

GENERAL TERMS & CONDITIONS OF TENDER

(APPLICABLE TO FOREIGN & INDIAN BIDDERS)

1. INSTRUCTIONS TO BIDDERS:

- 1.1 BIDDER shall use only English language for filling in details and text wherever applicable in **Techno- Commercial Offer (Part- I)** and **Price Bid (Part-II)**.
- 1.2 Tender documents are NON-TRANSFERABLE and meant for the addressed BIDDER only.
- 1.3 Offer is to be submitted by the addressed BIDDER only and any offer submitted in the name of any other Company will **NOT** be accepted.
- 1.4 The BIDDER shall bear all costs associated with the preparation and submission of their tender including costs associated with provisioning of Bank Guarantees and Counter Guarantees. GSL will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process including the cancellation of this tender process.
- 1.5 Currency of tender and payment: The rates and the prices shall be quoted by the BIDDER in the currency specified in the Price Bid format i.e INR and in **any one** of the foreign currencies i.e EURO/GBP/ USD. The rates and the prices shall be quoted by Indian Bidder in Indian Rupees only in the Price Bid format
- 1.6 For conversion of Foreign currency into Indian currency i.e. Indian Rupees exchange rate as on date of opening of the price Bid will be considered for comparison of prices and deciding Lowest Bidder (L-1). Foreign currencies shall be converted into Indian Rupee at the bill selling rate from State Bank of India , Commercial Branch , Vasco-da-Gama, Goa, India on the day of opening Price Bid. If bid opening day happens to be bank holiday or non-transaction day, the exchange rate prevailing on immediate previous working day shall be adopted.
- 1.7 Offers (in sealed covers), specifying the tender reference number & date, bidders name and due date should reach GSL on or before due date of closing date of tender.. The tender will close at 15:00 hrs on stipulated due date. Techno-Commercial bid (Part I) will be opened at 15:00 hrs on the same date. Price bids (Part II) will be opened at later date only after technical acceptance of the techno-commercial bid by Technical Negotiation Committee (TNC). Bidders may depute their representative along with authorization letter from their company to witness the opening of Techno-Commercial offers and Price Bid. Request for extension of tender closing date from the bidders will not be entertained. However, , GSL reserves the right to extend the due date of tender opening. Accordingly, fresh date will be intimated to the BIDDERS.

1.8 **TENDER CLOSING & OPENING:**

Bidders shall submit their tenders in TWO BID SYSTEM' in two separately sealed envelopes as detailed below:

1.8.1 **PART I: "TECHNO-COMMERCIAL BID"** and marked thus clearly on the envelope.

This shall contain:

- a) Detailed Technical offer in line with technical specification and scope defined in GSL technical part.
- b) Detailed commercial offer indicating compliance of General Terms & Conditions and Standard Terms & Conditions.
- c) Compliance of GSL Loading factors.
- d) Bid Security (EMD).
- e) **'Unpriced'Commercial** Bid to confirm that the Bidder has quoted for all the items indicated in the Price Bid format.
- f) A complete Tender document, drawing, corrigendum and addendum, if any, issued by GSL duly endorsed (signed and stamped) at the bottom by the Bidder.
- g) A valid Power of Attorney, duly authorised by a Notary Public indicating that the person(s) signing the Tender have the authority to sign the Tender and thus the Tender is binding upon the Bidders;
- h) Self attested copy of Sales Tax and Permanent Income Tax Account Number (applicable for Indian Bidders).
- i) Statement indicating that Bidders is fully complying with the Tender terms or otherwise.
- j) Any other information or other materials required to be completed and submitted by the Bidders in accordance with these Tender documents.

1.8.2 **PART II: "PRICE BID"** and marked thus clearly on the envelope.

This shall contain only the price part of the Tender.

- a) Price Bid Format duly filled in, signed & stamped by the Bidder indicating competitive prices for all the items mentioned therein.

NOTE: Bidders to take note of conditions indicated in the clause "EXAMINATION OF TENDERS.

1.8.3 **Both inner and outer envelopes shall:**

- a) Be addressed to GSL mailing address specified in the Tender Data.
- b) Bear the identification as specified in the Tender data.

1.8.4 No Tender shall be accepted unless it is properly sealed. Bidders shall not be allowed to fill in or seal their Tenders at GSL office.

1.8.5 If the packet and envelopes are not sealed and marked as instructed above, GSL will assume no responsibility for the misplacement or premature opening of the Tender submitted. A Tender opened prematurely due to this cause may be rejected by GSL and returned to the Bidder, or alternatively, at the discretion of GSL, may be accepted.

1.8.5 Enfaxed or emailed Tenders will be treated as defective, invalid and will be rejected. Only detailed complete Tenders in the form indicated in paragraphs above, received prior to the closing time and date of the Tenders will be taken as valid.

1.8.6 **Both the envelopes, containing Part I and Part II bid respectively as indicated above, should be sealed in an outer envelope and deposited in the tender box kept at security office of GSL or can be delivered at GSL Central dispatch Registry office.**

1.9 **Price Bid Opening:**

After scrutiny of documents and technical bids, only those offers which are cleared technically and commercially will be considered for Price Bid opening. Further, the Price Bid cover (PART II) of the techno-commercially acceptable offers will be opened in the presence of the Bidders authorized representatives who choose to attend at a later date which will be intimated to all the qualified Bidders. The bidders' representatives will be required to produce authorization letter to sign a register evidencing their attendance.

2. GOVERNING OF TENDER:

A CONTRACT resulting from this Tender shall be governed by the Terms & Conditions of the Tender and the BIDDER quoting, in response to this tender shall be deemed to have read and understood the same.

3. COUNTER OFFER:

No counter-offer will be accepted from the BIDDER in response to this tender under any circumstances. Where counter Terms & conditions are offered by the BIDDER, those shall not govern the Tender, unless, specific acceptance of the same is conveyed in writing in the CONTRACT/PURCHASE ORDER or otherwise by GSL resulting from this tender.

