

**NIT No.MMTC/BBN/IOF/NINL-RM/4/2014-15 dated 13/08/2014**

Last Date of Submission of Bids: 28/08/2014 at 13: 30 Hours

**OPEN TENDER (NIT) FOR PURCHASE OF IRON ORE FINES (62% Fe)**

MMTC Limited, A Government of India Enterprise, having its Sub-Regional Office at Kalinga Road, Barbil – 758 035, P.O. Barbil, Dist. Keonjhar (Odisha) invites sealed tender in two bids system from **Mines Owners only** of Joda/Barbil sector of Odisha for supply of Iron Ore Fines basis (62% Fe) for the integrated steel plant, M/s.Neelachal Ispat Nigam Limited(NINL), at Kalinga Nagar Industrial Complex, Duburi - 755 026, Jajpur, Odisha, as per following specifications, terms & conditions:-

The Bidders are required to submit their sealed tenders on or before 28/08/2014 by 13.30 Hrs in the Tender Drop Box kept in Minerals Section, MMTC Limited, SRO, Barbil. The offer (s) is / are required to be submitted in **two separate sealed envelopes** i.e. One envelope for Technical bid containing documents mentioned under eligibility criteria, including a copy of this tender (Part –I) duly signed by the bidder with official seal on each page and Second envelope for Price Bid containing only quoted price per WMT on Ex-NINL plant delivery basis in INR, duly signed by the bidder with official seal, in the prescribed PRICE BID (Part-II of this tender). The entire information including technical bid and price bid should be typed written/downloaded from website without any change. The technical bid will be opened 28/08/2014 at 15:30 Hours and the price bid of technically qualified bidders will be opened subsequently. Bidders can depute their authorized representatives during opening of technical and price bids, if they desire. In case bidders fail to depute their representative during such opening of bids, no subsequent complaint or representation would be entertained relating to the tender process. . This NIT is available in MMTC and Govt. web sites i.e. ([www.mmtclimited.gov.in](http://www.mmtclimited.gov.in) & <http://eprocure.gov.in>). This NIT can be down loaded from the web sites and the bidders are required to submit the bids as per Tender so down loaded without any change/modification/alteration/deletion etc. In case of any changes in the NIT come to notice subsequently by MMTC the same will be rejected summarily.

**CLAUSE :1.ELIGIBILITY CRITERIA :** In order to become eligible to participate in the above Tender, prospective bidder(s) must submit self attested copies of following documents along with Technical Bid :-

- (a) (i) Self certification by Mine owners (ii) IBM Registration Certificate ; (iii) PAN card ; (iv) VAT Registration Certificate clearly indicating the commodity being dealt ; (v) CST Registration Certificate for iron ore.(vi) Local Office address with FAX /E-mail ID/ Telephone number(vii) Service Tax certificate(Optional). (viii) All the pages of the tender notice i.e. NIT, must be stamped and signed by the bidder and submitted with technical bid as a token of acceptance of the terms and conditions.
- (b) EMD of Rs.2.00 Lakh in the form of Demand Draft/Banker's Cheque favouring MMTC Limited, payable at Barbil.

In case wrong information with regard to the eligibility criteria or otherwise is furnished by any bidding party, the bidder shall be debarred from entering into any commercial transaction of any nature with MMTC for a period of one year which can be extended up to three years.

**CLAUSE :2 SALIENT FEATURES OF NIT :**

**Commodity : (a) Iron Ore Fines** (WMT basis by Rail)

**SPECIFICATIONS :**

<b>CHEMICAL COMPOSITION</b>		<b>PHYSICAL COMPOSITION</b>	
<b>Fe</b>	62% basis below the limit penalty. Rejection below 60% of Fe content	<b>Preferred size</b>	0 MM to 10 MM
<b>SiO<sub>2</sub></b>	3.00% Max. Above the prescribed limit penalty	<b>+10 MM</b>	5% Max. Above the prescribed limit penalty
<b>Al<sub>2</sub>O<sub>3</sub></b>	4.00% Max Above the prescribed limit penalty	<b>-10 MM</b>	95% Minimum
<b>Sulphur</b>	0.020% Max. Above the prescribed limit penalty	<b>-100 Mess</b>	20% Max Above the Prescribed limit penalty
<b>Phos</b>	0.055% Max. Above the prescribed limit penalty		
<b>Moisture</b>	8% Max. Above the prescribed limit penalty		

In the event of deviation from the above specifications of IOF , MMTC reserves right to cancel entire or part of the Purchase Order with / or, without penalties.

