

# **BID PACK**

## **SALE OF THE ASSETS**

**OF**

**M/S GOPINATH WEAVERS'  
COOPERATIVE SPINNING MILLS LTD  
(GOPISPIN)  
DEBHOJ VILLAGE, BALIAPAL,  
BALASORE, ORISSA**

**Department of Public Enterprises  
For & on behalf of Director, Textiles  
Government of Orissa**



## TABLE OF CONTENTS

<b>1. INTRODUCTION AND OVERVIEW .....</b>	<b>6</b>
1.1. Offer for sale .....	6
1.2. GoO Disinvestment Programme.....	6
1.3. Objectives of Sale .....	6
1.4. Completion of Legal Formalities.....	6
1.5. Draft Sale and Purchase Agreement.....	6
1.6. Information Memorandum and Data Room .....	6
1.7. Summary of the Bid Process .....	7
1.8. Timetable.....	8
1.9. Disclaimer .....	9
<b>2. ORISSA PROFILE.....</b>	<b>10</b>
2.1. Key Facts.....	10
2.2. Public Enterprise Reform .....	10
2.3. The Orissa Industrial Policy 2007 .....	10
<b>3. THE COTTON SPINNING INDUSTRY IN ORISSA.....</b>	<b>11</b>
3.1. Overview .....	11
<b>4. M/S GOPINATH WEAVERS COOPERATIVE SPINNING MILLS LTD. ....</b>	<b>12</b>
4.1 Introduction .....	12
4.2 Location.....	12
4.3 Infrastructure .....	12
4.4 Factory and utilities .....	12
4.5 Employees.....	12
4.6 Land.....	12
4.7 Buildings and civil works .....	12
4.8 Plant and machinery.....	13
<b>5. PROCEDURES, TERMS AND CONDITIONS .....</b>	<b>16</b>
5.1. Construction and Interpretation .....	16
5.2. Definitions.....	16
5.3. Participant and related terms .....	17
5.4. Disqualification.....	17
5.5. Conditions Where Proposed Purchaser is Different from Bidder .....	17
5.6. Signatures on Documents .....	17
5.7. Confidentiality Agreement .....	18
5.8. Due Diligence Investigation and Inspection of Assets .....	18
5.9. Enquiries and Clarification of Issues during Bid Process.....	18
5.10. Comments on Draft Sale and Purchase Agreement .....	18
5.11. No Obligation to Respond .....	18
5.12. Attempts to Wrongfully Influence the Bid Process .....	18
5.13. Date of Closure for Receipt of Bid.....	18
5.14. Manner of Bid Submission .....	19
5.15. Extension of Time.....	19
5.16. Bid Register.....	19
5.17. Secure Storage of Bids.....	19
5.18. Period of Validity of Bids and Duration of Bid Process.....	19
5.19. Enquiries by DPE.....	19
5.20. Incomplete Bids .....	19
5.21. False or Misleading Statements or Material.....	19
5.22. Act as Principal .....	20
5.24. Bid must stand alone.....	20
5.25. Person May only Participate in One Bid.....	20
5.26. Opening Technical Part of Bids .....	20
5.28. Sealing of Price Part of Bid .....	20
5.29. Responsiveness and Compliance.....	20



5.30. Evaluation of Technical Part of Bid .....	21
5.31. Opening of Price Part of Bid .....	22
5.32. Statement on Conduct of Bid Process to Date .....	22
5.33. Responsiveness of Price Part of Bid.....	22
5.34. Evaluation of the Price Part of the Bid.....	22
5.35. Identification of Best Offer.....	22
5.36. Finalize Sale and Purchase Agreement .....	23
5.37. Completion of Sale and Transfer.....	23
5.38. Forfeiture of EMD .....	23
5.39. No Obligation.....	23
5.40. Exclusion of Liability for Contents of Bid Documents .....	23
5.41. Exclusion of Warranties and Representations.....	23
5.42. Reasonableness of Exclusion of Warranties and Representations .....	23
5.43. Additional Requirements.....	23
5.44. Governing Law .....	23
5.45. Language .....	24
5.46. Costs, Expenses, Fees, Transfer Charges, Stamp Duty .....	24
5.47. Bid Materials.....	24
<b>6. REQUIREMENTS FOR BID.....</b>	<b>26</b>
6.1. Manner of Bid Submission .....	26
6.2. Contents of Technical Part of the Bid envelope.....	26
6.3. Form of Technical Part of the Bid .....	27
6.4. Form of Price Part of the Bid.....	27
<b>7. DRAFT SALE &amp; PURCHASE AGREEMENT .....</b>	<b>30</b>
7.1. Construction and interpretation .....	30
7.2. Sale of the assets, consideration, title, risk and insurance .....	32
7.3. Payment.....	33
7.4. Verification of assets, stock-take and valuation.....	33
7.5. Completion.....	33
7.6. Obligations on completion.....	33
7.7. Treatment of Specified Contracts.....	33
7.8. Interest.....	34
7.9. Representations and warranties .....	34
7.10. Expert .....	35
7.11. Covenants.....	35
7.12. Employee matters .....	36
7.13. Announcements.....	36
7.14. Notices.....	36
7.15. No waiver.....	37
7.16. Costs .....	37
7.17. Assignment.....	37
7.18. Variation.....	37
7.19. Severance of agreement.....	37
7.20. Termination prior to completion .....	37
7.21. Entire agreement .....	38
7.22. Time of essence.....	38
7.23. Counterparts .....	38
7.24. Language .....	38
7.25. Governing law and dispute resolution.....	38
7.26. Effective date .....	38
<b>SCHEDULE 1.....</b>	<b>39</b>
<b>SCHEDULE 2.....</b>	<b>40</b>
<b>SCHEDULE 3.....</b>	<b>41</b>
<b>SCHEDULE 4.....</b>	<b>42</b>
<b>SCHEDULE 5.....</b>	<b>43</b>
Department of Public Enterprises	3
For & on behalf of	
Director Textiles	
Government of Orissa	



**Glossary of Abbreviations**

DPE	Department for Public Enterprises
EMD	Earnest Money Deposit
GoI	Government of India
GoO	Government of Orissa
Km	Kilometres
Gopispin	M/s Gopinath Weavers Co-operative Spinning Mills Ltd
MT	Metric Tonne, 1000 Kgs
PSU	Public Sector Undertaking
OPERP	Orissa Public Enterprise Reform Project
Qtls	Quintals, 100 Kgs
VRS	Voluntary Retirement Scheme



**PART I**

**INFORMATION MEMORANDUM  
&  
BID DOCUMENTS**

**M/S GOPINATH WEAVERS' CO-OPERATIVE  
SPINNING MILLS LTD (GOPISPIN)  
DEBHOG VILLAGE,  
BALIAPAL, BALASORE,  
ORISSA**



## 1. INTRODUCTION AND OVERVIEW

### 1.1. Offer for sale

The Government of Orissa (GoO) wishes to sell the assets of M/s Gopinath Weavers' Cooperative Spinning Mills Limited (Gopispin), located in Debhog Village, Balasore district, Orissa. GoO invites bids from the investors for the assets of the spinning mill. Investors may not revitalise the mill but will be required to carry on industrial activities at the site.

GoO is selling the Assets on an "as is, where is" basis and no warranties or representations are being given by any party in respect of the business and assets. The assets primarily comprise land, of which a significant part is recognised to be surplus for the purposes of the spinning mill, along with depreciated buildings and plant.

### 1.2. GoO Disinvestment Programme

The GoO is pursuing economic development by encouraging a vibrant market economy through an economic reform programme that includes the reform of public enterprises. The sale of assets & business of co-operative cotton spinning mill is taking place under this reform programme, by which the State Government is reducing its direct involvement in commercial activity. The Department of Public Enterprises (DPE) is conducting the programme on behalf of the Textiles & Handloom Department / Director of Textiles, Government of Orissa.

### 1.3. Objectives of Sale

The GoO wishes to encourage an entrepreneur to develop the assets of Gopispin. The approach taken in the sale of the assets of spinning mill is to bring about reform in a manner that is sensitive to public needs and concerns. The specific objectives of the GoO are to achieve the following results:

- Strengthen and expand a competitive cotton industry in Orissa or develop any other appropriate industrial activity at the site
- Unlock the unrealised industrial potential in the land at the site
- Create sustainable employment
- Optimise sales proceeds.
- Diversion of State resources from supporting commercial enterprises to higher priority uses, such as education and health.

### 1.4. Completion of Legal Formalities

The spinning mill is under a co-operative structure and before privatisation can take place certain mandatory legal formalities, stipulated under the Orissa Co-operative Societies Act, 1962, have to be completed. GoO would complete all formalities before completion of the transaction.

### 1.5. Draft Sale and Purchase Agreement

The draft Sale and Purchase Agreement included in the Document describes the transaction and the terms and conditions relating to the proposed sale and transfer of Assets. *Assets* means the Society's right, title and interest in the *land and buildings, immovable fixed assets, movable fixed assets and stocks. These terms are defined in the Draft Sale and Purchase Agreement.* The Assets are being sold on an "as is, where is" basis and no warranties or representations are being given by the DPE, the Director, Textiles, the SPINFED and the management of the spinning mill (the Society) in respect of the existence or condition of the Assets.

A bid submission must be consistent with the Information Memorandum and Bid Documents, including the form and content of the draft Sale and Purchase Agreement. **There should be specific reference to proposed changes to the draft agreement in the bid submission.**

### 1.6. Information Memorandum and Data Room

The Information Memorandum and Bid Documents contain details on all matters relating to the sale of the assets of Gopispin. Additional relevant information has been collected and is available for inspection in the data room, located at Orissa Public Enterprise Reform Project (OPERP) 8 Forest Park, Bhubaneswar 751 009.



## 1.7. Summary of the Bid Process

**a. Advertisement of Invitation to bid and registration**

Persons interested in purchasing the Assets of Gopispin are invited by notice in the media. The person / authorized representative will have to sign a Confidentiality Agreement at the time of purchase of bid pack.

