

EPC execution of Power House Electro-Mechanical Works for Heo Hydro Electric Project (240 MW), Arunachal Pradesh, India



ISO: 9001, 14001,  
& 45001

Bid Document  
Sec-IV: General Conditions of Contract

## **Sec-IV: General Terms & Conditions of Contract**

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## GENERAL TERMS AND CONDITIONS OF THE CONTRACT

### 1.0 DEFINITION OF TERMS:

In this Contract, the following terms shall be interpreted as indicated:

- 1) The "Government" shall mean the Government of India or any State Government, as the case may be.
- 2) The "Chairman and Managing Director" shall mean the administrative head of the North Eastern Electric Power Corporation Limited, Shillong.
- 3) The "Purchaser" / "Corporation"/ "Owner" / "NEEPCO" shall mean the North Eastern Electric Power Corporation Limited, Shillong and shall include its legal representatives, successors and permitted assigns.
- 4) "Contract" means the Agreement entered into between the Purchaser and the Contractor as per the "Contract Agreement" signed between the parties including all attachments and appendices thereto and all documents incorporated by reference therein.
- 5) The "Contractor" or "Manufacturer" shall mean the Bidder whose bid has been accepted by the Purchaser for award of works and shall include such successful bidder's legal representatives, successors and permitted assigns.
- 6) The "Sub-Contractors" shall mean the person firm or company named in the Contract for any part of the work or any party to whom any part of the Contract has been sublet by the Contractor with the consent in writing of the Purchaser and will include the legal representatives, successors and permitted assigns.
- 7) The "Engineer"/ "Engineer-in-Charge" shall mean the Engineer Officer appointed by the Corporation to sign or cause to sign the Contract Agreement on behalf of the Corporation and / or the Engineer Officer appointed by the Corporation or its duly authorized representative to direct, supervise and be in charge of the works for the purpose of the Contract.
- 8) The "Consultant" shall mean the firm or the person as may be duly appointed by the Purchaser to act as consulting engineer.
- 9) The terms "Equipment", "Stores" and "Materials" shall mean and include plant, stores and materials to be supplied by the Contractor under the Contract.
- 10) "Works" means and includes the materials to be supplied and the work to be executed as defined and set out in the specifications and includes all extra work, additions, substitutions and variations ordered by the Engineer - in - Charge in accordance with the provisions of the Contract and any other items not specifically written but essential to complete the entire activity defined in the Contract.
- 11) The word "Specifications" shall mean collectively, all the terms and stipulations contained in this book including the conditions of Contract, technical specifications and Annexure thereto and list of corrections and amendments.
- 12) "Site" shall mean and include the land on, under, in, or through which the works are to be executed or carried out and such lands as may be agreed upon between the Corporation and the Contractor to be used by the Contractor or Purchaser in the performance of the Contract.

- 13) The term “Supply Price Component” of the Contract Price shall mean the Ex Works price of the equipment.
- 14) The term “Erection Price Component” of the Contract Price shall mean the value of the activities relating to Erection, testing, commissioning and putting the equipment into successful operation, including all the tests to be carried out by the Contractor at site and cost of Insurance for storage, erection, testing, commissioning etc.
- 15) “Manufacturer’s Works” or “Contractor’s Works” shall mean the place of work used by the manufacturer, the Contractor or the Sub-Contractors for the performance of the work.
- 16) “Inspector” shall mean the Purchaser or any other person nominated by the Purchaser from time to time, to inspect the equipment, stores and the works under the Contract and/or the duly authorized representative of the Purchaser.
- 17) “Letter of Intent” shall mean the official notice issued by the Purchaser notifying the Contractor that his proposal / bid is accepted, and that the Contractor is required to sign the Contract Agreement. The LOI shall deem to be the effective date of the contract.
- 18) Detailed Order shall mean the formal award of the Order, which shall be issued by the Executive Director (Contracts & Procurement), NEEPCO, on fulfillment of the terms and conditions stipulated in the LOI.
- 19) “Month” shall mean calendar month.
- 20) “Day” or “Days” unless herein otherwise expressly defined, shall mean calendar day or days of 24 hours each.
- 21) A ‘week’ shall mean a continuous period of 7 (seven) days.
- 22) ‘Writing’ or ‘Written’ shall include any manuscripts, typewritten or printed statement under or over signature and/or seal as the case may be.
- 23) When the words “Approved”, “Subject to Approval”, “Satisfactory”, “Equal To”, “Proper”, “Requested”, “As directed”, “Where Directed”, “When Directed”, “Determined By”, “Accepted”, “Permitted” or words or phrases of like importance are used, the approval, judgment, direction etc is understood to be a function of the Purchaser/Engineer.
- 24) “Zero Date” shall mean the date of issue of Letter of Intent for the work.
- 25) “Tests on Completion” shall mean such tests as prescribed in the Contract in the relevant codes or standards, to be performed by the Contractor before the works are taken over by the Purchaser.
- 26) The term “Final Acceptance” shall mean the Purchaser’s written acceptance of the equipment after successful erection, testing and completion of the equipment by the Purchaser under supervision of the Contractor,
- 27) “Warranty Period” shall mean the period during which the Contractor shall remain liable for repair or replacement of any defective part of the work performed under the Contract without any financial implication on the part of the Purchaser.
- 28) “Drawings”, “Plans” shall mean any or all:
  - a) Drawings furnished by the Purchaser as basis for the bid,
  - b) Supplementary drawings furnished by the Purchaser to clarify and to define in greater detail the intent of the Contract,