4. **LATE TENDERS:**

The BIDDERS are required to submit their offer in a sealed envelope under TWO BID system i.e. PART – I Techno Commercial offer and PART II Price Bid duly super scribing the GSL tender reference no. and due date so as to reach GSL well before stipulated due date and time. Late Tender shall not be accepted and will be returned unopened to the BIDDER. GSL shall not be responsible for any reasons for the tender not received before tender due date and time.

5. **PRICES:**

The rates quoted by the BIDDER in the tender shall remain fixed and firm till the execution of the CONTRACT/PURCHASE ORDER and no revision thereof will be allowed during the period of execution of CONTRACT/PURCHASE ORDER.

6. **BID SECURITY (EMD):**

6.1 BIDDER shall submit Bid Security also known as Earnest Money Deposit (EMD) with the Techno commercial offer i.e PART - I. The details of the EMD amount required to be submitted by the BIDDERS are as under

Sr. No.	EMD for Indian BIDDER	EMD for Foreign BIDDERS		
		In INR (in lakhs)	In Euro	In GBP
1	500	653000	516000	750000

6.2 The EMD shall be submitted by the BIDDERS in the form of Demand Draft (DD) or Bank Guarantee from any Overseas Bank of International repute duly counter guaranteed by any Indian Nationalised bank situated in India by Foreign Bidders.

6.3 In case of Indian Bidders, Bank Guarantee drawn on any Indian Nationalised Bank / Scheduled Bank (except Co-operative Bank) shall be submitted towards EMD. The Bank Guarantee should be valid for 90 days beyond the validity of the offer i.e. 18 months plus 3 months claim period from the date of opening of tender (Techno Commercial Bid).

- The format for EMD Guarantee is attached at **Annexure I**

6.4 The EMD of the unsuccessful BIDDER will be refunded/returned after finalization of the Tender.

6.5 EMD of successful Bidder shall be retained towards Pre Integrity pact.

6.6 No interest will be payable by GSL, whatsoever on refund of EMD.

6.7 EMD shall be forfeited in the following events:

- i) In case the BIDDER withdraws his tender during its validity or the extension thereof

OR

- ii) In case the BIDDER withdraws his tender after issuance of a "Letter of Acceptance" or fails to convey acceptance of the same.

OR

- iii) In case the BIDDER fails to execute the CONTRACT/PURCHASE ORDER, after tender has been accepted and CONTRACT/PURCHASE ORDER has been awarded.

OR

- iv) In case, if the BIDDER/Seller commits a breach of any provisions of pre-contract Integrity Pact signed by the BIDDER.

OR

- v) In case the successful bidder fails to submit Performance BG for 12.5% of the CONTRACT/PURCHASE ORDER Value within 21 days of signing of CONTRACT/ PURCHASE ORDER.

7. EXAMINATION OF TENDERS

7.1 Prior to the detailed evaluation of Tenders, GSL will examine the Tenders to determine for each Tender whether:

- (a) it is complete;
- (b) the documents have been properly signed;
- (c) it is accompanied by the required securities;
- (d) it is substantially responsive to the requirements of the Tender documents; and
- (e) Tender is valid in accordance with validity clause of the tender

7.2 A Substantially Responsive Tender is one which conforms to all the terms, conditions and specifications of the Tender documents, without material deviation, reservation or omission. A material deviation, reservation or omission is one:

- (a) Which affects in any substantial way, the scope, quality or performance of the equipment ;
- (b) Which limits in any substantial way, inconsistent with the Tender documents, the GSL's rights or the Bidders obligation under the CONTRACT/PURCHASE ORDER; or

- (c) The rectification of which would affect unfairly the competitive position of other Bidders presenting substantially responsive Tenders.

7.3 Goa Shipyard Limited determination of a Tender's responsiveness is to be based on the contents of the Tender itself. Following will be followed:-

- a) If a Tender is not substantially responsive, it will be rejected by GSL, and may not subsequently be made responsive by correction or withdrawal of the non-conformity.
- b) Tenders determined to be substantially responsive will be checked by GSL for any arithmetic errors. Errors will be corrected by GSL as follows:
- i) where there is a discrepancy between the amounts in words and in figures, the amount in words will govern;
 - ii) where there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall govern and the total price shall be corrected accordingly, unless in the opinion of GSL there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted will govern and the unit price will be corrected.
 - iii) If the successful Bidder does not accept the correction of the errors pursuant to above paragraph, this will be considered as invalidating its Tender and the Bid Security may be forfeited pursuant to paragraph as stated above.
 - iv) All items in the respective Price Schedules must be priced. If a Bidder has included the price of associated items in the price of the main items this must be clearly stated and a price of zero must be entered for the respective associated items. For any item left blank, the GSL will consider quoted rate / amount as "Zero".

7.4 CONFIDENTIALITY OF TENDER EVALUATION:

- a) The tender evaluation process is strictly Confidential.
- b) Information relating to the evaluation of tender will not be disclosed to BIDDERS or any other persons not officially concerned with such process.

8. PRICE NEGOTIATION

GSL reserves the right to conduct price negotiations with techno-commercially acceptable lowest Bidder (L1) including as an outcome of the purchase preference specified at para 11 below.

9. PERFORMANCE SECURITY

9.1 Foreign Bidders:

- a) Within Twenty One (21) days on signing of CONTRACT/PURCHASE ORDER, the successful Foreign Bidder shall furnish to GSL a Performance Guarantee for 12.5% value of the order, in the form of Bank Guarantee from any Bank of International repute in prescribed format **(Annexure-II)** duly counter guaranteed by any Indian Nationalized bank situated in India, valid till expiry of guarantee period of 12 (Twelve) ship sets plus 3 (Three) months claim period. Foreign bidder has a choice to submit performance Bank Guarantee from any Indian Nationalized Bank.
- b) Bidder shall furnish TWO separate Performance Bank Guarantees for foreign currency component and Indian Rupees component of the CONTRACT/PURCHASE ORDER respectively.