**b. Due Diligence Investigation and Inspection of Assets**

DPE provides the Bidder with a letter of authority to meet the management of the spinning mill and visit the mill. Each Bidder is expected to conduct its own investigations and inspections, to take professional advice and make evaluations and decisions based solely on those investigations, inspections, information and advice. The Document and other materials available are solely to assist in that exercise.

**c. Enquiries**

All enquiries or issues concerning the privatisation of Gopispin that OPERP is unable to answer satisfactorily should be submitted in *writing or by e-mail* to:

Deputy Secretary,  
Department of P.E., Govt. of Orissa  
Bhubaneswar-751001

Tel: (0674) 2390303  
Fax: (0674) 2391981  
[e-mail-dpesec@ori.nic.in](mailto:e-mail-dpesec@ori.nic.in)

The DPE reserves the right to circulate any question together with the answer to all registered bidders.

**d. Submission of Bid in two parts envelopes**

A Bid should be submitted in writing (hard/paper copy) in two parts in separate sealed envelopes.

The first envelope shall contain:

- Information on Technical standing of the Bidder;
- Their relevant experience or how they will acquire it;
- Outlines of their plans for using the assets; and
- Earnest Money Deposit; and
- Application fees of Rs. 2,000/- and duly signed Confidentiality Agreement, if downloaded.

**The second envelope contains the Price Part of the Bid setting out the price offered for the Assets.**

**e. Date of Closure for Receipt of Bids**

The Date of Closure for submission of Bids is 15.00 hours (3.00 PM) Indian Standard Time on 04.01.2008.

**f. Earnest Money Deposit**

The Bid must be accompanied by a demand draft / pay order in favour of Department of Public Enterprises (DPE), Government of Orissa Rs 8.0 lakhs (Rupees eight lakhs only), drawn on a nationalized bank payable at Bhubaneswar.

**g. Opening of Commercial Technical and Financial Part of Bid**

The opening of the Commercial Technical and Financial Part of the Bid will take place on 04.01.2008 at 16.00 hours at DPE in the presence of bidders / their authorised representatives.



- h. **Responsiveness and Compliance - Commercial Technical and Financial Part of Bid**  
The Technical Part of each bid is examined to see if it is substantially responsive to the objectives of the Bid Process and in compliance with the terms and conditions of the Bid. If a Bid is not substantially responsive or not compliant, the entire Bid is eliminated.
- i. **Evaluation of Commercial Technical and Financial Part of Bid**  
An evaluation process will consider Bids that are substantially responsive and in compliance. The evaluation is designed to establish the credibility of the Bid. It will be conducted on the basis of the criteria and weightings set out in the Document.
- j. **Opening of Price Part of Bid**  
The Price Part of Bids will be opened in the presence of the qualified bidders who will be notified of the time and place beforehand.
- k. **Examination - Price Part of Bid**  
The Price Part of each Bid is examined to ensure that it is substantially responsive and in compliance with the procedures, terms and conditions. Examples of being not responsive, or not compliant, include conditional offers, or linking the offered price or payment to other offers or other matters.
- l. **Evaluation of Price Part of Bid**  
Responsive and compliant Price Parts of Bids are evaluated on the basis of the offered purchase price for the Assets.
- m. **Finalise Sale and Purchase Agreement and Arrangements for Completion**  
The person that submitted the best offer that has been provisionally approved by the Government must take steps to finalise the sale and purchase agreement and make arrangements to sign the sale and purchase agreement and pay the agreed purchase price on the day of executing the transfer agreement.
- n. **Completion of Sale and Transfer**  
The sale and purchase is completed with the fulfilment of all terms and conditions included in the sale & purchase agreement.

### 1.8. Timetable

Activity	Planned Date*
Date of advertisement	30.11.2007
Meeting between bidders and DPE	26.12.2007
Date of closure for receipt of bids	04.01.2008
Opening of Technical Part of Bid	04.01.2008
Evaluation report on Technical Bids	28.01.2008
Notification to unsuccessful bidders	30.01.2008
Opening of Price Part of Bid	08.02.2008
Submission of Final Evaluation Report	20.02.2008
GoO decision on preferred bidder	04.03.2008
Inform preferred bidder	05.03.2008
Negotiation and execution of Sale and Purchase Agreement and payment of contractual deposit	15.03.2008
Completion of sale and hand-over of business	31.03.2008

\* Planned dates are subject to change.



### 1.9. Disclaimer

The DPE has exercised due care and caution in the preparation of the Information Memorandum and Bid Documents. They obtained information from sources that they considered reliable, but the information has not been subject to detailed verification.

GoO, DPE, the Director, Textiles, SPINFED the spinning mill management (and their respective advisers or any of their employees, officers, agents, or other bodies under their ownership or control) each expressly disclaims, and will not be subject to any liability for the accuracy, reliability or completeness of the contents of the Information Memorandum and Bid Documents. This disclaimer also applies to the various reports available at DPE or any other disclosure provided at any time, whether referred to here or not.

This Information Memorandum and Bid Documents do not constitute a prospectus or an offer or invitation for sale to the public of securities.

Each Bidder will conduct its own investigations and inspections, to take professional advice and make evaluations and decisions based solely on those investigations, inspections, information and advice. The Bidder should not rely on the Information Memorandum, Bid Documents and all other documents available at DPE, for these purposes.

Registered Persons should note that:

- DPE, the Director, Textiles, SPINFED are not bound to accept any of the bids submitted.
- DPE reserves the right to reject bids in whole or in part, to discuss different or additional aspects with any Bidder, and to cancel or terminate this Bid process before or after the Date of Closure.
- DPE and its advisers will not be liable for any costs, damages and expenses incurred by Bidders or resulting from any actions of this type or from the bid process.
- DPE has the right to distribute further information in response to enquiries from Bidders, where this is desirable, in the interests of equal access to relevant information, but in doing so DPE need not reveal the source of the enquiry.



## 2. ORISSA PROFILE

### 2.1. Key Facts

Land area	155,707 km <sup>2</sup>
Population	36.7 million (estimate)
Capital	Bhubaneswar - population circa 550,000 (est. 2000)
Languages	Oriya is the local official language. English is widely used in Government and its agencies and in legal, financial and commercial activity.  Hindi is widely spoken, with some Bengali and Telugu.

Orissa is located on the Eastern coast of India with a coastline of 480 km bounded on the east by the Bay of Bengal, bordered on the north by Bihar and West Bengal, on the west by Madhya Pradesh, and on the south by Andhra Pradesh. Orissa became a separate state of India in 1936 and since that time it has absorbed additional Districts so that there are now 30 Districts in the State.

From Bhubaneswar airport, there are regular direct passenger services to Delhi, Kolkatta, Mumbai, Chennai, Hyderabad, Visakhapatnam and several other national destinations. The Government plans to upgrade the facility to International Airport status. The airport also provides air cargo services.

### 2.2. Public Enterprise Reform

In common with all of India, Orissa developed state-owned enterprises, or public sector undertakings (PSU) and commercial undertakings in the co-operative sector, with a centrally planned approach to the economy.

By early 2002, Orissa, like other Indian states, found itself facing a financial crisis. The demands on government funds had been rapidly increasing to meet the increase in expenditure on social services, which created difficulties for government to provide sustained support to PSUs and the co-operative enterprises. GoO also increasingly felt that, in several areas of activity, the private sector could undertake the job of owning and running enterprises equally or more efficiently than the public sector.

This change in thinking led the GoO to publish, in April 2002, a White Paper on Public Enterprise Reform. The White Paper states: "the Government of Orissa has accepted Public Enterprise reform as a part of its economic and development policy. In a larger sense the policy will be applicable, in addition to Public Enterprises, also to Cooperative Enterprises engaged in commercial activities."

The White Paper further states that the primary objectives of reform will be:

- To create competitive market conditions.
- To eliminate budgetary support for loss making PSU
- To prevent further loss of capital by undertaking speedy reorganisation of loss making PSU
- To mitigate the suffering of employees in loss making undertakings
- To enable greater private initiative and facilitate infusion of private capital into these enterprises
- To facilitate higher productivity and greater value addition for each of the factors of production
- To free the Government from those economic activities where the private sector can play an effective role

The offering for sale of the assets of Gopispin is in pursuance of this reform / divestiture policy.

### 2.3. The Orissa Industrial Policy 2007

The Policy is designed to continue to attract mining, IT and other industries to the state through industrial park development, the creation of Special Industrial Zones, new ports and infrastructure and additional power generation. Orissa now has a Single Window Mechanism for investors. The IPR-2007 is available on the Orissa Government website <[www.orissa.gov.in](http://www.orissa.gov.in)>.



### 3. THE COTTON SPINNING INDUSTRY IN ORISSA

#### 3.1. Overview

An objective of the establishment of a cotton-spinning sector in Orissa was Government's desire to meet the needs of handloom weavers. The GoO has 13 textile mills of which seven are in the co-operative sector. The status of spinning mill in the state has been depicted in the following table:

	Name of Mill	Spindles	Status
1	Oricospin	31,000	Closed
2	Kalicospin	25,000	Closed
3	Sarspin	25,000	Closed
4	Jspin	25,000	Closed
5	Uspin	25,000	Closed
6	Gopispin	15,360	Working
7	Konarkspin	-	Working
8	OTM	22,788	Liquidated
9	BTM	31,680	Closed
10	NMT*	-	Closed

\*New Mayurbhaj Textiles Limited

The Orissa State Co-operative Spinning Mill Federation Ltd (SPINFED) is the nodal agency of seven co-operative spinning mills. SPINFED assisted the mills acquire cotton and earned a commission on yarn sales. It also managed a Central Testing Laboratory in Bhubaneswar. All the mills had 25,000 spindles or more.



## 4. M/S GOPINATH WEAVERS COOPERATIVE SPINNING MILLS LTD.

### 4.1 Introduction

Gopispin was established in 1976 to create rural employment and cater for the needs of the handloom weavers. The mill operated on conversion agreements with private spinners. The equipment briefly described below was examined by APITCO, technical experts and their report is available for bidders in the data room.

