

(Portions which are not applicable may be deleted)

**BEFORE SHRI SOLE ARBITRATOR, MINISTRY OF LAW, JUSTICE AND
COMPANY AFFAIRS (DEPARTMENT OF LEGAL AFFAIRS) DGS&D, NEW
DELHI**

IN THE MATTER OF

BETWEEN

**UNION OF INDIA/STATE GOVERNMENT/PUBLIC UNDERTAKING.....
CLAIMANT**

AND

M/s._____ RESPONDENT

ARBITRATION CASE NO._____

STATEMENT OF CLAIM ON BEHALF OF CLAIMANT

Showeth as under:-

1.That pursuant to the tender of the respondent firm dated.....a formal acceptance of tender No.....dt.....in continuation of advance acceptance of tenders of even number dated_____ was placed on the respondent firm for the supply_____. The full details are indicated in clause_____ of the A/T. The aforesaid contract was governed by the General conditions of Contract as contained in DGS&D-68 (Revised) as amended (any other condition acceptable to be indicated).
2. That the acceptance of tender dated_____ was accepted by the respondent contractor by letter dated _____by putting up stores for inspection/delivery on_____.
3. That as per clause_____ of the A/T, the date of delivery was_____. The aforesaid D/P was later on extended without/with R/Rand denial clause on_____upto_____at the request of the contractor firm which was accepted by the respondent contractor firm.
4. That the respondent firm failed and neglected to supply the goods within the original D/P/extended D/P and hence committed a breach of the contract.
5. That because of the breach on the part of the respondent, the purchaser cancelled the contract for the unsupplied quantity on_____ at the risk and expense of the respondent firm, reserving the right to claim damages.
6. That due to breach committed by the respondent firm, the claimant suffered damages as set out below and is entitled to the said damages.

7. That the claimant had floated a market rate enquiry to the trade for ascertaining the market rate on or about the date of breach i.e._____pursuant thereto replies were received from_____. The claimant considered as rates supplies by M/s._____as representing the market rate prevailing on or about the date of breach.

OR

That no response indicating the market rate on or about the date of breach was received from the trade to the aforesaid market enquiry. However, the Department had placed another A/T on M/s._____ on_____ and had purchased identical/similar stores. These rate (s) indicate the market rate ruling on or about the date of breach.

OR

That as no market rate was available pursuant to the aforesaid enquiry the ruling price of the market on or about the date of breach has been calculated on the basis of cost structure i.e. price of raw material, wages, over-head expenses, bonus, margin of profit etc.

OR

That pursuant to the aforesaid market enquiry no rates were intimated by any of the firms. Department has also not placed any contract on or about the date of breach and it is also not possible to calculate exactly the cost structure of the goods as the goods are not market able. However, the purchaser did suffer inconvenience/damage by reason of contractor's failure to supply. Hence the claimant is entitled to claim nominal damages, which are estimated at the rate of 7 ½% of the price of the case

8. That in this way the general damages comes to Rs._____ and the aforesaid sum was claimed from the respondent firm by demand notice dated_____. On their failure to pay, dispute arose which was referred to arbitration in these proceedings.

PRAYER

Under these circumstances, it is most respectfully prayed that the learned Arbitrator may be pleased to make an award for Rs._____ in favour of the claimant and against the respondent firm. Cost of the proceedings and any other incidental relief which the learned Arbitrator deems fit in the circumstances of the case may also be granted in favour of the claimant.

The claimant reserves the right to amend, alter or modify its statement of claim as and when so advised.

CLAIMANT

Undertaking/Union of India/State Government of

Additional Legal Adviser (Lit)

Through

Additional Legal Adviser/DD (Lit)/AD

New Delhi

Dated, the _____ 19 _____

VERIFICATION

It is verified that the facts stated above statement of claim are true and correct on the basis of official records available and nothing has been concealed there from.