**CLAUSE 3 : Quantity & Delivery period : As per following details :-**

<b>Month</b>	<b>Iron ore fines (MTs)</b>
<b>September,2014</b>	Upto 30 RAKES (120000 MT +/- 10%)

Quantities can be increased or decreased at MMTC's option during the above period. Further, MMTC reserves right to extend the delivery period as per requirement of NINL. Allocation of rakes/Quantity shall be on monthly basis. In case of failure by the supplier to supply allocated quantity/rakes during a particular month, the balance quantity/rake shall not be carried forward to next month and shall be treated as lapsed quantity. However, in case of non- supply of rakes by railway in spite of registration of indents by the supplier the balance quantity/rakes may be carried forward to next month. MMTC reserves the right to cancel the allocation of a supplier and allot the same to other supplier in case of non-supply of IOF for NINL plant.

**CLAUSE 4 : Loading point :**

Nearest Railway siding of the supplier from amongst Banspani, Jaroli, BIL Siding of S.E. Railway under CKP Division & Nayagarh siding of E.Co Railway .

- The bidders have to quote price per WMT basis as per above mentioned loading sidings.
- Allotment of rakes shall be decided as per NINL's requirement, CBT allocation of rakes by Railway authorities and landed cost of material at NINL siding.

**CLAUSE 5 : Destination :**

Railway Siding of Neelachal Ispat Nigam Limited, Duburi (NINS) Jajpur, Odisha.

**CLAUSE 6 : Preloading :**

Indent to be registered by the seller at the respective Railway sidings. Supplier has to ensure loading of material in the wagons fit for loading of Iron Ores and arrange packing of doors properly to prevent loss of cargo en-route destination. The supplier must clean each and every wagon before loading of the material to avoid any contamination of material.

Cont.... P/3

**CLAUSE 7 : Price:**

Price shall be in Indian Rupees per WMT F.O.R loading stations basis. The price shall be inclusive of royalty and exclusive of VAT / Sales tax, labour welfare cess, entry tax as applicable, which will be as per the prevailing rates. Any variation in the rate of taxes or imposition of any fresh statutory levy during the contractual delivery period shall be to the account of buyer, subject to submission of documentary evidence to that effect by the supplier.

**CLAUSE 8 : Penalty :**

**Penalty for Fe content:**

- a).(i) Ore containing Fe content (-) 62% up to 61 % : 2% of base price PMT on fraction pro-rata basis.
- ii) Ore containing Fe content from (-) 61% up to 60% : 4% of base price PMT on fraction pro-rata basis.
- iii) Ore containing Fe content less than 60% : Rejected and a token basic price @ Re.1/- PMT shall be applicable. However, other elements like Royalty, a fixed amount of Rs.200/- PWMT towards transportation charges of material from Mines to siding and loading into wagons , Labour welfare cess & VAT shall be applicable at actual .

(b) **Silica :**

For each 0.1% of Silica above the specifications, the deduction in price will be Rs.2.30 PWMT, fraction pro-rata.

(c) **Alumina :**For each 0.1% of Alumina above the specifications, the deduction in price will be Rs.2.30 PWMT, fraction pro-rata.

(d) **Sulphur :**For each 0.01% of Sulphur above the specifications, the deduction in price will be Rs.5.00 PWMT, fraction pro-rata.

(e) **Phosphorus :**

For each 0.01% of Phosphorus above the specifications, the deduction in price will be Rs.5.00 PWMT, fraction pro-rata.

(f) **Penalty for mechanical composition:**

Deduction in price will be Rs. 23.00 per WMT on the quantity of oversize ore in excess of the contractual specifications. The undersized ore (minus 100 Mesh) will be permitted up to 30% with a penalty of Rs. 30.00 per WMT for excess undersize ore in excess of 20%, but up to 30%. In case undersized ore is in excess of 30% but within 40%, a penalty of Rs.50/- PWMT shall be levied. No payment shall be made for the undersized in excess of 40%.

(g) **Moisture :** Moisture content is allowed to the extent of 8% . However, in case the moisture content analyses above the contractual limit of 8%, deduction in quantity will be effected at actual over and above 8% .Penalties on other ingredients like Fe, Silica, Alumina ,Phosphorus, Sulphur, Oversize and Undersize shall be on the basis of actual quantity before deduction of moisture.

