

ANNEXURE 23 Form of Agreement

(For contracts for supply of specific quantities)

Agreement executed -----day of -----
between(hereinafter called "the contractor") and the Governor of Kerala (here in
after called the "Government")

WHEREAS the contractor has tendered for the supply of articles for the use of the
Government as per tender notification No -----dated-----published
at pages-----of part-----of the Kerala Government Gazetted dated
----- which tender notification shall form part of this Agreement as if
incorporated herein.

AND WHEREAS the Government/Purchasing officer have/has been pleased to
accept the offer subject to the condition stipulated in the supply Order No -----
---dated ----- (Which shall form part of this agreement as if incorporated
herein) in respect of the articles mentioned therein.

AND WHERE AS the contractor has as security for the due fulfillment of his
obligations under this deed deposited RS -----being -----per cent
of the estimated value of the contract in -----Treasury as per pass Book No
----- Chalan No -----and Pledged the pass Book to the
-----/ as per draft on -----Bank duly approved by the
Government /in the form of a letter of guarantee for such amount from-----
Bank approved by the Government.

NOW THESE PRESENTS WITNESS AS FOLLOWS

1 (a) In cases where along with the tender samples have been forwarded to
the Government and the samples approved , the contractor agrees to supply
the materials according to the approved samples. In other cases the contractor
agrees to forward samples to government for approval if so required and then
to supply materials according to such approved samples. When the samples
are not required, the contractor agrees to supply according to standard
specifications.

Samples forwarded by the contractor to the Government will not
be paid for and shall be the property of Government but the Government are at
liberty to return them to the contractor on the completion of his contract or to
pay for them at agreed rates if they so choose. All samples must be clearly
labelled showing to what particular items tendered for they relate and they
should be of sufficient size and quantity to enable the Government to see if
the supplies made are according to the approved samples.

(b) The contractor here by declares that the goods sold to the buyer under this contract shall be of the best quality and workmanship and shall be strictly in accordance with the specifications and particulars contained in the copy of the order attached herewith and the contractor hereby guarantees that the said goods would continue to conform to the description and quality aforesaid for a period of ----- days /months from the date of delivery of the said goods to Government and that notwithstanding the fact that the Government may have inspected and/ or approved the said goods, if during the aforesaid period of ----- days/months the said goods to be discovered not to conform to the description and quality aforesaid or have deteriorated (and the decision of the Government in that behalf will be final and conclusive) the Government will be entitled to reject the said goods or such portion thereof as may be discovered not to conform to the said description and quality .On such rejection the goods will be at the contractors risk and all the provisions herein contained relating to rejection of goods, etc, shall apply . The contractor shall if so called up on to do, replace the goods etc, or such portion thereof as is rejected by the government . Otherwise the contractor shall pay to the Government such damages as may arise by reasons of the breach of the condition herein contained. Nothing herein contained shall prejudice any other right of the Government in that behalf under this contract or otherwise.

2. Request for enhancement of rates once accepted will not be considered except where Government have prior to the actual supplies, expressly agreed in writing for any price variation under specified circumstances, Conditions of sale or other special terms and conditions, if any, printed on the quotation sheets of the contractor or attached with the contractors tender or any other letter or paper from the contractor will not govern this contract nor bind the Government in any manner whatsoever unless such terms have been expressly accepted by the Government in Writing .

3. The articles and quantities to be supplied are shown in the copy of the supply order No. ----- and date -----attached herewith. The contractor agrees to supply the quantities of the articles shown in the order at the rate tendered by him for each article within the time fixed.

4. In the case of goods delivered by shipment, the contractor, shall where the expected tonnage of goods is more than 200 tons, deliver the goods through the Trivandrum port if so required by the Government.

5. The Contractor agrees that time is the essence of this contract.

6.(a) If the contractor defaults in the supply of all or any of the articles correctly

and promptly as above the Government are at liberty to procure the same from elsewhere without cancelling the contract as a whole. If Government incur, in thus procuring such materials a higher cost than the agreed rate such excess cost may be deducted by the Government from the contractors bill or adjusted or otherwise realized from his security deposit or recovered,from him by other means . The contractor agrees that he shall not be entitled to claim the excess, if any, of the tendered rate over such cost to Government .