Deputy Director (Supplies)

LIST OF DOCUMENTS

1. Tender of the firm
2. Advance A/T and firm's acceptance by cor/conduct, if any
3. Forman A/T and firm's acceptance by cor/conduct if any.
4. A copy of the general or special conditions of contract as applicable to the acceptance of the tender as for example DGS&D-68(Revised) which is applicable to the subject A/T
5. All the A/Ls by which the D/P was extended.
6. To prove the D.O.B, documents are required to be filed to show that the aforesaid A/L has been granted on the basis of the firm's request and/or that the firm has either expressly or by conduct accepted the aforesaid A/L. If goods supplies partially-documents to show (i.e. I/Notes).
7. Documents, if any, to show admission of increase in market rate on or near about the date of breach by the contractor.
8. Cancellation letter.
 - (i) Where the claim is by proof of market rate by trade enquiry
 1. To prove actual loss, the repurchase A/T, if repurchase has been made.
 2. Circular letter to trade for market rate with list of firms to whom sent.
 3. Documents to indicate market rate on or about D.O.B. on the basis of response form trade.
 4. List of the firms who have responded to the trade circular.
 5. If the goods are of such nature whose raw material prices are fixed by some other authority like JPC or MMTC etc. the price circular issued by them during the period.
 6. Demand Notice.
 - (ii) Where the claim is by proof of market rate by A/T placed by DGS&D on or about the date of breach.
 1. To prove actual loss, the repurchase A/T if repurchase has been made.
 2. Circular letter to trade for market rate with list of firms to whom sent.
 3. List of the firms which responded to the trade circular.
 4. Documents to indicate market rate on or about the date of breach (copy of A/T or supply order on which DGS&D is relying to prove the market rate on or about the D.O.B.)
 5. Tender enquiry relating to the issue of the above A/T.
 6. Documents to show that A/T relied on have been executed/supplied without deviation and full payment made.
 7. Demand Notice.
 - (iii) where claim is on basis of @ 7.5%.

1. Documents to indicate that goods are non-marketable, i.e. specification/drawing etc.
2. Documents to prove actual loss, if repurchase has been made.
3. Demand Notice.
- (iv) Where claim is on the basis of cost structure.
 1. To prove actual loss, repurchase A/T if repurchase has been made
 2. Circular letter to trade for market rate with list of firms to whom sent.
 3. List of the firms with response on the rate circular
 4. Break up of cost as accepted by the contractor or as is normally accepted by the trade on the basis of standard cost analysis made by specified authorities (Institute of Cost and Works Accountants etc.)
 5. Cost of raw material on D.O.B.
 6. Documents to show the wage rate on/or about the date of breach or the Industrial Cost index on the respective dates which determines the basis for payment of industrial wages.
 7. Documents to show over-heads on D.O.B.
 8. Documents to show bonus rates on date of breach.
 9. Documents to establish normal margin of profit ket
By the particular trade.
 10. Demand Notice.

DRAFT FOR CLAIMS OR RISK PURCHASE

(Portions which are not applicable may be deleted).

**BEOFRE SHRI _____ SOLE ARBITRATOR, MINISTRY OF LAW,
JUSTICE AND COMPANY AFAIRS (DEPARTMENT OF LEGAL AFFAIRS)
DGS&D, NEW DELHI.**

**IN THE MATTER OF
BETWEEN**

**UNION OF INIDA/STATE GOVERNMENT/PUBLIC UNDERTAKING
.....CLAIMANT**

AND

M/S..... RESPONDENT

ARBITRATION CASE NO. _____

STATEMENT OF CLAIM ON BEHALF OF CLAIMANT

Showed as under:-

1. That pursuant to the tender of the respondent firm dated _____ a formal acceptance of tender No. _____ dt. _____ in continuation of advance acceptance of tender of even number dated _____ was placed on the respondent firm for supply of _____. The full details are indicated in clause _____ of the A/T. The aforesaid contract was governed by the General Conditions of contract as contained in DGS&D-68 (Revised) as amended/any other condition applicable to be indicated.

2. That the acceptance of tender dated _____ was accepted by the respondent contractor by letter dated _____ by putting up stores for inspection/delivery on _____.

3. That as per clause _____ of the A/T, the date of delivery was _____. The aforesaid D/P was later on extended without/with R/R and denial clauses on _____ up to _____ at the request of the contractor firm which was accepted by the respondent contractor firm.

