GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. 2014/RS(I)/ 954/32/1765 New Delhi, dated 01.08.2014

M/s AMTEK Railcar Industries Pvt. Ltd.,
Village PhatakMajri,
P.O. Sadhugarh,
Distt. Fatehgarh Sahib -140406

DEVELOPMENTAL ORDER

Dear Sirs,

Sub: Developmental Contract No. 2014/RS(I)/ 954/32/1765 dated 01.08.2014 for manufacture and supply of wagons.

Ref: (i) E-Tender No. 2013RS(I)22TC opened on 25.11.2013.

(ii) Your e-offer against the wagon tender opened on 25.11.2013.

(iii) Counter offer vide letter of even No dated 28.07.2014.

(iv) Your acceptance letter No. ARIPL/13/1288 dated 28.07.2014.

1.0 The President of India, acting through the Executive Director, Railway Stores (S), Ministry of Railways (hereafter called the 'Government') is pleased to allocate you total 500 VUs of wagons (as a Developmental Order) against the subject tender as per details given below:

Wagon type	**Quantity (VUs)**
BOXNHL	300
BCNHL	200
Total	**500**

1.1 Out of above allocation, it has been decided to release order for manufacture and supply of 250 wagons as per details given hereunder:-

1.2 <u>Description, Specification and Rate of items</u> :

RSP Item No.	Description	Specification	Relevant Index Drawing & Design	Quantity (VUs)	Basic Rate per Wagon (`)
1	**2**	**3**	**4**	**5**	**6**
PB – 876/2014-15	B.G. Bogie Open Wagon type 'BOXNHL'	WD-02-BOXNHL-2011 of March 2011.	WD-05086-S-01 Alt-9 with DESIGN-'D'	150	11,74,500/- (Rupees Elevan Lakh Seventy Four Thousand Five Hundred only).
PB-867/2014-15	BG Bogie covered Wagon type 'BCNHL'	WD-02-BCNHL-2011 OF March 2011	WD-06076-S-01 Alt-5 with Design-'E'	100	10,71,000/- (Rupees Ten Lakh Seventy One Thousand only)
	TOTAL			**250**	

NOTE: Prices indicated above exclude the cost of free supply items.

2.0 In addition to wagons ordered above, following 250 wagons would remain withheld on your account and Government reserve the right to place order on you for manufacture and supply of these wagons against the tender under reference as per details given hereunder :

2.1 <u>Description, Specification and Rate of items</u> :

RSP Item No.	Description	Specification	Relevant Index Drawing & Design	Quantity (VUs)	Rate per Wagon (`)
1	**2**	**3**	**4**	**5**	**6**
	B.G. Bogie Open Wagon type 'BOXNHL'	WD-02-BOXNHL-2011 of March 2011.	WD-05086-S-01 Alt-9 with DESIGN-'D'	150	11,74,500/- (Rupees Elevan Lakh Seventy Four Thousand Five Hundred only).
	BG Bogie covered Wagon type 'BCNHL'	WD-02-BCNHL-2011 OF March 2011	WD-06076-S-01 Alt-5 with Design-'E'	100	10,71,000/- (Rupees Ten Lakh Seventy One Thousand only)
	TOTAL			**250**	

NOTE: Prices indicated above exclude the cost of free supply items.

2.2 The above allocation under para 2.1 shall be released to you after you have supplied at least 50% of the current orders placed against this tender (detailed at para 1.2 above) within six months from the date of receipt of contract, i.e., by 31.01.2015.

NOTE: These wagons should conform to the requirements of General Standard Specification No. G - 72 (Rev. 3) of April 2007 with Corrigendum No. 2 of January 2008 (or latest revision, if any), issued by RDSO.

2.3 Total Value of Tranche-I : ` 28,32,75,000/- (Rupees Twenty Eight Crore Thirty Two lakh Seventy Five Thousand only) without Excise Duty and VAT.

3.0 **Excise Duty and VAT:** The prices indicated at para 1.2 and 2.1 above are exclusive of ED @ 2% without CENVAT benefits, Education Cess @3% on ED and VAT @ 5%. However, ED will be payable on the total cost of wagons including free supply items and will be reimbursed against documentary evidence. VAT will be paid after adjustment of input tax credit for which a declaration may be given by you. Cost of free supply items is tabulated below:

Wagon type	Cost of all free supply items (Steel, CTRBs & Wheel-sets) per wagon set (in Lakhs of `) upto Wagon Builder's premises
BOXNHL	11.61
BCNHL	9.71

3.1 Any statutory variation in Excise Duty and VAT within the originally stipulated delivery period will be to purchaser's account. The purchaser will, however, not be responsible for payment of VAT by you under misapprehension of law.

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.

3.3 The Excise Duty and Sales Tax/ VAT on procurement cost of Couplers, Draft Gears and Bogies will be reimbursed to you by Railways on production of documentary evidence. This reimbursement will be limited to these levies applicable on upto the ceiling of latest price of Couplers, Draft Gears and Bogies in Railway Board contracts.