9.2. Indian Bidders:

- a) Within Twenty One (21) days on signing of CONTRACT/PURCHASE ORDER, the successful Bidder, shall furnish to GSL a Performance Security for 12.5% value of the order, in the form of Bank Guarantee from any Indian Nationalized/Scheduled bank (except Co-operative Bank) in prescribed format **(Annexure-II)** and valid till expiry of guarantee period of 12 ship sets plus 3 months claim period.

- 9.3 Failure of the successful Bidder to comply with above requirement shall constitute sufficient grounds for the cancellation of CONTRACT/PURCHASE ORDER, and forfeiture of the Bid Security (EMD).

10. INDIGENIZATION (SOURCING FROM INDIA)

- a) GSL Indigenization policy in line with 'Make In India' concept inter alia aims at identifying and facilitating indigenous manufacture of equipment, from OEMs making equipments indigenously in India.
- b) In order to encourage the use of Indian content in imported equipment, material and services, **Foreign as well as Indian BIDDERS shall ensure that a minimum of 20% aggregate across the complete CONTRACT/PURCHASE ORDER by value shall be indigenous (Indian)content.**
- c) Similarly, **Bidders who wish to avail purchase preference as per para 10(B) below shall ensure that a minimum of 40% aggregate across the complete CONTRACT/PURCHASE ORDER by value shall have Indigenous (Indian) content**

- e) The BIDDERS shall submit details of their partner firm, joint venture agreement registered in India, for indigenization scope of work

11. **PURCHASE PREFERENCE:**

Purchase Preference shall be extended to Bidder with minimum 40% Indigenization across the complete CONTRACT/PURCHASE ORDER by value and where the difference in overall quote (Landed cost) of L1 bidder with minimum 20% Indigenization & lowest Bidder with minimum 40% Indigenization is not more than 5%.

Note:

- (i) To avail this purchase preference Lowest **Bidder with minimum 40% Indigenization** who is ready to match the overall prices of L1 bidder with **minimum 20% Indigenization** shall only be considered.
- (ii) In case BIDDERS fails to achieve committed indigenous (Indian) content at the time of supply, then for such shortfall in committed indigenous (Indian) content equivalent amount of INR plus a penalty of 10% of such shortfall amount shall be deducted while making final payment of INR/Foreign currency. In case of any shortfall in the penalty amount due, the same shall be remitted by the seller to the GSL's account within 30 days from the date of raising such demand, failing which it shall be en-cashed from the Bank Guarantee for performance.
- (iii) The progress of indigenization will be reviewed periodically during the currency of Contract based on the Indigenization Plan submitted and agreed during TNC with the Bidder. In case of shortfall /likely shortfall in committed indigenous content noticed the penalty amount applicable shall be recovered/adjusted from the pending due payments or subsequent payments.
- (iv) Necessary supporting documents to be provided by the BIDDER from their statutory auditor or practicing Chartered Accountant/Cost Accountant to GSL in support of Indigenization percentage declared by the firm, at the time of claiming back the BG.
- (v) Payment towards indigenous (Indian) content shall be made in Indian Rupees only.
- (vi) All Payments to Indian Bidder shall be made in Indian Rupees only.

12. **SUBMISSION OF BANK GUARANTEE BY BIDDER WITH MINIMUM 40% INDIGENISATION TOWARDS INDIGENIZATION (INDBG):**

- i) BIDDER who has availed purchase preference shall be required to submit a Bank Guarantee for 5% of the order value, valid till execution of the entire order / contract plus 90 days claim period. This INDBG shall be en-cashed in case Indigenization as committed is not achieved.

- ii) The Indigenization Bank Guarantee (INDBG) in prescribed format (**Annexure – III**) shall be submitted within 21 days of placement of Contract / Purchase Order. The validity of this INDBG will have to be extended by BIDDER as and when required by GSL based on the progress of Indigenization. In case, the firm is not able to meet the percentage of Indigenization committed as per the CONTRACT/PURCHASE ORDER terms, the penalty as elaborated in 10 B Note (ii) is to be adjusted by the firm in their Invoice, or else, same will be adjusted by en-cashing the bank Guarantee.
- iii) The INDBG can also be accepted in the form of Demand Draft/ SWIFT in favour of Goa Shipyard Ltd., if opted, by the BIDDER. The INDBG will be from any Indian Nationalized/Scheduled bank (except Co-operative Bank). The demand for payment by the GSL / Buyer shall be treated as conclusive proof for payment.

13. FORFEITURE OF INDIGENIZATION BANK GUARANTEE (INDBG) of Bidder with minimum 40% Indigenisation towards Indigenization

Non Compliance of agreed terms with respect to Indigenization will result in forfeiture of INDBG.

14. BID REJECTION CRITERIA UNDER INDIGENIZATION CLAUSE:

Following bids shall be rejected:

- a) BIDDERS not agreeing to accept tender condition in respect of Indigenization content of minimum 20% and purchase preference provision applicable to **Bidder with minimum 40% Indigenisation towards Indigenization.**
- b) BIDDERS not agreeing to submit required Bank Guarantees (BGs) in the prescribed format.
- c) BIDDERS who are not agreeing to accept tender condition in respect of Penalty Clause towards indigenization.

15. COMMERCIAL BID REJECTION CRITERIA:

Offers of the BIDDERS failing to comply with the following criteria shall be rejected:

- a) Bids received after tender closing date and time, if it is a late tender.
- b) Bids not accompanied by EMD/ Bid Security.
- c) BIDDERS not agreeing to furnish required Performance Guarantee in prescribed format.

- d) BIDDERS not agreeing to provide assistance for installation of equipment supplied by them OR stand guarantee for the equipment supplied OR quoting to only one part of the tender while not submitting quote to the other part which is, inseparable with the first part.
- e) BIDDERS who do not quote for all the items included in the Price Bid format (PART-II).

16. PENDING ORDERS WITH THE BIDDER FROM OTHER CUSTOMERS :

BIDDER shall submit the details of the pending orders for similar equipment from other customers .