### 4.2 Location

The landed property of Gopispin comprises a total area of 39.89 acres. The location is in Survey No 265/4, 223/10, 163/1 and 91/2 of Debhog Village, Balasore district, Orissa.

### 4.3 Infrastructure

The mill has power, water and sanitation, housing, surrounding walls and estate roads which the valuers have detailed.

### 4.4 Factory and utilities

The mill has a total installed capacity of 19,200 spindles but only 15,360 are in operation. Capacity utilisation is restricted to 65% due to un-maintained plant.

### 4.5 Employees

Currently the mill has 462 employees. The intention is to offer the mill without encumbrances to attract maximum investor interest and to enable new management to choose employees. The successful investor will not be required to take over any employees but may do so. Those employees not taken over by the Investor will be retrenched at the cost of GoO.

### 4.6 Land

The valuation report notes the following land:

S.No	Description	Acres	Survey Nos	Nature of use
1	Freehold – Devog Village	2.76	265/4	Gram Jangal
2	Freehold – Dantunida Village	24.92	223/10	Sarada Theen
3	Freehold – Hasimpur Village	3.59	163/1	Sarada Dui
4	Freehold – Bahabalapur Village	8.62	91/2	Gochar
Total		39.89		

### 4.7 Buildings and civil works

SI No	Item description	Total area m <sup>2</sup>
A	Main factory building:	
1	Blow room	1302.5
2	Draw frame simplex	2538.5
3	Ring frame section	2363.5
4	Reeling cone winding	1657.0
5	Cone packing	222.0
6	Cone godown	224.6
7	Yarn godown	268.0
8	Bundling and packing	371.0
9	General store	203.5
B	Ancillary building:	
10	Rotary air filter room	102.2
11	Card grinding w/s	103.5
12	Laboratory	52.0
13	Office for Tech Officer	186.0
14	Toilet	97.7
15	Time office	35.0



16	Entrance lobby	58.0
17	Humidification plant room	914.5
18	A Type quarters	
	Ground floor	698.0
	First floor	698.0
19	B Type quarters	
	Ground floor	611.4
	First floor	611.4
20	Canteen	120.0
21	Electrical control room	182.97
22	DG room	103.5
23	Security office	27.35
24	Cycle stand	189.0
25	Cotton godown	735.0
26	Compound walls	1281.0
27	Water tank	50,000 ltrs
28	Electrification	-
29	Sanitation & water supply	-

#### 4.8 Plant and machinery

The following table lists the major items of plant:

S.No	Section	Make	Qty	Year
1	Blow Room			
A	Line with 2 scutchers	Trumac	1	1990
B	Line with 2 scutchers	Trumac	1	1990
C	Rotary air filter	Trumac	1	1990
2	Carding section			
A	Carding model CM-80	Texmaco	6	1990
B	Carding model LC11/3	Laxmi	2	2001
3	Draw frame section			
A	2 deliveries	Padmatex	8	1990
4	Speed frame section			
A	120 spindless SKF	Texmaco	4	1990
B	120 spindless SKF	Laxmi	1	1990
5	Ring Frame Section	Laxmi	19	2000
A	Ring frames	Laxmi	16	2000
B	Ring frames	Laxmi	3	2000
6	Doubling section			
A	Ring frames	Retex	1	1990
7	Reeling section			
A	Reeling	Keyor	22	1990
8	Winding section			
a	Cone winding mc	Textool	3	1990
b	Auto spices	Mesdan	3	2002
c	Cheese winding mc	Textool	1	2002
9	Baling Section			
	Baling press	PSU	1	1990
	Bunding press	Keyer	2	1990
10	Humidification section			
a	Room 1 & 2			
b	Room 3			
c	Mini humidification	Batlibel	2	1990
11	Utilities			
1	Air compressor	Elgi	6	1990
A	Air compressor	Elgi	6	1990



Invitation to submit offers for Assets of Gopispin

B	Air compressor	Elgi	2	1990
2	Air dryer model	Delsir	1	2002
3	Flat grinding mc	Perfect	1	1990
4	Flat grinding mc	Perfect	1	1990
5	Bare cylinder grinding mc	Perfect	1	1990
6	Cylinder	Perfect	1	1990
7	Cots buffing mc	Sabar	1	1990
8	Cots mounting mc	C&C	1	1990
9	Draw frame mounting mc	C&T	1	1990
10	Licker in Mounting mc	Laxmi	1	2002
11	Semi central unit	Batlibei	2	1990
12	Metalic wire mounting mc	Perfect	2	1990
13	Electric welding mc	Perfect	1	1990
14	500 KVA DG set	Kirloskar	2	1990
15	Transformers	GEC	2	1990
16	MOCB	BHEL	2	1990
17	Stabilizer	Logic ct	1	2002
18	Electric cables	local	set	1990
12	SQC		set	1990
a-g	Apparatus – different	Kumar	7	1990
13	Weighing mc			
	1000 kgs	Kumar	2	1990
	100 kg	Kumar	2	1990
	300 kgs		1	
14	Electronic weighing mc	Kumar	2	2004
15	Crane for carding – 3 tons		1	2001
16	Bhunson Fans		11	1990

More comprehensive details are available in the data room.



## **PART II**

### **BID PROCEDURES**



## 5. PROCEDURES, TERMS AND CONDITIONS

These Procedures, Terms and Conditions apply to the Bid Process by which the DPE of Government of Orissa acting on behalf of the Director, Textiles is seeking to identify the best offer for the assets of Gopispin.

During the course of the Bid Process, where exceptional or unusual circumstances demand, the DPE may modify the procedures, terms and conditions and the requirements for Bids, with full and timely disclosure to Bidders of the modifications and the reasons for them.

The Procedures, Terms and Conditions are designed to ensure that Bids are given equal opportunity.

### 5.1. Construction and Interpretation

These Procedures, Terms and Conditions, together with all other documents referred to, in the Information Memorandum and Bid Document (the "Document"), shall be read as one document. Any word or expression defined or given a particular meaning, in these Procedures, Terms and Conditions shall have the same meaning in all other parts of the Document and other materials, unless the interpretation should be inconsistent with the context or expressly or implicitly excluded.

### 5.2. Definitions

In this Document, unless the context otherwise requires, the following expressions shall mean:

"Assets"	The Society's right, title and interest in i. Land and buildings ii. Immovable and Moveable Fixed Assets iii. Stocks Each as defined in the Sale and Purchase Agreement
"Bid"	A submission for the purchase of the Assets, made by the Registered Person, in compliance with the process set out in the Document.
"Bidder"	A Registered Person that submits a Bid.
"Bid Process"	The process that includes: advertisement, inviting registration to bid for the purchase of the Assets, Bid submission, examination of Bids for compliance and responsiveness, evaluation of Bids, identification of best offer, decision on whether the best offer is acceptable, agreement for completion of the sale and transfer of the Assets, completion of formalities.
"Connected Person"	Examples include, but are not limited to: (a) A person which directly or indirectly controls, is controlled by, or is under common control of: (i) The Registered Person, or (ii) The Proposed Purchaser or member of the Proposed Purchaser, where the Proposed Purchaser is different from the Registered Person; or (iii) a person in which a person described in (i) or (ii) has a direct or indirect interest; (b) Two persons are connected if not less than one third of the share capital is held or one third of the voting power at board or general meeting is capable of being exercised by or on behalf of a third person. A decision by DPE with regard to whether persons are connected will be taken based on relevant facts and after examination of the relationship between the persons.
"Controller"	A person in accordance with whose wishes or instructions another person (including a company, shareholder or a director) is accustomed to act and "control" is understood accordingly.
"Date of Closure"	15.00 hours (3 p.m.) Indian Standard Time on the latest date and time by which Bids are to be received by the DPE.
"Document"	Information Memorandum and Bid Documents for Gopispin
"Documents"	The Document and all other materials provided to Registered Persons including Technical Review Report, Scrutiny of Title Report.
"Participant"	A participant in the Bid Process is a term that includes a Registered Person, Bidder, Proposed Purchaser or a member of any of these.
"Person"	An individual, a company, corporation, society, a partnership, a trust, an unincorporated organisation, a consortium of persons, a joint venture whether incorporated as a legal entity or formed by contractual agreement, a State



	Government, or Government authority or any other entity.
"Proposed Purchaser"	Person proposed in a Bid as the purchaser of the Assets. The Proposed Purchaser must itself have legal capacity to contract for the purchase of the Assets.
"Purchaser"	Person to whom the Assets are to be sold, with whom a binding agreement is signed, from whom payment is received and to whom the Assets are transferred.
"Registered Person"	Person registered with DPE as interested in the Bid Process and signed the Confidentiality Agreement.
"Technical Bid"	The Part of the Bid containing Commercial, Technical and Financial information requested from Bidders

### 5.3. Participant and related terms

The different meaning of these terms should be noted:

*Participant*: a person participating in the process whether Registered, Bidder, Proposed Purchaser or a member of them

*Registered Person*: a person registered with DPE that is eligible to submit a Bid.

*Bidder*: a Registered Person that submits a Bid.

*Proposed Purchaser*: an individual or body corporate proposed by a Bidder in a Bid as the purchaser of the Assets

*Purchaser*: an individual or body corporate with whom a binding agreement for the sale and purchase of the Assets is executed and by which agreement payment of the purchase price for the Assets is received and the Assets are transferred.

### 5.4. Disqualification

Disqualification may take place at any time in the Bid Process from registration through to completion of the Bid Process.

Disqualification may take place before or after (a) a Bid has been examined to see if it is substantially responsive and compliant or (b) has been evaluated.

Disqualification may take place for reasons of breach of the statements in the Registration Form, Confidentiality Agreement, Cover Letter or the procedures, terms and conditions and requirements set out in the Information Memorandum and Bid Documents or any of the obligations of Registered Persons and Bidders in the Document.

A Registered Person, Bidder, Proposed Purchaser may be disqualified and the Bid will be excluded from the Bid Process.