4. That the respondent firm failed and neglected to supply the goods within the original delivery period/extended delivery period and hence committed a breach of the contract.

5. That because of the breach on the part of the respondent, the purchaser cancelled the contract for the unsupplied quantity on _____ at the risk and expense of the respondent firm reserving the right to claim damages.

6. That due to the breach of the contract committed by the respondent, the claimant had to repurchase the stores at the risk of the respondent firm. For this purpose a risk purchase tender enquiry was floated under notice to the respondent firm on _____. The responded firm also participated/did not participate in the R/P tender. But their officer could not be considered _____. The R/P A/T was placed on M/s. _____. The R/P A/T on _____ by R/P. A/T No. _____ dated _____ within six months of the date of breach.

7. Theat R/P A/T was placed on the lowest tenderer that while placing the R/P A/T on M/s. _____ the lower offer(s) of M/s. _____ have been ignored on the ground(s):-

- 1.
- 2.
- 3.

8. That the R.P A/T placed on_____ has materialized and full payment has been made to the supplier.
9. That by resorting to the risk purchase the claimant has suffered a loss amounting to Rs._____ and the same was demanded from the respondent firm on_____ and on failure to pay by the respondent firm, the dispute has arisen giving rise to the present reference to the arbitrator.
10. That the details of the calculation of the R/P loss sustained by the claimant are shown in the Annexure.

PRAYER

Under these circumstances, it is most respectfully prayed that the learned Arbitrator may be pleased to make an award for Rs._____ in favour of the claimant and against the respondent firm. Cost of the proceedings and any other incidental relief which the learned Arbitrator deems fit in the circumstances of the case may also be granted in favour of the claimant.

The claimant reserves the right to amend, alter or modify its statement of claim as and when so advised.

CLAIMANT

Undertaking/Union of India/State Government of Additional Legal Adviser(Lit).

Additional Legal Adviser(Lit)

Through

Additional Legal Advisor/DD (LIT)/Ad (Lit)

New Delhi Dated, the _____ 19 _____

VERIFICATION

It is verified that the facts stated above statement of claim are true and correct on the basis of official records available and nothing has been concealed there from.

Deputy Director (Supplies)

(In approval cases, claim for General Damages is to be preferred in the alternative.)

List of Documents

- 1 Tender of the firm.
- 2 Advance A/T and firm's acceptance, if any.
- 3 Formal A/T and firm's acceptance, if any
- 4 A copy of the general or special conditions of contract as applicable to the acceptance of tender as for example DGS&D-68 (Revised) which is applicable to the subject A/T.
- 5 All the A/Ls by which the D/P was extended.
- 6 To prove the D.O.B. documents are required to be filed to show that the aforesaid A/L has been granted on the basis of the firm's request and/or that the firm has either expressly or by conduct accepted the aforesaid A/L. If goods supplies partially, documents to show (i.e. I. Notes)
- 7 Documents, if any, to show admission of increase in market rate on or about the date of breach by the contractor.
- 8 Cancellation letter.
- 9 Notice to defaulter firm under which R/P T/E was sent to them
- 10 R/P tender enquiry and tender.
11. Advance R/P A/T.
12. Formal R.P A/T

13. If the R/P A/T is placed on the last day of six months from D.O.B. postal proof to show that it was put into transmission within time.
14. Comparative statement of R/P tenders while placing R/P A/T.
15. While placing R/P A/T if lower offers were ignored documents to substantiate the reasons for ignoring the lower officer, e.g. capacity report, banning orders etc
16. Demand Notice.
17. Documents to indicate the R/P A/T has fully materialized without deviation (File Inspection Note)
18. Document to show that full payment against the R/P A/T has been made.

DRAFT CALIMS OF LIQUIDATED DAMAGES

(Portions which are not applicable may be deleted)

BEFORE SHRI _____ SOLE ARIBITRATOR, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DEPARTMENT OF LEGAL AFFAIRS), DGS&D, NEW DELHI.