17. PRE-CONTRACT INTEGRITY PACT:

- a) The signing of a '**Pre-Contract Integrity Pact**' is mandatory. The format of Integrity Pact (IP) is placed at **Annexure IV**. The BIDDERS are required to sign the same and submit separately in an envelope along with the **Techno Commercial offer (PART – I)**.
- (b) The Integrity Pact (IP) is a binding agreement between the BUYER and BIDDER/SELLER, in which the BIDDER/SELLER promises that it will not offer bribes during the procurement process and that the Buyer promises that it will not accept bribes. Under the IP, the BIDDER/SELLER for specific services or contracts agrees with the Buyer to carry out the contracted transaction in a fair and transparent manner.

18. GOVERNMENT REGULATIONS:

BIDDER /Seller to confirm that there are no Government restrictions or limitations in the country of the supplier or countries from which subcomponents are being procured and/or for the export of any part of the system to be supplied under this tender. Seeking all permissions from concerned authorities in the country of export is the responsibility of BIDDER and NO delay whatsoever on this account will be acceptable to GSL. Necessary **End User Certificate (EUC)** if required will be provided through Indian Navy.

19. CONTRACT MECHANISM.

A CONTRACT/PURCHASE ORDER will be placed by the BUYER on the successful BIDDER for supply, testing, installation, commissioning of MCM Suite equipment/systems and Training to personnel of the BUYER and to ensure Performance guarantee of the equipment/systems supplied. CONTRACT/PURCHASE ORDER placed by the BUYER on the BIDDER will be based on the terms and conditions of this Tender and such other agreed terms between the parties and also as per the directives and requirements and to the complete satisfaction of the BUYER / Indian Navy. The selection of the SELLER is **subject** to placement of CONTRACT/PURCHASE ORDER on terms acceptable to the BUYER failing which the selection shall be terminated at the discretion of the BUYER. BUYER reserve its right to either sign a CONTRACT or place a PURCHASE ORDER resulting from this Tender with successful Bidder.

20. CONDITIONS UNDER WHICH THIS TENDER IS ISSUED:

- (i) The information contained in this Tender document or subsequently provided to the BIDDERS, whether verbally or in documentary or any other form by or on behalf of the GSL/BUYER or the GSL/BUYER or any of their respective employees, representatives or advisers, is provided to the BIDDERS on the terms and conditions set out in this tender, and such other terms and conditions subject to which, such information may be provided.
- (ii) This tender is neither an agreement, nor, an offer nor an invitation to offer by the GSL/BUYER to the prospective BIDDERS or any other person. The sole purpose of this TENDER is to provide BIDDERS with the information, which may be useful to them, in the formulation of their respective Proposals. This TENDER includes statements, which reflect various assumptions and assessments arrived at by the GSL/BUYER in relation to the work. Such assumptions, assessments and statements do not purport to contain all the information, which each BIDDER may require. This TENDER may not be appropriate for all persons, and it is not possible for the GSL/BUYER, its employees or advisers to consider the objectives, technical expertise and particular needs of each party, who reads or uses this TENDER. The assumptions, assessments, statements and information contained in this TENDER, may not be complete, accurate, adequate or correct. Therefore, each BIDDER should and is expected to conduct its own investigations and analysis, and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this TENDER, and obtain independent advice from appropriate sources. Neither the GSL/BUYER or its employees and advisers accepts responsibility for the accuracy, or otherwise for any interpretation or opinion on the law which may be expressed herein.
- (iii) Neither the GSL/BUYER nor its employees and advisers make no representation or warranty, and shall have no liability to any person including any BIDDER under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this TENDER or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the TENDER and any assessment, assumption, statement or information contained therein or deemed to form part of this TENDER or arising in any way in this award process. The GSL/BUYER also accepts no liability of any nature, whether resulting from negligence or otherwise, however caused, arising from reliance of any BIDDER upon the statements contained in this TENDER. It is the responsibility of each BIDDER to make its own assessment in preparing its Proposals.
- (iv) This TENDER is being issued with no financial or other commitment from the GSL/BUYER of any nature whatsoever.

- (v) The GSL/BUYER may in its absolute discretion, but without being under any obligation to do so, change, vary, update, amend or supplement this TENDER, any part thereof or any information, assessment or assumption in this TENDER, at any stage and/or may invite revised or fresh offers, if required.
- (vi) The GSL/BUYER also reserves the right to withdraw/cancel the tender at its sole discretion at any stage without assigning any reasons and none of the BIDDERS shall have any claim whatsoever against the GSL/BUYER on this account and expressly waives any claims of whatsoever nature arising in future on this account.
- (vii) Information and data provided in this TENDER document should be kept strictly 'Confidential' and should not be disclosed to any firm / party / individual not concerned with the project on part of your company, without the prior approval in writing from GSL/BUYER.
- (viii) Notwithstanding anything to the contrary in this TENDER, the terms of a Contract / Purchase Order to be placed by the GSL/BUYER on the SELLER shall supersede this TENDER and the GSL/BUYER shall not be bound or stopped by the contents of this TENDER or any information, clarification, amendment or supplement issued in connection therewith.

21. STANDARD CLAUSES IN CONTRACT/PURCHASE ORDER :

The Government of India / BUYER desires that all actions regarding procurement of any equipment/systems are totally transparent and carried out as per established procedures. The BIDDER is required to accept our standard clauses regarding agents/agency commission, penalty for use of undue influence and access to books of accounts, arbitration and applicability of laws and Jurisdiction of Court, etc. which would be incorporated in the CONTRACT/PURCHASE ORDER. The detailed CONTRACT/PURCHASE ORDER will be awarded to the BIDDER incorporating the Standard Clauses.