3.4 In case, Excise Duty is not applicable on complete Couplers, Draft Gears and Bogies used for these wagons – reimbursement of Excise Duty paid on inputs generally and traditionally used in Couplers, Draft Gears and Bogies manufactured by you and used in production of these wagons, will be allowed to you on the basis of actuals against documentary evidence and as certified by RDSO for quantities involved. Purchaser reserves the right to disallow part/full claim on this account if it appears unreasonable as compared to the general/traditional scale/source of inputs used by you or other manufacturers of Couplers, Draft Gears and Bogies. Alternatively if a wagon manufacturer making in-house production of Bogies and/or Couplers and/or Draft Gears clears them under clause 57CC/Rule 6 of CENVAT Rules, reimbursement shall be made @ 8% or as applicable for the CENVAT credit forgone against documentary evidence.

3.5 Actual freight charges on procurement of Couplers, Draft Gears and Bogies subject to maximum of Rail freight charges from nearest sources of supply through shortest route will be reimbursed by Railways on production of documentary evidence. No reimbursement would be made for supply of Couplers, Draft Gears and Bogies to the wagon builders within the same city.

Note : The provisions given under paragraph numbered 3.3, 3.4 and 3.5 above are not applicable in respect of AAR approved imported Couplers and Draft Gears for BOXNHL and BCNHL wagons.

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 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:** The following items will be supplied free of cost to the wagon builders F.O.R. contractor's siding if any or the nearest Railway Station open for booking, on submission of Indemnity Bond and Bank Guarantee as per Annexure-III & IV respectively.

i) CARTRIDGE TAPERED ROLLER BEARINGS (CTRBs),
ii) WHEELSETS, and
iii) STEEL as per Annexure V for respective types of wagons.

5.1 Railway is procuring upgraded design of indigenous couplers (without draft gears). Some of these couplers may be given to Wagon Manufacturers for fitment in place of AAR approved couplers after giving reasonable notice. In such cases, cost of AAR approved couplers as decided in Railway Board contract would be deducted before making the payment for such wagons.

5.2 Steel will be procured and supplied by Director, Railway Stores (I&S), Railway Board, Kolkata within the ceiling of Annexure-V as appended to the contract. You will have to render the accountal regularly as per proforma in use as advised by Director, Railway Stores (I&S), Railway Board, Kolkata. Purchaser reserves the right to alter the ceiling in Annexure-V in case steel is supplied in sizes other than those on which present Annexure-V is based.

5.3 Allocation for CTRBs and Wheel-sets will be done by CMM (BI), Eastern Railway, Kolkata. Regular accountal will have to be furnished to CMM (BI) for these items in the manner required by him.

5.4 You are required to furnish Bank Guarantee for Steel to be supplied by President of India in terms of clause 1(a) of the special conditions of the contract, as per proforma (Annexure-III & III'A').

5.5 The said Bank Guarantee shall incorporate reference of this contract. Value of this Bank Guarantee will be normally 4 months stock limit of steel. For the present, you should submit Bank Guarantee worth ` 3.41 crores. Purchaser, however, reserves the right to increase this value at any time during currency of the contract. The stock of steel with you at any point of time should not exceed the limit of Bank Guarantee. If due to any reason whatsoever, the stock of steel in hand exceeds at any time the

value of the Bank Guarantee, additional Bank Guarantee to cover this excess value should immediately be furnished separately in Annexure-III-A. The amount for such increase will be decided by DRS (I&S), Kolkata.

5.6 Planning of Steel would start only after getting the requisite Bank Guarantee to the satisfaction of concerned authorities.

5.7 <u>PACKING</u> :

a) Wherever wheel sets will be supplied by Rail Wheel Factory (RWF), Bangalore duly packed, following materials will be used in supply of wheel sets and its assemblies:

1) HDPE covers,

2) HDPE Body,

3) End grip,

4) Wheel sets retainer assembly consisting of channel and associate parts as per RWF Drg. No. WAP/Misc/M-928, 929, 930 or WAP/Misc/M-934, 935, 936 (latest alteration).

b) Above packing materials are to be unpacked by wagon builders and returned to RWF early for re-use on freight to pay basis in packed condition as prescribed on the pallet.

c) The empty wooden pallet for the packing of above retainer channels and associate materials will be despatched by RWF by Road transport on freight to pay basis within 10 days of unloading.

d) Wagon builders should take proper care of above packing material till it is returned to RWF. It should also be ensured by them that no damages are caused to the packing material in their custody.

e) If the packing materials are not returned to RWF within 10 days, the prevalent cost of packing materials will be recovered. The present cost of above materials is ` 1,440/- per wheel set.

5.8 (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 :** Delivery is to commence within two months after placement of contract and is to be supplied in continuation of existing orders and to be completed by 31.07.2015 or earlier depending upon ordered quantity and Railways' requirement. The prototype wagon, wherever required, should be manufactured and got cleared from RDSO within 3 months.

6.1 Delivery of the material is subject to clause 8.1 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 percent of value of the delayed supplies.

7.0 F.O.R. Sadhugarh, Punjab.

8.0 Place of Manufacture Amtek Railcar Industries Pvt.Ltd., PhatakMajri, P.O. Sadhugarh, Tehsil & Distt. Fatehgarh Sahib, Punjab.

9.0 Paying Authority: FA&CAO (WC), Northern Railway, New Delhi.

10.0 **Terms of payment :**

(a) 90% payment of the total cost at Col. 6 para 1.2 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 5.7.

(d) 2% of the 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 submission of completion reports of steel and other free supply items against this contract.