- (h) **Bonus for Fe content** : On each 1% of Fe above 62% Fe, bonus will be paid on fraction pro-rata basis.

**CLAUSE 9 : Weight /Railway Dues:**

(i) In case of Intra-state transactions, the weight of the ore received on F.O.R basis shall be determined on the basis of weight recorded at Govt. approved road weighbridge and the quantity unloaded at Railway Siding on the basis of Transit Permits issued by Mining Department, Joda. Weight determined as above shall be final OR

(ii) In case of private Sidings where quantity is determined on the basis of Railway Receipt, quantity in the bill shall be as per the R/R. In case DDM, Joda Mining Circle permits acceptance of permitted quantity on the basis of weighment of individual lorries without Transit Permit, the total quantity shifted as per statement submitted by the supplier would be acceptable for payment purposes.

(iii) In case of non-weighment of rakes the quantity determined by weight volume ratio by third party assayer shall be binding for determination of railways dues, if any.

(iv) Payment of Railway dues such as, Punitive Charges and Dead freight, etc. shall be as per Railway Receipt. The Punitive Charges and Dead freight if any payable to the Railways shall be shared 50:50 between the buyer and the seller subject to maximum of Rs.100/- per MT being the share of MMTC. Demurrage charges due to delay in loading, penalty due to excess loading per wagon and subsequent adjustment charges shall be to seller's account. Further, other Railways liabilities, if any, related to the despatch of material shall be to the seller's account.

**CLAUSE 10 : Sampling and Analysis of cargo** : At the loading point, an approved / recognized analyst shall be appointed as independent analyst by the buyer who shall draw samples and analyze for the quantity loaded by the seller. The analyst shall determine the specifications (Chemical and Physical) of the ore for a full rake in three lots by giving analysis of elements, components as per required specifications. First 2 (two) lots shall be of 20 wagons each and the 3<sup>rd</sup> lot shall be for the balance wagons in the rake. The analyst shall provide an analysis certificate showing detailed analysis reports after completion of the lot indicating the weighted average of three lots.

Apart from above as and when required, joint sampling/analysis by a third party inspection agency nominated by MMTC/NINL may be undertaken at unloading point i.e. NINL plant and the results of such sampling analysis shall be binding for all purposes.

Drawing of samples at the time of loading of rakes for carrying out chemical and physical analysis shall be done by the public analyst appointed by the buyer. In case seller's representative does not turn up at the time of drawing of samples, the sample so drawn by the public analyst in the presence of buyer's representative would be final and binding on the seller.

Final sample packets prepared by the analyst by crushing, etc. will be divided into 7 (seven) parts and sealed separately in the presence of the representatives mentioned above. Out of above, two sample packets will be handed over to the representative of NINL, one to seller's representative and one will be retained by the public analyst to conduct the analysis. In case recourse has to be taken for umpire analysis, the fifth set of sample packets (i.e. the umpire's sample) preserved under the safe custody of the analyst concerned, will be used and the balance two set of sample packets will be handed over to the representative of MMTC.

Cost of such sampling / analysis by the public analyst will be to the seller's account. In the event of recourse, cost of such analysis will be borne as stated in the umpire analysis clause appearing hereunder.

**Umpire Analysis:** Whenever the variance between loading station's analysis result and unloading station's analysis result is 0.5% or more in Fe or any other element, MMTC will have the option to forward the sample packet for umpire analysis. Umpire analysis shall be final and binding on both parties (Seller and Buyer). The cost of the umpire analysis will be to the account of the party, whose analysis is more remote from the umpire analysis. If the result of the analysis is equi-distant from the original analysis the charges will be divided equally between the buyer and the seller.