IN THE MATTER OF
BETWEEN
STATE GOVERNMENT/UNION OF INDIA/ PUBLIC UNDERTAKING.....
CLAIMANT
AND

M/S _____ RESPONDENT

ARBITRATION CASE NO. _____
STATEMETN OF CLAIM ON BEHALF OF CLAIMANT

Showeth as under:

1. That pursuant to the tender of the respondent firm dated _____ a formal acceptance tender No. _____ dated _____ in continuation of advance acceptance of tender of even number dated _____ was placed on the respondent form for supply of _____. The full details are indicated in clause _____ of the A/T. The aforesaid contract was governed by the General Conditions of Contract as contained in DGS&D-68 (Revised) as amended/any other condition applicable to be indicated.
2. That the acceptance of tender dated _____ was accepted by the respondent contractor by letter dated _____ by putting stores for inspection/delivery on _____
3. That as per clause _____ of the A/T, the date of delivery was _____. The aforesaid D/P was later on extended without/ with R/R and denial clause on _____ up to _____ at the request of the respondent contractor firm
4. That the following is the chart showing the lot No. quantity, tendered on, released on, R/R date, dated of receipt of stores by consignee and remarks:-

Lot No.	Qty. Tendered On Of stores	Released on	R/R date	Date of receipt	Remarks
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5. That is will be seen from the above table that the supplies in respect of lots _____ have been tendered within A/T D/P. THE Lot Nos. _____ have been tendered within extended D/P with R/R and denial clauses. Lot No. _____ was offered when there was no D/P.

6. That there was delay in supplying the goods and as per terms of the contract agreed between the parties, the respondent is liable to make good the loss suffered by the petitioner due to delay in supplies. The claimant has suffered loss/damages/inconveniencs quantified and claimed as liquidated damages as per Annexure 'A' amounting to Rs. _____ which is calculated @ 10% of @% of the value of the stores supplies for the delayed period/on the basis of the difference between the contract rate and the market rate on the date of delivery which amounts to Rs. _____ Liquidated Damages calculated on the basis of 2% of the value of the stores supplies as

provided in the contract clause 17 (7) (1) of DGS&D-68 (Revised) revised amount to Rs._____. Hence the lesser amount is being claimed. The L/D is not claimed by way of penalty but is a genuine pre-estimate of loss suffered.

7. That the A/T was regularized on_____ with the L/D amounting to Rs._____ which the claimant is entitled to claim and the aforesaid sum was claimed from the respondent firm on_____ and on their failure to pay dispute arose which was referred to arbitration in these proceedings.

PRAYER

Under these circumstances, it is most respectfully prayed that the learned Arbitrator may be pleased to make an award for Rs._____ in favour of the claimant and against the respondent firm. Cost of the proceedings and any other incidental relief which the learned Arbitrator deems fit in the circumstances of the case may also be granted in favour of the claimant.

The claimant reserves the right to amend, later or modify its statement of claim as and when so advised.

CLAIMANT

Undertaking/Union of India/State Government of

By
Deputy Director (Supplies)

Through

Add. LA(Lit)/DD(Lit)/AD(Lit)

New Delhi Dated
The _____,19

VERIFICATION

It is verified that the facts stated in the above statement of claim are true and correct on the basis of official records available and nothing has been concealed there from.

Deputy Director(Supplies)

LIST OF DOCUMENTS

1. Tender of the firm
2. Advance A/T and firm's acceptance, if any.
3. Formal A/T and Firm's acceptance, if any.
4. A copy of the general or special conditions of contract as applicable to the acceptance
of the tender as for example DGS&D-68(Revised) which is applicable to the subject
A/T.
5. All A/Ls by which the D/P was extended.
6. All A/Ls under which D/P has been extended with R/R and denial clauses.
7. Documents to indicate:-
 - (a) When stores were put up for inspection.

- (b) When stores were inspected and cleared from inspection.
- (c) When dispatched.
- (d) When received by consignee.

(8) Document to indicate loss/inconvenience.

(9) Documents to show delay in supplies was entirely attributable to contractor. 10. Finalization letter.

(10) Demand letter.

(11) If the case is of potential loss then documents to indicate that on the dates when the supplies were made there was lower trend in price. Documents for lower trend.

(12) Documents to show market rate on the date on which the stores were delivered.

