



**A Govt. of India Enterprise**  
**Touching Lives, adding value**  
Core-1, SCOPE Complex, 7, Institutional Area, Lodi Road  
New Delhi – 110 003 (India)

**NOTICE INVITING TENDER NO. T-3 /UREA/2018-19 dated 06.11.2018**

1. MMTC invites offers for the supply of Prilled Urea/granular urea (fertilizer grade), 46% nitrogen minimum **in bulk**. Offers may be made on both FOBT and C&F FO basis in US Dollars per metric tonne of Urea or on FOBT basis alone (indicating the name of the loading port with facilities available and restrictions, if any) at 1/2 safe berths, one safe Indian port for **shipment from load ports latest by 07.01.2019**. Bidders to ensure that quantities offered against the tender are shipped on evenly spread basis over the entire period of shipment to avoid bunching at discharge ports. C&F FO offers should indicate the discharge rate basis **PWWD SHEX EIU**, for five or more workable hatches, pro rata if less, indicating *inter alia* the despatch /demurrage rate at disport and firm freight from loading port to discharging port in India. **MMTC reserves the right to reject such offers which are made only on C & F FO basis.**
2. Accredited suppliers are required to submit bid bond of US \$ 3 PMT and others are required to submit bid bond of US \$ 10 PMT from any scheduled bank along with the offer. Urea producers are exempted from submitting the bid bond.
3. The bids are to be submitted only through electronic mode for which bidders may log on to website <https://mmtc.abcprocure.com>. The bid bonds in original and the credit rating (as required) are required to be submitted physically in sealed envelopes to be dropped in tender box placed at **MMTC Limited, Fertilizer Division, 7<sup>th</sup> Floor, Core-1, Scope Complex, Lodhi Road, New Delhi**, before the closing time of receipt of tenders as above. Offers submitted without original bid bond shall not be considered. The offers in the prescribed format should be submitted by **1400 Hours IST on 14.11.2018**. Bid bonds should be kept valid **up 21.12.2018**.
4. Marine insurance shall be arranged by MMTC. MMTC and / or its receivers reserve the right to appoint any reputed independent inspection agency at discharge port for determining quality and quantity, whose report shall be treated as final. Detailed terms and conditions for import of urea would be as per MMTC's tender terms which are an integral part of this Notice Inviting Tender. **All bidders are required to enclose payment of Rs. 10,000 plus GST as per applicable rate (by way of DD/PO drawn in favour of 'MMTC Ltd.' and payable at New Delhi) towards tender documents cost at the time of participation.**
5. MMTC reserves the right to reject any or all the offers without assigning any reasons whatsoever.
6. Bids with open origin of goods are not acceptable. Bidders shall clearly state origin country (ies) of goods being offered in their technical bid. Bids offering material from countries of origin against which sanctions have been imposed / facing sanctions, shall not be considered and price bids of such tenders shall not be opened.



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New Delhi – 110 003 (India)

REF NO.T-3/Urea/2018-19

Dated 06.11.2018

M/s

Sir,

**Subject: UREA TENDER NO. T-3 /UREA/ 2018-19 dated 06.11.2018**

With reference to your request/enquiry, we enclose herewith a set of Tender documents along with MMTC's Standard Contract Proforma and MMTC's L/C Proforma.

2. We wish to state that in case of Category II & III Bidders a latest Bank reference to show credit worthiness of Bidder is to be submitted along with the bid. Category III bidders are also required to submit a Credit Rating report from any of the following International Credit Rating agencies for direct submission to MMTC by the concerned agency in a sealed cover, before due time/date of the Tender.

- Dun & Bradstreet,
- Moody's
- Standard & Poor

The report shall not be more than six months old in case of new supplier. In respect of supplier(s) who have supplied Urea under Government account to STE, the report shall not be older than one year from the date of the bid submission. Ratings need to be minimum satisfactory or equivalent.

3. The bidders must submit a fresh Bid Bond along with the bid.

4. Price bid must be signed by the foreign supplier in the prescribed format. In case it is signed by an authorized agent, the letter of authority (strictly as per the enclosed proforma at Annexure-VII) has to be submitted along with the bid.

5. The bids are to be submitted only through electronic mode for which bidders may log on to website <https://mmtc.abcprocure.com>. The bid bonds in original and the credit rating, along with bank reference (as required) are required to be submitted physically in sealed envelopes to be dropped in tender box as at the following address : MMTC Limited, Fertilizer Division, 7<sup>th</sup> Floor, Core-1, Scope Complex, Lodhi Road, New Delhi; before the closing time of receipt of tenders as above.

6. The offers should be kept valid till **1730 Hrs. IST on 22.11.2018**. This letter forms an integral part of the Tender Documents.

Thanking you,

Yours faithfully  
For **MMTC Limited**

Chief General Manager



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 Core-1, SCOPE Complex, 7, Institutional Area, Lodi Road  
 New Delhi – 110 003 (India)

**NOTICE INVITING TENDER**

**SUBJECT: IMPORT OF PRILLED/GRANULAR UREA (BULK ) 46% NITROGEN**  
**(FERTILISER GRADE)**

MMTC Limited, proposes to purchase prilled/ granular Urea (Bulk) 46% Nitrogen minimum (fertilizer grade) on FOBT/C&FFO basis for earliest arrivals into India.

Interested suppliers may please note the terms and conditions of supply, as detailed hereunder, and may send their offers in sealed covers, addressed to Chief General Manager (Fertilisers), MMTC Limited, 7<sup>th</sup> Floor, Core 1, Scope Complex, 7 Institutional Area, Lodhi Road, New Delhi-110 003.

<b>1. CLOSING DATE AND TIME</b>	Offers, made only in the prescribed proforma (Annexure-VIII) along with Bid Bond in US dollars only against this enquiry should be submitted latest by <b>1400 Hrs. IST on 14.11.2018 only through electronic mode</b> as mentioned in the NIT. Offers once made cannot be withdrawn by the party during its validity.
<b>2. OPENING DATE AND TIME</b>	<b>TECHNOCOMMERCIAL BID : 1400 HRS IST ON 14.11.2018</b> <b>PRICE BID: 1530 HRS IST ON 14.11.2018</b>
<b>3. SPECIFICATIONS</b>	As per Annexure-I.
<b>4. PACKING</b>	In bulk
<b>5. PRICE</b>	Offers may be made on both FOBT and C&F FO basis in US Dollars or on FOBT basis alone (indicating the name of the loading port with facilities available and restrictions, if any) per Metric Tonne of Urea for payment against L/C as per para 7 below. While submitting offers on both FOBT and C&F FO, firm freight from loading port to discharging port in India must also be quoted separately. Bidders are requested to make price offers on Per Metric Tonne basis in US Dollars on cash basis. MMTC reserves the right to reject such offers which are made only on C&F FO basis.
<b>6. SHIPMENT</b>	Bidders must clearly indicate specific quantity offered for arrival as indicated above. Bidders are also required to furnish specific tonnage offered from each port of shipment indicated by them. Such quantities shall be clearly mentioned as “firm quantities”. Offers mentioning “suppliers option” are liable to be rejected.
<b>7. SHIPMENT TERMS</b>	As per Annexure-III and III (A)
<b>8. PAYMENT</b>	Payment will be effected through Letter of Credit payable at sight. MMTC does not provide transferable, divisible and assignable L/C. Only unconfirmed L/C shall be established by MMTC as per L/C proforma attached, on receipt of PG Bond & signed contract and vessel nomination.

<b>9. STANDARD CONTRACT</b>	It is expected that MMTC's standard contract for purchase of Urea and the L/C proforma which are annexed herewith would be read and understood by the bidders.
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**10. INTEGRITY PACT:**

1. Signing of Integrity Pact (IP) is mandatory for every bidder participating in this tender. A copy of the IP is enclosed (Annex.-XI), which may be deemed to have been signed by MMTC. The Bidder(s) and MMTC shall be bound by the provisions of IP in case any complaint relating to the tender is found substantiated.

2. The IP shall be executed on a plain paper and duly signed on each page by the same signatory who signs the bid document.

3. Any bid not accompanied by duly signed IP by the bidder shall be summarily rejected.

4. All sub-contractors/associates whose contribution in the tender is above 20 crore shall sign IP with MMTC after the tender is awarded to the successful bidder. All bidders shall inform their sub-contractors/associates accordingly.

5. The Independent External Monitors (IEMs) for this tender shall be Shri D.R. S. Choudhary, IAS (Retd.). All correspondence to him regarding implementation of IP should be addressed to : Shri D.R. S. Choudhary IAS (Retd.), Independent External Monitor , MMTC Limited, Core-1, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi-110003. The e-mail id is [dilip.chaudhary@icloud.com](mailto:dilip.chaudhary@icloud.com). Bidders are requested not to communicate any commercial enquiry to IEM except complaints relating to integrity Pact.

**11. GENERAL CONDITIONS:**

a) Bidders will be categorized as follows:-

**CATEGORY-I** All producers. The producers whose names are appearing in the IFA Publication "Survey of Urea Capacities 1995" or any updated edition of same will only be considered as producers.

**CATEGORY-II** Accredited suppliers who have performed satisfactorily at least for two years out of past five years. A list of accredited suppliers is enclosed (Annexure-VI).

**CATEGORY-III** All other suppliers not covered under Categories I & II above.

(i) **BID BOND**

CATEGORY- I "Producers" who submit the bids directly (or through authorized representative/agent in India) and offering Urea from their own production units are exempt from submission of Bid Bond. Only those producers will be treated as "producers" whose names are listed in IFA publication "Survey of Urea capacities 1995" or any updated edition.

CATEGORY - II “Accredited Suppliers” as recognized by MMTC shall submit a Unconditional Bid Bond at the rate of US \$ 3.00 PMT (including plus tolerance) of the quantity offered. They shall also submit a latest bank reference along with the offer.

CATEGORY- III All other bidders who are not covered above shall submit a Unconditional Bid Bond @ US \$ 10.00 PMT(including plus tolerance) of the quantity offered. They shall also submit a latest bank reference along with the offer.

Tenderers should furnish along with their offer, Bid security in US dollars (Not in Rupees) by means of a bid bond issued by a Scheduled Bank in New Delhi in original, for values as mentioned above strictly in the prescribed proforma (Annexure IV) in favour of MMTC Limited and **kept valid until 21.12.2018**. No deviations in the format of bid bond are acceptable. Bids are liable to be rejected in case of conditional Bid Bonds. MTPL, Singapore, being 100% subsidiary of MMTC is exempted from submitting Bid bond and Performance Guarantee Bond.

ii) **PERFORMANCE GURANTEE BOND**

In the event of an offer being accepted, Performance Guarantee Bond shall have to be submitted by the offerer strictly as per MMTC’s format only (Annexure-V) within 10 days from the date of issuance of acceptance of offer. Conditional PG bonds are not acceptable. The PG Bond should be established through any Indian nationalized bank or a schedule bank in New Delhi. The value of the PG bond in US Dollars shall be as follows:

CATEGORY -I	Producers	1% value of the Contract including plus tolerance
CATEGORY –II	Accredited Suppliers	3% value of the Contract including plus tolerance
CATEGORY- III	other Bidders	10% value of the Contract including plus tolerance

In case the PG Bond is not submitted within 10 days from acceptance of offer by MMTC, the Bid Bond amount shall be forfeited. The PG Bond shall cover the performance of the contract, quantity short landed, quality penalties based on discharge port results, LP/DP despatch/demurrage or any deduction by DOF on any account etc.

iii) **ADDITIONAL DOCUMENTS FOR ‘ACCREDITED SUPPLIERS’ AND OTHER BIDDERS**

Accredited suppliers are required to submit an original latest Bank reference.

Other Bidders are required to submit the following documents along with the original offer/bid :

1. A latest Bank reference report in original.
2. Credit rating report from any of the following International Credit Agencies:-
  - DUN & BRADSTREET
  - MOODY’S
  - STANDARD AND POOR

The report shall not be more than six months old in case of new supplier. In respect of supplier(s) who have supplied Urea under Government account to STE, the report shall not be older than one year from the date of the bid submission.