**CLAUSE 11 : Payment :**

(a) Provisional Payment : The Seller shall raise commercial invoice to MMTC Limited, Barbil, Dist: Keonjhar (Odisha) (Tin No.21471106607), for supplying cargo to Neelachal Ispat Nigam Limited. Buyer will release provisional payment to the extent of 90% value of the cargo through E-mode on receipt of analysis report (Fe content only reported by third party analyst) appointed by MMTC, on the basis of weight determined as per CLAUSE 9 & 10 of this NIT against Invoice supported by Railway Receipt / Transit Permit issued by the Dept. of Steel & Mines, Govt of Odisha. Seller will submit a detailed statement of Transit Permits showing quantity shifted from mine head to the Railway siding, **duly sealed & signed by Govt weighbridge officials or concerned receiving officials of railway at railway siding along with invoice.** Besides, supplier shall comply with all statutory norms relevant for obtaining mining permission, rake loading, etc. **The invoice must be raised by the seller after the date of issue of R/R.**

(b) Final Payment :

Buyer will release the final payment after adjustment of provisional payment to supplier on E-Mode on the basis of weight and complete analysis report determined as per CLAUSE 10. For the purpose of E-payment the supplier will be required to furnish its Bank account details in writing to MMTC in the prescribed format. . **The Bank charges for RTGS payment will be borne by the Seller holding account in banks other than State Bank of India.**

**CLAUSE 12 : Inspection :**

Inspection of cargo at Buyer's option will be done at mine heads by Buyer's representative. The cost of such inspection will be borne by the bidder. This will, however, not absolve the Seller of its responsibility for supply of the material as per contractual specifications.

**Clause:13: Consignee:**

The seller shall consign the material in favour of M/s.Neelachal Ispat Nigam Limited, Kalinga Nagar Industrial Complex, Duburi-755026, Dist-Jajpur, Odisha .

**CLAUSE 14 : Default in Delivery :**

In the event of any default in the delivery schedule or non-performance of the contract by the Seller, the Buyer reserves the right to forfeit the security deposit.

**CLAUSE 15 : Security : Within 7 working days after receipt of intimation from MMTC,** successful bidder shall submit security deposit of Rs.10,00,000/- (Rupees Ten Lakhs) only in the form of pay order or demand draft issued by any nationalised Bank in favour of MMTC Limited payable at Barbil. On receipt of the above security deposit, contract shall be executed and EMD shall be returned to the successful bidders. Un-successful bidder(s) shall also get back their EMD(s) after 5 working days from the date of work order issued to the successful bidder.

**CLAUSE 16 : Arbitration :** Any dispute or difference whatsoever arising between the parties out of or relating to construction, meaning, scope, operation of this contract or validity or breach thereof shall be settled by Arbitration by Sole-Arbitrator to be nominated by the General Manager, MMTC, Bhubaneswar. The provisions of Arbitration and conciliation Act, 1996 shall apply to such arbitration proceedings. The Venue of the arbitration shall be Bhubaneswar, Odisha.

**CLAUSE 17 : Force Majeure :** In case at any time during the existence of the contract, either party is unable to perform in whole or in part any obligation under the contract because of war, hostility, military operation of any character, civil commotions, sabotage, quarantine restrictions, acts of Government, fire, floods, explosions, epidemics, strikes, embargoes, blockages, mobilizations, earthquake, cyclone, **plant shut down restrictions** or any other unforeseen circumstances beyond the reasonable control of the parties concerned then the date of fulfilment of any obligations shall be postponed during the time when such circumstances are operative.

Any waiver / extension of time in respect of the delivery of any instalment or part of the goods shall not be deemed to be waiver/extension of time in respect of the remaining deliveries. If operation of such circumstances exceeds by one month, the affected party will have the right to refuse further performance of the contract in which case neither party shall have the right to claim eventual damages.

The party which is unable to fulfil its obligations under the present contract must within 10 days of occurrence of any of the cause mentioned in the contract shall inform the other party of the existence of the circumstances preventing the performance of the contract. Certificate issued by a Chamber of Commerce of Industry or any other competent authority connected with the cause shall be sufficient proof of the existence of the above circumstances and their duration. Non-availability of material will not be an excuse to the Seller for not performing their obligations under the contract.

The delivery period in respect of undelivered quantities may be extended during the contractual period at Buyer's option subject to acceptance of the price by the Seller available through any tender by MMTC during the extended delivery period or the contractual price, whichever is lower.

If no mutual agreement either for extension of time for supply of iron ore or price is arrived at, the contract may be terminated at the option of the MMTC without any liability.

**CLAUSE 18 : Authorisation of Agent/Representative :** For the bid submitted by agent / representatives, the name, address & bank attested specimen signature of their principal is to be furnished along with a letter of authority issued by the principal authorizing the agent/representatives to participate on their behalf.

**CLAUSE 19 : Contract :**

Tender documents forming part of the contract shall be signed by the bidder on each page and furnished along the Technical Bid as token acceptance of the terms and conditions. One copy of the Purchase Order(s) to be issued by MMTC to the successful bidder(s) shall also be duly stamped & signed by the supplier & submitted to MMTC.