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 1.2 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 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.

13.0 **SECURITY DEPOSIT:** The contractor shall deposit as Security Deposit, a sum equal to 10% of the total value of the contract subject to ceiling of ` 20,00,000/- (Rupees Twenty lakh only). Security Deposit may be paid in any of the following manner:

(i) In the form of deposit receipts, Pay Orders, Demand Drafts and Guarantee Bonds of the State Bank of India or any of the Nationalized or Scheduled Commercial Banks.

(ii) Government securities at 5% below the market value.
(iii) Deposit in the Post Office Saving Bank.
(iv) Bonds of Indian Railway Finance Corporation and KRCL Bonds.

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.

14.0 **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.

15.0 **INSPECTION AND QUALITY CONTROL** :

15.1 **Internal Quality Control:** Each Wagon Manufacturer would have to appoint, at their 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.

15.2 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.

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

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

15.5 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. Average Quality Index will be the average for six completed months after the date of order. This quality Index would be one of the factors for deciding the quantum of second tranche of wagon orders in contracts placed in next cycle of purchase of wagons and not for this contract. However, the system of wagon quality rating will be given a dummy trial in this batch of contracts.

16.0 **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.

17.0 **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..

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

19.0 **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 10 days from the date of issue of this contract.

DA: As above

Yours faithfully,

(Rajiv Lochan Bharadwaj)
Director, Railway Stores (W)
Railway Board
for & on behalf of the President of India

No. 2014/RS(I)/ 954/32/1765 New Delhi, dated 01.08.2014

Copy to:-

1) FA&CAO(WC), Northern Railway, New Delhi. 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, Northern Railway, New Delhi.

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. 2014/RS(I)/954/32/1765 New Delhi, dated 01.08.2014

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, Manak Bhawan, Shivaji Bridge, New Delhi – 110 001. 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.

(Rajiv Lochan Bharadwaj)
Director, Railway Stores (W)
Railway Board

ANNEXURE-A

Composite Material and Wage Escalation Clause – Base Month: June' 2013

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

$$P_1 = \frac{P_o}{100}\left(20 + 18 \times \frac{I_I}{I_o} + 17 \times \frac{S_1}{S_o} + 45 \times \frac{L_1}{L_o}\right)$$

Where,

P_1 = Escalated/ de-escalated price.

P_o = Base Price.

I_1 = The index number of whole sale prices in respect of items "Iron & Semis" Base 2004-05 compiled by Economic Adviser to the Govt. of India for the calendar month, three months prior to the call for inspection of the wagons. For instance wagons offered for inspection in November, 2013 the Index number for the month August, 2013 will be applicable.

I_o = Above whole sale price index for "Iron & Semis" applicable for the Base month.

S_1 = The index number of whole sale prices in respect of items "Steel Flat" Base 2004-05 compiled by Economic Adviser to the Govt. of India for the calendar month, three months prior to the call for inspection of the wagons. For instance wagons offered for inspection in November,2013 the Index number for the month August,2013 will be applicable.

S_o = Above whole sale price index for "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 three months prior to the call for inspection of the wagons. For instance wagons offered for inspection in November,2013 the Index number for August,2013 will be applicable.

L_o = 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_o shall constitute the amount due to the contractor towards escalation on cost of wages and material. Otherwise, the difference P_o minus P_1 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.

- x - x - x -

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 vehicles 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 at least 3(three) months in advance.

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 erection 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 vehicles 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 vehicles 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. 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 In the event of any unforeseen event directly interfering with the manufacture and supply of wagons arising during the currency of contract, such as war, insurrection, restraint imposed by the Government, acts of legislature or other authority, explosion, accident, strike, riot, lockout or other disorganization of labour, acts of public enemy, acts of God, sabotage the contractor shall within a week from the commencement thereof notify the same in writing to the President of India with reasonable evidence thereof. If the force majeure condition(s) mentioned above be in force for a period of 90 days or more at any time, the President of India shall have option to terminate the contract on expiry of 90 days of commencement of such force majeure by giving 14 days notice to the contractor in writing. In case of such termination, no damages shall be claimed by either party against the other save and except those which had accrued under any other clause of this agreement prior to such termination.

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 **DEFECTIVE VEHICLES :**

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 to 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 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 no 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 :**

(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole Arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units, by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the head of the organizations in respect of the contracts entered into by the other organizations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as Arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as Railway servant have expressed views on all or any of the matters under dispute or difference. The award of the Arbitrator shall be final and binding on the parties to this contract.

(b) In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the Court for any reason, it shall be lawful for the authority appointing the Arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as Arbitrator and that if for any reason that is not possible, the matter is not to be referred to Arbitration at all.

(d) The Arbitrator may from time to time with the consent of all the parties to the contract enlarge the time for making the award.

(e) Upon every and any such reference, the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the Arbitrator.

(f) Subject as aforesaid, the Arbitration and Conciliation Act, 1996 and the rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the Arbitration proceeding under this clause.

(g) Work under the contract shall, if reasonably possible continue during the arbitration proceedings and no payment due to or payable by the President of India shall be with held on account of such proceedings.

(h) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator as his discretion may determine.

(i) In this clause the authority, to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority whether in addition to other functions or otherwise.