13. Chart showing the manner in which L/D has been calculated.

14. Cost working is required to quantify the inconvenience to file before Arbitrator

15. Documents to show actual loss, if any.

16. Documents to show the loss that would have been incurred in case stores were hired etc.

DRAFT FOR CLAIM OF PRICE PREFERENCE

(Portions which are not applicable may be deleted)

BEFORE SHRI _____ SOLE ARBITRATOR, MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS, (DEPARTMENT OF LEGAL AFFAIRS), NEW DELHI.

IN THE MATTER OF ARBITRATION

BETWEEN
UNION OF INDIA/STATE GOVERNMENT/PUBLIC UNDERTAKING-----
CLAIMANT
AND

M/S _____RESPONDENT
ARBITRATION CASE NO. _____
STATEMENT OF CLAIM ON BEHALF OF CLAIMANT

Showeth as under:

1. That pursuant to the tender of the respondent firm dated _____ a formal acceptance of tender No. _____ dated _____ in continuation of advance acceptance of tender of even number dated _____ was placed on the respondent firm for the supply of _____. The full details are indicated in clause _____ of the A/T. The aforesaid contract was governed by the General Conditions of Contract as contained in DGS&D-68 @ as amended/any other condition applicable to be indicated.

2. That the acceptance of tender dated _____ was accepted by the respondent contractor by the letter dated _____/by putting up stores for inspection/delivery on _____.

3. that as per clause _____ of the A/T, the date of delivery was _____. The aforesaid D/P was later on extended without/with R/R and denial clause on _____ upto _____ at the request of the contractor-firm which was accepted by the respondent-contractor firm.

4. That clause _____ deals with the price preference which is quoted as under:-

PRICE PREFERENCE FOR EARLIER DELIVERY TO BE INTRODUCED IN FIRM A/T

5. That the D/P as mentioned in the A/T was _____.

6. That the respondent's tender quoting higher rates was given preference over the lowest acceptable tenderer for earlier delivery offered and that the respondent was fully made aware of the special circumstances under which he would be liable if he failed to adhere to the delivery dates offered and accepted by the claimant.

7. That since the firm failed to complete supplies within the original D/P as stipulated in the contract the same was extended with L/D and denial clauses on _____ from _____ to _____ and finally from _____ to _____. These amendment letters extending the D/P were accepted by the firm.

8. That the following is the chart showing the quantity put up for inspection, released by the Inspector and dispatched by the contractor firm:

Lot Qty. No.	Tendered	Released	R/R Dated No.	on on
-----------------	----------	----------	---------------	-------

9. That it would appear from the above chart that the contractor firm supplies the stores after the original D/P of _____. Hence they are liable under the price preference clause.

10. That the amount for which the respondent is liable under the price preference clause comes to Rs. _____ which the claimant is entitled against the contractor firm.

PRAYER

Under the circumstances, it is most respectfully prayed that the learned Arbitrator may be pleased to make an award for Rs. _____ in favour of the claimant and against the respondent-firm. Cost of the proceedings and any other incidental relief which the learned Arbitrator deems fit in the circumstances of the case may also be granted in favour of the claimant.

CLAIMANT

Undertaking/Union of India/State Government of

By

Deputy Director (Supplies)

Through

Addl. LA (Lit)/DD (Lit)/AD (Lit)

New Delhi Dated

The _____, 1999/2000

VERIFICATION

It is verified that the facts stated in the above statement of claim are true and correct on the basis of official records available and nothing has been concealed therefrom.

Deputy Director(Supplies)

LIST OF DOCUMENTS

1. Tender of the firm.
2. Advance A/T and firm's acceptance, if any.
3. Formal A/T and firm's acceptance, if any.
4. A copy of the general or special conditions of contract as applicable to the acceptance of tender as for example DGS&D-68 (Revised) which is applicable to the subject A/T.
5. All A/Ls by which the D/P was extended.
6. All A/Ls under which D/P has been extended with L/D and denial clauses and specific notice showing the liability under price preference clause.

7. Acceptance of A/Ls by Contractor.
8. Tender of the lowest offerer.
9. Finalisation letter
10. Demand Letter.