**CLAUSE 20 : Submission of Tender Bid :** The bid (s) is/are to be submitted in the following manner :

(a) Techno-Commercial Bid : One closed envelope (super scribing "Techno Commercial Bid") for Technical bid containing documents mentioned under eligibility criteria, including a copy of this tender (Part -I) duly signed by the bidder with official seal on each page.

(b) Price Bid : Second closed envelope (super scribing "Price Bid") for Price bid containing only quoted price per WMT on Ex-NINL Plant, Duburi, Jajpur (Odisha) delivery basis in INR, duly signed by the bidder with official seal, in the prescribed PRICE BID (Part-II of this tender).

(c) Both the closed envelopes put in one closed envelope super scribing "Tender NIT No.MMTC/BBN/IOF/NINL-RM/4/2014-15 dated 13/08/2014 for supply of IOF for NINL", to be dropped in the Tender Box kept in the Mineral Division, MMTC Limited, Sub Regional Office, Barbil on or before 28/08/2014 by 13:30 hours.

**CLAUSE 21 : General Conditions:**

(a) For evaluation of the bid, the landed cost at NINL plant, Duburi, Jajpur, Odisha shall be the basis.

(b) MMTC reserves the right to cancel or, reject any or all bids without showing any reason whatsoever and the decision of MMTC in this respect shall be final and binding and shall not be liable to be questioned in any court or before any authority.

(c) The quantity mentioned under Clause no. 3 shall be split if required among 3 (Three) eligible bidders in ascending order, provided they match L1 Landed Cost. Such order split shall be in the ratio L1:L2:L3::60%:25%:15%. In case both the L-2 and L-3 bidders do not accept L-1 price, the entire quantity shall be offered to L1 bidder. In case, either of the L-2 and L-3 bidders accept L-1 price, then the ratio shall be L-1:L-2/L-3 :: 70%:30%.

**Clause No.22: Termination of Contract**

The buyer may at any point of time by notice in writing summarily terminate the contract without any complain whatsoever from the seller.

- (i) In the event of insolvency of the seller/insolvency of any partner of the seller's firm/dissolution of the seller's firm/winding up of the sellers company on appointment of receiver.
- (ii) If the seller commits the breach of the contract even though not specifically provided for herein, provided always that such determination shall not prejudice any right of action or remedy which shall accrued or shall accrue thereafter to the buyer and provided also that the seller shall be liable to compensate the buyer for damages, claims, losses and expenses etc.

**Clause No.23: Validity:**

The tendered price/rate will remain valid for 31 days from the date of opening of the tender (price bid), for acceptance by MMTC Ltd.

**Clause No. 25: Integrity Pact:**

The successful Bidder has to sign an Integrity Pact as Annexure- I with MMTC which will be a part of the tender.

Accepted.

MMTC limited  
B A R B I L

(End of Technical Bid portion)



NIT No. MMTC/BBN/IOF/NINL-RM/4/2013-14      Date - 13/08/2014  
(Last Date of submission of Bids : 28/08/2014 at 1330 Hours)

PART-II

PRICE BID

**Price:** Price shall be in Indian Rupees. .... per WMT on F.O.R loading stations basis. The price shall be inclusive of royalty and exclusive of labour welfare cess, VAT and Entry tax as applicable, which will be as per the prevailing rates. Any variation in the rate of taxes or imposition of any fresh statutory levy during the contractual delivery period shall be to the account of buyer, subject to submission of documentary evidence to that effect by the supplier.

The price offered shall remain valid till 30/09/2014 for acceptance by MMTC.

Place:  
Date:

Signature of the Bidder with Official Seal

## **INTEGRITY PACT**

Between

**MMTC** Limited hereinafter, referred to as “MMTC”

And

M/s. .... hereinafter referred to as “The Buyer/Vendor/Bidder”

### **Preamble**

WHEREAS, MMTC is an international trading company dealing in export/import/sale/purchase of various commodities.

WHEREAS, MMTC values full compliance with all relevant laws of the land, rules, regulations and the principles of economic use of resources and of fairness/transparency in its relation with its Buyer/Vendor/Bidder. In pursuance, thereto, the following clauses of the Integrity Pact will be applicable and this document shall deem to be an integral part of the Agreement/Contract between us.