19.0 <u>LAWS GOVERNING THE CONTRACT</u> :

(j) 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 <u>POWERS</u> :

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.

-x-x-x-

ANNEXURE - I A

SPECIAL CONDITIONS OF CONTRACT FOR MANUFACTURE OF WAGONS

1. (a) Following items will be procured by the President of India and supplied to the contractor as free supply item F.O.R. contractor siding, if any or the nearest Railway Station.

(i) Steel (to the extent of ceiling indicated in Annexure V for respective wagons),
(ii) Wheel sets, and
(iii) Cartridge Taper Roller Bearings (CTRBs).

(b) STEEL

Steel required for fabrication of wagons which can be procured direct from the Steel Plants in wagons loads will be procured by the President of India direct from the steel plants to the extent of the ceiling for all categories of steel specified in Annexure-V and will be supplied to contractor at their works siding, if one exists, failing which to the nearest rail head station open for booking. For the items of steel, out of the quantity specified in Annexure-V referred to above, which cannot be procured from the main producers or by allocation releases from Railways Buffer Stock. Director Railway Stores (I&S), Railway Board, Kolkata will authorize the contractor, on behalf of the President of India, within the ceiling referred to therein, for their procurement from other sources and the responsibility for the procurement of such items of steel shall rest entirely on the contractor. Cost will be paid by the President of India on their receipt in contractor's works on production of a certificate from the Officer of Inspection and Liaison Organization of RDSO, as per clause 3.3 (c) of Special Conditions of Contract. The contractor shall furnish an Indemnity Bond to cover total steel for fabrication of all types of wagons specified in the order. In addition the contractor (Private Sector Wagon Builders) shall also furnish a Bank Guarantee against this contract from a bank acceptable to the President of India in the proforma given at Annexure-III to cover the value of 4 months steel requirement based on his current annual out turn of wagons to be determined by the President of India.

Supply of other items at (ii) and (iii) above will be made free of cost F.O.R. contractor's siding if one exists failing which F.O.R. nearest rail head station open for booking on submission of a Indemnity Bond as per Annexure-IV.

(c) The procedure for obtaining payment for the cost of steel procured by the contractor as per clause 3.3 below has been indicated in clause 3.3.1 below.

Payment in (c) above shall be subject to the deduction of any amount for which the contractor is liable under this contract or any other contract in respect of which the President of India is the other party.

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

3. **CONDITION RELATED TO SUPPLY OF STEEL :**

3.1 Immediately after conveying the unconditional acceptance of the contract, the contractor shall submit a schedule of steel required for fabrication of each types of wagon, on order to the Director Railway Stores (I&S), Railway Board. Kolkata, in a proforma prescribed by him limiting the total quantities under each category to the ceiling limits stipulated in Annexure-V to the contract. The contractor should simultaneously intimate his production programme consistent with the delivery

stipulation in the contract with due allowance for the lead time required for obtaining steel from the main producers.

3.2 After scrutiny of the schedule of requirements of steel submitted by the contractor, the Director, Railway Stores (I&S), Railway Board, Kolkata will place order, for the quantity of steel finally decided by him, on the producers on behalf of the President of India for supply to the contractor F.O.R. their works siding, if one exists failing which the nearest rail-head for station, open for booking thereby endorsing a copy of the order to the contractor. The liability of the purchaser will be limited only to the cost of the steel and freight charges. Under load charges siding charges for wagons into the siding of the contractor and/or any other incidental charges etc. will be borne by the contractor.

3.3 For such items of steel out of the quantity specified in Annexure-V which cannot be covered by Railway's orders on producers directly or by allocation/release from Railway's buffer stock, the Director, Railway Stores(I&S), Railway Board, Kolkata will authorize the contractor for its procurement from the market/stockyards on behalf of the President of India. The responsibility for procurement of such items of steel will entirely rest on the contractor. The payment of cost for such purchase will be subject to the following conditions:-

a) Procurement authorization for steel by Director, Railway Stores (I&S), Railway Board, Kolkata.

b) Inspection on receipt of supply for quantity and quality and certification by the authorized Inspecting Officer of RDSO.

c) Payment will be made at (I) one of the main steel producers price plus additional contingency charges at the rate of 5% of the stockyard price, or (ii) the market price, whichever is lower subject to the following:

(i) As far as possible, the purchases should be made at the most economical price by contacting the nearest local stockyards or open market.

(ii) Wagon builders will have to produce evidence to the FA&CAOs concerned to the effect that the purchases have been made at the most economical price by endorsing copies of offers received from sources contacted. In case, material in the stockyard, where it would have cost less to the Railways, is not available, a regret or non availability certificates will be required to be furnished to FA&CAO concerned. For the purpose Director, Railway Stores (I&S), Railway Board, Kolkata will be required to indicate the details of sources (SAIL, TISCO, RINL etc.) to be contacted for supply of material.

(iii) In case the purchases are made from a stockyard which is not local, wagon builders will be reimbursed the cost of steel at main producers' stockyard price as per invoice plus additional contingency charges and 5% of the stockyard price. In such case the requirement contained in (y) above, will not apply. Freight charges from stockyard to wagon builder's premises will, not however, be permissible.

