

**NOTICE INVITING TENDER NO. MMTc/FERT/DAP/2015-16/4 DATED 16.7.2015 FOR SUPPLY OF DI-AMMONIUM PHOSPHATE (DAP)**

<b>1.</b>	<b>COMMODITY</b>	DI-AMMONIUM PHOSPHATE (DAP 18:46:0:0) IN BULK
<b>2.</b>	<b>QUANTITY</b>	1,05,000 MT (+/-5%)
<b>3.</b>	<b>SPECIFICATION</b>	<p>DI-AMMONIUM PHOSPHATE (DAP)18:46 - AS PER INDIAN FCO LATEST AMENDMENTS  MOISTURE, PERCENT BY WEIGHT, MAXIMUM : 2.5  TOTAL NITROGEN, PERCENT BY WEIGHT, MINIMUM : 18.0  AMMONICAL NITROGEN, PERCENT BY WEIGHT, MINIMUM : 15.5  UREA NITROGEN, PERCENT BY WEIGHT, MAXIMUM : 2.5  NEUTRAL AMMONIUM CITRATE SOLUBLE PHOSPHATES (AS P2O5), PERCENT BY WEIGHT, MINIMUM : 46.0  WATER SOLUBLE PHOSPHATES (AS P2O5), PERCENT BY WEIGHT, MINIMUM : 41.0  PARTICLE SIZE: NOT LESS THAN 90 PERCENT OF THE MATERIAL BE RETAINED ON 1 MM IS SIEVE &amp; 4 MM IS SIEVE AND NOT MORE THAN 5 PERCENT SHALL BE BELOW 1 MM IS SIEVE</p> <p>THE TOLERANCE LIMIT AS PER FCO.</p> <p>IN CASE THE CARGO IS NOT MEETING THE FCO SPECIFICATIONS, THE CARGO WILL BE REJECTED. THE SUPPLIER SHALL REFUND THE LANDED COST OF THE CARGO FOUND UNFIT AS WELL AS ALL THE CONSEQUENTIAL HANDLING AND THE DISTRIBUTION COST THEREOF IMMEDIATELY ON BUYER'S/ITS AGENT FIRST DEMAND WITH VALUE DATE BEING THE DATE OF INITIAL PAYMENT TO THE SUPPLIER, FALLING WHICH PENALTY @18% P.A. SHALL BE PAYABLE UPTO THE DATE OF ACTUAL REMITTANCE BY THE SUPPLIER.</p>
<b>4.</b>	<b>COLOUR</b>	BLACK/DARK BROWN/ DARK GREY
<b>5.</b>	<b>DISCHARGE PORT &amp; ARRIVAL</b>	KANDLA / MUNDRA IN 1 <sup>ST</sup> FORTNIGHT OF OCTOBER'2015 GANGAVARAM/KAKINADA IN 1 <sup>ST</sup> FORTNIGHT OF OCTOBER'2015
<b>6.</b>	<b>DISCHARGE RATE AND DESPATCH/ DEMURRAGE RATE</b>	<p>KANDLA/MUNDRA- IN TWO LOTS OF 35,000 MT ( +/-5%) EACH.  GANGAVARAM/KAKINADA- 35,000 MT( +/-5% ) .</p> <p>FOR KANDLA/ MUNDRA/ KAKINADA DISCHARGE RATE 10000 MT PWWD BASIS 4 OR MORE AVAILABLE/ WORKABLE HOLDS / HATCHES, PRORATA IF LESS</p> <p>FOR GANGAVARAM DISCHARGE RATE 7500 MT PWWD</p>

		<p>BASIS 4 OR MORE AVAILABLE/ WORKABLE HOLDS / HATCHES, PRORATA IF LESS.</p> <p>BEAM / LOA/ DRAFT RESTRICTION AS APPLICABLE AT RESPECTIVE DISCHARGE PORTS.</p> <p>DEMURRAGE DESPATCH RATE WOULD BE USD 15000/7500 PDPR.</p>
<b>7.</b>	<b>PRICE</b>	<p>IN U.S. DOLLARS PER METRIC TONNE ON FOBT LOADPORT INDICATING LOAD RATE AND LOADPORT RESTRICTIONS, IF ANY, AND C&amp;F FO ABOVE PORT INDICATING DISCHARGE RATE. PLEASE NOTE THE BIDDERS ARE REQUIRED TO QUOTE BOTH FOB/LOADPORT AND C&amp;F/DISCHARGE PORT PRICES. OFFERS MADE ONLY ON C&amp;F BASIS ARE LIABLE FOR REJECTION.</p> <p>THE PRICE SHOULD BE INCLUSIVE OF AGENCY COMMISION, IF ANY, INDICATING THE PERCENTAGE OF AGENCY COMMISION.</p> <p>IN ADDITION, THE BIDDERS MUST QUOTE THE INTEREST RATE APPLICABLE FOR AVAILING CREDIT UPTO 180 DAYS. BUYER MAY OPT FOR AVAILING CREDIT FOR 30/60/90/180 DAYS FROM THE DATE OF BILL OF LADING.</p> <p>TAXES AND DUTIES, IF ANY, PAYABLE OUTSIDE INDIA SHALL BE TO SUPPLIER'S ACCOUNT AND IN INDIA TO BUYER'S ACCOUNT. INDIGENOUS SUPPLIER SHOULD INDICATE ALL TAXES AND DUTIES WHEREEVER APPLICABLE AND SHALL ALSO SPECIFY THEIR SALES TAX REGISTRATION NUMBER.</p>
<b>8.</b>	<b>ORIGIN</b>	BIDDERS TO SPECIFY THE COUNTRY OF ORIGIN.
<b>9.</b>	<b>PAYMENT</b>	<p>BY LETTER OF CREDIT PAYABLE AT SIGHT OR ON 30/60/90/180 DAYS BASIS</p> <p>IN CASE SHIPMENT FROM IRAN PAYMENT WILL BE IN AED ON CAD BASIS.</p>
<b>10</b>	<b>VALIDITY</b>	OFFER TO BE KEPT VALID FOR A PERIOD OF TWENTY DAYS FROM THE DATE OF TENDER OPENING AND SHALL NOT BE WITHDRAWN BY THE PARTY DURING ITS VALIDITY.
<b>11</b>	<b>ANALYSIS AND SAMPLING</b>	MMTC/THEIR AGENTS SHALL DRAW SAMPLES FOR DETERMINING THE QUALITY OF THE CARGO AT THE PORT OF DISCHARGE THROUGH ANY STATE/CENTRAL FERTILIZER QUALITY CONTROL LABORATORY IN INDIA. THE QUALITY SO DETERMINED AT DISCHARGE PORT SHALL BE FINAL AND BINDING ON THE SUPPLIER.

12	<b>WEIGHMENT</b>	WEIGHMENT SHALL BE AS DETERMINED BY DRAFT SURVEY CONDUCTED THROUGH AN INDEPENDENT INTERNATIONALLY REPUTED SURVEYOR/INSPECTION AGENCY APPOINTED BY MMTC/ITS BUYER AT THE PORT OF DISCHARGE. THE MATERIAL COST SHALL BE BASED ON B/L QUANTITY OR DRAFT SURVEY, WHICHEVER IS LESS.
13	<b>LOADPORT INSPECTION</b>	LOADPORT INSPECTION SHALL BE CONDUCTED BY INDEPENT REPUTED INSPECTION AGENCY TO BE APPOINTED BY MMTC.
14	<b>GENERAL TERMS</b>	<p>I. PLEASE NOTE THAT THE FORM OF MATERIAL SHOULD BE STRICTLY AS PER SPECIFICATIONS MENTIONED ABOVE.</p> <p>II. INDIAN AGENTS COMMISSION IF ANY WILL BE PAID ONLY IN INDIAN RUPEES AND DEDUCTED FROM THE INVOICE VALUE. PAYMENTS ARE SUBJECT TO STATUTORY DEDUCTIONS.</p> <p>III. IN CASE BIDDERS WHO ARE NOT MANUFACTURERS MUST FURNISH THE NAME OF THE MANUFACTURER WHO SHALL SUPPLY THE PRODUCT AND THE COUNTRY OF ORIGIN TOGETHER WITH SUPPORT LETTER IN ORIGINAL FROM THE MANUFACTURER.</p> <p>IV. MMTC RESERVES THE RIGHT TO ACCEPT OR REJECT ANY OR ALL TENDERS OR TO RE-TENDER AT MMTC'S SOLE DISCRETION WITHOUT ASSIGNING ANY REASONS.</p> <p>V. ALL BIDDERS SHALL SUBMIT A BID BOND OF US \$ 2 PMT OR EQUIVALENT INDIAN RUPEES FOR THE OFFERED QUANTITY INCLUDING PLUS TOLERANCE (AS PER ATTACHED FORMAT ANNEXURE- I). THE BID BOND WILL BE VALID FOR THREE MONTHS FROM THE DATE OF OPENING OF TENDER. ON AWARD OF THE CONTRACT, SHIPPER SHALL ESTABLISH A PERFORMANCE GUARANTEE BOND IN THE FORMAT PRESCRIBED ( ANNEXURE-II) BY MMTC AT 5% OF THE CONTRACT VALUE VALID FOR 1 YEAR FROM THE DATE OF ISSUANCE OF PERFORMANCE GUARANTEE BOND. INSURANCE WILL BE TAKEN BY BUYER.</p> <p>VI. BIDDER WILL SIGN THE INTEGRITY PACT AS PER ENCLOSED ANNEXURE III WHICH IS THE INTEGRAL PART OF THE TENDER DOCUMENTS, FAILING WHICH THE TENDERED/BIDDER WILL STAND DISQUALIFIED FROM THE TENDDERING PROCESS AND THE BID OF THE BIDDER WOULD BE REJECTED.</p> <p>VII THE UN-PRICED COMMERCIAL AND TECHNICAL BIDS SHOULD BE ACCOMPANIED WITH THE COPY OF PRICE BID WITH THE PRICES BLANKED.</p>

	<p>VIII SUPPLIER SHOULD NOMINATE THE SUITABLE VESSEL EXCLUSIVELY FOR MMTC/ITS BUYER. HOWEVER IF NEED ARISES PRIOR APPROVAL OF MMTC SHOULD BE OBTAINED IN WRITING. THE VESSEL OF 25 YEARS AND ABOVE IS NOT ACCEPTABLE.</p> <p>IX ALL OTHER TERMS SHALL BE AS PER MMTC'S STANDARD TERMS AND CONDITIONS FOR IMPORT OF FERTILIZERS.</p> <p>X. BIDS ARE TO BE SUBMITTED LATEST BY 1100 HRS. ON 10.08.2015 THROUGH ELECTRONIC MODE FOR WHICH BIDDERS MAY LOG ON TO WEBSITE <a href="https://mmtc.eproc.in">https://mmtc.eproc.in</a> OR THROUGH PHYSICAL MODE FOR WHICH THE BIDDERS HAVE TO SUBMIT THEIR BIDS PHYSICALLY IN SEALED ENVELOPE TO BE DROPE 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 THE TENDERS AS ABOVE. THE TECHNICAL BIDS WILL BE OPENED AT 1115 HRS ON 10.08.2015 AND PRICE BID WILL BE OPENED AFTER EVALUATION OF TECHNICAL BID.</p> <p>XI. BIDS ARE TO BE SUBMITTED IN TWO BID SYSTEM – TECHNICAL BID CONSISTING OF SPECIFICATION, BID BOND AND PRICE BID SEPERATELY. FOR DETAILS PLEASE LOG ON TO <a href="http://WWW.MMTCLIMITED.COM">WWW.MMTCLIMITED.COM</a> OR <a href="http://WWW.EPROCURE.GOV.IN">WWW.EPROCURE.GOV.IN</a></p> <p>XII. BID BOND IN ORIGINAL ARE REQUIRED TO BE SUBMITTED PHYSICALLY IN TENDER BOX PLACED AT MMTC LIMITED, FERTILIZER DIVISION, 7TH FLOOR, CORE-1, SCOPE COMPLEX, LODHI ROAD, NEW DELHI. OFFERS SUBMITTED WITHOUT ORIGINAL BID BOND SHALL NOT BE CONSIDERED.</p> <p>XIII. CLASS III DIGITAL SIGNATURE CERTIFICATE (DSC) IS MANDATORY TO PARTICIPATE IN E-AUCTION/ E-TENDERING PARTICIPATING BIDDERS HAVE TO MAKE SUR THAT THEY HAVE THE VALID DCS IN THEIR NAME . IF NOT, THEY CAN PROCURE FROM ANY OF THE EAS APPROVED BY CCA. MINIMUM TIME TO PROCURE DSC IS 5 WORKING DAYS.</p>
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BID BOND PROFORMA