In order to achieve the goals, MMTC may appoint an Independent External Monitor (IEM), who will monitor the tender/auction/e-auction/e-sale/sale/purchase process and the execution of the contract for compliance with the principles mentioned above.

### **Section1 – Commitments of MMTC**

1. MMTC commits itself to take all necessary measures to prevent corruption and to observe the following principles.
  - a) No employee of MMTC, personally or through family members will in connection with the tender for or the execution of a contract, demand, take a promise for or accept, for himself/herself or third person, any material or non-material benefit which he/she is not legally entitled to.
  - b) MMTC Will during the tender/auction/e-auction/e-sale/sale/purchase process, provide to all Buyer(s)/Vendor(s)/Bidder(s) the same information and will not provide to any Buyer/Vendor/Bidder any confidential/additional information through which the Buyer/Vendor/Bidder could obtain an advantage in relation to the tender/auction/e-auction/e-sale/sale/purchase process or the contract execution.
  - c) MMTC will exclude from the process all known prejudiced persons.
2. If MMTC obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-Corruption Laws of India or if there be substantive suspicion in this regard, MMTC will inform its Chief Vigilance Officer and in addition can initiate disciplinary action.

### **Section 2 – Commitments of the Buyer(s)/Vendor(s)/Bidder(s)**

1. The tender/auction/e-auction/e-sale/sale/purchase commits himself to take all measured necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender/auction/e-auction/e-sale/sale/purchase process and during the contract execution.

- a) The Buyer(s)/Vendor(s)/Bidder(s) will not, directly or through any other person or firm, offer, promise or give to any of MMTC's employees involved in the tender/auction/e-auction/e-sale/sale/purchase process or the execution of contract or to any third person any material or non-material benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
  - b) The Buyer(s)/Vendor(s)/Bidder(s) will not enter with other Buyer(s) into any illegal agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
  - c) The Buyer(s)/Vendor(s)/Bidder(s) will not commit any criminal offence under the relevant Anti-Corruption Law of India., further the Buyer(s)/Vendor(s)/Bidder(s) will not use improperly, for purposes of completion or personal gain, or pass on to others, any information or document provided by MMTC as part of the business relationship regarding proposals, plans business details including information contained or transmitted electronically.
  - d) The Buyer(s)/Vendor(s)/Bidder(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly the Buyer(s)/Vendor(s)/Bidder(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further, all the payments made to the Indian agents/representative have to be in Indian Rupees only.
  - e) The Buyer(s)/Vendor(s)/Bidder(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the Contract.
2. The Buyer(s)/Vendor(s)/Bidder(s) will not instigate third persons to commit offences outlined above or be necessary to such offences.

### **Section 3 – Disqualification from tender process and exclusion from future contracts**

If the Buyer(s)/Vendor(s)/Bidder(s), before award of contract, has committed a serious transgression through a violation of Section 2 above or in any other form such as to put his reliability or credibility as buyer/vendor/bidder into question. MMTC is entitled to disqualify the Buyer(s)/Vendor(s)/Bidder(s) from the tender/auction/e-auction/e-sale/sale/purchase process or to terminate the contract, if already signed, for such reason.

- a) If the Buyer(s)/Vendor(s)/Bidder(s) has committed a serious transgression through a violation of Section 2 above or in any other form such as to put his reliability or credibility as buyer/vendor/bidder into question. MMTC is entitled to also exclude the Buyer(s)/Vendor(s)/Bidder(s) from the future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgression, the position of the transgressors within the company, hierarchy of the buyer and the amount of the damage. The exclusion will be imposed for a minimum of 6 months and maximum of 3 years.

- b) If the Buyer(s)/Vender(s)/Bidder(s) can prove that he has restored/recouped the damage cause by him and has installed a suitable corruption prevention system. MMTC may at its sole discretion revoke the exclusion prematurely.
- c) A transgression is considered to have occurred if in light of available evidence no reasonable doubt is possible.