Disqualification may lead to forfeiture of the EMD.

Disqualification is without prejudice to any other rights or remedies available to DPE, the Director, Textiles and Gopispin.

### 5.5. Conditions Where Proposed Purchaser is Different from Bidder

A Registered Person cannot take part in the Bid Process as an agent, consultant, nominee or trustee of another person, including another Registered Person or a person connected with a Registered Person. Where the Proposed Purchaser is a company that is different from the Registered Person the Bid must include verifiable documentary evidence that the Bidder either directly wholly owns the company or holds more than 50% or more of the shares and voting rights in the company.

### 5.6. Signatures on Documents

At any time where a document of any type is required to be signed as part of the Bid Process details of each signatory shall be provided in print below each signature. If a person is signing with power of attorney the document must be signed in that capacity, if a person signing with power of attorney is also participating.



### **5.7. Confidentiality Agreement**

Throughout the Bid Process, a Registered Person is bound by the terms of the Confidentiality Agreement, signed at the time receiving the bid documents.

### **5.8. Due Diligence Investigation and Inspection of Assets**

A Registered Person will have an opportunity to perform a due diligence investigation and inspection of the Assets. After pre-qualification and signing of confidentiality agreement, the DPE will provide a letter of authority to a Registered Person to visit the Assets.

### **5.9. Enquiries and Clarification of Issues during Bid Process**

There will be no scope for adjusting bids or submitting additional information after the Date of Closure so that a Registered Person must ensure that it has a full understanding of the matters set out in the Document.

Enquiries should be made as early as possible in the Bid Process. Responses to significant enquiries will be provided to all Registered Persons to ensure consistency of information but the source of the enquiry will not be revealed.

Enquiries relating to the privatisation, if satisfactory answers are not obtained from OPERP should be addressed to:

<i>Deputy Secretary</i>	<i>Tel : (0674)2390303(O)</i>
<i>Department of P.E.</i>	<i>Fax : (0674) 2391981</i>
<i>Govt. of Orissa, Bhubaneswar-751 001</i>	<i>e-mail: <a href="mailto:dpesec@ori.nic.in">dpesec@ori.nic.in</a></i>

### **5.10. Comments on Draft Sale and Purchase Agreement**

A Registered Person should take professional advice and study the Draft Sale and Purchase Agreement in the Document. A Registered Person may submit comments in writing on the Draft Sale and Purchase Agreement as part of the Bid. There is no obligation on DPE to respond to the comments or to change the draft Agreements. The DPE reserves the right to alter the Sale and Purchase Agreement after the Date of Closure or to seek additional indemnities, warranties, representations, guarantees or performance obligations from a Proposed Purchaser.

### **5.11. No Obligation to Respond**

DPE reserves the right, in its sole discretion, not to respond to any enquiries raised if it is considered inappropriate to do so and nothing in paragraphs 7.9 or 7.10 shall be taken or read as compelling or requiring DPE to respond to any enquiry or to provide any clarification.

A Registered Person shall not be granted an extension of time or other concession on the basis that DPE has not responded to an enquiry.

### **5.12. Attempts to Wrongfully Influence the Bid Process**

Any attempt to directly or indirectly influence the Bid Process at any time will lead to disqualification. After the Date of Closure, direct or indirect attempts to hold meetings, make oral requests, issue or submit material or comments relating to Bids or the Bid Process to any person will be grounds for disqualification.

### **5.13. Date of Closure for Receipt of Bid**

A Bid, complete in all respects, shall reach the DPE before **15.00 hours (3.00 p.m. Indian Standard Time) on 04.01.2008 (the "Date of Closure")**.

A Bid received after the deadline for submission of Bids on the Date of Closure shall be declared late, rejected and returned unopened to the Registered Person. No special pleadings will be accepted.

A Registered Person is responsible for the timely delivery and receipt of Bids prior to the time and Date of Closure and no liability shall attach to the DPE in this matter.

Hard (paper) versions of the Bid should be submitted.



Electronic transmission of the Bid to DPE, DoTH, the Director, Textiles, GoO or the Gopispin or to any other person by fax or e-mail at any time during the Bid Process may lead to the Bid being disqualified.

**5.14. Manner of Bid Submission**

A Bid should only be submitted to DPE. A copy of a Bid or information relating to a Bid should not be provided to any other person. Should DPE have reasonable grounds to suspect that a copy of a Bid or sensitive information from a Bid is available to a person other than the Bidder the Bid may be disqualified.

**5.15. Extension of Time**

DPE reserves the right to change the Date of Closure, but shall only exercise this right where special circumstances demand. A change shall apply to Registered Persons who shall be notified of the change, at the same time and as soon as practicable. DPE reserves the right to change the times and dates in the Bid Process timetable and shall notify Registered Persons of any changes.

**5.16. Bid Register**

The receipt of a Bid will be entered in a Bid Register maintained by the DPE, giving the date and time of receipt of the Bid and the name of the Registered Person. If the Bid is hand delivered, the name of the person delivering the Bid on behalf of the Registered Person is also recorded. A duplicate note of verification of receipt shall be issued to the Registered Person. The issuing of a receipt by DPE is not an acceptance by DPE that the Bid has been properly submitted or that the Bid is substantially responsive and compliant.

**5.17. Secure Storage of Bids**

DPE shall ensure that each Bid is held securely from the time of receipt until after the deadline for receipt of Bids on the Date of Closure. DPE shall ensure that the Price Part of the Bid shall be held securely until the opening of the Price Part of the Bid.

Only individuals authorised by DPE to examine and evaluate the Bids shall have access to the Bids throughout the Bid Process.

**5.18. Period of Validity of Bids and Duration of Bid Process**

All Bids must remain valid until six months from Closing Date. No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids on the Date of Closure and the expiration of the period of Bid validity or any extension of the Bid validity.

In exceptional circumstances, the DPE reserves the right to extend the time for identifying a Preferred Bidder or for the Director, Textiles, GoO to make a decision on accepting a Bid and the Bid validity shall be extended until accordingly.

The DPE reserves the right to terminate the Bid Process at any time.

**5.19. Enquiries by DPE**

The Bidder agrees that the DPE may, without seeking the permission of the Bidder, contact any person, make enquiries, seek confirmation, or verify any inclusion in or omission from a Bid or any matter related to a Bid, a Bidder or a member of a consortium.

**5.20. Incomplete Bids**

Each of the items listed in Part III - requirements for Submission of Technical Part of Bid and Price Part of Bid constitute an integral part of a complete Bid.

An incomplete Bid shall be regarded as not being substantially responsive or in compliance with the aims, procedures, terms and conditions and requirements of the Bid.

**5.21. False or Misleading Statements or Material**

The Registered Person agrees that at any time during the Bid Process, if DPE discovers or has reasonable grounds for suspecting a Bid contains a statement or document or that a Registered Person or member of a Proposed Purchaser makes a statement that:



- i. is not authentic; or
- ii. may have an un-authorised signature; or
- iii. has been altered without the authority or permission of the issuing body; or
- iv. has been forged, obtained by fraud or false representations or under false pretences; or
- v. is submitted in a manner calculated to deceive or mislead; or
- vi. purports to change a previously submitted statement without justification; or
- vii. contains false or inaccurate statements or information or material misrepresentation; or
- viii. contains an authorisation that is expired or has been withdrawn; then

The DPE may in its absolute discretion disqualify the Bid.

#### **5.22. Act as Principal**

No Bid shall be accepted where a person submits the Bid "in trust", as "trustee", as "agent" or as "consultant" or with any similar qualification or description.

#### **5.24. Bid must stand alone**

A Bid which is made only by reference to, related to, or dependent upon

- i. the Bid of any other person, or
- ii. the Bid for any other entity; or
- iii. any business, assets, claims of liability, agreement or condition, whether to do with the Gopispin or otherwise or sums owed to GoO for taxes, dues or any other reason may be disqualified.

#### **5.25. Person May only Participate in One Bid**

A Bidder may submit only one Bid and any person may participate in only one Bid. Where a person submits, participates in or is associated with more than one Bid, either directly or indirectly, by itself or through a Connected Person, it will cause all connected Bids to be eliminated or disqualified.

A Bid that contains alternatives, particularly with respect to Purchase Price of the Assets, shall be treated as the submission of more than one Bid and the Bid with all alternatives shall be eliminated as not responsive or compliant.

#### **5.26. Opening Technical Part of Bids**

Opening of the Technical Part of the Bid will take place at the Department of Public Enterprises 4.00 pm Indian Standard Time on 04.01.2008.

A Bidder (a Registered Person that has submitted a Bid) is entitled to attend or send authorised representatives to the opening of the Technical Parts of the Bids, with due power of attorney.

The sealed envelope containing the Price Part of the Bid is temporarily set-aside until the completion of opening the Technical Parts of the Bid.

#### **5.28. Sealing of Price Part of Bid**

After the opening of the Technical Parts of the Bid, each sealed envelope containing the Price Part of a Bid is examined by DPE and Bidders to verify that the sealed envelopes are intact and to rule out the possibility of tampering. The members of inter-departmental core group and of each Bidder that is present sign their names on the cover of the envelopes.

All the sealed envelopes containing the Price Parts of Bids are placed in a single envelope which is itself sealed and signed on its cover by the members of inter-departmental core group and representative of each Bidder that is present.

The sealed envelope (holding the sealed envelopes containing the Price Parts of the Bids) is secured in safe keeping by DPE until the time of opening of the Price Part of the Bid.

#### **5.29. Responsiveness and Compliance**

A Bid may fail to be responsive to the aims of the Bid Process or to comply with the Procedures, Terms and Conditions of the Bid Process or the requirements for submission of Bids.

Following the Bid Opening, DPE shall examine the Technical Parts of the Bids:



The DPE shall determine whether the Technical Part of the Bid is responsive and compliant in matters that include, but are not limited to the following:

- Is it compliant with the specified requirements for the contents of the Bid, the format of presentation, and the manner and method of submission;
- Is it authorised, signed and submitted in the required manner, with the appropriate powers of attorney and letters of authority;
- Is it accompanied by the required enclosures that have been authenticated and in the form required;
- Is it responsive to the aims of the Bid Process and complies with the procedures, terms and conditions and requirements of the Bid.