6(b) If the contractor fails to deliver all or any of the stores or perform the service within the time/period (s) specified in the contract, the purchaser shall without prejudice to its other remedies under the contract, deduct from the contract price as liquidated damages, a sum equivalent to 0.5% or 1% of the delivered price of the delayed stores or unperformed services for each week of delay until actual delivery or performance, up to a maximum deduction of 10% of the contract prices of the delayed stores or services. Once the maximum is reached, the purchaser may consider termination of the contract at the risk and cost of the contractor.

7.(a) All payments to the contractor for supplies effected satisfactorily will be made after scrutiny of his bills.

- (i) either by departmental cheque payable at the Government Treasuries
- (ii) or by cheques or drafts on the Reserve Bank of India, State Bank of India and State Bank of Travancore (at any of their principal branches in India)
- (iii) or in the case of supplies from abroad by drafts or otherwise as may be agreed to.

(b) The firms will produce stamped pre receipted invoices in all cases where payments(advance/final) for release of railway receipt /shipping documents are made through Bank. In exceptional cases where the stamped receipts of the firms are not received for the payments (in advance) the unstamped receipt of the bank (ie, counterfoils of pay-in-slips issued by Bank) alone may be accepted as a valid proof for the payment made.

8. All incidentals expenses incurred by the Government for making payment outside the district in which the claim arises shall be borne by the contractor.

9. The contractor shall not assign or make over in part or wholly the contract or the benefits or burdens thereof. The contractor shall not underlet or sublet the execution of the contract or any part thereof without the consent in writing of the Government. The Government shall have absolute power to refuse such consent or rescind such consent (if given) at any time. The contractor shall not be relieved from his obligation, duty or responsibility under this contract even if consent to let or subject is given by Government.

10. NOT WITHSTANDING the provisions contained in clause 5, the Government shall have the right to cancel the contract for any default on the part of the Contractor in due performance thereof.

11. It shall be lawful for the Government from and out of any money for the time being payable or due to the contractor from the Government under this contract or otherwise to set off any loss or expense, cost or damages sustained or incurred by the Government by reasons of the cancellation of the contract.

12. The security deposit shall subject to the conditions specified herein be returned to the contractor within three months after the expiration of the contract. In all case where there are guarantee for the goods supplied the security deposit will be released only after the expiry of the guarantee period.

13. The contractor agrees that any communication addressed to him may be handed over to him or his agent personally or left at his residence or place of business or may be sent by prepaid post to his address as mentioned in this deed.

14. In case the supply of articles involves erection of machinery the contractor agrees that the machinery will be erected within the time and at the place specified by the Government /Purchasing Officer in that behalf. It shall also be the duty and responsibility of the contractor to see that the machinery thus erected is in good working condition to the satisfaction of the person duly authorized by the Government /Purchasing office in that behalf and to ensure the proper functioning of the machinery till the guarantee period is over.

NOTE:- In the event of the failure of the contractor to erect the machinery within the time and at the place specified by the Government /Purchasing Officer or in the event of the machinery failing to function properly during the guarantee period the amount spent by the Government and the loss sustained by the Government on this account by making alternative arrangements shall be recoverable from the contractor in the manner provided in Clause 15hereunder.

15. The contractor agrees that all sums found due to the Government under or by virtue of these presents shall be recoverable from him and his properties, movable and immovable, under the provisions of the Revenue Recovery Act, for the time being in force as though they are arrears of land revenue or in any other manner and within such time as the Government may deem fit. **The contractor agrees that** in deciding what sum of money is due from the contractor under or by virtue of this deed, the decision of the Government shall be final and conclusive and shall be binding on the contractor.”

16. The contractor agrees that any sum of money due and payable to him from Government shall be adjusted against any sum of money due to Government from him under any other contracts.

17. If the purpose of the purchase is not fulfills, the director has the authority to stop the payment till the contractor produces the genuine reason for the delay.

IN WITNESS WHERE OF the contractor and Sri-----
----- (H.E. Name and designation) for and on behalf of
the Governor of Kerala have here unto set their hands.

Signed, sealed and delivered by-----
(Contractor)

In the presence of witnesses (1)

(2)

Signed, sealed and delivered by Sri. -----
----- (H.E name & designation) for and on behalf of the Governor of Kerala

In the presence of Witness (1)

(2)