Credit Rating has to be minimum satisfactory or equivalent.

b) Tenderers are required to indicate the country of origin of the material offered, loading port and facilities at loading port with restrictions, if any

c) IMPORTANT POINTS FOR CAREFUL CONSIDERATION

- i) Offers to be strictly made in the format as in Annexure-VIII. Offers not received in the prescribed format are liable for rejection. Complete set of MMTC's Tender Document duly signed and stamped on each page as token of your acceptance of all terms and conditions of tender without any deviation .
- ii) The offers received in the tender shall be evaluated on overall lower to higher basis (L1 upwards) for each coast separately and quantity shall be allocated to the bidders for each port as per the requirement of DOF from L1 upwards without considering port wise lowest bids from the suppliers.
- iii) Incomplete offers / offers not conforming strictly to specifications as well as to tender conditions prescribed with the tender documents are liable to be rejected.
- iv) Offers received with original bid bond only to be considered. Intimation of advice regarding opening of bid bond will not suffice.
- v) Loading Rate – As per Clause 23 of Shipping Terms for FOB contracts at Annexure III.
- vi) Schedule of shipment for the entire contracted quantity will be declared within 10 days of award of Contract and L/C shall be established only after receipt of (a) acceptable P.G. Bond and their confirmation (b) signed contract and (c) nomination of vessel.
- vii) PG Bond to be released by Buyers only after receipt of discharge port draft survey and analysis reports, and recovery of penalties, short landing, settlement of dispatch/demurrage, dead freight or or as a result of any short receipt from Department of Fertilizer, Government of India on any account and any other recoveries from suppliers, if any.
- viii) Firm freight from loading port(s) to discharging port(s) in India may be indicated separately.
- ix) In case of Bidders offering more than one load port/discharge port at sellers' option at the time of making an offer, the option for choosing the load port/discharge port would rest with MMTC. Offers with more than one load port/discharge port at sellers' option would be liable for rejection at the sole discretion of MMTC.
- x) Bidders should quote only the firm quantities in the offer. In case optional quantities are offered, MMTC reserves the right to consider only firm quantities for placement of orders. In addition, offers giving optional quantities are liable to be rejected at the sole option of MMTC
- xi) The Bidder should not quote multiple rates for one discharge port. In case lot wise, multiple rates are offered for the same discharge port, the total firm quantity offered for a

particular discharge port shall be treated to be offered at the lowest price quoted in that offer for that particular discharge port.

xii) It may be noted that shipping tolerance of (+/-) 5% is already provided in the Tender Document. The seller should therefore quote a fixed quantity for each discharge port and should not mention range in quantity offered like 100,000-110,000 MT (+/-) 5% in the offer. However in the event the offers are submitted giving range in quantity in addition to (+/-) 5% tolerance, the same shall only be considered based on minimum quantity of range with allowed shipping tolerance of (+/-) 5% at the sole discretion of MMTC

xiii) Cargo size: 25,000 MT plus/minus 5%, at Buyers' option (in case the purchases are made on FOBT terms).

xiv) For CFR FO purchase, if shipment is done in Panamax vessels, all expenses on account of pre-berthing delays, shall be to buyers account and time to count on NOR Tendered valid.

xv) Supplier must indicate the origin of the material, the name of load port and facilities at loading port with restrictions, if any, along with firm lay days and firm freight from load port to discharge port in India (all India range)..

xvi) In the Bill of Lading (B/L), shipper column must indicate the name of the supplier.

xvii) MMTC shall exercise FOBT/CFR FO/CIF option within two working days after receipt of communication/approval from TRANSSHART, Ministry of Shipping and Transport, Government of India.

xviii) MMTC reserves exclusive right to accept bids either on FOBT basis or CFR FO/CIF basis or not to accept any bids at all, at its sole discretion.

xix) Fixture of Floating shipments for supply of urea shall not be accepted.

xx) Vessels appearing in Sanction List as per OFAC's updated SDN List of US Department of Treasury may not be accepted by MMTC for shipment of ordered cargo. Suppliers to accordingly arrange suitable vessels to avoid problems in release of payment.

xxi) Trading Arms/Divisions (registered as separate company) of Producers will not be treated as Producers. Offers submitted by such Trading Arms/Divisions will be treated as Category-III suppliers unless they qualify as Category-II suppliers and are notified accordingly by including their name in Category-II list of Tender Document (Annexure-XII).

d) MMTC reserves the right without assigning any reason to accept or reject any tender in part or full or to buy any quantity in excess of the tender quantity. MMTC is not bound to accept the lowest offer.

e) Prices quoted should be inclusive of Indian Agents Commission, if any, to be indicated separately. It will be deducted out of Invoice value and will be paid by MMTC Ltd., to the agents in India in Indian Rupees. The conversion will be made only at the rate of exchange at which payment is made to the sellers. In case the Indian Agents are foreign controlled companies and commission is payable in US Dollars, certificate/permission from the Reserve Bank of India/Government of India, as the case may be, that they are entitled to do the agency business and receive commission from MMTC should be enclosed with the Tender.

- i) In a tender, either the Indian agent on behalf of the Principle/OEM or Principle/OEM itself can bid but both cannot bid simultaneously for the same item/product in the tender.
  - ii) If an agent submit bid on behalf of the Principle/OEM, the same agent shall not submit a bid on behalf of another Principle/OEM in the same tender for the same item/product.
- f) In respect of business concluded against this Tender Notice, the following conditions will apply.

Schedule of deliveries for **Shipment from Load ports latest by 07.01.2019**. In case of multiple Bills of lading for one vessel, the date of Bill of Lading issued in the last shall be treated as shipment date for the total cargo loaded in that vessel. Timely shipment is the essence of the contract and shall be treated as firm. Any delay in effecting contracted shipments, will render the Sellers liable for breach of contract and shall be dealt as per Default clause.

**g) FORCE MAJEURE**

- i) If at any time during the existence of this contract either party is unable to perform in whole or in part any obligations under this contract because of war, hostility, civil commotions, sabotage, quarantine restrictions, Acts of God and Acts of Government (including but not restricted to prohibition of exports or imports), fires, floods, explosions, epidemics, strikes, embargoes, then the date of fulfillment of engagement shall be postponed during the time when such circumstances are operative.
- ii) Any waiver/extensions of time in respect of the delivery of any installment or part of the goods shall not be deemed to be waiver/extension of time in respect of the remaining deliveries.
- iii) If operations of such circumstances exceeds 3 months, each party shall 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 fulfill its engagements under the present contract must within 15 days of occurrence of any of the cause mentioned in this clause shall inform the other party, in writing, of the existence or termination of the circumstances preventing the performance of the Contract. Certificate issued by the Chamber of Commerce in the country of seller or the Buyer or the country where the Load port is located shall be sufficient proof of the existence of the above circumstances and their duration. Non-availability of raw material will not be an excuse to the Sellers for not performing their obligations under the contract.

**h) ARBITRATION**

In the event of any dispute/disputes under or out of or relating to the construction, meaning, operation or effect of this contract or breach thereof, the matters in dispute shall be referred to two arbitrators – one each to be nominated by the parties contracting herein and in case of the said arbitrator not agreeing then an Umpire to be appointed by the arbitrators in writing. The decision of the arbitrators or in the event of their not agreeing of the umpire, shall be final and binding on the parties to the contract.

The provisions of the Indian Arbitration Act and Rules as amended from time to time made there under shall govern the proceedings. The Arbitrators or the Umpire, as the case may be, shall be entitled with



the consent of the parties to enlarge the time, from time to time, for making and publishing the Award. The venue and seat of the arbitration shall be New Delhi (India). The award shall be reasoned award.

The party invoking the arbitration clause shall do so by serving the other party a notice by registered post specifying the disputes and qualifying its claims in categorical terms addressed to Additional General Manager (Law), MMTC Limited, Core-1, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi-110 003, if the claim is against MMTC and \_\_\_\_\_ of the suppliers, if the claim is against the other party. The other party shall have the right to submit its counter claim, if any.

**i) FINAL WEIGHT**

Sellers & receivers at the discharge port will appoint, at their own cost independent surveyor for conducting joint draft survey.

Final weight as determined by Joint Draft Survey conducted through an independent internationally reputed surveyor at the discharge port shall be treated as final. This clause is to be read along with clause (k) (i) and (iv) given below.

**j) INSPECTION BEFORE SHIPMENT**

MMTC reserves the right at its option to have the material inspected before shipment in regard to quality and quantity including its specifications. The Seller shall tender the material for inspection to the agency to be nominated by MMTC and shipment shall be effected only after the material is inspected.

Certificate of Inspection so obtained by the Sellers to the effect that the material is in accordance with the specifications laid down in the contract shall accompany the shipping documents.

**k) i )** The weight of cargo shipped determined by joint draft survey at discharge port would be final and binding on the Seller for the purpose of payment of shortages as compared to B/L weight. Quantity declared as damaged cargo shall be treated as quantity delivered short and shall be treated accordingly.

ii) Buyers and/or its receivers' representative shall draw samples for determining the quality of the cargo at the port of discharge through an independent reputed inspection agency or may opt for the mandatory inspection from Central Fertilizer Quality Control and Training Institute, Faridabad or any of its regional branches. The quality so determined at discharge port shall be final and binding on the seller. The cargo shall also conform to 'standard' as analysed by Central Fertiliser Quality Control and Training Institute at Faridabad (India) or any of its regional branches.

iii) The Seller should nominate its representative to supervise the draft survey and drawl of samples at discharge port at their own expense. MMTC will advise the port of discharge at the time of finalizing the contract.

iv) The Seller are liable for shortage in quantity as revealed by the Joint Draft Survey at discharge port vis-à-vis the Bill of Lading quantity, and the amount of penalties levied by receivers on account of deviations in quality (nutrients, moisture and particle size) on the basis of discharge port analysis as per (b) above vis-à-vis specifications in the contract would be recovered,

without any demur or reference to the seller from the value of the PG Bond executed by the Seller in case the Seller fails to remit the amount promptly. The Seller should make good such recoveries made by receivers through payment to MMTC directly within 15 days of notification by MMTC.

- v) Performance Guarantee Bond to be executed by the Seller will be required to be kept valid till discharge port results, in respect of weight and quality, and amount of penalties and dispatch / demurrage / dead freight / detention charges / receipt of cash from DOF etc. also as performance would be deemed completed only after that. All efforts will be made to finalise the accounts within 180 days from the date of completion of discharge of the cargo of last shipment of the contract. In case of any delay due to unforeseen circumstances sellers have to extend the validity of P/G Bond at the request of the Buyers.

#### **l) UMPIRE ANALYSIS**

i) The Buyer and/or receivers' representative and the Seller's representative be present at the time of sample collection at discharge port. The MMTC's receiver will organize entry passes for the representative of Faridabad Laboratory or any of its regional laboratory and Seller's representative. A part of the discharge port sample will be kept by the Seller's representative and one part by Faridabad Laboratory or any of its regional laboratory for future reference in case of dispute. In case it is required, the reference sample for umpire analysis will be the sample retained by Central Fertilizer Quality Control & Training Institute, Faridabad or any of its regional laboratory only.

ii) In case of dispute about quality, the Seller has right for umpire analysis. In such circumstances reference sample will be sent to the umpire laboratory and the result of umpire laboratory will be binding on both Seller and Buyer. The cost of umpire analysis will be borne by the losing party. The umpire analysis will be done by a reputed Inspection Agency nominated by MMTC and/or its receiver. The umpire agency shall be one of the laboratories notified for the referee analysis in the Fertilizer Control Order 1985 (as amended upto the date of tender closing) and will be the one other than the load port/discharge port Inspection Agency. The seller shall have the right to select at least 3(three) eligible laboratories for umpire analysis, out of which MMTC and/or receivers shall nominate one agency.

iii) The penalties for deviations in specifications found at discharge port will be recovered on the basis of scales given in Annexure – II.

iv) In the event of disagreement in the discharge port draft survey results, about quantity at discharge port and any of the parties representing the ship-owners/foreign suppliers and receivers etc. refusing to sign or signs under protest the Joint draft survey report, MMTC and/or its receiver may at its discretion go in for recalculation of quantities by Umpire Survey. The Umpire Surveyor shall be nominated from the panel drawn by the Department of Fertilizer (GOI). The Umpire agency will be the one other than the load port Inspection Agencies as well as discharge port inspection agencies nominated by ship owners, sellers and receivers. The decision of Umpire Surveyors will be binding on both seller and buyer. The cost of Umpire agency survey shall be equally borne by the parties.