Failure to be responsive or compliant may be due to *statements or actions that generally seek to gain unfair advantage in the Bid.*

A Bid that is not substantially responsive or compliant will be rejected by the DPE and no opportunity will be given to make the Bid responsive or compliant by correction or withdrawal of the identified deviation or reservation.

Only those Bids determined to be substantially responsive and compliant shall be eligible to be evaluated.

**5.30. Evaluation of Technical Part of Bid**

Only information submitted forms the basis of the evaluation. A Bidder's general reputation or information presumed by the Bidder to be in the public domain cannot be assumed to be available to the evaluation. It is the sole responsibility of the Bidder to ensure that adequate information is submitted to assist an accurate evaluation.

<i>Criteria</i>	<i>Total Points</i>
<i>Bidder's general credibility, commercial capability and management experience. Ability to source funds to pay for the Assets and planned future investments.</i>	80
<i>Quality and credibility of future plans including financing. Employment plan.</i>	20
<i>Total Technical Evaluation Maximum Points</i>	100

The Technical Part of the Bid will be evaluated in accordance with the criteria and weightings set out here.

The DPE reserves the right, in its sole and absolute discretion, to evaluate and determine which Bidders and Proposed Purchasers are commercially and technically qualified.

A deficiency or other irregularity in a Bid may be waived during *evaluation*, if the substance of the Bid is not affected, or the matter is subsidiary or ancillary to the main aims of the Bid Process or the object to be achieved by the Procedures, Terms and Conditions or Requirements concerned.

During *evaluation* the DPE reserves the right, but is not obliged, to make a written request to Bidders to clarify arithmetic errors, typographical errors, ambiguities or inconsistencies in the Bid. No change in the scope of the Bid shall be sought or accepted. The responses from Bidders shall be in writing. Correction will not be permitted where it unfairly affects the competitive position of other Bids eligible for evaluation.

Each Bidder or person associated with a Bid authorises DPE to collect and use information about the Bid and Bidder from any source for the purpose of evaluation and where necessary to seek clarification.



### **5.31. Opening of Price Part of Bid**

The envelopes containing the eligible Price Part of the Bids will be opened at the DPE at 16.00 hours (4.00 pm) Indian Standard Time on 08.02.2008. Confirmation of the date and time of opening of the Bids will be communicated to all Bidders who shall be informed of the outcome of the Technical evaluation.

A person that is connected with a Bid, that has been evaluated as qualified to have the Price Part of the Bid opened, shall be entitled to attend, or send authorised representatives, to the opening of the Price Part of the Bids.

The DPE may in its absolute discretion invite media coverage of the event.

The sealed envelope containing all the envelopes with the Price Parts of the Bids will be examined by DPE and representatives of Bidders to verify that the envelope is intact and to rule out the possibility of tampering before being opened.

Each envelope containing the Price Part of the Bid is in turn examined to ensure that it is intact and to rule out the possibility of tampering. The envelopes are then opened and the name of each Bidder and the price offered per share for the Assets and business as set out on the Form of Bid shall be announced and recorded.

The Bid recorded as highest at the opening of the Price Part of the Bid need not necessarily be evaluated as the highest bid. The Bids have yet to be examined for responsiveness and compliance or evaluated and the ranking of bids can change due to elimination or disqualification of a Bid.

### **5.32. Statement on Conduct of Bid Process to Date**

After the opening of all the Price Parts of the Bids each Bidder should sign a statement regarding the opening of the Bids and the conduct of the Bid Process up to the date of the Price Part Bid Opening. The Statement shall state:

#### ***Bid for the Gopispin: Price Part of Bid***

“It is acknowledged that the Price Part of the Bids opened are those submitted. The conduct of the Bid Process to date including the opening of the Price Part of the Bids has been conducted properly”

Name of Bidder

The Statement should be signed by, or on behalf of, each of the Bidders who are present as well as by a member of the inter-departmental core group.

### **5.33. Responsiveness of Price Part of Bid**

Each Price Part of the Bid will be examined to ensure that it is substantially responsive and compliant with the Information Memorandum and Bid Documents and in particular with the Procedures, Terms and Conditions and the Requirements for Bids. Bids that are not substantially responsive and compliant will be eliminated from evaluation. Examples of matters that will lead to elimination prior to evaluation are:

- Altering the wording in the Form of Bid.
- Attaching conditions to the offer.

### **5.34. Evaluation of the Price Part of the Bid**

Eligible bids that are substantially responsive and compliant will be evaluated and ranked to identify the Best Offer.

### **5.35. Identification of Best Offer**

The Bid Process is designed to try and ensure that the Bid is the Best Offer that fulfils the aims of the transaction set out in Section I through:

- being substantially responsive and compliant in all respects;
- being commercially, technically and financially qualified;
- obtaining the highest and most attractive price and value for the Assets



- consistent with the objectives of the Bid Process. A report on the outcome of the Bid Process is submitted to the inter-departmental core group.

#### **5.36. Finalize Sale and Purchase Agreement**

The person that submitted the offer that has been provisionally approved by the GoO must take steps to finalise the sale and purchase agreement and make arrangements so as to be able to sign the sale and purchase agreement.

#### **5.37. Completion of Sale and Transfer**

The sale and purchase is completed with the fulfilment of all terms and conditions included in the agreement.

#### **5.38. Forfeiture of EMD**

If there is a failure (without sufficient cause as adjudged by DPE) to make the deposit of agreed purchase price, the EMD is forfeited. If there is failure (without sufficient cause as adjudged by DPE) to take steps to finalise the Sale and Purchase Agreement, or to sign the agreement, or to make payment of purchase price, or in the event of any attempt to make material changes by negotiation to the Bid, and in particular to change the offer for the Assets and business, then the EMD is forfeited.

#### **5.39. No Obligation**

DPE, the Director, Textiles or Gopispin are not obliged to enter a contract to sell the Assets.

DPE, the Director, Textiles or Gopispin are not bound to accept the highest price or any Bid, in respect of the Assets.

DPE, the Director, Textiles or Gopispin reserve the right to reject any or all Bids in whole or in part.

#### **5.40. Exclusion of Liability for Contents of Bid Documents**

DPE, the Director, Textiles, SPINFED or Gopispin or any of their advisers do not accept any liability for the accuracy or completeness of the contents of the Documents.

#### **5.41. Exclusion of Warranties and Representations**

No warranty or representation is given by the DPE, the Director, Textiles, SPINFED or Gopispin or their advisers in connection with the Assets or the Bid Process and it is a condition of submitting a Bid that any such warranty or representation is expressly excluded.

The Bidder agrees and accepts, that a statement, measurement, calculation, account or description contained in the Documents, any media, web site, advertisement or document of any type or other form of oral or written communication from the DPE, the Director, Textiles, SPINFED or Gopispin or their advisers or others, in respect of the Gopispin or the Assets:

- are for illustration and information purposes only, and are not taken as matters of fact;
- shall not constitute a representation, inducing a person to submit a Bid, or to enter into the sale and purchase of the Assets, or a warranty which may form part of an agreement.

#### **5.42. Reasonableness of Exclusion of Warranties and Representations**

The Bidder warrants that the exclusion of warranties and representations as provided here is reasonable.

#### **5.43. Additional Requirements**

The DPE, the Director, Textiles or Gopispin reserves the right to seek additional information, indemnities, warranties, representations or performance obligations from one or more participants in the Bid Process at any time during the Bid Process.

#### **5.44. Governing Law**

The Bid Process and all matters pertaining to the privatisation shall be subject to the law of India and the courts in Bhubaneswar shall have jurisdiction to entertain any matter concerning this transaction.



**5.45. Language**

The language of the Bid and all communications and documents in connection with the Bid shall be the English language. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the English language, in which case, for the purposes of interpretation of the Bid, the English translation shall govern.

**5.46. Costs, Expenses, Fees, Transfer Charges, Stamp Duty**

A Registered Person is responsible for its own costs and expenses from participating in the Bid Process.

Costs associated with the transfer and sale of the Assets, including stamp duty and registration charges, will be borne by the Registered Persons. In the event that the Assets are withdrawn from sale, or that the Bid Process is terminated, DPE, the Director, Textiles, SPINFED or Gopispin or their advisers shall not be liable for any costs or expenses incurred by Registered Persons, or Prospective Purchasers, in the preparation and submission of Bids, or for anything in any way related to the Bid Process. In registering interest and submitting a Bid, a Bidder disclaims and voluntarily and knowingly waives any and all rights or claims with respect to costs.

**5.47. Bid Materials**

All materials submitted as part of the Bid become the property of DPE.



## **PART III**

# **REQUIREMENTS FOR BID**



## 6. REQUIREMENTS FOR BID

This Part of the Document sets out all matters relating to the Technical Part of the Bid and the Price Part of the Bid. It describes the manner and method of submission, the contents to be included and presentation format.

A Bid must strictly comply with these obligatory requirements and failing to do so may result in elimination.

### 6.1. Manner of Bid Submission

#### A. Delivery

A Bid containing a complete set of information in the required format must be delivered to the DPE on or before the deadline on the Date of Closure being 15.00 hours (3 PM Indian Standard Time) on 04.01.2008.

#### B. Address for Delivery

The address to which the Bid is to be delivered is:

*Deputy Secretary to Government  
Department of Public Enterprises  
Government of Orissa, Bhubaneswar-751001*

#### C. Bid to be submitted, at the same time, in two parts in separate sealed envelopes:

3 copies of the Technical Part of Bid in one envelope with one marked "Original"

1 copy of Price Part of Bid in a second envelope

#### D. Packaging and Sealing of Envelope

Each Part of the Bid should be in a sealed, non-transparent envelope. The envelope should be suited to the contents. No part of the contents should be capable of being removed or read, without breaking or tearing the envelope, or forcing two adhering surfaces apart, or breaking the seal. The form of the seal may be of wax or other material that will make obvious any attempt to tamper with the envelope, or interfere with the contents.