- c) Drawings submitted by the Contractor with his bid provided such drawings are approved/accepted by the Purchaser,
  - d) Drawings furnished by the Purchaser to the Contractor during the progress of the work, and
  - e) Engineering data and drawings submitted by the Contractor during the progress of the work provided such drawings are approved by the Engineer.
- 29) “Codes” shall mean the following, including the latest amendments, and/or replacements, if any:
- a) Indian Electricity Act, 2003, and rules and regulations thereunder.
  - b) IEC codes.
  - c) Indian Factory Act. 1948 and rules and regulations made thereunder.
  - d) Indian Explosives Act, 1884, and rules and regulations made thereunder
  - e) IEEE codes.
  - f) Bureau of Indian Standards.
  - g) Other internationally approved standards and/or rules and regulations touching the subject matter of the Contract.
  - h) Any other act code/standard published by the Government of India/other agencies and institutions having a bearing over the performance of the Contract.
- 30) Words imparting the singular only shall also include the plural and vice versa where the context so requires.
- 31) Words imparting ‘persons’ shall include firms, companies, corporations and association or body of individuals, whether incorporated or not.
- 32) Terms and expressions not herein defined shall have the same meaning as are assigned to them in the Indian Sale of Goods Act (1930), failing that in the Indian Contract Act (1872) and failing that in the General Clause Act (1897) including amendments thereof, if any.
- 33) In addition to the above, the following definitions shall also apply:
- a) “All equipment and materials” to be supplied shall also mean “Goods”.
  - b) “Constructed” shall also mean “erected and commissioned”.
  - c) “Latent Defects” are inherent defects in design workmanship of material which surface after the warranty period and which could not be found during normal checks prior to the end of the warranty period and which hinder/endanger the normal operation of the equipment.
- 34) “Purchaser’s Representative” shall mean any person, persons or consulting firm appointed and remunerated by the Purchaser to supervise the work, inspect and examine workmanship and test materials/equipment to be supplied.
- 35) “FOR Cost” shall mean the cost of equipment / material free on rail / road carrier Ex Works, exclusive of Taxes & Duties in respect of direct transaction between the Purchaser and the Contractor.
- 36) “FOB Cost” shall mean the cost of materials / equipment free on board defined in the latest edition of INCOTERMS.
- 37) “CIF Cost” shall mean the cost of materials / equipment including Insurance and sea freight as defined in the latest edition of INCOTERMS.

- 38) The "Delivery of Plant/Equipment" shall be deemed to take place on delivery of the plant/equipment in accordance with the terms of the Contract complete in all respects after approval by the Engineer of the report of the Inspector, as per the terms of the Contract.
- 39) "Bid Price" shall mean the price quoted by each bidder in his proposal for the complete scope of works.
- 40) "Differential Price" shall mean the summation of the equalizing elements of price for parameter differential or deficiencies in equipment and services determined from the Bidder's proposal.
- 41) "Cost Compensation for Deviations" shall mean the Rupee value of deviations from Bid Documents as determined from the bidder's proposal. This shall also include the Rupee value for shortage in scope. The extent of compensation on account of deviations as determined by the owner will be final and binding.
- 42) "IEEMA" shall mean the "Indian Electrical & Electronics Manufacturers' Association".
- 43) The word "Tonnes / MT" wherever used in these specifications shall mean Metric Tonne or 1000 kg.
- 44) Words imparting the singular number shall include the plural number, and plural the singular, and the words imparting the masculine gender shall include the feminine and neuter gender where the context so requires.
- 45) "Labourer" shall mean all categories of labour engaged by the Contractor, his sub-Contractors and his piece workers for work in connection with the execution of the work covered by the specifications. All these labourers will be deemed to be employed primarily by the Contractor.
- 46) "Fiscal Year" shall mean a year beginning on 1<sup>st</sup> (first) April and ending on 31<sup>st</sup> (Thirty-first) March of the succeeding year.
- 47) The clause headings shall not limit, alter or affect the meaning of the specifications, conditions of bidding on these conditions.
- 48) The "Department" means the North Eastern Electric Power Corporation Limited, represented by the Executive Director (Contracts & Procurement) or Engineer-in-Charge, wherever applicable.
- 49) The "Corporation's Stores" shall mean the stores owned by the North Eastern Electric Power Corporation Limited at different locations of the Plant.
- 50) "Project" refers to Electro-Mechanical Works of 240 MW Heo Hydro Electric Project, Arunachal Pradesh, India.
- 51) "Authorised Representative" of the Corporation shall mean any authorised officer of the Corporation from the level of Junior Engineer and above.
- 52) "Commissioning" shall mean the satisfactory operation of the equipments / work as specified after all necessary initial tests, checks and adjustment, pre-commissioning required at site and in operation as specified in technical specification.
- 53) "Commercial Use" shall mean that use of the work, which the Contract contemplates or of which it is commercially capable.
- 54) "Approval" shall mean the written approval of the Engineer- in- charge and of the statutory authorities wherever such authorities are specified by any codes or otherwise.
- 55) "Writing" shall include any manuscript type written or printed statement,