#### **m) DEFAULT:**

The supplier must note that timely shipment /delivery of the material is essence of the contract and shall be treated as firm. However, under any circumstances if the supplies get delayed and the supplier fails to effect shipment/deliver the material within the time stipulated in the contract, the same shall be treated as breach of contract unless specifically extended by

buyer/DOF in writing. Under such situation, it is agreed that the Buyer shall have the following options to safeguard its interest:-

- a) To accept late shipment (Full or part) with any one of the following conditions:

To recover as liquidated damages and not by way of penalty for the period after this material was due, until actual delivery or until the buyer secures the material or other material of similar description from other sources, a sum equivalent to 2% of the contract value of the undelivered material per month, or part thereof. The Liquidated damages recovered from the seller shall ultimately be paid to DOF.

OR

To accept the supplies (full or part) of the delayed shipments, subject to seller's confirmation of the revised lower prices intimated by the buyer, based on the prevailing import prices in India, established through subsequent tender(s) by State Trading Enterprises (STEs).

- b) To not accept the late shipment with any one of the following conditions

Buyer with notice to seller shall source the delayed quantities (full or part) of the likely similar description of material (readily available in the market) at the sole risk and cost of the seller and claim all the related losses/damages from the seller towards breach of the contract.

OR

To cancel the contract or a portion thereof for supply of full or part quantities without any further notice and to forfeit the PBG/Performance Bond submitted for the successful performance of the contract.

- c) Further in addition to (a) and (b) above, the buyer reserves the right to debar the seller from participating in one or more future tenders invited by the buyer and/or other canalizing agencies in India.

However the buyer/DOF reserves the right to invoke the PG Bond submitted by the seller for ensuring performance under this contract without assigning any reason/loss/damages or any other situation. The seller shall have no recourse to the PG Bond invocation.

Decision taken by the buyer/DOF in this regard will be conclusive and shall be binding on the Seller.

**n) EVALUATION CRITERIA:**

The offers received in the tender shall be evaluated on overall lower to higher basis (L1 upwards) for each coast separately and quantity shall be allocated to the bidders for each port as per the requirement of DOF, from L1 upwards coast-wise without considering port wise lowest bids from the suppliers.

Note: The coast-wise i.e. ECI and WCI wise percentage (%) requirement will also be incorporated in the tender if informed verbally by DOF.

**(o) SYSTEM FOR CALLING BIDDERS FOR MATCHING COUNTER OFFER PRICES:**

In order to meet the demand, the required quantities may be imported from more than one supplier through various discharge ports in India. For contracting the required quantities, bidders shall be called for matching prices as per counter offers as under:-

- (a) The comparative statements (CST) indicating hierarchy of bidders shall be prepared on the following basis:-
  - (i) **CST (COAST WISE i.e. separately for ECI & WCI):-** Coast wise i.e. East coast of India (ECI) and West coast of India (WCI) CST for various discharge ports on each coast showing hierarchy of various bidders.
  - (ii) **CST (CONSOL):-** Consolidated CST for all discharge ports irrespective of East Coast of India (ECI) or West coast of India (WCI) showing hierarchy of various bidders.
- (b) Based on discharge port-wise quantity requirements on each coast, counter-offers (based on coast wise L-1 prices or port-wise negotiated L-1prices) shall be first given to bidders in order of their hierarchy as per the respective CST (COAST WISE). In case requirement of full quantity at a particular discharge port are not met, for sourcing the balance left over quantity counter offers will be then given to various other bidders in order of their hierarchy as per CST (CONSOL).
- (c) For discharge port for which no offer is received, counter offers will be decided by MMTC and shall be given in order of hierarchy in CST (CONSOL).
- (d) In case any bidder has quoted prices only on FOB basis, MMTC at its sole discretion may add the estimate freight and suitably place him in all the comparative statements.
- (e) The bidders shall have to intimate within a stipulated time their acceptance to counter offers indicating quantities and discharge ports.
- (f) MMTC's decision in this regard shall be final and binding on all bidders.

Note: This tender is subject to the policy and guidelines of the Government of India for import of Urea, as applicable from time to time.

DRAFT CONTRACT PROFORMA

CONTRACT NO

Date:

This contract of purchase is made and entered into on this <date>, between:

SELLER :

hereinafter called the Seller (which expression shall unless repugnant to the context mean and shall include its successors and assigns), and

BUYER :       MMTC LIMITED  
                  CORE -1, SCOPE COMPLEX  
                  7 INSTITUTIONAL AREA, LODI ROAD  
                  NEW DELHI-110 003, INDIA  
                  FAX NOS: + 91-11-24365808

hereinafter called the Buyer (which expression shall unless repugnant to the context mean and shall include its successors and assigns).

<seller> and <buyer> are collectively called as parties

The following is agreed to:

Whereas, buyer is one of the largest international trading company, dealing in fertilizers, minerals, metals, ferrous and non-ferrous metals, and agro products.

Whereas, seller is in the business of \_\_\_\_\_ and deals in <                    >.

Whereas, buyer desires to purchase urea, as more specifically set forth in this contract from seller.

Whereas, seller desires to sell urea to buyer.

Whereas, it is the intention of parties that seller shall sell urea as more specifically set forth in this contract herein, buyer will purchase urea from seller based on terms and conditions set forth herein.

Whereas, the parties agree that Department of Fertilizer (DOF) , under Ministry of Chemicals and Fertilizers, Government of India is not a party to this contract. However, DOF is the final buyer and the buyer acts only as a facilitator.

Whereas, the parties agree that the buyer can make a reference to DOF for any direction or decision or any issue/ matter under this contract, if it deems fit.

Whereas, the parties agree that decision/ direction of DOF shall be final, binding and acceptable to the parties in the interest of country (India), if referred to DOF by the buyer.

In consideration of the mutual covenants and provisions contained herein, the parties thereto agree as follows:

**I. DESCRIPTION AND PURCHASE PRICE OF UREA:**

The Seller agree to sell and the Buyer agree to buy a quantity of \_\_\_\_\_MTs Plus Minus 5% Bulk Urea prilled/granular under the terms and conditions set out hereunder:

Description of material	Quantity	Port(s) of loading	Price (PMT, CFR/FOBT, USD)
Bulk Urea 46 % Nitrogen Fertilizer Grade	----- MT +/- 5 %, in --- lots, tolerance at seller's option	----- Port	US \$ ----- PMT CFR FO -- Port, India at basis discharge rate of ----- MT PWWD SHEX EIU for ----- India.  <b>OR</b>  US \$ ----- PMT FOBT

**II. SHIPMENT SCHEDULE:**

1. Schedule of deliveries for Shipment from Load ports latest by **07.01.2019**.
2. In case of multiple Bills of lading for one vessel, the date of Bill of Lading issued in the last shall be treated as shipment date for the total cargo loaded in that vessel.
3. Timely shipment is the essence of the contract and shall be treated as firm. Any delay in effecting contracted shipments, will render the Seller liable for breach of contract and shall be dealt as per Default clause.
4. In case of delay in shipment by the seller, on request of seller, buyer may intimate DOF and seek their approval for acceptance of extension for last date of shipment. Such approval will be conveyed to seller, if received by buyer within 4 working days from date of receipt of letter/email by buyer. However requesting DOF for extension is at sole discretion of buyer.
5. In case delayed shipment is accepted, then default clause mentioned at clause XIII will be applicable.

**III. QUALITY SPECIFICATIONS AND METHOD OF ANALYSIS:**

1. Quality specifications shall be as per Annexure-I.
2. In the event of any consignment not conforming to the contractual specifications, the Buyer have the right to reject the same.

**NOTE:**

- (1) Samples to be taken, held and composited by such procedure as will produce a truly representative final sample with particular care being taken to preclude moisture changes; and

- (2) Sampling to be performed 250/500 MT at prescribed intervals and preferably to be done during loading aboard the vessel.

#### IV. PRE-SHIPMENT INSPECTION FOR QUALITY & WEIGHT:

Buyer shall have a right to inspect the fertilizer at all reasonable times prior to shipment thereof by appointing their own Inspection Agency.

1. Inspection shall be carried out before shipment by the Buyer or their authorized representative/appointed inspection agency at the factories of the suppliers/manufacturers and/or at any other place at their discretion.
2. At least ten days clear notice in writing shall be given by the Seller before loading the cargo into container/barges or directly into the ship at the producing factory to the Buyer Authorized Inspection Agency with e-mail/Cables under intimation to Buyer.

The notice to the Inspection Agency and intimation to the Buyer shall contain the following information:

- a) Location of producing factory;
  - b) Contract number and description of fertilizers;
  - c) Date of loading/despatch from factory;
  - d) Quantity to be shipped, name of the vessel and port of loading.
3. (i) For purposes of determining quality, the Inspection agency may at their discretion draw samples of the material at the producing factory as specified in the contract. However, the inspection agency shall draw samples in all cases during the loading of the vessel with a view to ensure that the material conforms to the contractual specifications. A clear inspection note will be released by the Inspection Agency only if they are satisfied with the contractual specifications of the cargo.  
  
(ii) Samples so drawn shall be sent to the laboratory nominated by the Inspecting Agency.
  4. The Seller will provide free of cost facilities to the inspecting agency for taking samples.
  5. Factory production analysis records shall be made available for the scrutiny of the inspecting agency for checking whether the material produced is in conformity with the contractual specifications. This will include distribution of particle size and coating as well as nutrient content, etc.
  6. After inspection and sampling, the analysis report, weight records and other data required by the Inspecting Agency shall be forwarded to them. A copy of the vessels Bill of Lading shall also be provided as evidence of quantity loaded in good conditions, i.e. clean. All documents regarding shipment shall be airmailed immediately to avoid delay in the issue of the Inspection certificate of claiming payment for the suppliers.
  7. Analysis report should specify the nutrients and other requirements of the contract specification. The report shall specify the methods of analysis used, type of sieve used for determination of particle size and also the contract number, the quantity loaded and the name of the vessel. If more than one factory supplied cargo for same vessel, a factory analysis report shall be provided for each of the factories.
  8. The weight should be determined by conducting draft survey before loading of the cargo and after completion of the loading of the cargo through an independent internationally reputed surveyor at Buyer's cost. Bill of Lading and invoice will show draft survey weight. Quantity declared as damaged cargo shall be treated as quantity determined short and shall be treated accordingly.

V. CHECK WEIGHTMENT AND QUALITY AT THE INDIAN PORT OF DISCHARGE:

(a) The Buyer and/or its receivers shall draw samples for determining the quality of the cargo at the port of discharge through an independent reputed inspection agency or may opt for the mandatory inspection from Central Fertilizer Quality control and Training Institute (CFQC&TI), Faridabad or any of its regional branches. This would be decided by buyer and/or its receivers and communicated to seller before the arrival of the vessel.

(b) The port of discharge would be any one safe port nominated in West/East Coast of India. Buyer and/or its receivers shall also arrange Draft Survey at discharge port by reputed surveyor. The seller must nominate their representative at their own expense and ensure that they shall be present at the discharge port at the time of taking sample by the inspector of CFQC&TI and sign the sealed sample after satisfying the method of sampling and drawl of sample. The seller must ensure that their representative shall be present at the discharge port at the time of initial draft survey and final draft survey and sign the joint draft survey at discharge port. The draft weight as reported in Joint Draft Survey Report at discharge port shall be treated as final.

(c) The quality and quantity as determined at (a) & (b) above at discharge Port will be treated as final and binding for both Buyer and Seller.

(d) The payment for shortage in quantity, as revealed by the Joint Draft Survey at discharge port vis-a-vis the bill of lading quantity, and the amount of penalties on account of deviations in quality (nutrients, moisture and particle size) on the basis of discharge port analysis as per (a) above vis-a-vis specifications in the contract will be paid by the Seller within 25 days from the date of claim failing which buyer shall have recourse to the PG Bond executed by the Seller.

(e) In case Urea shipped by the seller under this contract is found deficient with reference to the specifications provided in the contract, penalties shall be recovered from the seller as per the provision of the contract given in Annexure II. However DOF/buyer reserve its right to reject and return the entire cargo at discharge port, if it is declared non-standard and not found fit for direct agriculture use as per the report of the CFQC&TI or any other agency appointed by the DOF/Receiver of the cargo. In such an event the seller shall refund the landed cost of the cargo found unfit or rejected as well as all the consequential handling and distribution costs thereof immediately on Buyer first demand within 25 days of buyer demand, with value date being date of initial payment to the seller, failing which penal interest at the rate of 18.00% per annum shall be payable upto the date of actual remittance by the seller without waiting for Umpire analysis or the result of Umpire Analysis..