22. LIQUIDATED DAMAGES(LD):

a) In the event of the SELLER's failure to have the equipment/systems delivered by the date/dates specified in the Contract / Purchase Order, the GSL/BUYER may, at own discretion withhold any payment until the whole of the equipment/systems have been supplied, and GSL/BUYER may also deduct from amount payable to the SELLER as agreed, liquidated damages and not by way of penalty the sum of **0.5 %** of the Contract / Purchase Order price of the scheduled undelivered equipment/systems for each and every week or part of a week for which the equipment / systems have been delayed subject to a maximum of **10%** of the value of delayed equipment / systems, in case the delay in delivery is acceptable to the GSL/BUYER. For the purpose of calculation of LD, the date on which the equipment/ systems have been dispatched will be treated as the date of delivery.

b). Work completion period indicated above is essence and in case of delay in completion of installation and commissioning of the systems on board, beyond 4 weeks from the contractual date, LD @ 0.5% per week of delay, from the contractual date, subject to a maximum of 5% of the order value of each ship set for installation assistance, will be payable to GSL. .

c) LD @ 0.1% per week beyond 6 week subject to maximum of 1% of order value for delay in submission of binding drawings will be applicable

d) These LDs as per 'a', 'b' and 'c' above are independent of each other and are not intended to be read concurrently or cumulatively. However, maximum LD applicable will be 10% of the order value against (a) & (c) above.

e) SELLER and GSL/BUYER agree that the LD prescribed herein represent a genuine pre-estimate of the damages that would be incurred or suffered by the GSL/BUYER. The applicable LD shall be recovered from the pending payments, due to the SELLER or shall be remitted by the SELLER to the GSL's account within 30 days from the date of raising such demand failing which it shall be en-cashed from the Bank Guarantee for Performance.

23. RISK PURCHASE:

In case the BIDDER fails to deliver the equipment beyond 20 weeks from the stipulated delivery date, GSL/BUYER reserves the right to cancel the order at it's discretion and procure the equipment from alternative source. Difference in procured cost, if any, will be recovered from any of pending bills with GSL/BUYER or through due process of Law.

24. TRIALS & COMMISSIONING ASSISTANCE:

- (a) Service Engineer assistance as required and indicated in the Technical specification to be included in the quoted prices.
- (b) Man days spent by GSL for the rework & rectification arising due to malfunctioning & mismatching of equipment & items supplied will be charged to your account and the same will be recovered from your pending bills.
- (c) It is to be essentially ensured that competent service engineer is deputed for STW/HATS/SATS so that the schedule for these activities is not affected on board ship. It is to be noted that if competent service engineer is not deputed, the STW/HATS/SATS scheduled of the equipment and that of related equipment are badly affected resulting in loss to GSL. In the event of deputation of non competent service representatives, the man days will not be accounted while accounting for free man days or for payment.

25. GUARANTEE:

- i) a) Hardware warranty should be for a period of **36** months from the date of delivery or **24** months from acceptance of the Equipment post successful completion of Equipment trials by Owner whichever is earlier.
 - b) The Software warranty shall be for a minimum period of **03** years from the date of acceptance of the Equipment on successful completion of Equipment trials by Owner with an option to extend it if required with mutually agreed terms directly with Owner.
- ii) If within the period of warranty, the goods are reported by the Buyer to have failed to perform as per the specifications, the Seller shall either replace or rectify the same free of charge, maximum within 15 days of notification of such defect received by the Seller, provided that the goods are used and maintained by the Buyer as per instructions contained in the Operating Manual. Warranty of the equipment would be extended by such duration of the down time. Record of the down time would be maintained by owner in log book. Spares, required for warranty repairs shall be provided free of cost by Seller. The Seller also undertakes to diagnose, test, adjust, calibrate and repair / replace the goods/ equipment arising due to accidents by neglect or misuse by the operator or damage due to transportation of the goods during the warranty period, at the cost mutually agreed to between the Buyer and the Seller. The seller shall intimate the assignable cause of the failures.
- iii) Seller hereby warrants that necessary service and repair back up during the warranty period of the equipment shall be provided by the seller and he will ensure that the downtime is within 15 days of the warranty period at any one time from the notification of such defects and not exceeding a cumulative period of 45 days within warranty period.
- iv) In case the complete delivery of Engineering Support Package is delayed beyond the period stipulated in this CONTRACT/PURCHASE ORDER, then the Seller undertakes that the warranty period for the goods / stores shall be extended to that extent.

26. FORCE MAJEURE

- i) The term "Force Majeure event" shall mean fires, floods, natural disasters or other acts such as war, turmoil, strikes, sabotage, explosions, quarantine restriction beyond the reasonable control of either party or which could not have been mitigated if the affected party had acted prudently.
- ii) On the occurrence of any Force Majeure Event, the party affected by the event ("Affected Party") shall be excused for the non-fulfillment or for the delayed fulfillment of such of its contractual obligations as are prevented by the Force Majeure Event, provided that:

(a) The affected party informs the other party of its occurrence as soon as practicable and in any event within (15 days) of the occurrence; and

(b) The Affected Party exercises diligence to seek to overcome the Force Majeure event and to mitigate the effects thereof on the performance of its obligations under this CONTRACT/PURCHASE ORDER.

iii) The Parties agree that if the Force Majeure event subsists for a continuous period of 3 (three) months or more, then the parties shall mutually discuss an alternate solution for such Force Majeure situation including by way of termination of this CONTRACT/PURCHASE ORDER. Notwithstanding the foregoing, if the parties are unable to reach a mutually acceptable solution within 2 (two) months of commencing discussions on the same, the GSL/Buyer shall have the unilateral right to terminate this CONTRACT/PURCHASE ORDER with immediate effect.

27. PROGRESS REPORT:

In order to monitor the progress of the manufacturing of the above equipment, SELLER shall submit progress report along with the bar chart indicating major activities on cardinal events and major milestone along with the complete details of the subcontracted items within 8 weeks from the date of placement of order on bi-monthly basis in the first year of project and monthly thereafter, so that the delivery of the equipment is ensured.

28. DOCUMENTS:

Seller shall provide requisite documents & drawings and manuals etc (both in soft & prints), for the equipment. Binding drawings are to be supplied within 06 weeks from the date of the CONTRACT/PURCHASE ORDER.