3.3.1 <u>PAYMENT FOR COST OF STEEL PROCURED BY THE WAGON BUILDERS IN TERMS OF CLAUSE 3.3 ABOVE</u>:

For the procurement of steel by the wagon builders and payment of the cost thereof in terms of clause 3.3 above detailed information as in the proforma prescribed by

Director, Railway Stores(I&S), Railway Board, Kolkata, should be maintained and submitted to the Inspecting Authority on receipt of materials for verification and certification.

The statement for claiming payment should be submitted in the proforma as indicating in Annexure of RDSO's letter No. MW/IL/OA dated 04-05-1978 to the Assistant Inspecting Engineer, along with the relevant ledgers, invoices test certificates and receipt for the amount paid by the wagon builders for procurement of steel in terms of clause 3.3 above. The Assistant inspecting Engineer, RDSO, after scrutinizing the statement for claiming payments submitted by the wagon builders and supporting facts and documents shall record a certificate as follows:

"The steel indicated in the statement has actually been received by the wagon builders at their works and the documents such as invoices, bills, test certificates and receipts etc. for the amount paid have been personally verified by me".

3.4 Credit for scrap arising will be on contractor's account and no accountal need be presented for scrap arising. This credit is expected to off set all other contingent costs to be incurred by the contractor on account of steel (a) difference between market stockyard price and main steel producers price of steel referred to in para 3.3 above (b) any extra requirements of steel over the ceiling limits stipulated and (c) extra work, if any involved due to non availability of any steel section(s) in the requisite lengths, widths, sizes etc., except that the provisions contained in clause 3 of the special conditions of the contract will apply in case of major modifications necessitated due to non-availability of requisite lengths, widths and sizes etc. Any saving in consumption compared to the schedule to Annexure-V shall be to contractor's account.

3.5 Occasionally an excess quantity may be ordered on steel plants and consigned to the contractor to make up full wagon loads etc. which shall be accounted for by the contractor separately for adjustment against earliest possible subsequent orders separate storage and accountal of such excess quantities should be maintained for verification as and when required. The utilization/disposal of such excess steel stocks will be allowed only after obtaining the approval of the Director, Railway Stores (I&S), Railway Board, Kolkata.

3.6 The payment to the main producers for supplies of steel against orders placed by Director, Railway Stores (I&S), Railway Board, Kolkata would be made by FA&CAO, Eastern Railway on receipt and verification of the bills, Railway Receipt, test certificates etc. After payment, the Railway Receipt will be forwarded to contractor. The duplicate copies of test, Inspection certificates will also be sent to the contractor. In case, the relevant documents are not received by the contractor in time, he shall take delivery of the materials against indemnity bond.

3.7 The FA&CAO, Eastern Railway will send advice of each payment made by him for steel supplied to the contractor, Director, Railway Stores (I&S), Railway Board, Kolkata and the Inspecting Officer of RDSO. The contractor shall post these particulars in a ledger as prescribed by RDSO and put up the ledger to the Inspecting Officer to verify the quantity of each consignment and its proper accountal.

3.8 Responsibility for progressing supplies of steel with producers, movement with carriers and maintenance of up-to-date accountal of steel shall be that of the contractor. If there be any shortfalls in the quantity of steel either in the despatch made by the producers or due to loss in transit, it shall be the responsibility of the contractor to lodge and pursue the claims with the producers/carriers for such shortages for satisfactory settlements. The President of India does not accept any

responsibility for compensating such losses. Quantity of steel paid for by the President of India will be deemed to have been supplied to the contractor. Any additional requirement to be made good any shortages on any account shall be met by the contractor at his own cost.

3.9 Supply of non indentable tonnage of steel to the contractor from Railway's Buffer stock will be made on freight to pay basis against release orders of Director, Railway Stores (I&S), Railway Board, Kolkata or Dy. Director (I&S), Railway Board, Kolkata subject to contractor paying service charges @ ` 200/- per tonne. However on indentable tonnage of free supply steels, such charges will not be leviable as per instructions issued in Railway Board's circular letter No.73/749/33/RS(S) dated 25.09.1980.

3.10 If the contractor does not take the delivery of steel dispatched by the producers due to any reason it will be diverted to nearest Railway's Depots, the contractor will have to pay departmental charges at the rate of 12 ½ % of price and incidental charges @ 2% of price and freight charges. In case it is not possible to divert the material to any of Railway Depots, wagon builder will be entirely responsible for this consignment of steel & cost thereof. Any other charges associated with diversion of consignment will also be recovered from him.

3.11 The contractor shall submit to the under mentioned offices a monthly summary of steel holding for each type of wagon against contract in the prescribed proforma:

a) FA&CAO, Eastern Railway, Kolkata.
b) Director Railway Stores (I&S), Railway Board, 3, Koilaghat Street, Kolkata.
c) Executive Director, Railway Stores (Steel), Ministry of Railways, Railway Board, New Delhi.
d) Associated Inspecting Officer, RDSO.
e) Director, Wagon (I&L), RDSO, Manak Nagar, Lucknow-226011.