- under or over signature or seal, as the case may be.
- 56) Words imparting persons shall include Firms, Companies, Corporations and other bodies whether incorporated or not.
- 57) The terms used under Technical Specification and Acceptance test will have the meaning given to them in relevant issues of the Bureau of Indian Standards or any other authoritative standards as mentioned in the specification. Codes or their approval equals applicable on the date of the Letter of Intent.
- 58) Date of Agreement shall mean the date on which both the parties have signed the Contract Agreement or any other date mentioned in the Contract / letter of intent as the effective date of Contract whichever is earlier.
- 59) "Performance and Guarantee Test" shall mean all tests to demonstrate capacity efficiency and operating characteristics as specified in the bid documents.
- 60) "Commercial Use" or "Commercial Operation" shall mean the conditions of operation in which the complete equipment & materials covered under the Contract are officially declared by the Purchaser to be available for continuous operation upto the rated capacity. Such declaration by the Purchaser however, shall not relieve or prejudice any of the Contractors obligations under the Contract.
- 61) "Purchaser's Representative" shall mean any person, persons or consulting firm appointed and remunerated by the Purchaser to supervise the work, inspect and examine workmanship and test materials / equipment to be supplied.
- 62) Wherever figures are shown after the words "Elevation" "Reduced Level" or an abbreviation thereof or when figures representing "Elevations" or Reduced Level" are given, they shall mean the height in meters based on bench marks established by the North Eastern Electric Power Corporation Limited, near Dam sites.
- 63) Tender Drawings: - The terms "tender drawings" refers to the drawings made part of the bid documents.
- 64) Detailed Drawings: -If necessary, additional detailed drawings may be furnished to the Contractor for execution of the work and they will form part of the Contract.
- 65) Contract Value / Contract Price shall mean the amount at which a particular Contract is awarded.
- 66) Value of Work done shall mean BOQ multiplied by Unit rates.
- 67) "Facilities" shall mean all Plant and Equipment, Tools and works to be supplied.
- 68) "Plant and Equipment" shall mean permanent plant, equipment, machinery, apparatus, system, articles and things of all kinds to be provided and incorporated in the facilities by the Contractor under this Contract including the spare parts, tools and tackles to be supplied by the Contractor but does not include Contractor's equipment.



## 2. CONTRACTOR TO INFORM HIMSELF FULLY:

- 2.1 The Contractor shall be deemed to have carefully examined the general conditions, specification and schedules and also to have satisfied himself as to the nature and character of the plant and equipment, as the case may be, to be supplied under the Contract or work to be executed and, wherever necessary, of the site condition and the relevant matters and details. He is deemed to have understood the entire scope, nature and magnitude of work in accordance with the Contract documents and shall be responsible for any defect, omission or error in the bid documents, unless he has pointed out the same before opening of the Price Bids. Any information thus or otherwise obtained from the Purchaser or the Engineer-in-Charge shall not, in any way, relieve the Contractor of his responsibility for supplying the plant and equipment and executing the work in terms of the Contract, including all details and incidental works and supply of all accessories or apparatus which may not have been specifically mentioned in the Contract, but is necessary for ensuring safe and efficient working of the equipment.
- 2.2 If the Contractor shall have any doubt as to the meaning of any portion of the scope of the Contract, he shall, before signing / accepting it, set forth the particulars thereof and submit them to the Engineer-in-Charge in writing in order to remove such defect, error, omission etc., by the Purchaser.
- 2.3 Any change in layout due to site conditions or technological requirement shall be binding on the Contractor and no extra claim on this account shall be entertained.
- 2.4 The documents forming the Contract shall be interpreted in the following **Order of Priority**: -
- a. Agreement.
  - b. Letter of acceptance and notice to proceed with the works.
  - c. Detailed Order.
  - d. Letter of Intent
  - e. Common Acceptable Terms and Conditions and acceptance of modified technical data / parameters which are accepted by the Purchaser.
  - f. Contractor's bid.
  - g. Contract data.
  - h. General terms and Conditions of Contract, Conditions of Contract for Erection.
  - i. Technical Specifications.
  - j. Drawings.
  - k. Bill of Quantities/ Schedule of Requirements.
  - l. Any other accepted documents listed in the Contract as forming part of the Contract.