29. PRESERVATION:

The equipment shall be supplied duly preserved suitable for 36 months storage from the date of readiness for dispatch. Cost of preservation is to be included in the prices. Preservation and re-preservation procedure shall be included in BIDDER/sellers manual. Assistance for re-preservation beyond this period will be provided by BIDDER/Seller. Cost of the same to be included in the quoted price.

30. WEIGHT:

Total weight of the equipment / sub assemblies/ items would be printed on the packing list against each item/package and the slinging position for lifting the package would be indicated on the package. BIDDER/seller shall indicate estimated weight of the equipment & the components in "KGS" on the drawing.

31. INDIVIDUALITY OF CONTRACT:

In the event of an order resulting from tender, the same shall be treated as an individual contract and shall not allow any general lien to the seller, and shall not get prejudice in execution due to any situation arising out of some other contract that the firm may have with GSL/Buyer.

32. HAZARDOUS DECLARATION OF GOODS:

No goods shall be declared Hazardous/dangerous Cargo in the Bill of Lading/Air Way Bill, unless otherwise mutually agreed upon.

33. ARBITRATION (APPLICABLE TO FOREIGN BIDDER):

- i) Any dispute or difference whatsoever arising between the parties out of or relating to the validity, construction, scope, implementation, operation or the validity or the breach thereof ("Dispute"), the parties agree to endeavour to settle the same amicably by mutual discussions within a period of 90 (ninety) days of service of a written notice from either Party to the other Party, referring / raising the Dispute, in an effort to resolve the Dispute in good faith.
- ii) In the event the said Dispute is not resolved within the said period of 90 (ninety) days, the unresolved Dispute shall be referred to the arbitration by (a Sole Arbitrator / Panel of three Arbitrators) to be appointed in accordance with the Rules of Arbitration of the Indian Council of Arbitration (ICA). The arbitration shall be conducted in accordance with the rules of Arbitration of the ICA, which rules are deemed to be incorporated by reference in this clause.
- iii) The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator(s).
- iv) The arbitration proceedings shall be conducted under the Indian Arbitration and conciliation Act, 1996 or amendments made there under. The award of the Arbitrator shall be final and binding on the parties and shall be enforceable in Indian Courts only. The language of the arbitration shall be English. The seat and venue of arbitration proceedings shall be Mumbai, India.
- v) The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

34. ARBITRATION (APPLICABLE TO INDIAN BIDDER)

- i. In the event of any question, dispute or differences arising under the agreement resulting from this tender or in connection therewith, (including a dispute relating to the validity or existence of this agreement), the parties agree to settle the same amicably by mutual discussions within a period of 90 (Ninety) days of service of a written notice from either Party to the other parties, referring/raising the dispute, to resolve the dispute in good faith.
- ii. If the parties failed to resolve the dispute within the aforesaid period of 90 (Ninety) days, then by consent of the Parties, it is agreed that the unresolved dispute shall be referred to the sole arbitration of the Chairman & the Managing Director of GSL or if his designation is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted with the function of the Chairman & Managing Director of GSL, Vasco, by whatever, designation of such officer may be called (hereinafter referred to as the said officer) and if the Chairman & Managing Director of GSL, or the said officer is unable or unwilling to act as such, to the sole arbitration of some other person appointed by the Chairman & Managing Director or the said officer. The Parties agree and consent that there shall be no objection to any such appointment on the ground that the arbitrator is a Government Servant, or that he has to deal with the matter to which the agreement relates to, or that in the course of his duties as Government Servant, he has expressed his views on all or any of such matter in dispute or indifference. The award of the arbitrator shall be final and binding on the parties.
- iii. The Parties agree that in the event that such Arbitrator, to whom the matter is originally referred to, is being transferred, or is vacating his office or is unable to act for any other reasons, whatsoever, the said officer shall appoint another person to act, as an arbitrator in accordance with the terms of the agreement, and the person so appointed and the Parties agree and consent that he/she, shall be entitled to proceed with the reference from the stage, at which it was left by his predecessor.
- iv. Upon any and every reference for the award, as aforesaid, the cost of the proceedings including all expenses incidental thereto, shall be determined at the discretion of the arbitrator.
- v. The seat and venue of the arbitration proceedings shall be in the office of the Chairman & Managing Director, Goa Shipyard Limited, Vasco-da-Gama, Goa or such other place, as the arbitrator may decide.

35. ARBITRATION (IN CASE THE BIDDER IS PSU IN INDIA)

- (i) Any dispute or difference whatsoever arising between the parties out of or relating to the validity, construction, scope, implementation, operation or the validity or the breach thereof ("Dispute"), the parties agree to endeavour to settle the same amicably by mutual discussions within a period of 90 (ninety) days of service of a written notice from either Party to the other Party, referring / raising the Dispute, in an effort to resolve the Dispute in good faith.
- (ii) In the event the said Dispute is not resolved within the said period of 90 (ninety) days, such dispute or difference shall be referred by either party for Arbitration to the Sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

36. AGENTS / AGENCY COMMISSION:

The BIDDER/Seller confirms and declare to the Buyer that the Seller is original manufacturer of the stores referred to in this tender and has not engaged any individual or firm whether Indian or Foreign origin, whatsoever, the intercede, facilitate or in any way to recommend to the Government of India, or any of its functionaries, whether officially or unofficially the award of the contract to the Seller. Nor has any amount been paid or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation. The Seller accepts that if it is established that the present declaration is in any way incorrect and if at any later stage it is discovered that Seller has engaged any such individual / firm and paid or intended to pay any amount / commission to such individual / firm, the Seller will be liable to pay the similar amount to the Buyer for engaging such individual / firm and making the payment as commission. In addition, the Seller will also be debarred from entering into any supply contract with the GSL/BUYER, for a minimum period of 5 years. The GSL/Buyer shall also consider cancellation of the contract either in whole or part without any entitlement or compensation to the Seller who shall also be liable to refund all payments made by the GSL/Buyer in terms of the contract along with the interest at the rate of 2% p.a.above the London Inter Bank Offer Rate (LIBOR) rate.

37. PENALTY FOR USE OF UNDUE INFLUENCE:

- i) The BIDDER/Seller undertakes that he has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Buyer or otherwise in procuring the contract or forbearing to do or for having done or for borne to do any act in relation to the obtaining or execution of the Contract or any other contract with the Govt. for showing or for bearing to show favour or disfavor to any person in relation to the contract or any other contract with the Govt. Any breach of the aforesaid undertaking by the seller or any one employed by him or acting on his behalf (whether with or without the knowledge of the seller) or the commission of any offence by the seller or any one employed by him on acting on his behalf as defined in Chapter IX of the Indian Penal Code, 1860 or the prevention of corruption Act, 1947 or any other act enacted for the prevention of corruption shall entitle the buyer to cancel the contract and all or any other contracts with seller and recovered from the seller the amount of any loss arising from such cancellation. A decision of the buyer or his nominee to the effect that a breach of undertaking has been committed shall be final and binding on the firm.
- ii) Giving or offering of any gift, bribe or inducement or any attempt to any such act on behalf of the seller towards any officer/employee of the GSL/BUYER or to any other person in a position to influence the decision of GSL/BUYER, directly or indirectly or any attempt to influence any officer/employee of GSL/BUYER for showing any favour in relation to this or any other contract, shall render the said seller to such liability/penalty as GSL/BUYER may deem proper, including but not limited to termination of the contract, imposition of penal damages, forfeiture of the Bank Guarantee and refund of the amount paid by GSL/BUYER.

38. ACCESS TO THE BOOKS OF ACCOUNTS:

In case, if it is found to the satisfaction of GSL/BUYER, that the seller has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to agents/Agency commission and penalty for use of undue influence, the seller, on a specific request of the GSL/BUYER shall provide necessary information/ inspection of the relevant financial document/ information

39. TERMINATION

- i) The GSL/BUYER shall have the right to terminate this Contract / Purchase Order in part or in full in any of the following cases: -
 - (a) In the event the progress in respect of preparation & submission of drawings or manufacture of equipment/systems of MCM Suite is found to be unsatisfactory,
 - (b) The BIDDER/SELLER fails to deliver the equipment/systems of MCM Suite for reasons not attributable on account of Force Majeure for more than (5 months) after the scheduled date of delivery.
 - (c) The BIDDER/SELLER is declared bankrupt or becomes insolvent and declared so by the competent Court.

- (d) The BIDDER/SELLER fails to deliver the MCM Suit for reasons due to Force Majeure for more than (06 months).
- (e) It has come to the knowledge of the GSL/BUYER/BUYER that the BIDDER/SELLER has utilized the services of any Indian/ Foreign agent in securing this Contract / Purchase Order and has paid any commission/bribe to such individual or any firm.
- ii) On termination of the Contract / Purchase Order, the BIDDER/SELLER shall refund to the GSL/Buyer the amount, if any paid under the terms of this Contract / Purchase Order.

40. RECOVERY OF SUM DUE:

Whenever under this contract any sum of money is due and payable by the BIDDER/ Seller to GSL/BUYER, GSL/BUYER shall be entitled to recover such sum by appropriating in whole or in part, the Security Deposit if any, paid by the BIDDER/Contractor/Supplier, if a security being insufficient or if no security has been taken form BIDDER/Seller , then the total sum due/balance of the total sum due, as the case may be, shall be deducted and recovered from the sum due to the BIDDER/Seller under this or any other contract (with the Goa Shipyard Limited) and remaining balance due, if any, will be recovered through due process of law.

41. NOTICE OR COMMUNICATION

Any notice or communication required or permitted under this contract /purchase order shall be written in English language and may be delivered by the parties to this Contract / Purchase Order personally or may be sent by FAX, e-mail or registered prepaid airmail, at the following address :-

<p>For the GSL/BUYER :</p> <p>For Kind Attention of CMD</p> <p>GOA SHIPYARD LIMITED</p> <p>Address: Vaddem, Vasco-Da-Gama, Goa, 403 802</p> <p>Fax : _____</p> <p>Email : _____</p>	<p>For the BIDDER/SELLER :</p> <p>Kind Attention :</p> <p>Address: _____</p> <p>Fax : _____</p> <p>Email : _____</p>
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Any change in the names has to be communicated by both the parties.

42. NON DISCLOSURE OF CONTRACT DOCUMENT:

The information and data provided in this tender document should be kept strictly confidential. Except with the written consent of the other party, either party shall not disclose the Contract or any provision, specification, plan, design, pattern, sample or information thereof to any third party.

43. INTELLECTUAL PROPERTY/PATENT/INDUSTRIAL RIGHTS.

- (i) The BIDDER/seller assures to the GSL/Buyer that there is no infringement of any Patent or Industrial or Intellectual Property Rights occasioned by the supply and transfer of designs and documents and connected materials, which are the subject matter of this contract.
- (ii) The BIDDER/seller undertakes to indemnify the GSL/Buyer against all claims, costs, expenses and claims of damages made by any third party at any time on account of the infringement of any or all the rights mentioned in the previous paragraph, whether such claims arise in respect of manufacture or use. The BIDDER/Seller shall be responsible for supply, testing, installation and commissioning of all equipment/systems, Base and Depot Spares, on Board Spares, all other spares, technical literature and providing training under the Contract / Purchase Order, irrespective of the fact of infringement of any or all the rights mentioned above.
- (iii) The GSL/BUYER shall inform the Seller as soon as reasonably practicable of any claim or suit or any other proceeding about the alleged infringement so that the Seller can remove all alleged infringement.
- (iv) The contract price shall be deemed to include all amounts payable for the use of patents or Industrial/ Intellectual Property Rights of the equipment/systems.
- (v) In the event, of any such claim or suit or any other proceedings by the Third Party, the BIDDER/SELLER agrees the following at its cost and risk:
 - (a) To negotiate the agreement with such Third Party or Parties so that the /equipment/systems under this Contract / Purchase Order are no longer infringed upon by any alleged patent or industrial /intellectual property right claim made by any Third Party/Parties.
 - (b) To modify the equipment/system or any part thereof to be supplied under this Contract / Purchase Order or to substitute suitable equipment/system thereafter subject to the full satisfaction and requirement of the GSL/BUYER to ensure that such modified or substituted equipment/systems is not the subject of any claim whatsoever by the Third Parties.

- (c) To defend any claim, suit or proceedings at his own cost and expenses and to satisfy the decree / order in any such claim, suit or proceedings at his expenses and cost.
- (d) In case the BIDDER/SELLER does not succeed in settling the claims/suits filed by any third party in respect of the patent or industrial/intellectual property right, etc. as above, in such event the BIDDER/SELLER agrees to indemnify the GSL/BUYER, its directors, officers, agents and employees (collectively, the "Indemnified Persons") for any and all losses, demands, liabilities, fines (including interests and penalties), expenses, Litigation costs, damages resulting whether directly or indirectly from third party claims, settlements and costs and expenses (including attorneys' and accountants' fees) suffered or incurred by an Indemnified Person resulting from or arising out of or connected with this Contract / Purchase Order.
- (e) The provisions of this clause shall survive the expiration of this Contract / Purchase Order.

44. TRANSFER AND ASSIGNMENT

The BIDDER/SELLER has no right to transfer or assign the obligations under the Contract / Purchase Order or any part thereof to any third party.

45. AMENDMENTS TO THE CONTRACT / PURCHASE ORDER

No provision of this Contract / Purchase Order shall be changed or modified in any way (including this provision) either in whole or in part except by an instrument in writing made after the date of this Contract / Purchase Order and signed by the Authorized signatory of Buyer.

46. WAIVER OF RIGHTS

- (i) No act or omission of either party shall by itself amount to a waiver of:
 - (a) the enforcement of any right or remedy available to that party under this Contract / Purchase Order or
 - (b) the right to take action with respect to any breach or default by the other party, unless expressly stated by that party in writing. In particular, no delay in exercising any right or remedy shall by itself constitute a waiver of that right or remedy.
- (ii) No waiver by a party of any right or remedy shall be construed as:
 - (a) a continuing waiver of such right or remedy; or
 - (b) a waiver in respect of any other right or remedy.

47. SEVERABILITY

In the event that any of the terms of this Contract / Purchase Order are found to be invalid, unlawful or unenforceable, such terms will be severable from the other remaining terms, which will continue to be valid and enforceable. If any invalid term is capable of amendment to render it valid to achieve the same object as the invalid or unenforceable term, the Parties agree to negotiate an amendment to remove the invalidity.

48. SURVIVAL

Except as otherwise provided in the Contract / Purchase Order, termination of this Contract / Purchase Order shall not affect any rights or liabilities which have accrued prior to termination, and shall not affect any provision thereof which is expressly or by implication intended to come into or continue in force on or after such termination.

49. LIABILITY OF GOVERNMENT OF INDIA

It is expressly understood and agreed by and between the BIDDER and GSL that GSL is entering in to Contract/ placing Purchase Order solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this Contract and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that GSL is an Independent legal entity with power and authority to enter into CONTRACT/PURCHASE ORDER solely in its own behalf under the applicable laws of India and general principle of contract law. The BIDDER expressly agrees, acknowledges and understands that GSL is not an agent, representative or delegates of Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any note, omissions, commissions, breaches or other wrongs arising out of the CONTRACT/PURCHASE ORDER. Accordingly, BIDDER hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counterclaims against the Government of India as to any manner, claims, cause of actions or things whatsoever arising of or under this agreement.

50. FALL CLAUSE:

The BIDDER undertakes that it has not supplied/ is not supplying similar product/systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found at any stage that similar product/systems or sub systems was supplied by the BIDDER to any other Ministry/ Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the BUYER, if the CONTRACT/PURCHASE ORDER has already been concluded.

51. LIMITATION OF LIABILITY:

“Seller’s liability shall be limited to the obligations specified in the CONTRACT/PURCHASE ORDER. Under no circumstances Seller shall be liable for any consequential or indirect damages of whatsoever nature incurred by the Buyer, including but not limited to loss of use, loss of production, loss of profit, loss of business, increase in operating costs or damages to its reputation. For all motives considered together arising out of CONTRACT/PURCHASE ORDER or tort relating to performance of the CONTRACT/PURCHASE ORDER, Seller’s liability shall be limited to **100%** of the total CONTRACT/PURCHASE ORDER value”.

52. COMPLETE AGREEMENT

- (i) This CONTRACT/PURCHASE ORDER shall constitute the complete and exclusive statement of the terms of the CONTRACT/PURCHASE ORDER between the Parties hereto and there are no promises, terms or conditions, oral or written, express or implied, other than those contained herein provided, however, that any conditions or obligations imposed on the BIDDER/SELLER under the Tender shall continue to have effect in addition to its obligations under this CONTRACT/PURCHASE ORDER.
- (ii) This CONTRACT/PURCHASE ORDER supersede all prior negotiations, representations or understandings between the parties whether written or oral.

53. APPLICABILITY OF LAW AND JURISDICTION

The CONTRACT/PURCHASE ORDER shall be governed under the Indian Laws subject to Arbitration clause. The Courts in the State of Goa shall have the exclusive jurisdiction over matters arising out of or in connection with this CONTRACT/PURCHASE ORDER.

54. SUBMISSION OF ADDITIONAL DOCUMENTS :

Bidder to submit the following document (in English language)along with the Techno Commercial bid :

- I. Annual report containing the audited financial statements for last three financial years.
- II. Shareholding pattern of the Bidder.
- III. The Management structure indicating the names and addresses of the Directors.

55. VALIDITY:

- a) The offer shall be valid for **18 months** from the date of opening of tender.
- b) OBS offer shall be valid for **18 months** from the date of opening of tender.
- c) B&D spares offer shall be valid for **24 months** from the date of opening of tender.
- d) AMC quote shall be valid for 60 months or till finalization of CONTRACT/PURCHASE ORDER whichever is earlier.

GOA SHIPYARD LIMITED