VI. UMPIRE ANALYSIS:

i) The Buyer and/or receivers' representative and the Seller's representative be present at the time of sample collection at discharge port. The buyer's receiver will organize entry passes for the representative of Faridabad Laboratory or any of its regional laboratories and Seller's representative. A part of the discharge port sample will be kept by the Seller's representative and one part by Faridabad Laboratory or any of its regional laboratory for future reference in case of dispute. In case it is required, the reference sample for umpire analysis will be the sample retained by Central Fertilizer Quality Control & Training Institute, Faridabad or any of its regional laboratory only.

ii) In case of dispute about quality, the Seller has the right for umpire analysis. In such circumstances reference sample will be sent to the umpire laboratory and the result of umpire laboratory will be binding on both Seller and Buyer. The cost of umpire analysis will be borne by the losing party. The umpire analysis will be done by a reputed Inspection Agency nominated by buyer and/or its receiver. The umpire agency shall be one of the laboratories notified for the referee analysis in the Fertilizer



Control Order 1985 (as amended upto the date of tender closing) and will be the one other than the load port/discharge port Inspection Agency. The seller shall have the right to select at least 3(three) eligible laboratories for umpire analysis, out of which buyer and/or receivers shall nominate one agency.

iii) The penalties for deviations in specifications found at discharge port will be recovered on the basis of scales given in Annexure – II.

iv) In the event of disagreement in the discharge port draft survey results, about quantity at discharge port and any of the parties representing the ship-owners/foreign suppliers and receivers etc. refusing to sign or signs under protest the Joint draft survey report, buyer and/or its receiver may at its discretion go in for recalculation of quantities by Umpire Survey. The Umpire Surveyor shall be nominated from the panel drawn by the Department of Fertilizer (GOI). The Umpire agency will be the one other than the load port Inspection Agencies as well as discharge port inspection agencies nominated by ship owners, Seller and receivers. The decision of Umpire Surveyors will be binding on both seller and buyer. The cost of Umpire agency survey shall be equally borne by the parties.

#### VII. SHIPPING:

- (a) Within 2 days of sailing of vessel, the Seller shall inform the Buyer by e-mail the name of the vessel, date of sailing and quantity shipped, and shall also despatch directly to the Buyer by DHL/UPS/FED EX/TNT courier, one negotiable set with one non-negotiable set each of following documents by first & second airmail to reach within 7 days from the date of sailing of vessel :
- (1) Clean Bill of Lading showing Department of Fertilizer, Ministry of Chemicals and Fertilizers, Govt. of India as the consignee; and MMTC Limited as the notified party. In the Bill of Lading (B/L), shipper column must indicate the name of the supplier.
  - (2) Signed commercial invoice issued by Seller for 100% of value (less agency commission, if any) and
  - (3) Certificate of Origin
  - (4) Certificate of analysis of cargo
  - (5) Draft survey certificate issued at load port.
- (b) Seller is required to inform the following details to the Buyer by e-mail immediately on negotiation of documents under buyer's L/C to facilitate the Buyer to provide necessary funds in their bank account to honour their documents.
- (i) Date of negotiation
  - (ii) Amount negotiated
  - (iii) Expected date of receipt of documents at opening bank's counter
  - (iv) DHL/UPS/FED EX/TNT courier receipt no. and date.

#### VIII. PAYMENT:

(a) Without prejudice to Buyer's right to damage under terms of the contract, payment less agency commission, if any, shall be made through an irrevocable commercial letter of credit. Reimbursement shall be made within five days of receipt of documents at the counters of the LC opening bank. The letter of credit shall be established for the full value of the shipment in favour of the Seller on receipt of Performance Guarantee in acceptable form and its confirmation, signed contract and on nomination of vessel, payable for 100% of the invoice value based on load port results and against presentation of the following documents:

- (i) 3/3 original negotiable clean on board, freight prepaid, Bill of Lading in long form and three non-negotiable copies thereof, showing Department of Fertilizer as consignee and MMTC Ltd., Core No. 1, Scope Complex, 7 Institutional Area, Lodi Road,

New Delhi-11003 (India) as notified party. Charter Party Bill of Lading acceptable provided it bears on endorsement that all terms and conditions of the relevant charter party are deemed to have been incorporated therein; B/L signed by freight forwarders not acceptable. For Iranian Origin cargo Bill of Lading issued from UAE/Dubai shall also be acceptable.

- (ii) One original and three copies of certified commercial invoice;
- (iii) Original certificate of origin duly signed by Chamber/Ministry of Commerce;
- (iv) Original certificate of Inspection showing analysis and weight furnished by Seller and certified by the Buyer Inspection Agency with a separate certificate of Inspection issued by the Buyer's inspection agency showing analysis and weight and method of analysis adopted.
- (v) Certificate from the Seller that the material supplied under the contract are correct as to quantity, rate, total value and the payment is due in accordance with the terms of the contract at the time of presentation;
- (vi) Certificate to the effect that with three non-negotiable sets have been despatched to the Buyer at New Delhi address by DHL courier. Copy of DHL courier receipts shall form part of negotiable documents, in terms of clause VIII above;
- (vii) Copy of the e-mail from Seller to Buyer giving details of shipment;
- (viii) One original and three copies of Stowage Plan
- (ix) Original load port Draft Survey Report issued by the buyer's inspection agency;
- (x) Copy of MMTC's letter confirming receipt of 2 original quality and quantity certificate (issued by designated inspection agency at load port) despatched by the beneficiary within 72 hours of sailing of vessel
- (xi) Copy of MMTC's letter confirming receipt of approval of Transchart, Ministry of Shipping and Transport (in case of CFR FO) contracts.
- (xii) Copy of MMTC's letter confirming receipt of three non-negotiable sets.
- (xiii) In case of CFR FO contracts, category III bidder's has to furnish a certified copy of NOR (Notice of Readiness) tendered and accepted by receivers or their agents at the nominated Indian discharge ports.

The charges for establishing letter of credit and bank charges in the country of Buyer shall be to the buyer's account. All bank charges in the Seller country shall be to the account of the Seller. The letter of credit extension and amendment charges will be to the account of the party responsible for occasioning the extension/amendment. On the date of negotiation, Seller will inform the buyer the details of negotiation such as contract no., vessel's name, date of sailing, amount of invoice negotiated, name of bank and date of negotiation by e-mail.

IX. INDIAN AGENTS:

M/s. \_\_\_\_\_ will be acting as the local agent of the Seller and all correspondence, discussions etc., carried out by M/s. \_\_\_\_\_ would be binding on the Seller.

X. WHARFAGE/DEMMURAGE:

If any wharfage or demurrage results at the port of discharge due to negligence of the Seller or their nominee including negligence of sending correct document in time connected with the shipment of material under this contract and if in consequence thereof, clearance of the consignment by the Buyer or delivery of goods to it is delayed resulting in wharfage or demurrage such wharfage or demurrage shall be to the account of the Seller. Similarly any wharfage or demurrage resulting from the negligence or default on the part of Buyer shall be to the Buyer account.

XI. ASSIGNMENT OR DELEGATION:

The Seller shall not assign or delegate any of their obligations under this contract to any party without prior written consent of the Buyer. The provisions of this paragraph shall apply to:

- a) Sub-contracting for the procurement of its commodity purchased hereunder; and
- b) A sale or encumbrance of substantially all of the Seller shares or assets, a merger of Seller' business or insolvency or receivership proceedings in respect of sellers business.

XII. TITLE AND RISK:

Title to the goods and risk shall pass from Seller to the Buyer on material crossing the ships rail at loading port.

XIII. DEFAULT:

The seller must note that timely shipment /delivery of the material is essence of the contract and shall be treated as firm. However, under any circumstances if the supplies get delayed and the seller fails to effect shipment/deliver the material within the time stipulated in the contract, the same shall be treated as breach of contract unless specifically extended by buyer/DOF in writing. Under such situation, it is agreed that the Buyer shall have the following options to safeguard it's interest:-

- a) To accept late shipment (Full or part) with any one of the following conditions:

To recover as liquidated damages and not by way of penalty for the period after this material was due, until actual delivery or until the buyer secures the material or other material of similar description from other sources, a sum equivalent to 2% of the contract value of the undelivered material per month, or part thereof. The Liquidated damages recovered from the seller shall ultimately be paid to DOF.

OR

To accept the supplies (full or part) of the delayed shipments, subject to seller's confirmation of the revised lower prices intimated by the buyer, based on the prevailing import prices in India, established through subsequent tender(s) by State Trading Enterprises (STEs).

- b) To not accept the late shipment with any one of the following conditions

Buyer with notice to seller shall source the delayed quantities (full or part) of the likely similar description of material (readily available in the market) at the sole risk and cost of the seller and claim all the related losses/damages from the seller towards breach of the contract.

OR

To cancel the contract or a portion thereof for supply of full or part quantities without any further notice and to forfeit the PBG/Performance Bond submitted for the successful performance of the contract.

- c) Further in addition to (a) and (b) above, the buyer reserves the right to debar the seller from participating in one or more future tenders invited by the buyer and/or other canalizing agencies in India.

However the buyer/DOF reserves the right to invoke the PG Bond submitted by the seller for ensuring performance under the contract without assigning any reason/loss/damages or any other situation. The seller shall have no recourse to the PG Bond invocation.

Decision taken by the buyer/DOF in this regard will be conclusive and shall be binding on the seller.

**XIV. SHIPMENT TERMS:**

As per Annexures III for FOB & III A for C&F shipments.

**XV. FREIGHT FORWARDERS:**

Buyer shall appoint their own freight forwarders after signing of this contract and shall intimate the same to the Seller in due course. As soon as the Seller are in a position to load the vessel, they shall intimate the Freight Forwarders appointed by the Buyer about the same.

**XVI. OTHER CONDITIONS:**

Buyer shall arrange to obtain the relative import licences, if needed and get them revalidated whenever necessary. Similarly, the Seller shall arrange to obtain export licences if needed for the export of the goods from their country. The goods shall not be shipped till the import licence number and date are communicated in writing to the Seller and all shipping documents shall bear the relative contract number and the import licence number and date. All levies, taxes, duties etc. in the Seller and Buyer countries shall be to their respective accounts.

**XVII. SETTLEMENT OF DESPATCH AND DEMURRAGE:**

The Seller guarantees to prepare the laydays statement on the basis of the certified statement of facts and send it to the Buyer within 15 days of the date of sailing of the vessel. After the laydays statement has been accepted by the Buyer, the monetary settlement of despatch/demurrage shall be effected by the respective parties within one month of the date of acceptance of the laydays statement. In case SOF is not given by the seller within 15 days from shipment date, Buyer shall have the right to invoke PG and receive load port demurrage/ disport despatch based on buyer's calculations.

**XVIII. TAXATION:**

All taxes , duties, levies, charges, cesses, etc in nature of taxes or penalty / damages which may be imposed outside India on Urea will be to the account of the Seller.

Any taxes , duties or levies in the nature of taxes which may be imposed on the quantity of urea discharged in India , shall be to the account of Buyer.

**XIX. FORCE MAJEURE:**

1. If at any time during the existence of this contract either party is unable to perform in whole or in part any obligations under this contract because of war, hostility, civil commotions, sabotage, quarantine restrictions, acts of God and acts of Government (including but not restricted to prohibition of exports or import), fires, floods, explosions, epidemics, strikes, embargoes, then the date of fulfillment of engagement shall be postponed during the time when such circumstances are operative.

2. Any waiver/extension of time in respect of the delivery of any installment or part of the goods shall not be deemed to be waiver/extension of time in respect of the remaining deliveries.

3. If operation of such circumstances exceed three months, each party shall have the right to refuse further performance of the contract by giving written notice to the other party in which case neither party shall have the right to claim eventual damages.

4. The party which is unable to fulfill its engagements under the present contract must within 15 days of occurrence of any of the causes mentioned in this clause shall inform the other party in writing of the existence or termination of the circumstances preventing the performance of the contract. Certificate issued by a Chamber of Commerce in the country of Seller or the Buyer shall be sufficient proof of the existence of the above circumstances and their duration. Non-availability of raw-material will not be an excuse to the Seller for not performing their obligations under this contract.

**XX. ARBITRATION:**

(a) All disputes or differences whatsoever arising under or out of or relating to the construction, meaning and operation or effect of this contract or the breach thereof shall be settled by arbitration in accordance with the rules of arbitration of Indian Council of Arbitration as amended from time to time, and the award made in pursuance thereof shall be binding on the parties. The governing law shall be laws of India. The venue and seat of arbitration shall be New Delhi, India. The language of arbitration shall be English.