### **3. USE OF CONTRACT DOCUMENTS AND INFORMATION:**

- 3.1 The Contractor, without the Purchaser's prior written consent, shall not disclose the Contract, or any provisions thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than the person employed by the Contractor in the performance of the Contract. Disclosures to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 3.2 The Contractor, without the Purchaser's prior written consent, shall not make use of any document or information enumerated in various Contract documents except for the purpose of performing the Contract.
- 3.3 Any document, other than the Contract itself, enumerated in various Contract documents, shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Contractor's performance under the contract if so required by the Purchaser.
- 3.4 All designs, drawings, works and other technical information relating to works including any software provided by the Contractor under the Contract and the intellectual property rights therein made or acquired by the Contractor prior to or during the preparation of the proposals or tender or in course of work on the Contract shall be and remain the property of the Contractor.
- 3.5 Such technical information shall be made confidential by the Purchaser, its employees, agents or sub-Contractor and shall not be copied, modified or disclosed by any of them and shall not be used by them otherwise than for the purpose of operation and maintenance of the plant.
- 3.6 From the effective date of the Contract, the Contractor grants to the Purchaser, the non-exclusive and non-transferable right to use the technical information including software provided by the Contractor for the life of the works under the Contract, for the purpose of their operation and maintenance and for no other purposes.

### **4. PERFORMANCE GUARANTEE:**

- 4.1 Within 30(thirty) days from the date of issue of Letter of Award, / Letter of Intent, the Contractor shall furnish a Bank Guarantee in the prescribed format, for an amount equal to 10% (ten percent) of the Contract value by way of Guarantee for the due and faithful performance of the Agreement and for the due and faithful performance of the Letter of Intent along with the other terms and conditions agreed to.
- 4.2 The Bank Guarantee shall be initially valid for such period to cover 90 (ninety) days after the warranty period as per Agreement.
- 4.3 The Bank Guarantee for amounts expressed in Indian Rupees shall be acceptable only if they are issued by the State Bank of India or any of its subsidiaries or a Nationalised / Scheduled Bank in India through any of its branches in India, or a foreign bank notified as a Scheduled Bank under the provisions of the Indian Banking

- Companies Regulation Act through any of its branches in India, provided that any Guarantee issued by such foreign bank shall be acceptable only after its confirmation by the State Bank of India.
- 4.4 The prescribed proforma for the Bank Guarantee for Contract performance is enclosed at Sec-VI, Volume-I of this bid document
- 4.5 The Contractor shall, on receipt of written instruction from the Purchaser, at his own cost, get the validity period of Bank Guarantee furnished by him, extended from time to time as per the instructions of the Purchaser and shall furnish the extended / revised Bank Guarantee or any extension thereof. In case the extended / revised Bank Guarantee is not received by the Purchaser within the specified period, the Purchaser, entirely at his discretion, shall be at liberty to encash the aforesaid Bank Guarantee.
- 4.6 The Performance Guarantee shall cover additionally the following guarantees to the Purchaser:
- 4.6.1 The successful and satisfactory operation of the equipment after erection under the Contract as per the specifications and documents.
- 4.6.2 That the equipment provided shall be free from all defects in design, material and workmanship and shall, upon written notice from the Purchaser, fully remedy free of expenses to the Purchaser such defects as developed under the normal use of the said equipment within the period of guarantee, specified in the volume.
- 4.7 The Bank Guarantee submitted in lieu of Performance Guarantee will be returned to the Contractor without any interest at the end of the 90 (ninety) days after the Warranty Period, subject to fulfillment of the work in all respects.
- 4.8 It is expressly understood and agreed that the amount of Performance Guarantee shall not be construed as limiting factor / amount for various liabilities under the Contract.

**5. DETAILED WORK ORDER:**

After issue of the Letter of Intent and on receipt of its unconditional acceptance by the successful bidder, the Purchaser shall issue the Detailed Work Order.

Detailed Order shall cover the entire scope for supply of all plant, equipment, materials and other components, as defined in the bid documents including the scope of work & service covering inland transportation, intermediate storage and preservation, delivery to site, insurance, unloading, storage, preservation, handling at site, erection, testing and commissioning including Performance Guarantee Test, as defined in the bid documents. This order shall also cover all activities other than those in the scope of the Detailed Order.