#### E. Markings on Envelope

a. The sealed envelope with the Technical Part of the Bid shall be marked clearly on the top right corner of the envelope:

*"Technical Part of the Bid for the Assets of Gopispin"*

*Do not open before 1600 hours (4.00 pm) Indian Standard Time on 04.01.2008 Date of Closure*

- Name and Address of Bidder:

b. The sealed envelope with the Price Part of the Bid shall be marked clearly on the top right hand corner of the envelope:

*"Price Part of Bid for the Assets of Gopispin"*

*Do not open before 1600 hours (4.00 pm) Indian Standard Time on 08.02.2008.*

- Name and address of the Bidder

### 6.2. Contents of Technical Part of the Bid envelope

The following materials should be included in the sealed envelope containing the Technical Part of the Bid.

If the Bidder is not the Proposed Purchaser, for example because the Bidder has formed a new company for the purpose of the Bid then the following information must be supplied for both the Bidder and the Proposed Purchaser.



The Technical Bid envelope should contain the following:

- Cover letter on letterhead of Bidder signed by authorised representative
- Memorandum and Articles of the Bidder
- Latest audited financial statements
- Earnest Money Deposit
- 3 copies of the Technical Bid
- A bankers certificate of credit worthiness
- IT assessment / Return copy for last three years
- Any comments on the Sale and Purchase Agreement in writing

### 6.3. Form of Technical Part of the Bid

Bidders should:

- Submit all the following information
- Use the same number references as below
- **NOT** make any reference to the price of their bid

	Item	Description
	<b>Details of the Bidder</b>	
1	Name of the Bidder	
2	Business Address	
3	Telephone Numbers	
3	E-mail Address	
4	Name of Person Authorised to act in respect of the Bid	
5	Relationship/Position of authorises person with Bidder	
6	Mobile Phone Number of the authorised person	
7	E-mail address of the authorised person	
8	List the names of individual shareholders holding more than 5% of the issued share capital and their shareholdings	
9	If there are controllers of the Bidder (a controller is a person in accordance with whose wishes the Bidder/Directors/Shareholders is accustomed to act) provide the name and address of such persons	
10	Details of Directors of the Bidder if it is a company	
11	Details of management team	
12	Brief History of the Bidder	
	<b>Business Plan</b>	
13	Provide an outline of the Bidder's plans for utilising the assets of Gopispin and how they will be financed	
	<b>Sources of Finance</b>	
15	Sources of funds and evidence of availability to finance purchase of assets and future investments	

### 6.4. Form of Price Part of the Bid

Re: Assets of Gopispin

To:

**THE PRINCIPAL SECRETARY TO GOVERNMENT  
DEPARTMENT OF PUBLIC ENTERPRISES  
GOVERNMENT OF ORISSA  
BHUBANESWAR**

This Bid is submitted in response to the Invitation issued by the Department of Public Enterprises, Government of Orissa, for the Assets of Gopispin in accordance with the provisions of this Information

Department of Public Enterprises  
For & on behalf of  
Director Textiles  
Government of Orissa



Memorandum and Bid Documents issued by the Department of Public Enterprise. The Bidder / Proposed Purchaser agree and confirm that they are bound by the terms and conditions of the Information Memorandum and Bid Documents.

Full name and the address of Bidder (which must be the same as the Registered Person):

Name: .....

Address: .....

Telephone,  
e mail

**Delete where not applicable:**

The Bidder confirms that it is acting as a principal on its own account and not as agent or trustee and the Bidder and the Proposed Purchaser is the same person.

Where the Bidder is not the Proposed Purchaser state the full name and address of the Proposed Purchaser

Name: .....

Address: .....

Telephone  
e mail

[The Proposed Purchaser is 100% owned by the Bidder;]

[The Bidder holds more than 50% of the share capital and voting rights in the Proposed Purchaser.

The purchase price that the Bidder offers for the Assets [on its own behalf] / [on behalf of the Proposed Purchaser] is Rs \_\_\_\_\_. (Rupees \_\_\_\_\_ only)

The [Bidder] / [Proposed Purchaser] acknowledges that it is bound by the provisions of the Document.

The Bid shall be valid for six months and the Registrar may further extend the validity of the Bid if special circumstances demand.

**Date:**

**Signed for or on behalf of the Bidder by a duly authorised person: -----**

**Name and position held**



## **PART IV**

# **DRAFT SALE & PURCHASE AGREEMENT**



## 7. DRAFT SALE & PURCHASE AGREEMENT

THIS AGREEMENT DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2008

BETWEEN

[Name of the Mill] (the Seller), a Cooperative Society within the meaning of the Orissa Cooperative Societies Act, 1962, whose registered office is at [Address of the Mill] and acting through the [Designation of Authorised person];

AND

M/s [-----] (the "Purchaser"), a Company registered under the Companies Act, 1956 having its Registered office at [-----]

WHEREAS

- A. The Government of Orissa (GoO) is the substantial shareholder in the Seller representing more than 99% of the issued and paid up share capital.
- B. GoO acting through the [Designation of Authority] by Order of dated [Date of the Order] has formally approved the sale of the Business and Assets of the Seller.
- C. The Seller is the legal and beneficial owner of the Assets and Business and has the right, power and authority to sell and transfer the Assets and Business to the Purchaser.
- D. The Department of Public Enterprises (DPE) acting on behalf of the [Designated Authority], invited bids for the Assets and Business of the Seller by public advertisement on [-----]. Bids were to be submitted in accordance with the bid procedures and requirements of the bid process.
- E. A Bid was received from the Purchaser and as it was substantially responsive it was evaluated against the criteria set out in the published procedures.
- F. On receipt of the Bid evaluation, GoO approved the Purchaser as the preferred bidder and decided that the Seller should sell the Assets and Business to the Purchaser, subject to the terms and conditions in this Agreement.
- G. The Seller wishes to sell and the Purchaser wishes to purchase the Assets and Business subject to the terms and conditions in this Agreement.

IN CONSIDERATION OF the mutual representations, warranties, covenants and agreements contained in this Agreement and upon the terms and subject to the conditions set forth in this Agreement IT IS HEREBY AGREED AND DECLARED by and between the Parties as follows:

### 7.1. Construction and interpretation

In this Agreement and the Schedules to it unless the context otherwise requires, the following terms shall mean:

"Adviser"	Any person who has advised or assisted GoO, the, DPE and the Seller in the course of the preparation and implementation of this sale and purchase of the Assets and Business.
"Agreement"	This Agreement and the Schedules to it as varied from time to time under its terms
"Assets and Business"	The Seller's right, title and interest in the following Assets and ongoing Business: <ul style="list-style-type: none"> <li>• Premises;</li> <li>• Immovable and Movable Fixed Assets;</li> <li>• Specified Contracts (if any to be assigned by agreement between the parties);</li> <li>• Goodwill and Records;</li> <li>• Stocks;</li> </ul> Each as defined in the Agreement
"Book Debts"	All debts and other amounts owing and due to the Seller in respect of goods and services supplied in the Business as at the Transfer Time.
"Business"	The business conducted by the Seller utilising the Assets at [Location of the Mill (s)]
"Business Day"	A day on which retail banks are open for ordinary banking business in Orissa (unless clearly stated otherwise)
"Completion"	Completion of the sale and purchase of the Assets and Business in accordance with



	clause 7 of this Agreement.
"Completion Date"	----- day of----- 2007, but if the conditions set out in clause 7 have not been satisfied or have been waived, on or before such date, Completion Date shall mean such other later date as the Seller and the Purchaser may agree, but in any event, it shall be not later than 30 days after the earliest Completion Date.
"DPE"	Department of Public Enterprises, Government of Orissa.
"Encumbrance"	Includes any interest or equity of any person, including any right to acquire, an option or right of pre-emption or any mortgage, charge, pledge, lien, assignment, security interest or other security agreement.
"Excluded Assets"	Cash in hand or at the bank and all cheques and other securities representing the same; Book Debts; Any right to use or continue to use after Completion any trade or service name or mark of the Seller;
"Excluded Liabilities"	Liabilities of the Seller other than those as defined in Schedule-4 and includes without limitation; Liabilities of the Seller concerning employees arising in respect of the period prior to the Transfer Time; Liabilities of the Seller arising from the Business prior to the Transfer Time, such as creditors or sums that may be due and owing by the Seller under contract or agreement, sums that may be in dispute, including sums arising out of the acquisition by GoO or the Seller of any of the Assets.
"Expert"	An independent chartered accountant of not less than ten (10) years' standing, who shall be nominated by agreement between the DPE and the Purchaser
"Goodwill"	All the goodwill, interest and connection of the Seller in and concerning the Business together with the right to represent the Purchaser as carrying on the Business as a going concern in succession to the Seller but not including any right to the use of the name of "[Name of the Mill]." or any associated or related name.
"Hazardous Material"	Any pollutant, or any hazardous, toxic, radioactive, noxious, corrosive or caustic substance whether in solid, liquid or gaseous form.
"Immovable Fixed Assets"	All fixtures and fittings and other fixed plant, machinery, equipment and hardware physically attached to the Premises now and at the Transfer Time and set out in Schedule 1.
"Land & Buildings"	Includes land of any tenure, buildings and other structures or parts of buildings and other structures, land covered with water, and any estate, interest, easement, profits, servitude, privilege, or benefit in or other right in or interest in, over or derived from land set out in Schedule 1.
"Movable Fixed Assets"	All the plant and machinery, tools and equipment, vehicles, office furniture and equipment and other tangible assets used by the Seller in or in connection with the Business at the Transfer Time and includes the items set out in Schedule 1.
"Party"	A party to this Agreement.
"Person"	An individual, a company, a partnership, a joint venture, corporation, a trust, an unincorporated organisation or any State or Government or Government authority or any other entity.
"Premises"	The premises, particulars of which are set out in Schedule 1 (and includes any part thereof and/or any building, structure and/or works thereon).
"Purchase Price"	The consideration for the Assets and Business set out in clauses 2 and 3.
"Rs"	Indian Rupees.
"Specified Contracts"	Those contracts and contractual arrangements (if assigned by agreement of the parties) in relation to the Assets and Business details of which are set out in Schedule 3.
"Stocks"	All stocks which are set out in Schedule 2 of (a) raw materials, components and consumables including without limit, fuel, office supplies, packaging and labelling, spares and spare parts; and (b) all stocks of partly finished product and all work in progress, materials or goods in the course of manufacture, in all cases owned by the Seller, as at the Transfer Time, for the purposes of, or in connection with, the Assets and Business, including items which, although subject to reservation of title by the seller of those items, are under the control of the Seller.
"Transfer"	The transfer of the Assets and Business pursuant to this Agreement.



