



RATE CONTRACT NO.04/140T/Crane/Hawe Fittings/RC

**“RATE CONTRACT FOR THE SUPPLY OF HAWE FITTINGS FOR 140
TONNE CRANES MANUFACTURED BY JAMALPUR WORKSHOP”**

July’ 3, 2009

**CONTROLLER OF STORES
EASTERN RAILWAY, FAIRLIE PLACE
17, N. S. ROAD, KOLKATA – 700 001.**

No. 04/140T/Crane/HAWE/FITTINGS/RC

Kolkata, Date:03/07/2009

**M/s Agromach Spares Corporation
194-D, Gaiwadi Compound, Girgaum Road
Mumbai – 400 004**

Dear Sirs,

Sub: Rate Contract no. 04/140T/Crane/HAWE/FITTINGS/RC
Dated 25/06/2009 for procurement of Hawe Fittings for
140 Tonne crane.

- Ref: 1. Railway Boards's New Delhi's letter
No.2005/RSF/174//9(RC-Spares) dt.16-09-05
2. Eastern Railways Tender No.
508/04/140T/Crane/HAWE FITTINGS/RC opened on
14/07/2008
3. Your Offer No. ASC/ER/08 dt.12/07/08
4. Advance Letter of Acceptance dt. 15/05/09

With reference to your offer No. ASC/ER/08 dt.12/07/08 against the Tender No. 508/04/140T/Crane/HAWE FITTINGS/RC opened on 14/07/2008 and Advance Letter of Acceptance dt.15/05/2009 issued by this office, this Rate Contract is being placed on you on the terms and conditions detailed hereunder.

1. Purchaser : **The President of India.**
2. Name and address of the seller : **M/s Agromach spares Corporation
194-D, Gaiwadi compound,
Girgaum Road
Mumbai – 400 004.**

3. Effective date of Rate Contract & supply orders (EDRC & EDSO):

3.1 Effective date of Rate Contract (EDRC):

The Rate Contract shall become effective from the date of receipt of signed copy of the Rate Contract and receipt of Performance Bond as per clause 23.1 of the contract.

3.2 Effective date of supply order(s) to be placed against Rate Contract (EDSO):

The supply order(s) against the Rate Contract shall become effective from the date Direct Demand Officer issues the supply order (s).

4. Scope of Supply:

Supply of Hawe Fittings for 140 Tonne Crane to the consignee as stated below:

Bilaspur/SEC Rly., MGS/EC Rly., KUR/E. Coast Rly., BNDM/SE Rly., KGP/SE Rly., HWH/E Rly., LKO/N Rly., ASN/E Rly., Ludhiana/N Rly., BIA/SEC Rly., Tinsukia/NF Rly., Verna/KRC Rly., Ratlam/W Rly., Gonda/GKP/NE Rly., Barwadih/EC Rly., Hubli/Kajipet/SW Rly., NJP/NF Rly., CNB/NC Rly., DLI/N Rly., CKP/SE Rly., DHN/EC Rly., Guahati/NF Rly., Sonpur/EC Rly., SBG/E Rly., Moradabad/N Rly., Kantabaji/E Coast Rly., Beliaghata/E Rly., Bhatinda/Ambala Cant/N Rly., Adra/Bokaro/SE Rly., DNR/EC Rly., VSKP/E Coast/Rly., Abu Road/NW Rly., NGP/Ajni/C Rly., Ambala/N Rly., Sambalpur/E Coast Rly., Chennai/S Rly., Rampurhat/E Rly., Pune/Miraj/C Rly., Jodhpur/NW Rly., Kurla/C Rly. & NBQ/NF Rly., CWM/ER/Jamalpur.

5. Prices:

- a. Total anticipated drawals for two years Rs. 45,17,011.20
- b. However, no minimum drawals is guaranteed against this Rate Contract.

Sl. No	MDC-ID	PL Number	Description	Apprx. Qty.	Make	Rate/each (@ Rs.)
1	54095540	08682392	Directional control valve SG 2L-AK	24 Nos.	HAWE	@ Rs. 21,640.00
2	57225540	08682203	Directional control valve SG 0D-C	08 Nos.	HAWE	@ Rs. 14,634.00
3	51821940	08682513	Flow control valve SD 2-3B	16 Nos.	HAWE	@ Rs. 30,561.00
4	56936840	08688035	Flow control valve SD 2-3/50P	32 Nos.	HAWE	@ Rs. 30,561.00
5	55505040	08682604	Stop valve RH 3 V	204 Nos.	HAWE	@ Rs. 10,980.00

SALES TAX: @ 4% Extra.

FOR: Destination.

Option Clause: Railway reserves the right to increase the quantity by 30% during the currency of Rate Contract.

6. Delivery:

The delivery period of the individual spares shall be 4 months from EDSO. Delivery period shall commence from effective date of supply order.

7. Duration of Rate Contract:

The contract shall remain in force for a period of 2 years from the date from Effective Date of the Rate Contract (EDRC). All Supply Orders which may be placed against this Rate Contract on or before the last date of the currency of the of the Rate Contract will be executed as per the terms and conditions governing this Rate Contract. However, subject to mutual consent in writing between the Purchaser and the seller, the duration of the Contract may be extended.

8. Direct Demanding Officer (DDO) for placement of Supply Orders:

8.1 **Controller of Store, Eastern Railway, Kolkata – 700 001** or his nominee(s) shall be the DDO, who is authorized to place Supply Orders against this Rate Contract. The Purchaser may appoint any other Officer (s) also as Direct Demanding Officer at any time during the currency of the Contract.

8.2 **Supply Orders**: This Rate Contract is not an authority for the seller to proceed for making arrangements for manufacturing and supply of Spares against this Contract. Specific supply Orders placed by DDO will be the authority to the seller for taking action for manufacturing and supply of the materials against this Rate Contract. The DDO during the period of the Rate Contract shall issue, from time to time, supply orders to the seller. All supply orders shall be subject to stipulations mentioned in this Rate Contract. Specific supply orders placed by DDO shall form an integral part of this Rate Contract.

9. **GENERAL CONDITION:**

a. **Seller's Responsibility**: The seller shall be solely responsible for the execution of the Rate Contract and supply orders in all respects in accordance with the conditions of the Rate Contract not with standing any approval which the Inspecting Officer may have given of materials or other parts of the work involved in the Rate Contract or of tests carried out either by the Seller or by the Inspecting Officer.

b. **Prices and Indemnity**:

Prices for the spares are for free delivery at **Consignee's end**.

c. The seller shall indemnify the Purchaser against all claims relevant to all rights (if any) of patent, registered design or trademark.

d. In the event of any claim in respect of an alleged breach of a patent, registered design or trade mark being made against the Purchaser, he

shall notify the Seller of the same and the seller shall be at liberty but at his own expenses to conduct negotiations for settlement of any litigation that may arise there form.

10. Payments:

“Financial Adviser & Chief Accounts Officer’s” of SEC Rly., EC Rly., E. Coast Rly., SE Rly, E. Rly., N Rly., NF Rly., KRC Rly., W Rly., NE Rly, SW Rly, NC Rly., NW Rly., Central Rly. & Jamalpur hereinafter called the Paying Authority against the various supply Orders to be placed by DDO.

- Ninety percent (95%) against the Inspection Certificate and receipted challan and balance 5% against R/Note.

11. Warrantee/Guarantee:

- a. The seller shall warrant that everything to be furnished hereunder shall be free from all defects and defaults in materials, workmanship and manufacturing and shall be of the highest grade consistent with the established and generally accepted standards for materials of the type ordered and fit for the purpose.
- b. This warrantee shall survive inspection, payment for and acceptance of goods but shall expire after 24 months from the date of receipt of item by the consignee or 18 months from the date of installation whichever is earlier except in receipt of complaints, defects and/or claims notified to the seller within the said warrantee period. If any materials found

defective, the DDO shall submit his claim to the seller within the period of warrantee. The Seller shall be given necessary facilities to investigate such claims at **Consignee's end as mentioned above para 4.**

- c. The Seller's liability shall be limited to arranging necessary replacement of the defective item(s) free of any charge only to the extent that such replacements are attributable to or arise from faulty workmanship or material or design in the manufacture of the spares. All replacements shall be made free of cost at ultimate destination. If the Seller so desires, the replaced spares can be taken over by his representative in India for its disposal as he deems fit, within a period of three months from the date of receipt of the replacement of defective spares by the Purchaser. At the expiry of this period, no claim in this respect shall lie on the Purchaser.
- d. All replacements that the Purchaser shall call upon the Seller to replace after first being discovered will be delivered under this warrantee, strictly in accordance with the delivery schedule(s) of this Rate Contract from the date from which the Purchaser calls upon the Seller for replacement of defective spares.
- e. The Seller shall have the option to request the release of any spares or part thereof said to be defective under warrantee conditions of the Rate Contract. The release of such spares will be to allow the Seller to rectify at his premises. In order to allow release of spares or part thereof the seller will provide the purchaser with an indemnity bond.
- f. Failure to replace defective spares within the agreed time will render the Seller liable to pay liquidated damages. In case, however, the Seller fails to replace the defective spares even within three calendar months after

the agreed time for such replacement(s), the Purchaser shall be within his rights to recover the cost of the defective spares from the payments due to the seller.

- g. Any approval or acceptance by the Purchaser of the spares incorporated herein shall not in any way limit the Seller's liability hereunder in respect of latest defects imputable to the manufacture but not detected upon acceptance at the works.
- h. The warrantee herein contained shall not apply to any material which shall have been repaired or altered by the Purchaser or on his behalf in any way whatsoever without written consent of the Seller so as to affect its strength, performance or reliability or to any defect to any part, to misuse, negligence or accident.
- i. This warrantee is expressly in lieu of all other guarantees express or implied including any implied guarantee or merchantability or fitness for a particular purpose and of all other warrantee obligations or warrantee liabilities on Seller's part.
- j. The decision of the Purchaser, the Controller of Stores, Eastern Railway, in regard to Seller's liability and the amount, if any, payable under this warrantee shall be final and conclusive.

12. INSPECTION:

12.1 Inspection and Tests will be authorized representatives of the Consignee(s) at Consignee's end.

12.2 Two weeks notice should be given to the inspecting authority or his nominee to arrange the necessary inspection. The inspector

nominated by the Purchaser shall have full powers at every stage of progress to inspect the materials at such intervals as he/they may deem fit and to reject any of the materials which do not confirm to specifications of the Rate Contract and his/their decision on every question of intent and meaning of specifications shall be final and conclusive. Inspection and acceptance will be final at the Consignee's end and rejection if any shall be at the Seller's cost subject to the provisions contained in the warrantee clause.

12.3 Should the Purchaser's Inspectors mentioned above fail to report at the Consignee's end within 14 days of the given inspection date, despite the Seller having given them 14 days prior notice in terms of Clause 12.2, above, then the Seller may seek extension in delivery period, without levy liquidated damages and denial clauses, for the period of delay on this account. The Seller can also, resort to another alternative, by making a written request to the purchaser seeking a waiver of the inspection clause for that particular consignment. The Purchaser shall communicate such waiver which will substitute the requirement of Inspection Certificate.

12.4 No spares will be considered ready for delivery until the Purchaser or the Inspecting Officer nominated by him shall certify in writing that they have been inspected and approved by him. It shall be the responsibility of the Sellers to ensure only such goods as having been duly inspected and approved by the Purchaser or his nominee, are supplied.

12.5 The Seller should also furnish “Fit for Purpose” Certificate with each inspection certificate.

12.6 One copy of each of inspection certificate as also one copy of the Seller’s “Fit for Purpose” Certificate will be forwarded by the seller to the Purchaser soon after receipt of each inspection certificate.

13. Shipment/Mode of delivery: By Road Transport.

13.1 Normal mode of delivery will be by road transport.

13.2 Freight for the conveyance of the Stores or any part thereof will be engaged by the Purchaser or his nominee, who will give due notice to the Seller when and on board what vessel they or such part thereof are to be delivered. Should the Stores or any part thereof be not delivered within 20 days of the receipt of such notice by the Seller, the Seller will be liable for all payments and expenses that the Purchaser may incur or be put to by reason of such non-delivery including dead and extra freight, demurrage of vessels and any other charges incurred by the Purchaser whatsoever.

13.3 Certificates, packing lists, invoices: Such number of Inspection Certificates, packing list and invoices as may be required by the Purchaser or his nominee, shall be furnished by the Seller at his own cost.

14. Consignee:

Bilaspur/SEC Rly., MGS/EC Rly., KUR/E. Coast Rly., BNDM/SE Rly., KGP/SE Rly., HWH/E Rly., LKO/N Rly., ASN/E Rly., Ludhiana/N Rly., BIA/SEC Rly., Tinsukia/NF Rly., Verna/KRC Rly., Ratlam/W Rly., Gonda/GKP/NE Rly., Barwadih/EC Rly., Hubli/Kajipet/SW Rly., NJP/NF Rly., CNB/NC Rly., DLI/N Rly., CKP/SE Rly., DHN/EC Rly., Guahati/NF Rly., Sonpur/EC Rly., SBG/E Rly., Moradabad/N Rly., Kantabaji/E Coast Rly., Beliaghata/E Rly., Bhatinda/Ambala Cant/N Rly., Adra/Bokaro/SE Rly., DNR/EC Rly., VSKP/E Coast/Rly., Abu Road/NW Rly., NGP/Ajni/C Rly., Ambala/N Rly., Sambalpur/E Coast Rly., Chennai/S Rly., Rampurhat/E Rly., Pune/Miraj/C Rly., Jodhpur/NW Rly., Kurla/C Rly. & NBQ/NF Rly., CWM/JMP.

15. Packing and Marking:

- a. Spares will be packed in separate packing/boxes. Marking of individual packing /spares in indelible ink will indicate:
 - 1) Rate Contract No.
 - 2) Supply order No.
 - 3) MDC-ID of Gottwald
 - 4) Item Description
 - 5) Consignee
- b) The Seller shall be held responsible for spares being sufficiently and properly packed so as to ensure their being free from any loss or damages on arrival at their destination.
- c) The marking on all goods supplied shall comply with the requirements of the Indian Acts relating to the merchandise or any amendment thereof and of the rules made under such acts and the Sellers shall be responsible for the proper and sufficient marking of the goods so as to be in compliance with the requirements of the said Acts.

16. Liquidated Damages:

16.1 In the event of the Sellers failure to deliver the spares within the time specified for deliveries in the supply order, liquidated damages, will be leviable at the rate of 2% per month or part thereof, subject to maximum of 10% value of the supply order.

16.2 If the delay has however arisen from Force Majeure or any cause attributable to the Purchaser, the Purchaser shall allow such additional time as may be reasonably required by the circumstances of the case and give necessary relaxation in liquidated damages and denial clauses for the agreed extended /additional time.

17. Extension of Delivery period:

17.1 In the event of the Seller failing to deliver the spares duly inspected and passed within the stipulated delivery period, he shall request the DDO for an extension of the delivery period explaining the circumstances under which an extension of the delivery period is sought. Any extension in the delivery period shall be subject to the following condition:

The Purchaser has the right to recover from the Seller the liquidated damages, which shall not exceed the maximum allowable under clause 16.1 of the delayed Spares which the Seller has failed to deliver within the period fixed for delivery.

17.2 The Seller shall not dispatch the Spares, till such time an extension in delivery schedule has been obtained from the Purchaser. However, if the Spares are dispatched by the Seller before an extension letter as aforesaid is issued by the Purchaser; the supply of the spares shall be deemed to be subject to conditions set below:

- i) If the delay has arisen from Force Majeure or cause attributable to the Purchaser, the Purchaser shall, allow extension in delivery period in accordance with Clause 16.2.
- ii) In other cases of delays in delivery of spares, the Purchaser is entitled to proceed in accordance with clause 12.3.

18. Seller's Default and Risk Purchase:

18.1 Should the Seller

- i) fail to have the spares ready for delivery by the time or times agreed upon as aforesaid, or
- ii) in any manner otherwise fail to perform the Rate Contract, or
- iii) have a receiving order made against it , or

- iv) make or enter into any arrangements or composition with its creditor which directly affects this Rate Contract or
- v) become bankrupt (or being a company should enter into liquidation either compulsory or voluntary).

the Purchaser shall have power, under the hand of the Controller of Stores. Eastern Railway, Kolkata (India) to declare the Rate Contract or part thereof at an end at the risk and cost of the Seller with respect to Spares which have not been delivered at that time.

18.2 In the event of the Purchaser cancels the Rate Contract or part thereof and opts to purchase the same spares from other sources (Risk Purchase), the Seller will be liable to pay extra expenditures incurred in procuring the same spares under this difference between the value of the respective spares under this Rate Contract and price at which the Risk Purchase is concluded on the basis of Purchaser's tendering procedures, provided the said Contract is concluded within nine months from the date of such cancellation.

18.3 The cancellation of the Rate Contract may be either for whole or part of the Rate Contract at Purchasers' option for such spares which have not yet been delivered. In the event of the Purchaser terminating this Rate Contract, he may procure upon such terms and in such manner as he deems appropriate,

supplies, identical to those so terminated. However, the Seller and Purchaser shall continue the performance of this Rate Contract to the extent not terminated under the provisions of this clause.

18.4 The provision relating to the cancellation of the Rate Contract under clause 17 and Risk Purchase under this clause can be invoked only in the event of delivery of Spares being delayed by 120 days or more beyond the delivery period or in the event of non fulfilling by the Seller default not being remedies within 60 days after Seller's receipt of first written notice of such non fulfillment.

18.5 The provision relating to the cancellation of the Rate Contract under clause 17 can be invoked only in the event of Sellers' inability to remove or remedy such situation within 120 days after the Sellers' receipt of first written notice from the Purchaser.

19. Force Majeure:

19.1 Seller shall not be liable for any delay in performing hereunder, if such delay or default is due to any event beyond the control of the Seller which could not have been reasonably foreseen at the time of signing of this Rate Contract provided it is directly interfering with the fulfillment of the Rate Contract and arises during the currency of the Rate Contract, such as insurrection, restraint imposed by the Government, act of Legislative or other

authority, war, hostilities, acts of the public enemy, civil commotion, sabotage, floods, fires, explosions, epidemics, quarantine restrictions, strikes, lockouts or acts of God (“Force Majeure”). The Seller shall within two weeks after being affected thereof notify the same in writing to the Purchaser with reasonable evidence thereof and the delivery time shall be extended accordingly.

- 20.1 If Force Majeure condition(s) mentioned above are in force for a period of 90 days or more at any time, the Purchaser shall have the option to terminate the Rate Contract on expiry of 90 days from the commencement of such Force Majeure by giving 14 days notice to the Seller in writing. Further, if the performance of the Rate Contract is delayed beyond one year after expiry of the duration of Rate Contract on account of Force Majeure conditions, each party shall have the option to terminate the Rate Contract by giving 14 days notice to the other party in writing. In case of such termination, no damages shall be claimed by either party against the other. Save and except those which had occurred under any other clause of this Rate Contract prior to such termination.

20. Bank Guarantee: Warrantee Bond for Supply Order(s):

- 20.1 The Seller shall furnish the warrantee bank guarantee as

per Annexure-I for the 10% value of each supply order to the DDO to cover the warrantee period as mentioned in clause 11 of the Contract along with

- 20.2 Before the expiry of the validity of the Performance guarantee bond/warrantee bonds the Seller on being called upon by the Purchaser from time to time shall time to time shall obtain from the guarantor bank an extension of its validity for a period of 6 months on each occasion.
- 20.3 As and when an amendment is issued to the Rate contract , the Seller shall, if necessary, within 30 days of the receipt of such an amendment furnish to the Purchaser an amendment to the performance-cum-warrantee B.G rendering the same valid for the Rate Contract as amended.
- 20.4 The Bank Guarantee and/or any amendment thereto shall be executed on a stamped paper of requisite money value in accordance with the law of the country in which the same is/are executed by the party competent to do so.
- 20.5 The warrantee bank guarantee will be returned by the DDO(s) to the Seller after successful completion of warrantee obligation.

21. Transfer and Sub-letting:

- 21.1 The Seller shall not sublet (except as may be customary in the trade concerned), transfer, assign or otherwise part with the

Rate Contract or any part thereof either directly or indirectly without the previous written permission of the purchaser.

21.2 The Seller shall be entirely responsible for the work executed by the sub-seller, if any. For this purpose he shall at his own cost ensure adequate inspection of their works by an inspection organization acceptable to the purchaser.

22. Arbitration:

22.1 In the event of any dispute or difference arising between the parties hereto relating to any matter out of or connected with this Rate Contract, such dispute or difference shall be referred to the award of Sole Arbitrator to be appointed by any member of the Controller of Stores, Eastern Railway, Kolkata. Subject as aforesaid the Arbitration and Conciliation Act, 1996, the rules there under and any statutory modification or re-enactment thereof shall apply to the Arbitration proceedings under this Rate Contract. The venue of the Arbitration in all cases shall be in Kolkata and the proceedings, documents and awards shall be in English.

22.2 In the event of Sole Arbitrator dying, neglecting or refusing to act, or resigning or being unable to act for any reason or his award being set aside by the court, for any reason, it shall be lawful for the authority appointing the

arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

22.3 Upon every and any such reference, the assessment of the cost incident to the reference and award respectively, shall be at the discretion of the arbitrator.

22.4 The arbitrator may from time to time, with the consent of all the parties to the rate contract, enlarge the time for making the award.

22.5 The arbitrator shall make the award specifying the reasons in writing.

22.6 Work under the Rate Contract, if reasonably possible, may continue, during the arbitration proceeding and no payment due to or payable by the purchaser shall be withheld on account of such proceedings.

22.7 In this clause the authority to appoint the arbitrator, include, if there be no such authority, the Officer, who is, for the time being discharging the functions or otherwise.

23. Legal Interpretation:

23.1 Jurisdiction: Venue of jurisdiction of this Rate Contract shall be the courts at Kolkata (West Bengal).

23.2 The Rate Contract shall be governed by the laws of India for the time being in force.

24. Progress Report:

24.1 The Seller shall render to the respective DDO(s) or their nominee(s) a report every quarter as to the progress of the execution of the Rate Contract by the 10th of the following month.

24.2 The report shall be furnished till the entire Rate Contract is completed. The submission and acceptance of these reports shall not prejudice the right of the purchaser in any manner. Copies of the progress report shall also be addressed to i) The Controller of Stores, Eastern Railway, Kolkata – 700 001. ii) the Chief Workshop Engineer, Eastern Railway, Kolkata – 700 001.

25. OBSOLESCENCE:

For the spares included in this Rate Contract, which may have become obsolete, the Seller shall, where possible, supply necessary drawings/instructions to the Consignee free of cost to enable them to carry out necessary modifications at their end and at their own cost. Such spares will be supplied at the rates indicated at Para-5. In case of few spares, the option of re-engineering may have to be examined and terms agreed upon on case to case basis. In the event where the option of re-engineering is not practical, the supplier shall have the option of withdrawing from their contractual obligations for such spares of spares subject to giving the purchaser at least 24 weeks notice.

26. LIMITATION OF LIABILITY:

Neither party shall be liable to the other party for any indirect or consequential damages whether in tort, common law nor otherwise that may be suffered by the other in connection with this Rate Contract. Liability for any and direct loses arising out of the Seller's act or defaults shall be limited in aggregate to the value of the Supply Order(s). However, nothing in this clause shall limit the Seller's liability for death or personal injury due to Seller's negligence.

A termination of the Rate Contract/supply orders only affects the undelivered and un-inspected spares.

27. Corrupt Gifts and Payments of Commission:

Any bribe, commission, gift or advantage given promised or offered by or on behalf of the Seller, his agents or servants, or any one of his/their behalf to any employee, representative or agent of the Purchaser or any person on his behalf in relation to the execution of this or any other contract with the Purchaser shall, in addition to the criminal liability under the laws in force, subject the Seller to cancellation of this and all other contracts with the Purchaser, and also to payment to the like extent as provided under Clause 20 and the Purchaser shall be entitled to

deduct the amounts so payable from any money otherwise due to the Seller under this Rate Contract or any other contract. Any question or disputes as to the commission of any offence under the present clause shall be settled by the Purchaser in such manner and on such evidence as may be thought fair and sufficient and his decision shall be final and conclusive on the matter.

28. FALL CLAUSE:

If at any time, during the period of the Rate Contract, the Seller reduces the FOR destination sale price, sells or offers to sell such stores to any person/organizations at a price lower than the price chargeable under the Rate Contract, he shall forthwith notify such reduction or sale or offer of sale to the Purchaser/DDO and the price payable under the contract for the stores supplied after the date of coming into force or such reduction or sale or offer of sale shall stand correspondingly reduced.

The Seller shall furnish the following certificate to the Paying Authority along with each invoice for payment of supplied made against the Supply Order(s).

“We certify that there has been no reduction in FOR destination sale price of the stores of description identical to the stores

supplied to the Government under the contract herein and such stores have not been offered/sold by us to any person/organizations including the purchaser up to the date of this invoice against all supply orders placed so far against during the currency of the Rate Contract at a price lower than the price charged to the Government of India under the contract.”

29. Other Terms and Conditions:

29.1 For the purpose of interpretations of various terms used in this Rate Contract Annexure-A may be referred to for definitions.

29.2 Communications relating to this Contract: In all communications pertaining to this Rate Contract and the number and the date of supply order if any should be invariably quoted.

30. This Rate Contract is issued by order and in the name of the President of India.

31. 6 copies of the Rate Contract are enclosed. 4 copies duly initialed on each page and signed in full on the last page may be sent to this office for record.

DAs: Annexure – I & Annexure - A

Yours faithfully,

(L. N. Basu)

Sr. Material Manager/Sales-I

For Controller of Stores

For and on behalf of the President of India.

To,

The President of India,

We accept the Rate Contract on the terms and conditions stipulated herein for and on behalf of M/s Agromach Spares Corporation, 194-D, Gaiwadi Compound, Girgaum Road, Mumbai – 400 004.

(Signature of signing Authority with designation)

Witness :

Signature :

Date :

No. 04/140T/Crane/Hawe Fittings/RC,

Kolkata, Date:23/06/2009

Copy forwarded to:

1. **Financial Adviser & Chief Accounts Officer's** of SEC Rly., EC Rly., E. Coast Rly., SE Rly, E. Rly., N Rly., NF Rly., KRC Rly., W Rly., NE Rly, SW Rly, NC Rly., NW Rly., Central Rly. & Jamalpur **for making necessary arrangement for payment in terms of Rate Contract.**
2. **Controller of Store's of** SEC Rly., EC Rly., E. Coast Rly., SE Rly, E Rly., N Rly., NF Rly., KRC Rly., W Rly., NE Rly, SW Rly, NC Rly., NW Rly., Central Rly., E.Rly/JMP
3. **Chief Mechanical Engineer's of** SEC Rly., EC Rly., E. Coast Rly., SE Rly, E Rly., N Rly., NF Rly., KRC Rly., W Rly., NE Rly, SW Rly, NC Rly., NW Rly., Central Rly., E.Rly/JMP
4. **Chief Works Manager's of** SEC Rly., EC Rly., E. Coast Rly., SE Rly, E Rly., N Rly., NF Rly., KRC Rly., W Rly., NE Rly, SW Rly, NC Rly., NW Rly., Central Rly., E.Rly/JMP
5. **Chief Workshop Engineer's of** SEC Rly., EC Rly., E. Coast Rly., SE Rly, E Rly., N Rly., NF Rly., KRC Rly., W Rly., NE Rly, SW Rly, NC Rly., NW Rly., Central Rly., E.Rly/JMP

(L. N. Basu)
Sr. Material Manager/Sales-I
For Controller of Stores.
For and on behalf of the President of India.

Annexure-A

1.1 Definitions:

Throughout these conditions, the terms:

1. “ The Purchaser” means the President of India acting through Controller of Stores, Eastern Railway, Kolkata – 700 001, unless the context otherwise provides.

2. “The “Inspecting Officer” means the persons, firm or department nominated by the Purchaser to inspect the Kits on his behalf and the duties of the Inspecting Officer so nominated.

3. **“The Seller” means M/s Agromach Spares Corporation, 194-D, Gaiwadi Compund, Girgaum Road, Mumbai – 400 004, with whom the order for the supply is placed and shall be deemed to include the Contractor’s successors, representatives, heirs, executors and administrators, as the case may be, unless excluded by the terms of the Rate Contract.**
4. **“The Rate Contract (RC)” means Contract No. 04/140T/Crane/Hawe Fittings/RC (including its annexures) for the supply of Hawe Fittings for 140 Tonne Cranes.**
5. **“The Consignee” means who is allowed to receive the Kits in the name and on behalf of the Purchaser.**
6. **“Supply Order” means each individual purchase order placed by the DDO under the Rate Contract.**
7. **“Inspection Certificate” means a certificate as defined in clause 13.**
8. **“Spares” means the Maintenance of Periodic Overhaul spares parts for 140 Tonne Diesel Hydraulic Breakdown Cranes.**
9. **“Fit for Purpose”: The Spares supplied against this Rate Contract shall be fit for purpose i.e. for manufacturing of 140 Tonne Diesel Hydraulic Breakdown Cranes.**

1.2 Written Communications:

Wherever in the Contract provision is made for a communication to be “written” or in “writing” this means any hand written, type written or printed communication, including telex, cable and facsimile transmission.

**PROFORMA OF BANK GUARANTEE FOR 10% CONTRACT VALUE TOWARDS
WARRANTY GUARANTEE**

To,
THE PRESIDENT OF INDIA,
acting through the Controller of Stores
Eastern Railway
17, N. S. Road,
Fairlie Place
Kolkata – 700 001.

Sub.— Guarantee No.....for..... (Amount).
Covering equipment (s) Serial no.....supplied
to.....(Consignee/s)

Ref.— Contract No.....dated.....
Placed on M/s.....

1. WHEREAS M/s.....one of our constituents,
(hereinafter called the "Sellers") have agreed to sell to you (hereinafter referred to as the "Government") Nos.
of..... (give description) as per contract
No.....
dated.....(hereinafter called "the said contract")

2. AND WHEREAS according to the terms of said contract, it has been stipulated that payment of 10% of the value of the stores would be made, provided that the Sellers furnish to the Purchaser a Bank Guarantee from a recognised bank, acceptable to the Purchaser for 10 per cent of the value of the said contract, valid for a period covering in full the Guarantee Period as per the warranty clause of the said conditions of the contract, being the conditions attached to and forming part of the said contract.

3. AND WHEREAS the Sellers have approached us to give the said Bank Guarantee on their behalf in your favour for an amount representing 10 per cent of the value of (he said contract which you have agreed to accept.

4. That in consideration of the promises and at the request of the said Sellers, we hereby irrevocably undertake and guarantee to pay to the Government of India or at such other place as may be determined by you forthwith on demand and without any demur, any sum upto a maximum amount of..... representing 10 per cent of the value of the stores despatched under the said contract in case the Seller make default in paying the said sum or make any default in the performance, observance or discharge of the guarantee contained in the said contract.

5. We agree that the decision of the Government, whether any default has occurred or has been committed by the Sellers in the performance, observance or discharge of the guarantee aforesaid shall be conclusive and binding on us M/s.....

6. Government shall be at liberty, from time to time, to grant or allow extension of time or give other indulgence to the said Sellers or to modify the terms and conditions of the contract with the said Sellers without affecting or impairing this guarantee or our liability hereunder.

7. We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Sellers in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal. We also undertake to pay to the Government any money so demanded against the Purchaser's claims in any other contracts placed on (he said sellers.

The payment so made by us under this bond shall, be a valid discharge of our liability for payment **thereunder** and the Sellers shall have no claim against us for making such payment.

8. This bank guarantee comes into force when the balance ten percent of the value of the stores, shipped per Vessel.....vide Bill of Lading No..... dated..... or R/RNo.....dated..... (in the case of indigenous contracts) under the said contract, has been paid and will remain in full force and effect up to.....*i.e.* for.....months counted from the dale of placing the stores in service, and shall continue to be enforceable for further five months *i.e.* up to.....(date), hereinafter called the said date.

9. This guarantee will not be discharged due to the change in the constitution of the Bank or the Sellers.

10. That no claim under this guarantee shall be entertained by us unless the same has been preferred by the Government within the said dale.

Date.....

Signature.....

Place.....

Printed Name.....

Witness.....

.....

(Designation)

Bank's Common Seal