**6. CONTRACT AGREEMENT:**

- 6.1 After issue of the Detailed Work Order and on receipt of an unconditional acceptance, the Purchaser shall prepare the Agreement on stamped paper and the Contractor will be informed for signing of the Agreement on a notified date. Signing of the Contract Agreement will be done in the Office of the Executive Director (Contracts and Procurement), North Eastern Electric Power Corporation Limited, Shillong.
- 6.2 It is expressly understood and agreed by and between the Purchaser and the Contractor

that the Purchaser is entering into this Contract Agreement solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this Agreement and has no liabilities, obligations or rights hereunder. It is also expressly understood and agreed that the Purchaser is an independent legal entity with power and authority to enter into Contracts agreements solely on its own behalf under the applicable laws of India and the general principles of Contract law. The Contractor expressly agrees, acknowledges and understands that the Purchaser is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the Contract. Accordingly, the Contractor shall expressly waive, release and forego any and all actions or claims including cross claims, impleader claims or counterclaims against the Government of India arising out of this Contract and covenants not to sue the Government of India as to any manner, claim, cause of action or thing whatsoever arising out of /or under this Contract Agreement.

- 6.3 The Contractor shall be required to sign the Contract Agreement in 3 (three) copies, along with appropriate Power of Attorney and other requisite materials. Until a formal Agreement is executed, the Letter of Intent, Detailed Order read in conjunction with the bidding documents will constitute a binding Contract. After signing of the Contract Agreement, 12(twelve) true copies of the same shall have to be made by the Contractor and shall be submitted within 30(thirty) days from the date of signing of the Contract Agreement along with a soft copy of the agreement in pdf format to the office of the Executive Director, Contracts & Procurement, NEEPCO Ltd, Shillong.
- 6.4 The Contractor shall be required to bear all charges in respect of vetting and execution of the Contract Agreement.

## **7. EFFECT AND JURISDICTION OF THE CONTRACT:**

- 7.1 The Contract shall be considered as having come into force from the date of issue of the Letter of Intent of the Contract by the Purchaser.
- 7.2 The laws applicable to this Contract shall be the laws in force in India. The Meghalaya High Court, Shillong, India shall have the exclusive jurisdiction in all matters arising under this Contract.

## **8. ASSIGNMENT AND SUBLETTING OF CONTRACT:**

- 8.1 The Contractor shall not, without the prior consent in writing of the Purchaser, assign or sublet or transfer the Contract or any part thereof other than to those vendors already identified/qualified/approved in the Contract. However, under compelling circumstances, the Contractor may, after informing the Engineer-in-charge and after getting his written approval, assign or sublet the Contract or any part thereof, provided that any such consent shall not relieve the Contractor from any obligation, duty or responsibility under the Contract. For the purpose of approval of vendors, the Contractor shall submit list of experienced vendors under consideration by the Contractor to the Engineer-in-charge along with other requirements/particulars desired by the Engineer-in-charge. Any assignment, subletting / sub-Contracting without prior written approval of the Engineer-in-charge shall be considered as null and void.

- 8.2 For components / equipment procured by the Contractor for the purpose of the Contract after obtaining the written approval of the Purchaser, the Contractor's purchase specifications and enquiries shall call for quality plans to be submitted by the suppliers along with their proposals. The quality plans called for from the vendors shall be set out during the various stages of manufacture and installation, the quality practices and procedures followed by the vendor's quality control organization, the relevant reference documents / standards used, acceptance level, inspection of documents raised etc. Such quality plans of the successful vendor shall be discussed and finalized in consultation with the Engineer-in-charge and shall form part of the Purchase Order / Contract between the Contractor and the vendor. Within 5(five) weeks of the release of the Purchase Order / Contract for such bought out items/components, a copy of the same without price details but together with detailed purchase specifications, quality plans and delivery conditions shall be furnished to the Engineer-in-Charge by the Contractor.

## 9. PATENT RIGHTS AND ROYALTIES:

Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes used in the work shall be deemed to have been included in the Contract price. The Contractor shall satisfy all demands that may be made at any time for such royalties or fees and he alone shall be liable for any damages or claims for patent infringements and shall keep the Purchaser indemnified in that regard. The Contractor, shall, at his own cost and expense, defend all suit and proceeding that may be instituted for alleged infringements of any patent involved in the works and, in case of any award of damages, the Contractor shall pay for such awards. In the event of any suits or other proceedings instituted against the Purchaser, the same shall be defended at the cost and expense of the Contractor, who shall also satisfy / comply any decree, order or award made against the Purchaser. However, it shall be understood that no such machines, plant, work, material or thing has been used by the Purchaser for any purpose or any manner other than that for which they have been furnished and installed by the Contractor and specified under these specifications. Final payment to the Contractor by the Purchaser will not be made while any such suit or claim remains unsettled. In the event any apparatus or equipment or any part thereof, furnished by the Contractor, is in such suit or proceedings held to constitute infringement and its use is enjoined, the Contractor shall, at his option, and his own expense, either procure for the Purchaser the right to continue use of said apparatus, equipment or part thereof, replace it with non-infringing apparatus, or equipment or modify it, so as to make it non-infringing.