3.12 The contractor shall submit the completion report for each type of wagon in the proforma given below for accountal of steel supplied by Railways in four copies to the Inspecting Officer, RDSO within three months of the completion of the order for each type of wagon:-

1. Serial No.
2. Description.
3. Specification
4. Quantity required within annexure-V category wise ceiling limit.

PLANNING AND RECEIPTS FROM PLANTS

5. Quantity ordered on plant:
6. Name of Plant.
7. P.O. and date particulars.
8. Quantity despatched by plant.
9. RR No. and date.
10. Invoice No. and date.
11. Quantity received.
12. Quantity paid for by FA&CAO (RBC).
13. FA&CAO (RBC) payment advice Memo No. and date.

RESEASE. PARTICULARS FROM RAILWAY'S STOCK

14. Quantity released from stock.

15. Railway.
16. Director, Railway Stores (I&S), Kolkata release order No. and date.
17. Railway Sale order No. and date.
18. Quantity received from Railway.
19. Issue Note No and date.

MARKET PURCHASE SANCTION PARTICULARS

20. Quantity authorized against market purchase sanction.
21. Director, Railway Stores (I&S), Kolkata Ref. No. date.
22. Quantity procured.
23. FA&CAO, Eastern Railway, Northern Railway reimbursement particulars.

TRANSFER TO RSPs AND OTHER WAGON CONTRACTS

24. Quantity transferred to (wagon contract reference and RSP No.)
25. RSP and Wagon contracts particulars transferred to.
26. Authority Director Railway Stores (I&S) transferred to.

TRANSFER FROM RSPs AND OTHER WAGON CONTRACTS

27. Quantity transferred from.
28. RSP & Wagon Contracts particulars transferred from.
29. Authority of Director, Railway Stores (I&S), Kolkata.
30. Total quantity planned (5+14+20)
31. Total quantity received (8+18+22-24+27).
32. Excess/shortfall.

4. Conditions related to supply of other free supply items:-

4.1 Planning of other free supply items – Wheel-sets, & CTRB for this contract will start only after furnishing the Indemnity Bond by the contractor to the full satisfaction of relevant authorities. Planning will be done at a time so that stock of these items with wagon builder does not exceed 3 months requirement of wagon production and in no case it exceeds the value of Indemnity Bond. Planning of these free supply items will be done by CMM/BI, Eastern Railway, 3, Koilaghat Street, Kolkata. Accountal of free supply items is required to be furnished on monthly basis against this contract in the proforma prescribed by CMM(BI), Eastern Railway, Kolkata. Completion Report for these free supply items will have to be submitted by the contractor against this contract, on same lines as for steel and in the proforma prescribed by CMM(BI), Eastern Railway, Kolkata.

5. The prototype/ pattern wagon can be retained by the contractor on submission of Indemnity Bond as per Annexure-II, for reference during the currency of the contract where the wagons on order being manufactured for the first time.

6. The contractor shall hold at his works and/or at the works of his sub-contractors, for and on behalf of the President of India as his property in trust for him the stores and articles supplied to the contractor free of cost and those procured by him on behalf of the President of India in respect of which payment has been made to him against the above order. The contractor shall, from time to time advise the Registrar of Companies in whose jurisdiction they are located, the details of such materials, so that Union of India's charge on the materials is duly registered with him.

7. The said stores and articles which will be held in trust by the contractor for the President of India shall be kept separately so that the same can be easily identified

and distinguishable from the other articles and goods charged and/or pledged to the Banks and/or other Financial Institutions/Debentures Trustees and that the said stores and articles shall not be charged and/or pledged with any bank.

8. The said stores and articles shall be such as required for the purpose of the above contract and the payment is made without prejudice to the provisions of the contract as to rejection and inspection and any such payment made towards the cost of the stores and articles rejected or found unsatisfactory on inspection shall be refunded immediately to the President of India.

9. The contractor shall be entirely responsible for the safe custody and protection of the said articles and stores against all risks excluding all war risks till they are duly utilized in manufacture of wagons and in case of surplus stores and articles these are delivered back to the President of India as he may direct. He shall be responsible for any loss, damages or deterioration whatsoever in respect of the said stores and articles while in his possession and custody or in the possession and custody of his sub-contractors. The said articles and material shall at all times be open to inspection of any officer authorized by the President of India. And if the contractor fails to produce/show the articles and materials before the Inspecting Officer or otherwise fails to give a true and proper account to the president of India, the President of India shall, on receipt of a certificate/report from the said Inspecting Officer indicating the quantity of articles and materials not produced/shown or for which on true or proper account could be given; be entitled or recover from him the compensation for such materials/articles either by deduction from any sums due or any sum which at any time hereafter may become due to the contractor, under this or any other contract. The certificate/report issued by the Inspecting Officer as aforesaid shall be final and conclusive and shall not be questioned in any manner whatsoever and no dispute shall be raised by the contractor in this regard. The rights conferred on the President of India under this clause shall not prejudice his other rights and remedies available to him under the contract.

10. Should any loss or damage occur or a refund becomes due, the President of India shall be entitled to recover from the contractor compensation for such loss or damage or the amounts to be refunded without prejudice to any other remedies available to him by deduction from any sum due or any sum which at any time hereafter may become due to the contractor under this or any other contract.

11. In the event of the contractor's failure to fulfill all their obligations under the contract, the President of India will be entitled to lift such stores and articles as would be retained in his custody which were supplied to him free of cost, and against which payments have been made by the President of India. The rights and remedies available to the President of India under this clause is however, without prejudice to his other rights and remedies available to him under this contract.

12. **JURISDICTION OF COURTS**

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

-x-x-x-

ANNEXURE-II

INDEMNITY FOR SAFE CUSTODY OF PROTOTYPE/ PATTERN WAGONS

We …… hereby undertake that we shall hold at our Works ……. for and on behalf of the President of India and in trust for him the prototype pattern wagons (mentioned herein below) which has been made over to us for technical reference in connection with manufacture and supply of wagons against the contract ..... (reference to be quoted here) in respect of which 90% payment of its basic manufactured cost has been made to us.

DESCRIPTION OF PROTOTYPE/ PATTERN WAGONS

2. We shall be and remain absolutely/responsible for the safe custody and protection of the prototype/pattern wagon against all risks whatsoever till that (these) is (are) released to the President of India in terms of the provisions contained in the contract or to his representative as he may direct in writing and as such do hereby indemnify the President of India against any loss or and/or damage to the said prototype/ pattern wagon while in our possession/custody. The said prototype/pattern wagon shall, however, be at all times open to the inspection by officers who may be authorized on that behalf by the Railway Board or their nominee.

3. Should, however, at any time any loss or damage as aforesaid occur to the prototype/pattern wagon while in our custody, the President of India or his representative shall be entitled to recover from us compensation for and in respect of such loss or damage without prejudice to any other remedies which may be otherwise available to the said President of India by way of deduction from any sum due to/or any sum which at any time hereafter may become due to use, under this or any other contract.

4. In the event of any loss or damage as aforesaid, the assessment of such loss or damage and the assessment of the compensation therefore would be made by the President of India or his authorized nominee and the said assessment would be final and binding upon us.

For .....

ANNEXURE-III
(Private Sector)

BANK GUARANTEE FOR STEEL

The President of India

WHEREAS MESSERS……. (hereinafter called "the Contractor") have agreed with the President of India to execute the following orders on the terms and conditions set out herein (hereinafter called "the said orders")

1.
2.
3.
4.

2. And whereas according to the terms and conditions of the said orders, the steel will be supplied free of cost subject to contractor's furnishing a standing Bank Guarantee for `……. (Rupees…….....only) in a form and from a Bank acceptable to the President of India.

3. And whereas the contractor has approached his bank to give to above said Bank Guarantee on his behalf in favor of ……the President of India for an amount of `…….. (Rupees……..... only) which the President of India has agreed to accept.

4. Now in consideration of President of India having agreed to supply steel free of cost, the bank hereby irrevocably undertake and guarantee to pay to the President of India, as such place or places as may be determined by the President of India forthwith on demand and without any demur, any sum upto a maximum of `……. (Rupees…….....only) in case the contractor makes any default in the performance, observance or discharge on the terms and conditions contained in any of the said orders or all in respect of which default has occurred.

5. The decision of the President of India whether any default has occurred or has been committed by the contractor in the performance, observance or discharge of the terms and conditions of the said orders shall be conclusive and binding on us.

6. The President of India shall be at liberty without our knowledge or consent from time to time to grant or allow extension of time or give indulgence to the contractor or to modify the terms and conditions of the said errors with the contractor without affecting or imparting the guarantee or our liability hereunder.

7. This guarantee is a continuing one and will not be revoked except with the prior written consent of the President of India.

8. The guarantee hereinbefore contained shall not be effected by any change in the constitution of the Bank or the contractor.

9. No claim under this guarantee shall be entertained by us unless the same has been preferred in writing by the President of India before the expiry of the guarantee. The validity of guarantee will expire on ..…… but will be extended further if required by the President of India.

For…….
(Name of the Bank)

ANNEXURE-III-A
(Public Sector)

INDEMNITY BOND FOR STEEL

Know all men by these presents that against wagon contract No.....dated.....we…….....a Company incorporated under the Companies Act., 1956 having our Registered office at ..... the town of ..... (hereinafter referred to as 'The Contractor') are held and firmly bound upto the president of India (hereinafter called 'The Government') in the sum of Rs. (Rupees ..... in words) for the payment of which sum will and truly to be made to the Government), we bound ourselves, our successors and assigns by these present.

Sealed with our seal on.....day of ..... two thousand and ten.

1.
2.
3.

2. AND WHEREAS the said contracts provide interalia that the steel required for the fabrication of wagons under the aforesaid contracts shall be supplied by the Government free of cost F.O.R. contractors siding if one exists failing which F.O.R. nearest rail head station open for booking and for the payment of the cost of steel procured by the contractor from market/stockyard on behalf of the Government in terms of clause 3.3 of the Special Conditions of contract. AND WHEREAS the contractor shall furnish a bank guarantee for Rs. _____ for free supply of steel by the Government against this contract as stated above, equivalent to the value of steel holdings for approximately four months wagons production programme.

3. AND AS WHEREAS it is agreed between the Government and the contractor that where the steel holdings by the contractor occasionally exceeds four months wagon production programme under the aforesaid contracts, the contractor shall furnish the separate Bank Guarantee for this excess value of the steel holdings by the contractor at a given time and from time to time as and when such steel holdings exceed four months wagon production programme already furnished.

NOW, THEREFORE, THE CONDITION OF THIS BOND OR OBLIGATION is such that if the contractor shall and will truly perform and fulfill all the undertakings, covenants, terms and conditions and agreements of the said contracts during the original terms of the said contracts and any extensions thereof that may be granted by the GOVERNMENT and shall also well and truly perform and fulfill all the undertakings, covenants, terms conditions and agreements of any or all duly authorized modification of the said contracts that may hereafter be made, than this obligation shall be void otherwise the same will remain in full force and virtue.

AND IT IS FURTHER AGREED BY AND BETWEEN THE PARTIES that the decision of the Government as to whether the contractor has well and truly performed and fulfilled all the undertakings, covenants conditions and agreements of the said contracts shall be final and binding on the contractor.

WE HEREBY FURTHER UNDERTAKE THAT:

(a) We shall hold at our works at ..... and/or ..... at the works of our sub-contractor for and on behalf of the President of India and as his property in trust for him, the steel holdings relating to the aforesaid contracts.

(b) the said steel which will be held in trust by us for the Government will be kept separately so that the same can be easily identified and distinguishable from other steel and articles of goods and that the said steel will not be charged and/or pledged with and Bank and/or other Financial Institutions/Debenture Trustee.

(c) We shall entirely be responsible for the safe custody and protection of the said steel against all risks till the said steel holdings are duly utilized in the wagons and the wagons are duly delivered to the Government and we further agree and undertake that we shall indemnify the Government against any loss, damage or deterioration whatsoever in respect of the said steel while in our possession or in the possession of our sub-contractors. The said steel shall at all times be open to inspection of any officer authorized by the Government.

(d) And any loss or damage occur or a refund becomes due on account of non-accountability of the said steel to the satisfaction of the Government, the Government shall be entitled to recover from us, compensation for such loss or damage or the amount to be refunded without prejudice to any other remedies available to the Government by deduction from any sum due or any sum which at any time hereafter may become due to us under any of the aforesaid contracts or any other contract/contracts. We undertake in terms of this indemnity Bond and as agreed aforesaid to pay without any demur for the same on demand by the President of India.

(e) In the event of our failure to fulfill all our obligations under the aforesaid contracts, the President of India will be entitled to lift the said steel in our custody.

IN WITNESS WHEREOF THE COMMON SEAL OF THE COMPANY IS HEREBY AFFIXED IN THE PRESENCE OF (1)…….(name),

(2)…….(name), two of the Directors of the company who have signed these presents, this……..day of ……2010.

Sealed with the seal of the company and their presents have been signed by (1)……..(Name) and (2) ……..(Name) two of the Directors of the Company in the Presence of :

(1)……Name & Address.

(2)……..Name & Address.

Accepted for and on behalf of the President of India.

By……..

(Name & Designation)

Witnesses):-

(1)……..(Name & Address)

(2)…….. (Name & Address)

ANNEXURE-IV

INDEMNITY BOND

INDEMNITY FOR SAFE CUSTODY OF FREE SUPPLY ITEMS

We …… hereby undertake that we shall held at our works for and on behalf of the President of India and in trust for him the stores/articles (mentioned herein below**) which may be and/or which has been made over to us, in connection with the manufacture of wagons against the contract.

2. We shall be and remain absolutely responsible for the safe custody and protection of the said stores and articles against all risks whatsoever till those are assembled in the wagons to be manufactured against the above mentioned contract and duly delivered to the President of India or to his representative as he may direct and as such do hereby indemnify the President of India against any loss or and/or damage to the said stores and articles while in our possession/custody. The said stores and articles shall, however, be at all times open to the Inspection by officers who may be authorized in that behalf by the Ministry of Railways, Railway board, or its nominee.

3. Should, however, at any time any loss or damage as aforesaid occur or a refund become otherwise due to the President of India, he or his representatives shall be entitled to recover from us compensation for and in respect of such loss or damage, if any, or the amount to be so refunded without prejudice to any other remedies which may be otherwise available to the said President of India by way of deduction from any sum due to/or any sum which at any time hereafter may become due to us under this or any other contract.

4. In the event of any loss or damage as aforesaid, the assessment of such loss or damage and the assessment of the compensation therefore would be made by the President of India or his authorized nominee and the said assessment would be final and binding upon us.

For----------

** Cost of free supply items per wagon set are as under:-

Wagon type	Cost of all free supply items (Steel, CTRBs & Wheel-sets) per wagon set (in Lakhs of `) upto Wagon Builder's premises
BOXNHL	11.61
BCNHL	9.71

ANNEXURE-V

Category wise requirement of steel for **BOXNHL** Wagons

S.No.	Description	Specification	Weight in MT per wagon
1.	Sheet 1 mm thick	RDSO STR No.C-K201, Gr X2 Cr Ni 12 (409M) of Table 1, Heat treatment condition/surface finish '2B' as per Table 5	0.00528
2.	Sheets up to 4 mm thick	IRS:M-44	3.0464
3.	Plates	IRS:M-44	3.10016
		Total	**6.15184**

Category wise requirement of steel for **BCNHL** Wagons

S.No.	Description	Specification	Weight in MT per wagon
1.	Plates	IS 2062:2011 E-450 BR Cu	3.1705
2.	Sheets up to 4 mm thick	IS 2062:2011 E-450 BR Cu	2.5543
3.	Sheets	IS 2062:2011 E-350 BR Cu	0.5996
		Total	**6.3244**

-x-x-x-x-x-