(ON A STAMP PAPER OF RS. 100/- TO BE EXECUTED BY A DELHI/NEW DELHI  
BRANCH OF AN INDIAN NATIONALISED BANK)

M/S. MMTc LTD.,  
CORE NO.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 DAP TO MMTc AND THE OFFEROR IS REQUIRED TO SUBMIT A BID BOND IN US DOLLARS AT THE RATE OF USD 2.00 PMT OR EQUIVALENT INDIAN RUPEES FOR THE QUANTITY OFFERED INCLUDING PLUS TOLERANCE 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 FORFEITED 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

**ANNEXURE II**

**PERFORMANCE BANK GUARANTEE PROFORMA**

Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_

(On a stamp paper of applicable amount to be executed by a Delhi / New Delhi Branch of a Scheduled Bank other than Gramin Bank or Cooperative Bank)

To  
M/s MMTC Limited  
Core 1, SCOPE Complex  
7 Institutional Area  
Lodhi Road  
New Delhi 110003 (INDIA)

Dear Sirs,

- 1) WHEREAS, MMTC Limited, having its registered office at Core-1, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi -110 003 India and one of its office at \_\_\_\_\_ (hereinafter called "the MMTC) have entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter called 'the CONTRACT') for \_\_\_\_\_ with M/s. \_\_\_\_\_ (name) address \_\_\_\_\_, (hereinafter called the 'XX')
- 2) AND WHEREAS the 'XX' under the CONTRACT is required to furnish a security for the performance of the CONTRACT and MMTC has agreed to accept the Bank Guarantee in lieu of security deposit of the said sum of US Dollars One Thousand only.
- 3) AND WHEREAS at the request of the 'XX', we \_\_\_\_\_ Bank, \_\_\_\_\_ (address), hereby irrevocably and unconditionally guarantee and undertake to payment to the MMTC, immediately on demand up to and not exceeding the sum of US Dollars One Thousand only payable by the 'XX' in the event of failing to perform any or all their obligations under the CONTRACT. The decision of the MMTC that the 'XX' has failed to perform all or any of its obligations under the CONTRACT shall be conclusive, final and binding on us.
- 4) We, \_\_\_\_\_ Bank, undertake to pay the amount demanded by the MMTC not exceeding the sum of US Dollars One Thousand only without any demur, delay, protest and without any reference or recourse to the 'XX' notwithstanding any dispute raised by 'XX' in any suit proceedings relating there to pending before any court or tribunal our liability under these presents being absolute and unequivocal. The payment shall be made to the MMTC across the Counter of the bank on the same day of receipt of invocation of this Performance Bank Guarantee.
- 5) NOTWITHSTANDING anything to the contrary contained hereinabove, liability under the Guarantee is restricted to US Dollars One Thousand only. Our Guarantee shall remain in force until \_\_\_\_\_ (date).

- 6) All your rights under the Guarantee shall be forfeited and we shall be relieved and discharged from all liability thereunder unless a claim under the Guarantee is made on our Bank in writing on or before \_\_\_\_\_ (expiry date).
- 7) Your Letter of Demand in writing may be presented to the Bank by Registered Post or in person and the same shall be binding on us.
- 8) This guarantee comes into force forthwith.
- 9) We further agree that MMTC shall have the fullest liberty without our consent and without effecting in any manner, our obligations hereunder to vary any of the terms and conditions of the delivery or extend time of performance by the said "XX" from time to time or to postpone for any time or from time to time, any of the powers exercisable by MMTC against the said "XX" and to forbear or enforce any part of the terms and conditions relating to the said CONTRACT and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said M/s 'XX'.
- 10) The liability of the Bank under this Guarantee shall be discharged on receipt of US Dollars One Thousand only by MMTC.
- 11) We \_\_\_\_\_ (Bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of MMTC Limited in writing.
- 12) This guarantee will not be discharged due to change in the constitution of the Bank or the said 'XX'.
- 13) We have the power to issue this Guarantee in your favour under the Charter of our Bank and the undersigned have full power to execute this Guarantee under the Power of Attorney granted to us by the Bank.

SIGNED AND DELIVERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2015

Yours Faithfully  
For and on behalf of Bank  
(Address)  
(Bankers Seal)

**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.

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

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

Place : .....

Date : .....

Witness 1 : .....

Name :

Address :

Witness 2 : .....

Name :

Address :