## 10. TIME – THE ESSENCE OF CONTRACT:

- 10.1 The date of completion of the works, as stipulated in the bid documents by the Purchaser with or without modifications, if any, and so incorporated in the Letter of Intent shall be deemed to be the essence of the Contract. The Contractor shall so organize his resources and perform his work as to complete it not later than the date agreed to. The time for completion of his works Contracted for, shall be reckoned from the date of issue of the Letter of Intent by the Purchaser. The Contractor's liability for delay in completion shall be stipulated under the Clause No. 15.0 of this part.

- 10.2 Entire scope of works under this contract shall be completed within 30 (Thirty Five) months from the date of issue of the Letter of Intent.
- 10.3 The supply of equipment in all respects shall be completed by the Contractor strictly as per the Supply Programme submitted by him at Datasheet-15(i), Volume-I, Section-VIII. The Contractor's liability for delay in completion of the same shall be as per Clause No. 15.0 of Volume-I, Section-IV.
- 10.4 The units shall be commissioned as per the Construction (Erection) programme separately submitted by the bidder at Datasheet 15(ii), Volume-I, Section-VIII. The Contractor's liability for delay in completion of the same shall be as per Clause No.15.0 of this Section.
- 10.5 The Contractor shall submit a detailed PERT network, duly considering the time frame provided and agreed at 10.2, 10.3 and 10.4 above consisting of all activities, covering various key phases of the work such as, but limited to, design/drawings/approval/manufacturing, testing, transportation, receipt at final destination at site within 30 (thirty) days from the date of Letter of Intent. The Contractor shall discuss the network so submitted with the Engineer-in-Charge and the agreed network which may be in the form as submitted or in revised form in line with the outcome of discussions shall form part of the Contract Agreement.
- 10.6 The above PERT network shall be reviewed and periodic review reports shall be submitted by the Contractor as directed by the Engineer-in-charge to ensure proper progress and timely completion of the Contract.
- 10.7 Subsequent to the award of the Contract, the Contractor shall make available to the Purchaser, a detailed manufacturing programme in line with the agreed Contract network. Such manufacturing programme shall be reviewed, updated and submitted by the Contractor to the Engineer-In-Charge once in every two months thereafter

## **11. COMPLETION PERIOD:**

- 11.1 The entire scope of supply and work under this contract shall be completed as per the schedule indicated below, to be reckoned from the date of issue of the Letter of Intent. The Contractor shall organize his resources and perform his work to complete it no later than the agreed date.

### **35 (Thirty-Five) Months from the date of issue of Letter of Intent (LOI).**

- 11.2 Erection, Testing, and Commissioning of the equipment for Unit# I, Unit# II and Unit#III will be carried out sequentially to match the requirements at the site and to adhere to the above schedule.
- 11.3 The Supply and Erection, Testing and Commissioning of equipment in all respect shall be completed by the Contractor strictly as per the Programme to be submitted by him at Datasheets-15(i) and 15(ii), Section-VIII, Vol-I. The Contractor's liability for delay in completion of the same shall be as per Clause No.15 of this Section.
- 11.4 The Contractor shall submit a bar-chart within 30 (thirty) days from the date of Letter of Intent duly considering the time frame provided and consisting of all activities, covering various key phases of the work such as, but not limited to, design/drawings/approval, manufacturing programme testing, transportation, delivery at Destination and supervision of Erection, Testing and Commissioning.



- 11.5 The programme shall be reviewed, updated and submitted by the Contractor to the Engineer-In-Charge once in every month thereafter.
- 11.6 The date of completion of the works, as stipulated in the bid documents and so incorporated in the Letter of Intent shall be strictly followed by the Contractor. The Contractor shall so organize his resources and perform his work as to complete it not later than the stipulated schedule. The time for completion of his works Contracted for, shall be reckoned from the date of issue of the Letter of Intent by the Purchaser. The Contractor's liability for delay in completion shall be stipulated under the Clause No. 15.0 of this part.
- 11.7 However, if the work is delayed on account of:
- a) Suspension of work as per Clause 31.0 for reasons attributable to the Corporation or,
  - b) "Force Majeure" at Clause 16, or
  - c) Any other cause which, at the absolute discretion of the Engineer-in-Charge, is beyond the Contractor's control,

Then immediately upon the happening of any such event as aforesaid, the Contractor shall inform the Engineer-in-Charge accordingly, but the Contractor shall nevertheless use constantly his best endeavour to prevent and/or make good the delay and shall do all that may be required in this regard. The Contractor shall also request, in writing, for extension of time to which he may consider himself eligible under the Contract within 7 (Seven) days of the date of happening of any such event as indicated above.

However, the time extension, if granted by the Corporation will not relieve the Contractor from the payment of compensation for delay, and the decision of the Engineer-in-Charge shall be final and binding.