(b) The party invoking the arbitration clause shall do so by serving the other party a notice by registered post specifying the disputes and qualifying its claims in categorical terms addressed to Additional General Manager(Law), MMTC Limited, Core-1, SCOPE Complex, 7 Institutional Area, Lodi Road, New Delhi - 110003 if the claim is against MMTC and \_\_\_\_\_ of the suppliers, if the claim is against the other party, the other party shall have the right to submit its counter claims, if any.

**XXI. PERFORMANCE GUARANTEE BOND:**

The Seller shall establish an unconditional, irrevocable PERFORMANCE GUARANTEE BOND (PGB) as per prescribed format enclosed with tender documents by any scheduled bank having its branch office in New Delhi (India) for \_\_\_\_\_% of the total contract value of the maximum guaranteed quantity to be shipped under the contract including plus tolerance as set forth by \_\_\_\_\_ .

Performance Guarantee Bond executed by Seller will be required to be kept valid till all claims under the contract including performance, weight and quality basing on discharge port results, any penalties, despatch/demurrage or as a result of any short receipt from Department of Fertilizer, Government of India on any account, shall not be questioned and shall be final and conclusive (irrespective of the stand that may be taken by or on behalf of the Seller) are settled.

Further, it is clearly understood that in the event of any default in the fulfilment of any of the obligation of the seller, the seller's liability will not be limited to the extent of the value of the PGB.

The objective of PG Bond is to ensure performance by the seller under this contract. However, in case of any deviation by the seller, the buyer have full right to invoke PG Bond without justifying losses/damages etc.

**XXII. SPECIAL CONDITION:**

It is expressly understood and agreed by and between the buyer/seller that MMTC is making the purchases on behalf of M/s. Department of Fertilizer (DOF), Ministry of Chemicals and Fertilizers, Govt. of India. In case any deductions are made from the bills of buyer by DOF on account of deviations in the specifications or due to short-landing at discharge port vis-a-vis Bill of Lading Quantity or on any other account, the amount will be reimbursed by the seller maximum within 25 days from the date of first demand by buyer. Despatch/demurrage in case of load port for FOB shipments and discharge port in case of C&FFO shipments as settled by the buyer shall be binding on Seller.

For acceptance of vessel, receiver nomination and Letter of Authority at discharge port, extension of shipment period, approval of DOF will be sought by buyer and once the same is received from DOF the same can be conveyed to seller.

**XXIII. PREVIOUS NEGOTIATIONS AND OBLIGATIONS:**

All previous negotiations and correspondence, connected with this contract shall be considered as null and void. No modifications, waiver or discharge of this contract or any of its terms shall bind either party unless in writing and signed by both the parties.

**XXIV. APPLICABLE LAW AND JURISDICTION:**

The terms and conditions of this contract are governed by the laws of India, as amended from time to time. The courts at Delhi, India shall have exclusive jurisdiction to settle any claim or dispute which might arise out of or in connection with these terms and conditions.

**XXV. CONFIDENTIALITY:**

The parties shall treat the terms and conditions of this contract as confidential and proprietary information during the validity of the contract and two years after the completion or termination of contract. Neither party shall disclose any such information to any third part without the other party's prior written consent, which consent shall not be unreasonably withheld; provided, however, that no such consent shall be needed where such disclosure (i) is required by law, regulation, or regulatory agencies having jurisdiction over one of the parties or (ii) is made in connection with a party's assertion of a claim or defense in a legal proceeding, and that in either of these events, the party intending to make such disclosure shall advise the other party in advance and cooperate to minimize the disclosure of any such information except disclosure made by the buyer to inspection agency for carrying out inspection of the cargo, DOF, Receiver of the cargo and banks(for LC opening/CAD negotiation).

**XXVI. NOTICE:**

For the purpose of this agreement, any notice and all other communication provided for in this agreement shall be in writing and shall be deemed to have been duly given when received at the respective addresses set forth below:

For Seller : < Address of the seller >

For Buyer: < Address of the buyer >

**XXVII. HOLIDAY LISTING:**

Notwithstanding anything contained in this agreement, MMTC's policy for holiday-listing of an agency mutatis mutandis applies to this agreement and in the event, the agency(s) while discharging its obligations under the agreement or otherwise, come(s) within the ambit of the said policy, MMTC at its sole discretion reserves the right to suspend/discontinue dealings or take any curative measures with the agency(s) in accordance with the policy in force.

**XXVIII. TERMINATION:**

This contract shall be for an initial period of one year from the commencement date. Either party will have the right to terminate the contract by giving at least 30 days notice in writing to the other party to expire at the end of the initial period or at any time after that.

Either party may terminate this contract by written notice to the other party at any time if that other party:

- (a) Commits a breach of this contract and , in the case of a breach capable of remedy, the party at breach fails to remedy the breach within 15 days of being required to do so in writing except clause II(shipment schedule) and clause III (quality specification and method of analysis) of this contract.
- (b) Either party has declared force majeure, which has exceeded three months time, and the party is unable to fulfill its responsibilities under the contract.
- (c) becomes insolvent, or has a liquidator, receiver, manager or administrative receiver appointed.

SELLER

BUYER

FOR AND ON BEHALF OF THE

FOR AND ON BEHALF OF

MMTC Limited  
Core -1, SCOPE Complex  
7 Institutional Area, Lodi Road  
New Delhi-110 003, India  
Fax No: 0091-11-24365808

Witness:

- 1.
- 2.

Witness:

- 1.
- 2.

**ANNEXURE-I**

**SPECIFICATIONS FOR PRILLED/GRANULAR UREA (BULK) FERTILIZER GRADE**

DESCRIPTION: The material shall be in the form of white prills or pellets or shots, shall be free from visible impurities and dust. The material must be chemically treated and coated to reduce Hygroscopicity.

NOTE The material shall be considered free flowing at the time of unloading, if the prills are separate from each other, the lumps or crust formed in the hatches of vessels are broken with slight pressure of fingers into separate prills and if the cliffs formed near the walls of the hatches can be broken by slight pressure with bamboo sticks/or iron rods.

The material shall also comply with the requirements specified in the Table below:-

Sl. No.	Characteristics	Requirements
1.	Moisture percent by weight maximum	0.50
2.	Total Nitrogen per cent by weight (On dry basis) minimum	46.00
3.	Biuret per cent by weight, maximum	1.50

**METHODS OF ANALYSIS**

- A. Nitrogen 2.4.03. AOAC (1995)
- B. Biuret 2.4.23 AOAC (1995)
- C. Moisture D.4 (TFI, 1982)
- D. Particle Size IV A, TFI (1982)  
Sampling 2.1.01. AOAC (1995)  
or  
IC 1, IC 2, (TFI-1982)  
or  
Schedule II A of FCO,1985

**PARTICLE SIZE (PRILLED/GRANULAR)**

The portion of the material passing through 2.8 mm IS SIEVE (Tyler Sieve 7) and retained on 1 mm IS Sieve (Tyler Sieve 16) shall not be less than 90% by weight and not more than 5% by weight shall pass through 1 mm IS SIEVE.

NOTE: The arrival of the material in white free flowing condition at Indian Ports will be guaranteed by the seller. For any deviation from the above specifications, Scale of Penalties as prescribed will apply.

In case of Granular urea, IS sieve size to read as 4mm(Tyler Sieve 5) instead of 2.8 mm and 2mm(Tyler Sieve 9) instead of 1 mm

Urea supplied shall be either in prilled or in granular form. No mix-up will be allowed grade wise and urea of different grades must be loaded in separate holds.



**SCALES OF PENALTIES**

**NUTRIENT LOSSES**

I) Any deficiency upto a maximum of 1% beyond the tolerance limits prescribed under FCO 5 times of the C&F value (established on the basis of transchart freight) of deficiency nutrient. In a non standard fertilizer, the total deficiency beyond FCO specifications has to be counted for the purpose of computing penalties.

Deficiency beyond above limit As decided by the expert committee of DOF, Govt. of India

II) With regard to penalty on excess moisture contents, the penalty will be levied on pro-rata basis. The scale of penalty will be prescribed as “two times the value of Fertiliser equivalent to excess moisture content in entire shipment by weight.”

III) The penalty on account of deviation in particle size which will be of two components:  
a) Penalty on account of deficiency in particle size.  
b) Penalty on account of excess over-size particle

The net penalty on account of particle size deviation would be total of its two components (a+b) which will be determined as under:

i) Deficiency in particle size = Percentage of material below the lower sieve in the sample Minus Maximum permissible material below the lower sieve.

The penalty on account of deficiency will be 30% of the value of material equivalent to “deficiency” in particle size (defined above) in entire shipment.

ii) Percentage of over-size material = Percentage of material above sieve in the sample Minus Maximum permissible percentage above upper sieve.

The penalty on account of over-size will be “15% of the value of fertilizer determined as over-size in entire shipment”.

On account of deviation in particle size, the buyer can reject the entire cargo or part thereof on recommendation of DOF.

IV) The buyer, as per directions of DOF reserves its right to reject and return the entire cargo at discharge port, if it is not found fit for direct agriculture use or declared ‘Non-standard’ as per the report of the CFQC&TI or any other agency appointed by the DOF. In case the entire cargo is rejected at the discharge port and/or declared unfit for direct application as fertilizer, as evidenced by the quality report of CFQC&TI, Faridabad or any of its regional laboratory, the Seller shall refund landed cost of the cargo found unfit as well as all consequential Handling and distribution costs thereof immediately on Buyer first demand with value Date being date of initial payment to the seller, failing which penal interest at the rate of 18% p.a. on quarterly rest basis shall be payable up to the date of actual Remittance by the seller.

**GENERAL SHIPMENT TERMS IN RESPECT OF FOBT CONTRACTS**

1. Within 7 days of the conclusion of the contract, the Seller will give to the Buyer a firm schedule showing the quantities available and the dates from which they would be available in each month. Seller shall make available a minimum of 25,000 tons of fertilizer 5% more or less at Buyer's option at a time to enable the Buyer to Charter the vessel. The Buyer have also the option to call the additional parcel of 3/4,000 Mts to enable them to Charter full loaders (subject to approval of buyer).
2. The Buyer will arrange and co-ordinate shipment of Fertilizer and will charter or arrange to charter a ship to move the fertilizers according to the schedule given by the Seller or within 15 days after that date. If cargo is not available after ship has arrived in the port of loading according to schedule, the Seller shall be responsible for the costs of demurrage of the vessel, and dead freight, if any, due to incomplete loading because of the un-readiness of either part or whole of the goods, when the vessel has been in port at due time, and the notice of readiness has been served will be for Seller/shippers account.
3. Seller to give approximate 10 days advance notice prior to commencement of laydays in respect of each parcel to Buyer, New Delhi for finalising/nominating suitable vessels to Seller in required lay days.
4. Seller to expedite stem confirmation/clean acceptance of nominated vessel within 24 hours of receipt of nomination of vessel by Buyer, New Delhi.
5. Vessels nominated by Buyer to be dry and clean.
6. The Seller agree to load from one/two safe port, safe berth(s)/ anchorage, always accessible from the port. In case, two berths are used for loading, shifting expenses including bunker oil consumed, tugs hire and crew's overtime will be to vessel's account and time for shifting not to count as lay time. However, vessel to be left in seaworthy trim to shift between berths/ports to master's satisfaction at seller's time and expense. Cost and time of more than one shifting is to be on Seller account.
7. No cargo is to be loaded in between deck, deep tanks, wing tanks, bunkers spaces. The Master to have the liberty of loading in such spaces for the purpose of stability of vessel but any extra time used and additional expenses incurred in loading into and/or discharging from such spaces (duly supported by the stowage plan) to be for Owners' account and lay time admissible will be calculated at half the specified rates for loading/discharging.
8. Owners guarantee that the vessel is fitted with cargo cranes capable of handling lifts of not less than 15 tons in union purchase, single wires, and all hatches working simultaneously with the necessary certification as provided under tackle regulations prevalent at the loading port concerned / Dock Safety Inspectorate. The vessel shall give free use of all available gears, cranes and power for same if required, but not exceeding the ordinary capacity for loading and discharging also lights for night work as on board. Crane-men/Winch-men to be for Charterers' account. Charterers' privilege discharging over side, Owners allowing free use of all gears. Any time lost due to breakdown of cranes not to count and expenses incurred to be for Owners' account.