#### **Section 4 – Compensation for Damages**

- 1. If MMTC has disqualified the Buyer(s) from the tender/auction/e-auction/e-sale/sale/purchase process prior to the award according to Section 3, MMTC is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.
- 2. If MMTC has terminated the contract according to Section 3, or if MMTC is entitled to terminate the contract according to Section 3, MMTC shall be entitled to demand and recover from the Vendor liquidated damages equivalent to 5% of the Contract value or the amount equivalent to Performance Bank Guarantee whichever is higher.
- 3. If the Buyer(s)/Vender(s)/Bidder(s) can prove that the exclusion of the Buyer(s)/Vendor(s)/Bidder(s) from the tender/auction/e-auction/e-sale/sale/purchase process or the termination of the contract after the contract award has caused no damage or less damage than the amount of liquidated damages, the Buyer(s)/Vendor(s)/Bidder(s) may compensate only the damage in the amount proved. If MMTC can prove that the amount of the damage caused by the disqualification of the Buyer(s)/Vendor(s)/Bidder(s) before Contract Award or the termination of the Contract after the Contract Award is higher than the amount of the liquidated damages, it is entitled to claim compensation for the higher amount of the damages.

#### **Section 5 – Previous transgression**

- 1. The Buyer(s)/Vendor(s)/Bidder(s) to declare that no previous transgressions occurred in the last 3 years with any other Company in any country conforming to the anti corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
- 2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or the contract, if already awarded and can be terminated for such reason.

#### **Section 6 – Equal treatment of all Buyer(s)/Vendor(s)/Bidder(s)**

- 1. MMTC will enter into agreements with identical conditions as the one with all Buyer(s)/Vendor(s)/Bidder(s) without any exception.
- 2. MMTC will disqualify from the tender process all Buyer(s)/Vendor(s)/Bidder(s) who do not sign the Pact or violate its provisions.

#### **Section 7 – Criminal charges against violating Buyer(s)/Vendor(s)/Bidder(s)**

If MMTC obtains knowledge of conduct of Buyer(s)/Vendor(s)/Bidder(s) or of an employee or a representative or an associate of Buyer(s)/Vendor(s)/Bidder(s), which constitutes corruption, or if MMTC has substantive suspicion in this regard, MMTC will inform the same to its Chief Vigilance Officer and/or appropriate Govt. authorities such as CBI.

## **Section 8 – Independent External Monitor(s)**

1. MMTC appoints competent and credible Independent External Monitor (IEM) for this pact. The task of the IEM is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2. The IEM is not subject to instructions by the representative of the parties and performs his functions neutrally and independently. He reports to the CMD, MMTC.
3. The IEM has the right to access without restriction to all trade/project related documentation of MMTC. The Buyer(s)/Vendor(s)/Bidder(s) will also grant the IEM, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his trade/project documentation. The IEM is under contractual obligation to treat the information and documents of the Buyer(s)/Vendor(s)/Bidder(s) with confidentiality.
4. MMTC will provide the IEM sufficient information about all meetings among the parties related to the project/contract provided as meetings could have an impact on the contractual relations between MMTC and the vendor. The parties offer to the IEM the obtain to participate in such meetings.
5. As soon as the IEM notices, or believes to notice, a violation of this agreement, he will so inform the Management of MMTC and request the Management to discontinue or take corrective action, or to take other relevant action. The IEM can in this regard submit NON-BINDING RECOMMENDATIONS. Beyond this, the IEM has not right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
6. The IEM will submit a written report to the CMD, MMTC within 4 to 6 weeks from the date of reference or intimation to his by MMTC and, should the occasion arise, submit proposals for correcting problematic situations.
7. If the IEM has reported to the CMD, MMTC, substantiate suspicion of an offence under relevant Anti Corruption Laws of India and the CMD, MMTC, has not, within the reasonable time taken visible action to proceed against such offence or reported it to its Chief Vigilance Officer, the IEM may also transmit this information directly to the Central Vigilance Commissioner, Govt. of India.
8. The word “IEM” would include both singular and plural.

## **Section 9 – Pact Duration**

1. This Pact begins when both parties have legally signed it. It expires for the Vendor 12 months after the last payment under the contract, and for all other Bidders, 6 months after the Contract has been awarded.
2. If any claim is made/lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/determined by CMD, MMTC.

## Section 10 - Other Provisions

1. This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of MMTC, i.e. New Delhi.
2. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
3. If the Vendor is partnership or a consortium, this agreement must be signed by all partners or consortium members.
4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

.....  
(For & on behalf of MMTC)  
(Official Seal)

.....  
(For & on behalf of Buyer/Vendor/bidder)  
(Official Seal)

Place:.....  
Date :.....

Witness 1.....  
Name :  
Address:

Witness 2.....  
Name :  
Address: