

## **GENERAL TERMS AND CONDITIONS FOR FORWARD AUCTION**

### **INTRODUCTION**

1. Government e-Marketplace (“**GeM**”) is the National Public Procurement Portal; an end-to-end online Marketplace for Central and State Government Ministries / Departments, Central & State Public Sector Undertakings (CPSUs & SPSUs), Autonomous Institutions and Local Bodies, for procurement of common use goods & services. The portal is owned and managed by GeM SPV which is a Section 8 (Non-Profit) Company registered under the Companies Act, 2013.
2. “Seller/Auctioneer” is the Contract placing authority, which includes Central/State Government Ministries/Departments including its attached/subordinate offices, Central/State Public Sector Units (PSUs) and Autonomous Bodies acting through its authorized officer(s) for and on behalf of President of India/Governor of the State /PSU/Autonomous Bodies, as the case may be, for auctioning the goods/material/immovable assets on GeM.
3. “Bidder” shall mean any entity such as firm(s) of Proprietorship / Partnership Firm / Limited Liability Partnership / Private Limited / Limited company / Society registered under Society’s Act / Statutory Bodies/ Individual etc., registered on GeM to participate in the Auctions on GeM. “Buyer” refers to the successful Bidder as declared by the Seller/Auctioneer.
4. These General Terms and Conditions (hereinafter referred to as “**GTC**”) are in addition to the item category specific Special Terms and Conditions (hereinafter referred to as “**STC**”) and Bid Specific Additional Terms and Conditions (hereinafter referred to as “**ATC**”), if any, incorporated by the Seller/Auctioneer in the relevant Bid document and shall form an integral part of the contract between the parties. In case of any conflict between any of the provisions of this GTC, STC and ATC, ATC will supersede the STC, which will supersede the GTC.

### **ROLE OF GeM**

5. GeM acts as a facilitator for conducting Forward Auction on GeM portal/ website. Both the Bidders and the Seller/Auctioneer must register on GeM portal according to the prescribed procedure in order to participate in the Forward Auction. Once the bid is accepted and Intimation Letter / Sale Acceptance Letter is issued by the Seller/Auctioneer to the successful Bidder, the Contract will be deemed to be concluded between the Buyer and the Seller/Auctioneer and both the Buyer and the Seller/Auctioneer will perform their respective obligations as per the GTC, STC and ATC.
6. GeM provides no guarantee or warranty as to the conditions of the goods/material/immovable assets or its quality or its fitness for any specific purpose or use and no complaint or any claim will be entertained by GeM in this regard.

7. The parties understand that GeM being an intermediary cannot be made a party to any dispute between the Seller/Auctioneer and the Buyer / Bidder.

### **Transaction Charges**

8. The successful Bidders /Buyer are liable to pay the transaction charges to GeM as per the applicable Revenue Policy for Forward Auction as available on the GeM portal/ website.
9. The applicable Transaction Charges shall be paid by the successful Bidder to GeM within 3 (three) working days of winning the auction lot. GeM at its sole discretion can extend the time for payment of the transaction charge.
10. The Intimation Letter / Sale Acceptance Letter shall only be issued to the successful Bidder once the transaction charge, as per applicable policy has been paid to GeM by the successful Bidder. In the event, the successful Bidder does not pay the transaction charge within the time limit as prescribed by GeM, its bid is liable to be cancelled and the Seller/Auctioneer would be within its rights to initiate action as per clause no. 47 (Termination of the Contract by the Seller/Auctioneer) of the GTC.
11. Levy of Transaction Charges shall be subject to applicable taxes such as GST.
12. In the event the Seller/Auctioneer terminates the Contract without any default on part of the Buyer and decides not to sell the auctioned goods / materials / assets, the transaction charge shall be refunded to the successful Bidder by GeM. It is clarified that no refund of Transaction Charges shall be made in case the Seller/Auctioneer cancels the contract due to non- fulfilment of any contractual obligations by the Buyer or due to any omission /misleading /false information provided by the Buyer on the GeM Portal/ website.
13. It is clarified that no interest shall be paid to the Bidders / Buyer on any amount paid or deposited by them under any of the terms and conditions of the Forward Auction and subsequently found refundable to him.

### **Suspension of Account**

14. GeM, at its sole discretion, may suspend account of any party for non-compliance of any terms and conditions of the Forward Auction including non-payment of transaction charges. GeM also reserves the right to debar any bidder/bidders due to any act of omission or commission or fraudulent acts indulged or caused to be indulged by such Bidder/Bidders in the course of bidding process and/or in the execution or performance of any of the contracts which may be awarded to the Bidder/Bidders pursuant to the Forward Auction. Any such order of debarment that may be passed by GeM shall be without prejudice to other right of actions available to the Seller/Auctioneer and/or GeM against the Bidder/Bidders under the terms and conditions of the Forward Auction.

### **Severability**

15. If due to any change in applicable laws, certain part of the GTC or any applicable STC/ ATC or any provisions of the GeM policies or portions thereof, becomes unenforceable, the remaining provisions shall continue in full force and effect so as to give effect to the intent of the parties.

### **Website Terms and Policies updation**

16. The Buyers and Sellers/Auctioneers are advised to check GeM's website for terms and conditions as well as policies such as Privacy Policy and the Website Disclaimer at all times, as GeM may update the website and such terms, from time to time.

### **Bidding Process**

17. All bids on the GeM portal/ website are a firm commitment to purchase. The highest Bidder at the end of an auction (meeting the applicable minimum bid or reserve price requirements) will be declared as the successful Bidder and will be obligated to complete the transaction with the Seller/Auctioneer. All bids must be in Indian Rupees Only.

### **ROLE AND OBLIGATIONS OF THE BUYER / BIDDER**

#### **Earnest Money Deposit (EMD)**

18. Bidders should deposit Earnest Money as prescribed in the form and manner by the Seller/Auctioneer before participating in the forward auction.

#### **Inspection of Goods / Materials / Immovable Assets**

19. The Bidder should inspect the goods / materials / immovable assets at the Seller/Auctioneer's site with prior appointment with the Seller/Auctioneer Department and by observing the entry procedure as prescribed by the Seller/Auctioneer. The discretion to allow any person to inspect the goods/materials / immovable assets would rest solely with the Seller/Auctioneer.
20. The goods/ materials / immovable assets available for Forward Auction should be inspected at the appropriate site(s) as prescribed by the Seller/Auctioneer and the Bidders should thoroughly satisfy themselves about the nature, physical condition, quantity and quality, dimensions, size, weight of the materials / immovable assets and working conditions at the site as per procedure laid down by the Seller/Auctioneer. Any claim/complaint about the quantity, quality, condition, fitness for use, or any defect / error / inadequacy in the description of the materials /goods / immovable assets etc. will not be entertained after participation in bidding process or issue of Intimation Letter / Sale Acceptance Letter or sale of the lot.

## **Quality and Quantity of Goods / Materials**

21. The goods will be sold on “**As is where is**” and “**No complaint basis**” in so far as physical condition of the same is concerned. The Bidders will therefore be deemed to have made themselves aware of the physical conditions, dimensions, size, weight, working conditions of the goods by inspecting the materials before submitting their Bids.
22. Where goods are sold on “lot basis” and not by unit weight/number basis, the entire material lying in the lot will have to be lifted by the Buyer without weighment, so as to clear the entire lot. The quantity if indicated against the respective lots are purely indicative and without any guarantee and the Seller/Auctioneer/ Owner shall not entertain any claim/complaint from the Buyer for any deficiency in quality, quantity, size, dimension or for refund of whole or any part of the purchase money or loss of profit or interest/damages or otherwise.
23. Where the goods are sold by “unit weight or unit number basis” and not on the basis of “Lot”, the quantity indicated in such cases against the respective lots are purely indicative which in actual may turn out to be more or less than the indicated quantity. In case of actual quantity turning out to be less than the indicated quantity after due completion of the lifting by the Buyer, the Buyer shall not be entitled to claim any damages, loss of interest or compensation on any other account, but shall be entitled to proportionate refund only.
24. Where there are items of more than one classification of any form in any lot and the Bidder has quoted in lumpsum for the entire lot instead of quoting in units per item, then no refund of any kind shall be entertained by Seller/Auctioneer/Owners if the quantity mentioned in the Auction Notice/ Bid turns out to be less at the time of delivery. However, if the quantity turns out to be more than the auctioned quantity, then the delivery of material shall be limited to auctioned/ bid quantity only.

## **Payment and Taxes**

25. The balance sale value (arrived at after adjusting EMD from the actual sale value but including all applicable taxes) shall have to be paid by the successful Bidder within 10 (ten) days for the lot value up to INR 5,00,000 (Indian Rupees Five Lakh) and within 15 (fifteen) days for the lot value more than INR 5,00,000 (Indian Rupees Five Lakh) from the date of bid acceptance (unless other timelines are prescribed in STC / ATC). The balance sale value including all taxes if not paid within the prescribed time limits, shall be paid within such time limit as may be extended by the Seller/Auctioneer, together with any Ground Rent / Charges as specified in Clauses 40 and 41 of the GTC. The initial deposit of EMD shall not carry interest and will be refunded without interest to the unsuccessful bidders within 7 (Seven) days from the bid end date.
26. The liability on account of imposition or levy of any new or existing taxes / duties/ levies/ charges and/ or increase in rate of taxes / duties/ levies/ charges as levied by Local/ State/ Central Govt. concerning all in relation to the material / goods /

immovable assets covered under the sale is entirely on Buyer and the Seller/Auctioneer shall not bear any liability or responsibility in this regard.

27. In the event the Buyer fails to make the requisite payment within the time / extended time stipulated, the sale relating to such lot can be cancelled at the discretion of the Seller/Auctioneer and the EMD deposited by the Bidder shall be forfeited in full and the Seller/Auctioneer shall be entitled to recover any incidental / consequential loss suffered by it as a result of such failure. The Seller/Auctioneer shall not be bound to give any notice to the buyer for the said forfeiture.

#### **Sale / Disposal / Processing of Goods / Materials / Immovable Assets**

28. It shall be the responsibility of the Buyer / Successful Bidder to purchase and dispatch /dispose off the goods / materials as per the applicable laws / regulations and no liability in this regard shall be attached to the Seller/Auctioneer.
29. The Buyer / Bidders shall also ensure that they have all the required authorizations, licenses, registration certificate etc. from the concerned departments and are in compliance with all the Statutory or State / Central Government Act / Law / Order / Rules etc. in order to purchase and dispatch/ dispose off the goods / materials/ assets. Such authorizations, licenses, registration certificate etc. shall be kept valid by the Buyer / Bidder for the entire period of the Contract, if awarded to them as well as the period of processing / disposing off the goods / materials under the Contract, failing which their Contract may be terminated at the sole discretion of the Seller/Auctioneer and no complaint in this regard will be entertained from the Bidder/ Buyer in this regard.
30. The Buyer shall ensure that in the event of **Sale of Hazardous Waste Items** all applicable Guidelines/ Notifications issued by the Central Pollution Control Board (CPCB) / Ministry of Environment & Forests (MOEF) from time to time, are complied by the Buyer. Additionally, the Buyer shall comply with all applicable rules / laws, wherever applicable, such as;
  - (a) Batteries (Management & Handling) Rules, 2001 and its subsequent Amendments.
  - (b) Hazardous Wastes (Management & Handling) Rules, 1989 and its subsequent Amendments and / or the relevant statutory Act / Rules.
  - (c) Solvent, Raffinate and Slop (Acquisition, Sale, Storage and Prevention of Use in Automobiles) Order, 2000

Scrap lots comprising of Hazardous waste including drain oil/waste oil shall be sold keeping in view the extant guidelines of Ministry of Environment & Forest as contained in the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 and second Amendment Rules, 2009, as amended from time to time, as notified by Ministry of Environment and Forests. Scrap lots comprising of scrap Batteries shall be sold keeping in view the extant guidelines of ministry of Environment & Forest as contained in Batteries (Management and Handling) Rules, 2011, as amended from time to time. Scrap lots comprising of E-waste shall be sold keeping in

view the extant guidelines of ministry of Environment & Forest as contained in E-waste (Management and Handling) Rules 2011, as amended from time to time

The Bidders/ Buyers shall also be responsible for ensuring that all Registration Certificates issued by State PCB / CPCB / MOEF are kept valid for the entire period of the contract, if awarded to them as well as the period of processing such Hazardous Waste item by them failing which their Contract may be terminated at the sole discretion of the Seller/Auctioneer and no complaint in this regard will be entertained from the Bidder in this regard.

### **Delivery of Goods / Materials**

31. The Seller/Auctioneer will issue the delivery order/authorization letter to the buyer to lift the goods/ materials after receipt of the balance sale value. The free time period allowed to lift the goods/ materials is 30 (thirty) days for the lot value up to INR 5,00,000 (Indian Rupees Five Lakh) and 40 (forty) days for the lot value more than INR 5,00,000 (Indian Rupees Five Lakh) from the date of bid acceptance unless otherwise specified by the Seller/Auctioneer in STC / ATC / bid document.
32. The Buyer shall lift the goods/ materials by employing their own labour and transport at their own risk and cost from the area allotted to them within the time stipulated by the Seller/Auctioneer.
33. The Buyer shall lift the materials only from the lots / site / space as may be earmarked / demarked by the Seller/Auctioneer from time to time which should be final and binding on the Buyer and they shall observe the rules and regulations and working hours as may be fixed by the Seller/Auctioneer.
34. The Buyer shall not lift or remove any material, which is not conforming to the delivery order/authorization letter issued by the Seller/Auctioneer. The Buyer shall remove the goods / lots only from the area earmarked / specified in the delivery order/authorization letter and the Seller/Auctioneer's decision shall be final and binding on the Buyer in this regard.
35. No picking, sorting, cutting or breaking of goods or materials sold will be permitted unless allowed and specified by the Seller/Auctioneer
36. If any damage or loss is caused to the workforce, materials or property of the Seller/Auctioneer or even if any claim arises against the Seller/Auctioneer by reasons of any act or commission or negligence on the part of the Buyer or on the part of their agents, representatives or employees, the Seller/Auctioneer shall be entitled to recover such losses or damages or claim as may be ascertained by the Seller/Auctioneer (which ascertainment shall be final and binding on the Buyer) from any amount due to the Buyer including the advances made / to be made by the Buyer as the Earnest Money/Security Deposit (as the case may be) without prejudice to the Seller/Auctioneer's rights to take further action under the contract as well as recover

such losses, damages or claim from any other money due or becoming due under other transaction with the Seller/Auctioneer or from the Buyer directly.

37. All the motor truck/trailers/cranes and other material handling equipments of the Buyer shall be duly registered, taxes paid properly and otherwise properly maintained in accordance with Motor Vehicle Act or Rules or any other Acts / Rules in force.
38. The Buyer will have to fulfill the relevant provisions of all safety and security rules of the Seller/Auctioneer and shall have to be governed by the Rules under the Factories Act and any other statutory Act / Law / Rule prevailing from time to time in respect of themselves and their representatives, workmen and equipments. The Buyer(s) shall provide safety equipment and appliances to their workmen at their own cost.
39. The Buyer shall be fully responsible for the acts of their representatives / workers and shall fully indemnify the Seller/Auctioneer for losses or damages. The Seller/Auctioneer will not be responsible for any claim from labor employed by the Buyer. The Buyer shall wholly and fully be responsible for such claims for compensation either for accident or injury / death or damage caused to their employees / transport or to any of the Seller/Auctioneer's employees or to others or to the Seller/Auctioneer's property during the operation of the Buyer.

#### **Default in payment and lifting of goods/materials by the Buyer**

40. Unless otherwise specified in the STC / ATC / Bid if the goods are not removed within the free time period as indicated above or as prescribed by the Seller/Auctioneer, they shall remain at the Buyer's risk until so removed and the Seller/Auctioneer shall be entitled to recover from the purchaser the ground rent @ Rs 10/- per lot or part of a lot per day or part of a day, or 0.5 % of the value of the goods/ materials remaining undelivered per day or part of a day whichever is higher. Such ground rent or any other charges that may have been incurred by the Seller/Auctioneer shall be recovered from the Buyer before the goods are delivered. If such materials are not removed on payment of ground rent within 30 (thirty) days from the expiry of the period as prescribed, then the Seller/Auctioneer may at his discretion, terminate the contract and order resale of the goods and forfeit all the money paid by the Buyer in respect thereof without making any reference to the Buyer. The lot/materials shall deem to have been abandoned by the purchaser to all intents and purposes.
41. Unless otherwise specified in the STC / ATC / Bid if in case of failing to deposit the Payment within the stipulated time, the Buyer can deposit the balance sale value with payment of interest charges for the delays involving maximum up to 30 (thirty) days for lot value up to INR 5,00,000 (Indian Rupees Five Lakh) and maximum up to 40 (forty) days for lot value more than INR 5,00,000 (Indian Rupees Five Lakh) from the date of acceptance of bid, in exceptional circumstances with prior permission of the Seller/Auctioneer. The rate of interest charged on delayed payment will be 7% above the "Base rate of State Bank of India" as prevailing on the last date of payment originally indicated in the Bid. The EMD shall be forfeited, if the payment is not

deposited by Buyer within the said maximum period of 30 or 40 days (as the case may be) and the Seller/Auctioneer may at his discretion, terminate the contract and order resale of the goods and forfeit all the money paid by the Buyer in respect thereof.

### **Assignment**

42. The Buyer shall not assign or sub-let this Contract or any part thereof without the written permission of the Seller/Auctioneer.

### **ROLE AND OBLIGATIONS OF THE SELLER/AUCTIONEER**

43. The Seller/Auctioneer reserves the rights to accept or reject the highest bid after assigning the reasons and the Contract of any or all the lots may be allotted by the Seller/Auctioneer to one or more than one Bidder as Seller/Auctioneer may deem fit and no claim / complaint in this regard will be entertained by the Seller/Auctioneer.
44. The Seller/Auctioneer reserves its right to demand copy of any document / License /Certificate issued by any Statutory / Govt. Authority in favour of the Bidder, if required, under any Statutory or State / Central Government Act / Law / Order / Rules etc. before the start or during the auction.
45. The Seller/Auctioneer shall allow a reasonable number of the Buyer's authorized representatives/ workmen/ trucks at the sole discretion of the Seller/Auctioneer for entering the Worksite for the purpose of removal and transportation of the goods/ materials.

### **PERIOD OF CONTRACT BETWEEN BUYER AND SELLER/AUCTIONEER**

46. The Contract shall be treated as having come into effect with the issue of Intimation Letter / Sale Acceptance Letter by the Seller/Auctioneer to the successful Bidder. The period of contract will be up to the last date of validity of the Delivery Order / Authorization Letter (or the last date of last Delivery Order /Authorization Letter in case of instalment payments being allowed) issued by the Seller/Auctioneer, as the case may be or as specified in the Bid. Unless the materials are lifted within the stipulated time, the Contract for the quantity not lifted within the stipulated time shall be deemed to have been terminated and the Seller/Auctioneer shall be at liberty to dispose them off without prejudice to its rights against the Buyer. If, further material is left in the area allotted to the Buyer after the period of contract, the Seller/Auctioneer may at its sole discretion give the extension of time to the Buyer to complete the contract in all respect and the Buyer shall remove the materials during the extended period also at the same contracted rate as provided for subject to the price escalation clause if provided in the Bid or as otherwise prescribed by the Seller/Auctioneer.



## **TERMINATION OF THE CONTRACT BY THE SELLER/AUCTIONEER**

47. In the event of Buyers' failure to fulfill any of the obligations including (but not limited to) non-lifting of the contracted goods/ materials under the agreement, non-payment of Transaction Charges to GeM etc., the Seller/Auctioneer's decision in regard to the Buyer's failure being final and binding on the Buyer, the Seller/Auctioneer shall have the full liberty to do any or all of the following: -

(a) Terminate the Contract with immediate effect for the goods/ materials/ immovable assets under the contract not taken delivery of by the Buyer as on that date in which event the Security Deposit and / or the Earnest Money (as the case may be) shall stand forfeited.

AND/OR

(b) Without prejudice to other remedies, retain and / or adjust / recover from the Bidder any amount lying with the Seller/Auctioneer to the Buyer's credit either under this contract or any other contract or which may at any time become payable/refundable to the Bidder either under this contract or any other contract, the amount of losses or damages or claim that might be incurred by the Seller/Auctioneer in selling the materials under the contract not taken delivery of at Buyers' risk and costs.

## **INTEGRITY PACT**

48. The Seller/Auctioneer as well as the Bidders /Buyer agree not to indulge in any corrupt practices including without limitation any activity or action to influence the transaction on any aspect of contract and commit to take all measures necessary to prevent corruption maintaining complete transparency and fairness in all activities related to GeM. Users agree to follow and adhere with the Integrity Pact guidelines provided on GeM Portal.

## **FORCE MAJEURE**

49. If at any time during the continuance of the Contract, the performance in whole or in part by either party of any obligation under this Contract shall be prevented or delayed by the reasons of any war, hostility, acts of the public enemy, epidemics, civil commotion, sabotage, fires, floods, explosion, quarantine restrictions, strikes, lockouts or act of God provided notice of happening of such event duly evidenced with documents is given by one party to the other within 10 (ten) days from the date of occurrence thereof, neither party shall be by reasons of such event, be entitled to terminate the Contract nor shall either party have any claim for damages against the other in respect of such non-performance or the delay in performance, and performance under the Contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist, and the decision of the Seller/Auctioneer as to whether the deliveries have been so resumed or not, shall be final and conclusive.

Provided further that if the performance in whole or part of any obligation under this contract is prevented or delayed by reason of any such event for a period exceeding 10 (ten) days, either party may at its option terminate the contract.