9. The Seller will load, stow and trim the vessel at the port of loading at the rate of 6000 MT per weather working day of 24 consecutive hours, Thursday (Saturday for non Arab Gulf origin) afternoon, Friday(Sunday for non Arab Gulf origin) and holiday excepted, at their own cost. Time shall not count between noon Thursday (Saturday for non Arab Gulf origin) and 8 AM Saturday (Monday for non Arab Gulf origin). Nor between 5 PM (1200 hours on Thursday – to read as Saturday for non Arab Gulf origin ) on the last working day preceding a legal holiday upto 8 AM on the first working day thereafter, unless used and if used actual time used to count unless the vessel is already on demurrage.
10. Port charges, quay dues and similar dues on ship for Owner's account. The Seller shall pay all dues and duties on the cargo in the country of origin/ shipment, including taxes on cargo. Freight tax, if any, on owner's account
11. Buyer to be responsible towards Seller for despatch money on all working time saved at loading port.
12. First opening and last closing of hatches to be for owner's expense and time not to count.
13. The cargo shall be loaded by Seller/Shipper free of expenses and risk to the vessel but under the supervision of the Master. Overtime to the account of the party ordering it. Officer/Crew's overtime to owner's account. Overtime if ordered by port authorities same to be shared equally between owners and Seller at loading port.
14. Time to commence at 1300 hrs, if notice of readiness to load is tendered during office hours before noon- and 8.00 AM next working day if notice of readiness is tendered during office hours afternoon whether in port or in the roadstead, whether in berth or not, and holidays excluded unless used, in which case actual time used to count as laytime. If loading starts before commencement of time counting, only half of such time used to count.
15. Any lighterage required for loading will be on seller's account.
16. Buyer to ask for Seller/ shippers stem before fixing vessel definitely, stating at the same time the vessel's draft. Buyer shall nominate vessel with all available details including draft. Seller should indicate load port restrictions/ requirements
17. Owners to give Seller/Buyer 7 running day's approximate notice of vessels expected readiness to load, stating approximate quantity required in metric tons, or cause such notice to be served on Shipper's port Representative. 5 running days definite notice of vessel load readiness at loading port will be given to Buyer/Seller or their representative. Time of arrival to be telegraphically confirmed by the Master not later than 72/48/24 hours in advance.
18. THE TERM "FOB AT LOAD PORT" MEANS
  - a) Loaded, stowed and trimmed on board overseas vessels at named port of export free of expense of buyer:
  - b) That it shall be responsibility of the Seller to do the following:
    - i) Provide for, and pay and bear all charges incurred in placing goods actually on board the vessel designated and provided by or for the Buyer on the date of within the period fixed. The cost of any extra cargo battens, dunnage, required and rigging of the same will be to vessel's account.
    - ii) Provide clean "ON BOARD" Ocean Bill of Lading.

- iii) Render Buyer or his authorized Agents assistance in obtaining the required documents issued in the country of origin or shipment or of both, as may be required for purpose of exportation or of importation of urea at destination country.
- 19. In case of two ports of loading preferred by the Seller, the freight difference of additional port of loading will be to Seller account.
- 20. Demurrage at the loading port will be on seller's account and it will be paid by Seller to the Buyer at the rate stipulated in the Charter Party.
- 21. Seller will be responsible for dead freight, if any and other related charges at load port, in case they fail or neglect to load the full cargo.
- 22. Seller/shipper to keep advised Buyer, New Delhi of berthing/loading prospects on arrival of vessel at load port and also keep Buyer New Delhi regularly informed about loading progress/status.
- 23. Loading Rate: Loading Rate shall be 6000 MTs per day WWDSHEX UU for all ports.
- 24. Once the vessel is fixed during the lay days offered by seller, berthing/loading of vessel at load port shall be seller's responsibility.

## ANNEXURE-III (A)

### GENERAL SHIPMENT TERMS IN RESPECT OF C&F CONTRACTS

1. The Seller will arrange for chartering suitable vessels to load the agreed quantity in full ship loads and the Seller are responsible for fulfilling the conditions of the Charter Party at the loading port and the Buyer or their nominees are responsible for fulfilling the conditions of the Charter Party at the discharging port. Vessels will be chartered on Ferticon Charter Party.
2. In case chartered ships are utilised, the maximum use of Indian ships shall be made by the Seller subject to Indian vessels being available at competitive freight rates. Availability of Indian vessels shall be ascertained from the Chief Controller of chartering, Ministry of Surface Transport (CABLE ADDRESS: TRANSSHART, NEW DELHI, Fax No: 91-11-23718614), sufficiently in advance. It is further agreed that specific enquiries for offer of Indian tonnage shall be replied within three clear days of receipt of enquiry by the Chief Controller of Chartering, New Delhi.
3. Vessels will be chartered on the basis of one or two safe port/ berth/ anchorage on W.C.I. or ECI.
4. The Master to give 24 hours notice of ETA at each discharge port to the nominated regional office of MMTC and MMTC New Delhi through e-mail.
5. A sailing details is to be sent by the Master to KRISHKHAD, NEW DELHI / MMTC, NEW DELHI through e-mail on vessel leaving loading port, giving sailing date, speed, commodity, total quantity loaded and estimated time of arrival at discharge port. Master to also wireless KRISHKHAD, NEW DELHI / MMTC, NEW DELHI through e-mail and fifteen days after sailing from loading port, giving latest expected time of arrival at port of discharge.
6. Master to give expected dates of arrival to KRISHKHAD, NEW DELHI / MMTC NEW DELHI through e-mail, 96 hours before vessel is due to arrive off Aden/Singapore and Master to again wireless to \_\_\_\_\_her latest expected date of arrival 72 hours after passing Aden / Singapore.
7. Cost of shifting to second berth (if used) including fuel, to be for Owners account and time used in shifting not to count as laytime.
8. Vessel to have Test Certificate covering vessel's gears in accordance with International Dock Safety Convention valid for the duration of the Charter.
9. The cargo shall be discharged at the average discharge rate fixed for various ports as per Annexure X for single decker vessel basis five or more available workable hatches and prorata for less number of workable hatches per weather working day of 24 consecutive hours, Saturday afternoon, Sundays and holidays excepted, even if used, provided vessel can receive and deliver at these rates. Time shall not count between noon on Saturday and 8 AM on Monday, and not between 5 PM (noon if Saturdays) on the last working day preceding a legal holiday and 8AM on the first working day thereafter even if used unless the vessel is already on demurrage. Time shall begin to count from 24 running hours after vessel's arrival within port limits and notice of readiness tendered and accepted during official working hours at each discharging port reported in free pratique whether in berth or not, but not between the hours of 5 PM (1200 hours on Saturdays) and 8AM on a week day or during any of the periods above exempted even if used unless (at discharging port) the vessel on

arrival already on demurrage. Charterers have the right to work during excepted periods, such time used not to count as lay time.

10. Surf days not to count as weather working day, unless used, and when used, actual time used to count for which Buyer shall prove to Seller the relevant certificate issued duly signed by port authorities or any other competent authority.
11. Rigging gangs employed at discharging port to be on the Owners/owners account.
12. Vessel chartered should be suitable for grab discharge and no cargo is to be loaded in twin decks, deep-tanks, wings tanks or bunker spaces or other place inaccessible to grabs. The Master to have liberty of loading in such spaces for the purpose of stability of the vessel but any extra time used and additional expenses incurred by reason of loading into and or discharging, from such spaces not easily accessible are to be for Owners' account and the discharge rate for this cargo will be reckoned at half of the specified rate of loading/ discharge for the purpose of working of laytime.
13. Vessel to be left in sea-worthy trim to shift between port and berths to Master's satisfaction at Seller's expense.
14. Cost of first opening and last closing of hatches to be for Seller' account, and time used not to count for all opening and closings.
15. Owners undertake that vessel's arrival draft at the first discharging port in India not to exceed 33 feet salt water. In case of any lightening over 33 feet draft arrival, same will be on Owner's/Seller account and time used not to count as laytime.
16. The Owners guarantee that the vessel is fitted with cargo gear, winches and derricks capable of handling lifts of not less than 5.0 tons of 2240 lbs. in Single Purchase or 2.5 tons of 2240 lbs. In Union Purchase Single Wires, all hatches working simultaneously with the necessary certification as provided under tackle regulations prevalent at the loading port(s) concerned.
17. Discharging port stated in Bills of Lading is not necessarily discharging port. Final discharging port is to be declared by 'KRISHKHAD NEW DELHI/buyer latest on vessel passing Aden/Singapore in response to Master's telegram to Buyer giving 96/48 hours' notice of ETA/Singapore.
18. The vessel shall give free use of all available gear for discharging and also lights for night work as on board winchmen from crew to be used if permitted otherwise, shore winchmen to be for Buyers' account. Buyers' privilege discharging oversight, Owners allowing free use of gear, winches and derricks.
19. Owners are to give name of agents at discharging port(s) to KRISHKHAD NEW DELHI/ MMTC NEW DELHI through e-mail within 48 hours of receipt of discharging port orders.
20. The Seller shall pay to the Buyer or their nominee – MMTC, New Delhi at the rate as mentioned in the Charter Party per day and pro-rata for part of a day for all lay time saved at discharge port. Demurrage/Despatch rate shall not exceed equivalent to US\$ 6000/3000 per day. In case such rates are higher than US\$ 6000/3000 per day, prior approval of the Buyer should be obtained.

21. Lighterage, if any, at the discharging port(s) to be at Receivers' risk and expense subject to Clause 15.
22. It is agreed that Receivers shall have to sign the statements of facts and other customary documents together with the Master of the Vessel and ships agents.
23. The Seller undertake, to advise the Buyer and KRISHKHAD/ Buyer by cable telex the name of vessel, total quantity loaded, the date of vessel's departure, speed, estimated draft before and after, expected date of arrival at the Indian Port(s), full name and postal address of the owners of the vessel and name and postal address of their agents in India within 48 hours of the sailing of the vessel.
24. 2 copies of the Charter Party to cover each shipment should be air-mailed to the Buyer by Seller within seven days of the sailing of the vessel.
25. Overtime for the account of the party ordering it. Officers' and Crews' overtime to be always on Owners' account. Overtime if ordered by disport authorities to be shared equally between ship-owner or Seller and Receivers.
26. Seller are to ensure that liberties, victories and other war built vessels are avoided for the shipment of the cargo. They should also not seek vessels of more than 15 years age. In case of necessity of booking vessels older than 15 years the Seller shall take the prior approval of the Buyer and overage insurance premium would be on Seller's account. It may be noted that vessels older than 25 years shall not be accepted for shipment.
27. Vessels which are to be chartered by suppliers should not ordinarily exceed 525 feet LOA and 85 feet in beam length. Vessel should be single Decker and should have Macgrover type steel hatch cover. Vessel should be suitable for grab discharge. For any relaxation of the above conditions, prior approval of Buyer should be obtained.
28. Before, finally confirming the vessel, approval from buyer will be obtained giving full details of the vessel and other relevant details as per GIC proforma for obtaining GIC approval and others like despatch/demurrage etc.
  - whether ISM regulation has been complied with and validity period
  - Name of Hull Underwriters, if vessel not insured.
  - Reasons therefore
  - Name & fill address of the Disponent owners if any
  - Name of the vessel with ex-name, if any
  - Flag
  - Classification
  - Year Built/ GRT/NRT
  - Name of the Registered owners
  - Name of the Manager, if any
  - / Name of the P&I club of the vessel operator names above
  - Name of the Characters, if any
  - Whether voyage charter or time charter
  - Loading port/discharging port
  - Nature of cargo
  - Name & address with Tel. No. & Fax No. of the agent at loading port
  - Name of the supplier

- On whose behalf Bill of Lading is to be signed ( name of the company to be mentioned)
  - Name of the underwriters.
29. Overage insurance premium if any, due to vessel's age, class and flag shall be to seller account.
  30. Seller would be liable to furnishing all relevant vessel particulars to enable the buyer to obtain General Insurance Corporation (GIC) approval before the vessel is finally accepted. Any extra premium charged by the insurance company towards non-approval of vessel would be to Seller's account.
  31. Vessel to consigned to receivers agents at disport for entry with port and customs. Owner paying customary agency fee.
  32. All vessel related charges including composite berth hire charges to be on owners account.
  33. The terms as per contract would override terms of individual charter party unless deviations are specifically accepted in writing.