"Transfer Time"	4 p.m. on the Completion Date.
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The headings in this Agreement shall not affect interpretation of the Agreement.

The cover page and the tables of contents do not form part of the Agreement.

The Schedules form part of the Agreement.

References to clauses and Schedules are to clauses and Schedules of and to this Agreement. References to sub-clauses or paragraphs are, unless otherwise stated, references to sub-clauses of the clauses or paragraphs of the Schedule in which the reference appears.

The plural form of any noun shall include the singular, and the singular shall include the plural, unless the context requires otherwise. Each masculine, neuter and feminine forms of any pronoun shall include all those forms, unless the context requires otherwise. Words of inclusion shall not be construed as terms of limitation in this Agreement. References to included matters shall be regarded as non-exclusive, non-characterising illustrations.

Any references to legislation including subordinate legislation shall include that legislation as from time to time modified, re-enacted, consolidated or replaced.

No provision of the Agreement or any related document shall be construed against or interpreted to the disadvantage of any Party by any arbitration, judicial or State authority by reason of that Party having or being deemed to have structured or drafted that provision.

A reference to any document being in "agreed terms" or in "agreed form" is a reference to that document in the form signed or initialled by or on behalf of the Parties for identification.

References to the Parties shall include their respective heirs, successors in title, permitted assigns and personal representatives.

References in this Agreement to anything which any party is required to do or not to do shall include acts, defaults and omissions, whether direct or indirect, on his own account or for or through any other person, and those which he permits or suffers to be done or not done by any other person.

## **7.2. Sale of the assets, consideration, title, risk and insurance**

For the purposes of this Agreement,

The Seller shall sell and transfer and the Purchaser shall purchase the Assets and Business, free from all encumbrances, subject to the terms and conditions of this Agreement, and for the Purchase Price appearing in it.

The total consideration for the Assets and Business shall [-----] (the "Purchase Price") to be paid by the Purchaser to the [Designated Authority], Government of Orissa, which is authorised to receive the payment on behalf of the Seller. The payment shall be by way of demand draft from a bank acceptable to the [Designated Authority] and made in his favour PE.

The Purchase Price is a single price and shall be the aggregate of:

- A. [Assets & Business]
- B. the price payable for the Stocks calculated in accordance with clause 11.4.

The Seller acknowledges and agrees that the Purchaser shall not assume or have any liability or obligation in respect of the Assets and Business other than Liabilities taken over as per Schedule-3 and the Seller agrees to indemnify the Purchaser and hold it harmless against any obligation or liability of the Seller in respect of the Business.



Subject as hereinafter expressly provided, the Seller shall sell free from all encumbrances to the Purchaser and the Purchaser (with a view to carrying on the Business as a going concern in succession to the Seller) shall purchase with effect from the Transfer Time:

- Premises and the Immovable Fixed Assets;
- Movable Fixed Assets;
- The benefit (subject to the burden in so far as it relates to the period after the Completion Date) of the Specified Contracts;
- Goodwill and Records;
- Stocks;

The Assets are being sold on an “as is, where is” basis and no warranties or representations are being given by the Seller, GoO, the Registrar, DPE or their Advisers in respect of the Assets and Business.

### **7.3. Payment**

Payment of the Purchase Price for the Assets and Business shall be made by way of:[State the offer]

### **7.4. Verification of assets, stock-take and valuation**

Prior to the Completion Date, the DPE shall engage a chartered accountant to prepare a report, with working papers necessary or appropriate to understand and agree the value of the Stock, if applicable, setting out the valuation of Stock calculated on the basis of the lower of cost or net realisable value. The definition of net realisable value shall be that set out in International Accounting Practices.

### **7.5. Completion**

The sale and purchase in this Agreement shall be completed on or before the Completion Date when the events detailed in clause 7 shall take place.

If in any respect the obligations of the Seller or the Purchaser respectively are not complied with on the Completion Date the party not in default may:

- defer Completion to a date not more than 30 days after the Completion Date; or
- proceed to Completion so far as practicable without prejudice to its rights under the Agreement; or
- waive in whole or in part all or any of the events, obligations or conditions,

BUT if Completion does not take place within 30 days after the Completion Date and all reasonable steps to comply in full with the obligations within a further period of 30 days are not being taken then the Party not in default may rescind the Agreement.

### **7.6. Obligations on completion**

#### ***The Seller's Obligations***

On or before the Completion Date the Seller shall deliver or cause to be delivered to the Purchaser:

- the Stocks, Records, Goodwill and Business and all related documents of title;
- duly executed transfer(s)/conveyance(s)/assignments of the Premises (and the Immovable Fixed Assets situated there) in agreed terms together with all title deeds and documents relating thereto;
- the Moveable Fixed Assets and all documents of title and registration documents relating thereto;

#### ***Purchaser's Obligations***

On or before the Completion Date the Purchaser shall:

Pay the consideration for the Assets.

Notwithstanding Completion, this Agreement shall remain in full force and effect as regards any of its unperformed or unimplemented provisions including, without limitation, all guarantees, warranties, covenants and undertakings.

### **7.7. Treatment of Specified Contracts**

In respect of the Specified Contracts:

Department of Public Enterprises  
For & on behalf of  
Director Textiles  
Government of Orissa



The Seller shall with effect from the Transfer Date assign or hold to the order of the Purchaser or procure the assignment to the order of the Purchaser of all the Specified Contracts which are capable of assignment without the consent of other parties;

- in the case of those of the Specified Contracts not so capable of assignment the Seller shall, as soon as practicable following Completion, use all reasonable endeavours to obtain at the Seller's cost and expense, all necessary consents for the assignment of the same or to arrange the novation thereof on terms acceptable to the Purchaser; and
- in respect of the benefit of the Specified Contracts, unless and until such consents are obtained or novation is effected (and in respect of the burden of performance of the Specified Contracts after Transfer Time, unless and until such novation is effected) the Seller shall, at the option of the Purchaser, following Completion either:
- unless contractually prevented from so doing, sub-contract the same to the Purchaser on the same terms (*mutatis mutandis*) and for the same remuneration as apply to the Specified Contracts in question; or
- act in connection therewith in all respects as the Purchaser may from time to time reasonably direct;

and so that (without prejudice to the generality of the foregoing) the Purchaser shall perform the obligations and liabilities arising under the Specified Contracts in question so far as any such obligation or liability arises after the Transfer Time (provided that (i) no such obligation or liability is attributable to a breach of duty or contract of the Seller prior to the Transfer Time and (ii) such obligations have been notified by the Seller to the Purchaser prior to the date hereof) and the full benefit of all contractual rights, benefits and claims there under whether arising before or after the Transfer Time shall vest in and be held on trust by the Seller for the Purchaser absolutely.

#### **7.8. Interest**

If any sum payable by the Purchaser under Clause 3 is not paid when due such sum shall bear interest from its due date until payment is received by the [Designated Authority]. Such interest shall be paid at the same time as such sum is paid. The rate of interest will be 15% per annum calculated on a 360 day basis.

#### **7.9. Representations and warranties**

General Exclusion of the [Designated Authority] and the Seller's Representations and Warranties other than in Agreement

The Purchaser acknowledges it has not entered into this Agreement in reliance upon any representation or warranty, whether of fact or opinion or otherwise, relating to the subject matter of this Agreement or, without limitation, in reliance upon any information, warranty, statement or silence on the part of the DPE, the Seller, or any officer, employee, agent or adviser of DPE or the Seller other than representations or warranties expressly provided in this Agreement. Unless required by statute or expressly provided in this Agreement, all representations, warranties and conditions, express or implied, statutory or otherwise, in respect of the Assets and Business are expressly excluded. The Purchaser agrees that the exclusion of representations and warranties as provided here is reasonable.

#### ***Representations and warranties on the part of the Seller***

The Seller represents and warrants:

- That the Seller has full power and authority to enter into and perform this Agreement and the execution and delivery of this Agreement and the consummation of the transaction contemplated here is duly authorised and approved on the part of the Seller and the Government of Orissa.
- That this Agreement has been duly and validly executed and delivered by the Seller and constitutes a valid and binding agreement, enforceable against the Seller in accordance with its terms.

#### ***Representations and warranties on the Part of the Purchaser***

The Purchaser represents, warrants and undertakes to and for the benefit of the Seller.



- That it has full power and authority to enter into and perform this Agreement and the execution and delivery of this Agreement and the consummation of the transaction contemplated here is duly authorised and approved on the part of the Purchaser.
- That this Agreement has been duly and validly executed and delivered by the Purchaser and constitutes a valid and binding agreement, enforceable against the Purchaser in accordance with its terms.
- That no representations, warranties, assurances or statements by the Purchaser in this Agreement and no statement contained in any document, certificates, documents or other writings furnished or to be furnished to the DPE by the Purchaser or any of their respective representatives pursuant to the provisions of this Agreement contain any untrue statement of material fact or omits or will omit to state any material fact, or omits or will omit to state any fact necessary, in light of the circumstances under which it was made, in order to make the statements deliberately misleading.
- That the Business Plan, a summary of which is exhibited at Schedule 5, that was submitted to the DPE as part of the Bid Submission represents the Purchaser's investment proposals at the [Name of the Mill], acknowledges that the [Designated Authority] and the Seller have entered this agreement relying on this representation and the Purchaser warrants that is shall use its best efforts to implement the Business Plan, in its entirety within the time frame of the Plan.