## **DISPUTE RESOLUTION BETWEEN BUYER AND SELLER/AUCTIONEER**

### **50. Amicable Settlement**

- i. The Parties undertake that any dispute that may arise between them shall first be dealt with in the manner stated below, irrespective of any other recourse, which any Party may have in law or in equity.
- ii. In the event of any conflict or dispute arising out of or in connection with the Contract, the Parties shall endeavour to settle such disputes amicably. If a Dispute is not resolved within 30 (thirty) days after written notice of any dispute by one Party to the other, the same shall then be resolved through the mechanism of a dispute resolution committee to be formed by the Buyer and Seller/Auctioneer and to be chaired by the nominated official of the Seller/Auctioneer. The dispute resolution committee shall resolve the matter within 30 (thirty) days of receiving the reference.

### **51. Arbitration**

In the event of any dispute arising under the terms and conditions of the Contract, which has not been settled in accordance with the procedure laid down in Clause 50 (Amicable Settlement) above, the aggrieved Party may invoke the resolution through Arbitration by sending notice to the other Party informing the invocation of Arbitration clause, given herein:

- i. In cases where the value of Contract does not exceed INR 1,00,00,000/- (Indian Rupees One Crore), the same shall be referred to the sole arbitrator mutually appointed by both the Parties.
- ii. Where the value Contract exceeds value of INR 1,00,00,000/- (Indian Rupees One Crore), the arbitration shall be conducted by a quorum of three arbitrators. Each party shall be entitled to appoint an arbitrator and the two party-appointed arbitrators shall within 30 (thirty) days appoint a third arbitrator i.e., the Presiding Arbitrator.
- iii. The arbitration shall be conducted in the English language. Arbitration proceedings can also be conducted online, as per the discretion of the Arbitral Tribunal.
- iv. The cost of the Arbitration shall be equally borne by the parties.
- v. The award of the arbitrator shall be final and binding on the parties to the Contract. The arbitration shall be governed as per Indian Arbitration and Conciliation Act, 1996, as amended up to date. The seat of arbitration shall be at the place where the principal place of business of the Seller/Auctioneer is located.
- vi. The contract shall be interpreted and governed in all respects in accordance with the laws of India. All disputes in connection with the Contract, shall be subject to the

exclusive jurisdiction of the Court within the local limits of whose jurisdiction, principal place of business of the Seller/Auctioneer is situated.

- vii. The Parties understand and agree that GeM being an Intermediary cannot be made a party to any such dispute and/or arbitration / legal / court proceedings between the Parties. In case any Buyer makes GeM a party / respondent in any case involving any dispute between Buyer and Seller/Auctioneer arising out of a concluded contract or arising out of bidding process initiated / concluded on GeM, it would be obligatory on the part of the Seller/Auctioneer to represent GeM also through their Counsel / Lawyer in the proceedings before the legal authority and ensure timely filing of replies / affidavits etc provided by GeM also through their Counsel / Lawyer before the concerned legal authority during the course of litigation. A standard reply on behalf of GeM, covering following aspects shall be incorporated in all replies / affidavits filed by the Seller/Auctioneer in such cases:

“Government e-Marketplace is a National Public Procurement Portal; an end-to-end online Marketplace for Central and State Government Ministries / Departments, Central & State Public Sector Undertakings (CPSUs & SPSUs), Autonomous institutions and Local bodies, for procurement of common use goods & services. Prima facie, the dispute in the present case appears to be between the Buyer and Seller/Auctioneer arising out a contract placed / bid created on Government e-Marketplace. As per the General Terms and Conditions of Government e-Marketplace (duly accepted by the Buyer and Seller/Auctioneer), GeM is not to be made a party to any dispute between the Buyer and the Seller/Auctioneer. As such Government e-Marketplace is liable to be deleted from the array of parties. In light of the above, we request your good self to kindly delete Government e-Marketplace from the array of parties.”

#### **LIMITATION OF LIABILITY**

52. Notwithstanding anything contained in this Contract, no party will be liable for any special, incidental or consequential damages arising out of or in connection with this agreement or any breach hereof (including for loss of data or profits, or cost of cover), whether or not such party has been advised of the possibility of such damages, and whether under a theory of contract, tort (including negligence) or otherwise; except for liabilities arising out of any violation, misappropriation or infringement of a party's intellectual property rights, or from a breach by either party of its obligation. In no event will either party's aggregate liability arising out of or in connection with this agreement or any breach hereof (whether under a theory of contract, tort (including negligence), warranty or otherwise) exceed the Contract Price entered into the Contract between the Buyer and the Seller/Auctioneer.