**ANNEXURE-IV**

**BID BOND PROFORMA**

(On a Stamp Paper of Rs. 100/- to be executed by a Branch of an Indian Scheduled Nationalised Bank)

M/s. MMTC Ltd.,  
Core 1  
SCOPE COMPLEX  
7 Institutional Area, Lodi Road,  
NEW DELHI-110 003  
INDIA.

Dear Sirs,

WHEREAS M/s. \_\_\_\_\_ (offeror) has offered to supply a quantity of \_\_\_\_\_ MTs of UREA to MMTC and the offeror is required to submit a Bid Bond in US Dollars at the rate of USD ..... PMT for the quantity offered alongwith the offer as a guarantee for fulfillment of all the terms and conditions of subsequent sale, we (Bank with full address) hereby guarantee and undertake to pay immediately on first demand by MMTC Ltd., New Delhi the amount of US\$ \_\_\_\_\_ in case the offeror fails to perform any or all the obligations, undertaken by him as per MMTC's acceptance without any reservation, protest, demur and recourse to said offeror. Any such demand in writing made by MMTC shall be conclusive and binding on us irrespective of any dispute or difference raised by the offeror. This Guarantee shall be irrevocable and shall remain valid till \_\_\_\_\_ in New Delhi.

4. Notwithstanding anything mentioned herein before, our liability under the Guarantee is restricted to US\$ \_\_\_\_\_ (US Dollars \_\_\_\_\_ only) and it will remain in full force upto \_\_\_\_\_ unless a claim under the Guarantee is filed against us on or before \_\_\_\_\_ all your rights under the said Guarantee shall be forefeited and we shall be relieved and discharged from all the liabilities thereunder . We, \_\_\_\_\_ Bank further agree that the Guarantee hereunder contain shall not be affected by change in the terms of purchase originally offered by the offeror. This bond shall be governed by Indian Laws and will be subject to the jurisdiction of courts at New Delhi in India alone.

Dated: \_\_\_\_\_ For \_\_\_\_\_

Place: \_\_\_\_\_ Bank \_\_\_\_\_

Note: Bid Bonds to be furnished in US Dollars only. Bid Bond in Indian Rupees will not be accepted.

**ANNEXURE V**

**PERFORMANCE GUARANTEE BOND PROFORMA**

(To be issued by an Indian Scheduled Nationalised bank on stamp paper of appropriate value)

M/s. MMTC Ltd.  
SCOPE COMPLEX  
7 Institutional Area,  
Lodi Road,  
NEW DELHI-110 003  
(INDIA)

1. Against Contract No. \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter called the said "Contract") entered into between the MMTC Ltd., (hereinafter called the Buyers) and M/s. \_\_\_\_\_ (hereinafter called the Sellers) this is to certify that at the request of the Sellers, we \_\_\_\_\_ Bank are holding in trust in favour of the Buyers, the amount of US\$ \_\_\_\_\_ payable to the Buyers on demand immediately without protest or demur or reference to the Sellers if the Sellers fail to perform all or any of their obligations under the said Contract or supply material short than the contracted quantity as revealed by draft survey at the discharge port or if penalties are levied due to quality deviations (nutrients/ moisture/particle size ) from contractual specifications as revealed by discharge port analysis report or liability towards dead freight and despatch/demurrage not settled. The decision of the Buyers duly communicated in writing to the Bank that the Seller have failed to perform all or any of the obligations under the contract or have delivered short quantity at the discharge port as per survey report at the discharge port/or penalties have been levied due to quality deviations (nutrients/moisture/particle size) from contractual specifications as per analysis report at the discharge port or have not settled despatch/demurrage and dead freight or as a result of any short receipt from Department of Fertilizer, Government of India on any account, shall not be questioned and shall be final and conclusive (irrespective of the stand that may be taken by or on behalf of the sellers). The said amount of US\$ \_\_\_\_\_ will accordingly forthwith be paid without any conditions or proof whatsoever.

2. It is fully understood that this Guarantee is effective for a period of one year i.e w.e.f dated .....and valid upto dated .....and that we \_\_\_\_\_ Bank undertake not to revoke this Guarantee during its currency without the consent in writing of the Buyers.

3. We, \_\_\_\_\_ Bank, further agree that the Buyers shall have the fullest liberty, without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said contract or to extend time of performance by the Sellers from time to time or to postpone for any time or from time to time any of the powers exercisable by the Buyers against the said Suppliers and/or forebear to enforce any of the terms and conditions relating to the said Contract and we, \_\_\_\_\_ Bank, shall not be released from our liabilities under this Guarantee by reason of any such variations or extension being granted to the said Sellers or for any forbearance and/or omission on the part of the Buyers, or any indulgence by the Buyers, to the said Sellers or by any other matter or thing whatsoever which under the Law relating to the sureties would, but for this provision have the effect of so releasing us from our liability under this Performance Guarantee.

4. We, \_\_\_\_\_ Bank, further agree that the Guarantee herein contained shall not be affected by change in the constitution of the said supplier/ importer/consignee.

FOR \_\_\_\_\_ BANK

ACCEPTED

Note: Conditional PG Bond will not be accepted. PG Bonds to be furnished in US Dollars only. PG Bond in Indian Rupees will not be accepted.

**APPROVED LIST OF ACCREDITED SUPPLIERS**

<b><u>S.NO.</u></b>	<b><u>NAME OF SUPPLIER</u></b>
1.	M/S HELM DUENGEMITTEL GMBH, GERMANY
2.	M/S KEYTRADE AG, SWITZERLAND
3.	M/S AMEROPA AG, SWITZERLAND
4.	M/S TOEPFER INTERNATIONAL-ASIA PTE LTD., SINGAPORE
5.	M/S GAVILON FERTILIZER, LLC, USA
6.	M/S SWISS SINGAPORE OVERSEAS ENTERPRISES PTE LTD., DUBAI
7.	M/S DREYMOOR FERTILIZERS OVERSEAS PTE LTD., SINGAPORE
8.	M/S RARE EARTH COMMODITIES DMCC, DUBAI
9.	M/S AMBER FERTILIZERS LIMITED, HONGKONG
10.	M/S BARY CHEMICALS PTE LTD., SINGAPORE
11.	M/S TRANSGLOBE DMCC, DUBAI
12.	M/S QUANTUM FERTILIZERS LTD., HONGKONG
13.	M/S KISAN INTERNATIONAL TRADING FZE, DUBAI
14.	M/S MMTc TRANSNATIONAL PTE LTD, SINGAPORE
15.	M/S AGORA INTERNATIONAL TRADING PTE LTD, SINGAPORE
16.	M/S FERTISUL INTERNATIONAL LTD, HONG KONG
17.	M/S LIVEN AGRICHEM PTE. LTD., SINGAPORE
18.	M/S AGRI COMMODITIES AND FINANCE FZE DUBAI
19.	M/s CONTINENTAL TRADERS PTE. LTD. SINGAPORE
20.	M/s GLOBAL TRANSNATIONAL TRADING FZE., DUBAI
21.	M/s ARIES FERTILIZERS GROUP, SINGAPORE
22.	M/s ETA LLC, DUBAI
23.	M/s VALENCY INTERNATIONAL TRADING PTE. LTD. SINGAPORE
24.	M/S AMEROPA ASIA PTE. LTD., SINGAPORE
25.	M/S EMMSONS GULF DMCC
26.	M/s FERTTRADE DMCC
27.	M/s DRAGON ASIA FERTILISER LIMITED
28.	M/s COMZEST TRADING FZC, DUBAI, UAE
29.	M/s MIDGULF INTERNATIONAL LIMITED
30.	M/s KOCH FERTILIZERS ASIA PVT. LTD.
31.	M/s CHS SARAL EUROPE SWITZERLAND
32.	M/s TRITON TRADING DMCC
33.	M/s SAMSUNG C&T CORPORATION, KOREA

**ANNEXURE-VII**

**(ON THE LETTERHEAD OF THE MANUFACTURER / PRINCIPALS)**

M/s. MMTC Limited,  
Core 1, SCOPE Complex,  
7 Institutional Area,  
Lodi Road,  
NEW DELHI -11003  
INDIA

RE: LETTER OF AUTHORITY

TENDER NO. \_\_\_\_\_ DT. \_\_\_\_\_

Dear Sir,

We \_\_\_\_\_ (Name of the Tenderer) organised and existing under the Laws of \_\_\_\_\_ (Name of the Tenderer's country) having its registered/principal office at \_\_\_\_\_ hereby appoint \_\_\_\_\_ Agency (Name of the agent) at \_\_\_\_\_ as our agent to do in our name all or any of acts mentioned hereinunder concerning the above noted tender for supply of urea to MMTC Limited:

1. To sign and submit bid on our behalf and participate in the above noted tender.
2. To receive letter of intent/order from MMTC on our behalf and to sign relevant documents in connection therewith.
3. To do all other acts in connection with the above tender as our agent.

We do hereby agree to ratify and confirm whatsoever our said agent shall do or cause to be done by virtue of this Letter of Authority.

This Letter of Authority comes into effect on and after \_\_\_\_\_ (mention date, month and year) and shall remain in full force and effect until revoked by our further notice in writing to MMTC.

Yours faithfully,

(Signature of Authorised Representative of  
Manufacturer/Principals with name and full address)

Signature of Authorised  
Person(s) of Local Agent

1. \_\_\_\_\_
2. \_\_\_\_\_

Signature of local agent's authorized person is duly attested  
(to be signed by the representative issuing this letter of authority)

**PRICE BID FORMAT**  
**(on bidder's letter-head)**

(Tender No. \_\_\_\_\_ dated \_\_\_\_\_)  
(To be completed by foreign suppliers/ their authorised local agents)

**Offer Ref. No.** \_\_\_\_\_ **Date** \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_; Fax No: \_\_\_\_\_; e-mail ID: \_\_\_\_\_

Name of the authorised \_\_\_\_\_

Local Agent:

Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_; Fax No: \_\_\_\_\_; e-mail ID: \_\_\_\_\_

**PRODUCT – UREA FERTILIZER GRADE 46% N (PRILLED/GRANULAR) IN BULK**

S.NO.	COUNTRY OF ORIGIN	PORT OF LOADING	PORT OF DISCHARGE	FIRM QTY (MT)	UNIT PRICE PMT (USD)				AGENCY COMMISSION PAYABLE TO INDIAN AGENTS
					FOBT I	FREIG HT II	CFR FO III	CIF IV	
<b><i>EAST COAST OF INDIA</i></b>									
1.			KAKINADA DEEP WATER						
2.			KRISHNAPATNAM						
3.			GANGAVARAM						
4.			KARAIKAL						
5.			GOPALPUR						
6.			VIZAG						
<b><i>WEST COAST OF INDIA</i></b>									
7.			PIPAVAV						
8.			NEW MANGALORE						
9.			TUTICORIN						
10.			MUNDRA						
11.			KANDLA						
12.			ROZY						
13.			HAZIRA ANCHORAGE						
14.			HAZIRA ADANI PORT						
15.			ADANI TUNA BULK TERMINAL						

**Bidders should clearly mention total quantity offered by them.**

Validity of Offer: Up to \_\_\_\_\_ Hrs. IST on \_\_\_\_\_

Shipment Period: Shipment from Load Ports latest by \_\_\_\_\_

NOTES:

1. Bidders are requested to indicate the facilities/restrictions, if any, at port of loading including the LOA, Width, Beam, Draft available, loading rate etc.
2. Bidders are requested to quote prices separately for all Serial Nos. of the above table.
3. We (bidders) have carefully gone through the terms & conditions of the Tender and hereby agree to abide by the same without any deviation/condition.
4. Bid bond for US\$ \_\_\_\_\_ is enclosed. The same is valid till \_\_\_\_\_.  
Or  
This is to certify that we are Producers and hence no bid bond is given.
5. The agency commission indicated above is included in the price.
6. Quantity rebate, if any.
7. Bids which are received only on CFR FO/CIF basis shall not be considered for evaluation and rejected, in case FOBT option and rates are not simultaneously quoted by the bidder.
8. Bids shall be evaluated on the basis of landed price in India.