#### **7.10. Expert**

In each case under this Agreement where any matter or dispute is referred to the decision of the Expert:

- the Expert shall act as an expert and not as an arbitrator;
- the Expert's decision (which shall be given in writing, stating reasons for it) shall be final and binding on the Parties;
- the Expert's costs and expenses shall be borne by the Seller and the Purchaser in such proportions as the Expert may decide to be fair and reasonable in the circumstances or, if no such decision is made by the Expert, by the Seller and the Purchaser in equal proportions.

Each Party shall promptly provide the Expert with such information as may reasonably be required to enable the Expert to reach a decision.

#### **7.11. Covenants**

From the date of this Agreement to the Completion Date, the Seller shall:

- provide the Purchaser and its employees or agents with such information as the Purchaser may from time to time reasonably request with respect to the Assets and Business and the transactions contemplated by this Agreement,
- provide the Purchaser and its assignees, officers, counsel, accountants, actuaries, and other authorised representatives access during regular business hours and upon reasonable notice to the books, records, offices, personnel, counsel, accountants and actuaries of the Assets and Business, as the Purchaser or its assignees may from time to time reasonably request,

In addition to such actions as the Seller may otherwise be required to take under this Agreement or applicable law to consummate this Agreement and the transactions contemplated in it, the Seller shall give assistance, take action, furnish information, prepare, or co-operate in preparing, execute and deliver certificates, agreements and other instruments, as the Purchaser may reasonably request, in connection with the sale and purchase of the Assets and Business.

The Seller shall provide letters to relevant authorities or give other assistance to ensure the smooth transfer or issuing of licenses and permits, to enable the Purchaser to operate the Spinning Mill.

The Purchaser agrees that it will carry out the investment proposals made in the business plan submitted as part of the bid submission and shall do so in timely manner in accordance with the time-scale in the plan. The business plan should include manpower requirements.



### 7.12. Employee matters

The Seller and the DPE shall use their best efforts to communicate with Employees of the Seller to ensure that Employees are informed about the sale of the Assets.

- After the conclusion of the transaction contemplated in this agreement, the Purchaser shall be provided with a list of employees who exercise option to work under the new management to select the number of employees as per commitment given in the bid. Those who are not selected and who have given consent to avail VRS will be given the benefits.
- Those who neither opt to work under new management nor voluntary retirement/separation scheme, will be retrenched as per law/staff regulations.
- Employees who have given consent and selected by the new management, will be sent to the new management with following safeguards;
  - Terms of conditions of service are not less favourable to the employees than those which they enjoyed under public sector management;
  - The service of the employee is not interrupted for the purpose of reckoning length of service;
  - The period service with PSU is deemed to be service with the new management;
  - There shall be no retrenchment at least for a period of one year from the date of takeover of operation by the new management;
  - The new management may however administer a Voluntary Retirement Scheme, which ensures at least the minimum package of benefits available to the employees of the PSUs at the time of take over

In case the Purchaser intends to hire extra manpower after the Closing Date, every effort must be made by the Purchaser to rehire from those separated from the Mill before the Closing date through VRS or VSS or must give preference to local workers.

### 7.13. Announcements

Except as required by law, the Purchaser shall not make any announcements or disclosures as to the subject matter of this Agreement or any matter arising from it without the prior written approval of the DPE. Approval in this matter shall not be unreasonably withheld.

### 7.14. Notices

Every notice required or contemplated by this Agreement shall be given in writing and shall be sufficiently served and deemed to have been received and given:

- a. delivered by hand, effective when received, or
- b. sent by postage prepaid registered or certified mail effective on the date it is officially recorded as delivered by return receipt or equivalent, or
- c. sent by courier, effective on the seventh Business Day (in the location to which it is sent) after delivery into the hands of the courier or
- d. sent by e mail/facsimile effective at the time of transmission if within normal business hours of the addressee and, if not, at 10 am on the Business Day (in the location to which the notice is sent and the times are those in that location) after the date of transmission.

A notice sent by e mail/facsimile should be confirmed by letter sent by courier. Where documentary evidence exists that a confirmatory letter was dispatched non-receipt of that letter does not invalidate the notice sent by e mail/facsimile.

In each case the notice is to be addressed to the party to whom intended at the address (which includes an e mail address/facsimile number) specified here or at some other address as the intended recipient shall have designated by written notice.

The addresses of the Parties are:

The Seller  
For the Attention of

DPE

For the Attention of

The Deputy Secretary to Government,

Department of Public Enterprises  
For & on behalf of  
Director Textiles  
Government of Orissa



Department of Public Enterprises  
Orissa State Secretariat, Bhubaneswar  
Tel Phone: (0674) 2390303, Fax: (0674) 2391981

**THE PURCHASER:**

For the Attention of:

**7.15. No waiver**

No failure or delay by the Seller or the Purchaser in exercising any of their powers, rights, privileges or remedies under this Agreement shall operate as a waiver of those powers, rights, privileges or remedies and no waiver shall be effective unless in writing. Failure or delay in exercising any single or partial exercise of any such powers, rights, privileges or remedies shall not preclude any other or further exercise of them. No waiver at any time of any breach of any of the terms and conditions of this Agreement shall be interpreted as a waiver of any subsequent breach, whether of the same or of any other terms and conditions of this Agreement. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

**7.16. Costs**

Each of the Parties shall each bear and pay its own costs and expenses incurred in connection with the preparation and implementation of this agreement. Any registration fees, taxes or stamp duty payable on the transfer of the Assets and Business shall be borne by the Purchaser.

The Purchaser agrees that the cost and expenses of removing unwanted plant, machinery, equipment or materials and the like from the Premises shall be for the account of the Purchaser and the Seller shall have no liability for these costs and expenses.

**7.17. Assignment**

This Agreement shall be binding upon and ensure for the benefit of the successors or permitted assigns of the Parties.

The Seller may at any time assign this agreement to GoO or a nominee of GoO but this agreement shall not be capable of being assigned by the Purchaser without the prior written consent of the Seller or its assign.

**7.18. Variation**

No variation of this Agreement shall be effective unless it is in writing and signed by (or by some person duly authorised by) each of the Parties.

**7.19. Severance of agreement**

If any part of this Agreement is found by any court or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

**7.20. Termination prior to completion**

This Agreement may be terminated at any time prior to Completion:

- By the mutual written consent of the Seller and the Purchaser:
- By the Seller in writing, without liability, if the Purchaser shall:
  - fail to perform in any material respect its agreements contained in this Agreement which are required to be performed by it at the Completion Date or failing Completion on the Completion Date within thirty days of the Completion Date, or
  - materially breach any of its representations, warranties or covenants contained in this Agreement, which failure or breach is not cured within 30 days of the Completion Date and where the Seller had notified the Purchaser in writing of the material breach and the Seller's intent to terminate this Agreement pursuant to this sub-paragraph (b),
- By the Purchaser in writing, without liability, if the Seller shall



- fail to perform in any material respect its agreements contained in this Agreement which are required to be performed by it on or prior to the Completion Date, or
- materially breach any of its representations, warranties or covenants contained in, this Agreement which failure or breach is not cured within 30 days of the Completion Date and where the Purchaser has notified the Seller in writing of the breach and its intent to terminate this Agreement pursuant to this sub-paragraph

Termination of this Agreement pursuant to this clause shall terminate all obligations of the Parties except for where the termination is under clause 20.1 (b) the sum of Rs... and the Earnest Money Deposit of Rs. 20 lakhs to the DPE, obligations under clauses 11.13 (Announcements) and 11.16 (Costs) provided, however, that termination pursuant to sub-paragraph (b) or (c) of clause 20.1 shall not relieve a defaulting or breaching party from any liability of any party.

**7.21. Entire agreement**

This Agreement constitutes the entire agreement made between the parties and there are no representations, promises, terms, conditions or obligations, oral or written, express or implied other than those contained in this Agreement and no variations of the Agreement shall be effective unless made in writing and signed by or on behalf of all Parties. All prior discussions and writings between the Parties with respect to the subject of this Agreement are replaced by this Agreement.

**7.22. Time of essence**

Time shall be of the essence of this Agreement, both as regards the dates and periods specifically mentioned and as to any dates and periods which may be substituted by agreement in writing between or on behalf of the Seller and the Purchaser.

**7.23. Counterparts**

This Agreement may be executed in counterparts each of which, when executed is deemed to be an original.

**7.24. Language**

The English language shall be the authentic language of this Agreement.

**7.25. Governing law and dispute resolution**

This agreement shall be governed by, and construed in accordance with the laws of India and in the jurisdiction of the courts at Bhubaneswar.

If there is a dispute between the parties in respect of any matter arising out of this agreement the matter shall be referred to arbitration in accordance with the Arbitration and Conciliation Act 1996. The venue for arbitration shall be Bhubaneswar.

**7.26. Effective date**

This agreement shall come into force on the date of delivery and execution.

*In Witness Whereof the Parties have caused this Agreement to be signed and executed by their duly authorised representatives the day and year first above written*

Signed for and on behalf of the Seller.

Authorised Director

In the presence of :

1.

2.

Signed for on behalf of \_\_\_\_\_



Authorised Director

In the presence of:

- 1.
- 2.

## **SCHEDULE 1**

THE PREMISES, THE IMMOVABLE FIXED ASSETS, THE MOVABLE FIXED ASSETS



## **SCHEDULE 2**

### **STOCKS**

All stocks of raw materials, components and consumables including, without limit, fuel, office supplies, packaging and labelling, spares and spare parts; and

All stocks of partly finished goods and all work-in-progress



**SCHEDULE 3**

SPECIFIED CONTRACTS



**SCHEDULE 4**

LIABILITIES TAKEN OVER



**SCHEDULE 5**

**PURCHASERS' BUSINESS PLAN**