## **12 DEDUCTION FROM CONTRACT PRICE**

- 12.1 All costs, claims, damages or expenses which the Purchaser may have paid for which the Contractor is liable under the Contract, shall have to be refunded by the Contractor within 30 (thirty) days of receipt of the bills. If the bills are not paid within the said period, this may be deducted by the Engineer-in-charge from the Performance Guarantee or from any money due or which will become due to the Contractor under this Contract.
- 12.2 In addition to the provision of Clause no. 12.1 above, which relates to the recovery by the Purchaser of any amounts that the Purchaser may have paid for which the Contractor is liable under the Contract, the Purchaser shall also be entitled to recover all dues in terms of the Contract including, but not limited to, Liquidated Damages for delay etc. by way of deductions from the payments due to the Contractor or that may become due to the Contractor in future or from any securities/guarantees under the Contract and/or otherwise.
- 12.3 In case of any dispute, the sum of money so withheld or obtained under this clause by the Purchaser will be kept withheld or retained as such by the Purchaser till all the claims arising out of the Contract is either mutually settled or determined by the Arbitrator, or by the competent Court, as the case may be, and that the Contractor shall have no claim for interest or damages whatsoever on this account.

## **13 PACKING, FORWARDING AND SHIPMENT:**



13.1 The Contractor shall be responsible for securely protecting and packing the plant and equipment, taking special care for protruding parts and such other vulnerable parts as per prescribed standards enforced to withstand the journey and ensuring the safety of materials and also arrival of materials at destination in good and original condition for contemplated use, so as to avoid damage under normal conditions of transport, loading & unloading, handling and storage at site till the time as specified in the Contract. While packing all the materials, the limitation from the point of view of availability of Railway Wagons Sizes in India should be taken account of. The Contractor shall be responsible for any loss or damage during transportation, handling and storage due to improper packing. The Purchaser shall bear no responsibility for the availability of Railway wagons and for any loss or damage during transportation, loading & unloading, handling and storage.

13.2 Each bundle or package shall have the following marking on it. The Project name should clearly be indicated on each bundle of Package.

- a. The name and address of the consignee.
- b. Destination Railway station / Destination place by road.
- c. The relevant marks, reference numbers etc., for identification.
- d. Directions for handling the materials.

Each package shall also be accompanied with detailed packing list to facilitate checking of the contents at the destination.

13.3 The Contractor shall notify the Purchaser the date of each despatch from his works, and expected date of arrival at the Project site for the information of the Purchaser.

13.4 The Contractor shall also give all despatch information concerning the weight, size and content of each package, including any other information which the Purchaser may require.

13.5 The following documents shall be sent by Registered Post/Speed Post/Courier to the Purchaser within 3 (three) days from the date of despatch to enable the Engineer-in-Charge to make progressive payment to the Contractor:

- a) Application for payment in standard format to the Purchaser (6 copies)
- b) Test Certificate (6 copies)
- c) Certificate of waiver, if inspection is waived (6 copies)
- d) Invoice (6 copies)
- e) Certificate of Insurance (6 copies)
- f) Proof of despatch (6 copies)

The above documents each in duplicate will be airmailed through COURIER to each of the following address.

1. The Head of Project, Heo HEP, NEEPCO Ltd., Arunachal Pradesh, India, Shi Yomi district,

Arunachal Pradesh-791003

2. Head of Finance, F&A, Heo HEP, NEEPCO Ltd., Arunachal, India,  
Shi Yomi district,  
Arunachal Pradesh-791003

- 13.6 The Contractor shall prepare detailed packing list of all packages and containers, bundles and loose materials forming each and every consignment despatched to site. The Contractor shall further be responsible for making all necessary arrangements for loading, unloading and other handling, right from his works till the consignment reaches the site and also till the equipment is erected, tested and commissioned. He shall be solely responsible for proper storage and safe custody of all equipment.
- 13.7 The Contractor shall send at least 10 (ten) copies of 'Model packing list'/PGMA (Part Group Manufacturing Agency) of various equipment/materials within 15(fifteen) days of finalization of the PERT network. These lists will be used as Check Lists for the despatch of all the equipment and materials to be supplied under the Contract. These lists shall be periodically updated by the Contractor, based on changes on subsequent detailed Engineering.
- 13.8 All demurrage, wharfage and other expenses incurred due to delayed clearance of the material and which are attributable to the Contractor and Sub-Contractor during transportation shall be to the account of the Contractor.