Name & Signature of the Bidder  
With Seal of Designation

Place:  
Date :

ANNEXURE IX

L/C PROFORMA

FROM: Name of Bank

TO \_\_\_\_\_

TEST DATED FOR USD

We hereby establish our irrevocable letter of credit  
Number \_\_\_\_\_/MMTC/\_\_\_\_\_/ dated \_\_\_\_\_

IN FAVOUR OF  
M/s \_\_\_\_\_

BY ORDER OF M/S MMTC LIMITED, CORE NO. 1, SCOPE COMPLEX, LODHI ROAD,  
NEW DELHI - 110 003, INDIA  
FAX NO. 91 – 11-24365808/24362072

VALUE: USD \_\_\_\_\_  
(Say USD \_\_\_\_\_ only)

EXPIRY: LC EXPIRES IN \_\_\_\_\_ (COUNTRY) ON  
\_\_\_\_\_ (DATE).

PRICE: USD \_\_\_\_\_ PMT, FOBT LESS AGENCY COMMISSION @ \_\_\_\_\_ PMT (IF  
APPLICABLE).

COMMODITY: PRILLE UREA (BULK) FERTILIZER GRADE

PART SHIPMENT ALLOWED

TRANSHIPMENT NOT ALLOWED

PORT OF LOADING \_\_\_\_\_

LATEST DATE FOR SHIPMENT \_\_\_\_\_

Beneficiaries are permitted to ship \_\_\_\_\_ MTs  
plus/minus \_\_\_\_\_ PCT of quantity of merchandise.

Available by drafts at sight drawn on applicants for hundred percent of invoice value duly marked  
with our LC no. and date and accompanied by the following documents:



Documents Required

1. 3/3 negotiable (original) copies of the clean on board B/L and three non negotiable copies thereof showing \_\_\_\_\_ as consignee and notifying party as M/s MMTC Limited, Scope Complex, New Delhi Charter Party Bill of Lading acceptable provided it bears an endorsement that all terms and conditions of the relevant charter party are deemed to have been incorporated therein. B/L to indicate the beneficiaries as shippers.

2. One original and three beneficiary's signed copies of commercial invoice in the name of MMTC Limited, New Delhi certifying that the goods shipped are as per contract no. MMTC/ /FZ(U)/\_\_\_\_\_ dated \_\_\_\_\_.

Invoices are to be drawn for net value after deducting Indian agent's commission at the rate of \_\_\_\_\_PMT which is payable to Indian agent i.e. M/s \_\_\_\_\_( NAME & ADDRESS) IN INDIAN RUPEES.

3. ONE ORIGINAL AND ONE COPY OF CERTIFICATE OF ORIGIN ISSUED/CERTIFIED BY A CHAMBER OF COMMERCE.

4. (a) Beneficiary/Sellers original certificate of inspection alongwith two copies showing analysis and weight and methods of analysis adopted and the same is counter signed by the openers \_\_\_\_\_ inspecting \_\_\_\_\_ agency i.e \_\_\_\_\_ M/s \_\_\_\_\_

(b) Inspection certificate issued by the opener's inspecting agency M/s. \_\_\_\_\_ certifying the following.

- i) Method of analysis adopted.
- ii) The specification of material shipped vis-a-vis contract specification in the following format.

Sl. No.	Characteristics	Required Specification As per Contract	Actual results as per Analysis
1.	Moisture percent by weight maximum	0.50	
2.	Total Nitrogen per cent by weight ( on dry basis) minimum	46.00	
3.	Biuret per cent by weight, maximum	1.50	

iii) Particle Size distribution as per limits below:

2.8 MM to 1 MM Min. 90% by Weight  
Less than 1 MM Max. 5% by weight

iv) Shipment is in bulk

#### METHODS OF ANALYSIS

A.	Nitrogen	2.4.03, AOAC (1995)
B.	Biuret	2.4.23 AOAC (1995)
C.	Moisture	D.4 (TFI,1982)

#### PARTICLE SIZE

Distribution	IV A, TFI (1982)
Sampling	2.1.01. AOAC (1995) or IC 1, IC 2, (TFI-1 or Schedule II A of FCO,1985

5. Beneficiary's certificate to the effect that the following documents have been despatched to the openers at New Delhi by first air mail/courier.
  1. 2 Original Invoices
  2. 2 Copies of original Certificate of Origin
  3. 2 Photocopy each of documents no. 4,5,7,8 and 9 of LC
6. Beneficiary's certificate to the effect that the following documents have been despatched to the openers at New Delhi by second airmail/courier. 3 sets of non-negotiable documents listed at 5 above.
7. Certified e-mail issued by beneficiaries/sellers to MMTC sent within 2 working days after the departure of the vessel, stating name of vessel, date of sailing, quantity shipped and invoice value.
8. Four copies each of stowage plans.
9. Original and a copy of load port draft survey report duly signed by opener's inspection agency M/s. \_\_\_\_\_
10. Copy of MMTC's letter confirming receipt of 2 original quality and quantity certificate (issued by designated inspection agency at load port) despatched by the beneficiary within 72 hours of sailing of vessel.
11. Copy of MMTC's letter confirming receipt of approval of Transchart, Ministry of Shipping and Transport (in case of CFR FO/CIF) contracts.
12. Copy of MMTC's letter confirming receipt of documents mentioned at sr. no. 5 and 6 above.

13. In case of CFR FO/CIF contracts, category III bidder's has to furnish a certified copy of NOR (Notice of Readiness) tendered and accepted by receivers or their agents at the nominated Indian discharge ports.
14. Certificate of cleanliness of holds issued by independent inspection agency M/s -----  
----- appointed by the buyer at load port.

#### ADDITIONAL CONDITIONS

- A) All bank charges and other charges including levies taxes etc, outside India are for beneficiary's account. L/C amendment and extension charges will be to the account of the party which is responsible for occasioning the extensions amendment and the decision of buyers in this regard will be final.
- B) Invoices and all other shipping documents including B/L to quote import licence No. Part III Para 157 canalised item Sl.No. 2 of the ITC 2015-2020 dated as amended from time to time, Contract No. MMTC/\_\_\_\_/FZ(U)/\_\_\_\_ dated \_\_\_\_\_ and irrevocable letter of credit no. and date.
- C) Third party documents are acceptable except invoice and draft.
- D) Documents are to be negotiated within thirty days from the date of Bill of Lading.

#### INSTRUCTIONS TO NEGOTIATING BANK

- A) Negotiating bankers are required to telex/inform the following details to us on our direct telex nos. \_\_\_\_\_ by a tested telex, on the date of negotiations.
  - . amount negotiated
  - . date of receipt of credit confirming documents at negotiating bank counters.
  - . negotiating bank certificate that documents strictly comply all terms and conditions of the credit.
  - . negotiating bank intimation of DHL courier receipt number and date evidencing despatch of negotiating documents to opening bank
- B) Provided that all the terms and conditions of the credit are strictly complied with and swift message as per (A) above is sent to us, negotiating bankers are authorized to negotiate the drafts. We shall remit the proceeds to the negotiating bank after five days after receipt of L/C complying documents at our counters. Documents are to be despatched to us in two sets first set by the couriers and second set by consecutive registered air mail. Second set should consist of one copy each of all documents.
- C) This credit is subject to uniform customs and practice for documentary credits (2003 revision) ICC Publication number 600.
- D) Advising bank to deliver the L/C immediately to the beneficiary.

NOTE: THE ABOVE L/C PROFORMA IS APPLICABLE ONLY FOR FOBT SHIPMENT. FOR C&F SHIPMENTS, THE L/C WILL BE OPENED BY MMTC AFTER MAKING NECESSARY CHANGES TO SUIT C&F REQUIREMENTS.

**DISCHARGE RATE FOR DIFFERENT INDIAN PORTS**

(Basis five or more available workable hatches and prorata for less number of workable hatches per weather working day of 24 consecutive hours, Saturday afternoon, Sundays and holidays excepted, even if used)

<b><u>Name of Port</u></b>	<b><u>Discharge Rate (MT)*</u></b>
Kandla	10000
Pipavav	10000
New Mangalore	8000
Tuticorin	8000
KakinadaDeep Water	10000
Vizag	10000
Mundra	10000
Rozy	7500
Krishnapatnam	10000
Gangavaram	10000
Karaikal	10000
Gopalpur	5000
Hazira Anchorage	5000**
HaziraAdani port	10000
Adani Tuna Bulk Terminal	10000

\* Discharge rate for shipment of small parcel i.e. = or < 25000 MT +/- 5% shall be 50% of the normal prescribed discharge rate except for Gopalpur and Hazira Anchorage.

Gearless Panamax vessels will be accepted at Pipavav, Kakinada Deep Water, Mundra, Rozy, Krishnapatnam, Gangavaram, Karaikal, and Hazira (Adani port). Vessels fixed for all other ports should be capable to achieve prescribed discharge rates by ship cranes.

The Gearless vessels will be accepted at Adani Tuna Bulk Terminal.

\*\* Hazira jetty (anchorage of Magdalla port) as 5000 MT is open for discharge during 16<sup>th</sup> October to 14<sup>th</sup> May and shall remain closed from 15<sup>th</sup> May to 15<sup>th</sup> October.

**INTEGRITY PACT**

Between

MMTC Limited hereinafter, referred to as “MMTC”,

And

..... 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.

**Section 1 – 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 a 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 Buyer(s)/Vendor(s)/Bidder(s) 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 the 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 Laws of India; further the Buyer(s) /Vendor(s)/Bidder(s) will not use improperly, for purposes of competition 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) /Vendor(s)/Bidder(s) can prove that he has restored/recouped the damage caused 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) /Vendor(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 this 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 this 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 representatives 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 option 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 him by MMTC and, should the occasion arise, submit proposals for correcting problematic situations.

7. If the IEM has reported to the CMD, MMTC, a substantiated 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 a 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.
5. This integrity Pact relates to Contract number and Date as -----.

.....  
(For & on behalf of MMTC)  
Name:  
Designation:  
(Office Seal)

.....  
(For & on behalf of Buyer/Vendor/Bidder)  
Name:  
Designation:  
(Office Seal)

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

Witness 1 : .....  
Name :  
Address :

Witness 2 : .....  
Name :  
Address :

**Fraud Prevention Policy**

- (1) **Commitments of the Bidder(s) / Contractor(s) / Buyer(s) / Vender(s):** The Bidder(s)/Contractor(s)/Buyer(s)/Vender(s) shall be bound to take all measures necessary to prevent Fraud and Corruption while dealing with MMTC. They agree and undertake to observe the principles/provisions as laid down in “Fraud Prevention Policy” of MMTC (Full text of which is available on MMTC’s website at <http://mmtclimited.gov.in> during their participation in the tender process, during the execution of Contract and in any other transaction with MMTC.
- a. The Bidder(s)/Contractor(s)/Buyer(s)/Vender(s) shall not, directly or through any other person or firm offer, promise or give or otherwise allow any of MMTC’s employee(s) any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind, whatsoever, during the tender process or during the execution of the Contract.
  - b. The Bidder(s)/Contractor(s)/Buyer(s)/Vender(s) shall not enter with other bidders into any undisclosed 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 Bidder(s)/Contractor(s)/Buyer(s)/Vender(s) shall not commit or allow any employee of MMTC to commit any offence under the relevant provisions of IPC/Prevention of Corruption Act; further the Bidder(s)/Contractor(s) / Buyer(s)/Vender(s) will not use improperly or allow any employee of MMTC, for purpose of competition or personal gain or pass on to others any information or document provided by MMTC as part of the business relationship, including information contained or transmitted electronically.
  - d. The Bidder(s)/Contractor(s)/Buyer(s)/Vender(s) shall not instigate third person to commit offences/activities outlined in Fraud Prevention Policy or be an accessory to such offences.
  - e. The Bidder(s)/Contractor(s)/Buyer(s)/Vender(s) if in possession of any information regarding fraud/suspected fraud, hereby agree and undertake to inform MMTC of same without any delay.
- (2) **Disqualification from tender process and exclusion from future contracts:** If the Bidder(s)/Contractor(s)/Buyer(s)/Vender(s), before award or during execution has committed a transgression through a violation of “Fraud Prevention Policy” of MMTC in any other form such as to put their reliability or credibility, in question, MMTC, other than taking recourse available under law, shall be entitled to disqualify the Bidder(s)/Contractor(s)/Buyer(s)/Vender(s) from undertaking any transaction with MMTC and/or declare the Bidder(s)/Contractor(s)/Buyer(s)/Vender(s) ineligible to be awarded a Contract either indefinitely or for a stated period of time.
- (3) **Damages:** If MMTC has disqualified the Bidder(s) from the tender process prior to the award or during execution according to Clause (2), MMTC shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value of the amount equivalent Performance Bank Guarantee.