#### **14 INSURANCE AND INDEMNITY:**

- 14.1 The Contractor shall, at his own cost, arrange, secure and maintain Insurance as may be pertinent to the works and obligatory in terms of law to protect his interests and the interest of the Purchaser against all possible risks, without in any manner limiting its obligations and responsibilities, in the joint names of the Purchaser and the Contractor, any and all insurances so as to cover any damage or loss to the equipment during Supply, Transportation, Storage and Preservation at intermediate location Delivery and Unloading at Site, receipt of Equipments/Materials at site as certified by Engineer In charge against all risks which are insurable for their replacement value, for which the Contractor shall be responsible according to the Contract. In respect of risks for which insurance cover is not available, the Contractor shall take insurance against such risks, as and when insurance cover becomes available, in accordance with Clause 14.2 below.
- 14.2 Insurance to be agreed upon must be for full coverage (All Risks) and, where necessary, should include War Clause (Cargo) and clauses for Strikes and disturbances in accordance with internationally acknowledged clauses.
- 14.3 All costs on account of Insurance liabilities covered under the Contract will be to the Contractor's account and will be included in the Contract price.
- 14.4 The scope of such Insurance shall be adequate to cover the replacement/reinstatement cost of the equipment for all risks upto and including delivery of goods on FOR destination basis and shall also cover inland transportation, intermediate storage, loading and unloading, handling, receipt of Equipments/Materials at site as certified by Engineer In charge Notwithstanding the extent of Insurance cover available from the underwriters, the Contractor shall make good the full replacement/rectification value of all equipment/materials and to ensure their availability as per project requirements without waiting for the settlements of the claims.

- 14.5 The Contractor shall have the sole liability/responsibility for settlement of claim with the under-writers towards loss/damage, if any, and, therefore, replacement/ rectification of the loss/damage shall be made good immediately at no extra cost to the Purchaser and without waiting for settlement of claim.
- 14.6 Without in any manner limiting its obligations and responsibilities, the Contractor shall arrange, secure and maintain at his own cost in the joint names of the Owner and the Contractor, any and all insurances so as to cover the Works (Permanent & Temporary), entire materials (including those issued by the Owner), equipment and plant or other items fixed and used or unfixed and intended and procured for the Works except works covered under EAR Insurance policy against all risks (insurance of which are available as per IRDA as on Base Date i.e. 28 days prior to the latest date of submission of bids) for their replacement value, for which the Contractor shall be responsible according to the Contract. The said insurance shall be valid from the Date of commencement upto the receipt of Equipments/Materials at site as certified by Engineer In charge. If contractor fails to settle the claims with the insurer before completion of the entire work, the amount equivalent to the loss or damage suffered by the Owner shall be recovered from any amount due to contractor.
- In the event of any other risks declared insurable by IRDA after the base date (i.e. 28 days prior to the date for opening of techno-commercial bids), the contractor shall within 30(thirty) days of such declaration arrange such insurance cover. The cost of such additional insurance cover shall be reimbursed to the contractor by the owner on submission of documentary proof.
- In case the contractor fails to arrange the insurance as mentioned above against any or all insurable risks (as per IRDA), the contractor shall be liable for loss or damage arising from such events or causes. Re-construction of such damaged work alongwith removal of debris shall be done by the contractor at his own cost.
- 14.7 Without prejudice to the provisions contained in article 14.1 hereinabove, the contractor shall take at his own cost in the joint names of the owner and the contractor, the following insurances:
- a) marine-transit till delivery at site;
  - b) contractor's plant & machinery policy;
  - c) motor vehicle insurance policy;
  - d) workmen's compensation policy;
  - e) material damage fire policy;
- 14.8 The following types of insurance will constitute the minimum insurance in regard to the above requirements:
- a) marine-transit policy till delivery at site:  
This policy will provide necessary cover for all materials, equipment and plant during marine and air transportation, inland transit including intermediary storage enroute, and till delivery at site. It shall also extend to cover all force majeure conditions enumerated in article 16, hereinbelow, for which insurance cover is available.
  - b) Contractor's plant and machinery policy:  
The contractor's plant and machinery policy shall cover the full replacement value of the plant and machinery. The policy shall also be endorsed to cover plant and machinery working underground.
  - c) Motor vehicle insurance policy:  
The motor vehicle insurance policy will cover direct physical damage to the vehicles as well as liability to third parties. It shall apply to all authorized drivers including the expatriates and their dependents who possess valid driving license in india.

d) Workmen's compensation policy or its equivalent:

The contractor will be responsible to arrange workmen's compensation policy or its equivalent for his employees.

e) Material damage fire policy:

To cover damage to rented premises or any other property for which the contractor has accepted liability.

**14.9 Erection All Risk (EAR) Insurance Policy:**

Policy shall cover all risks arising out of execution of Erection Works, and Storage of materials & Equipment at site.

The owner shall take EAR policy in the joint names of the Owner and the Contractor for the Erection Works and Storage of materials & equipment at site for a period from the date of receipt of material at site up to the date of successful Erection, Testing, Commissioning and handing over of Equipment/Plant.

The contractor shall assist the employer for notification of the claims, details of claims and follow-up of claims with Insurer as per the terms of EAR Policy.

- 14.10 The coverage in respect of all policies will be subject to annual review and adjustment to ensure adequacy of the coverage. Losses and damages shall be payable in the same currency used to acquire the damaged or lost goods.
- 14.11 The contractor shall furnish to the owner copies of all policies of insurance and receipts for premium paid and other connected documents and in addition, shall, whenever required by the owner, produce to the owner/engineer-in-charge such and other connected documents pertaining to insurance coverage and claims as the owner/engineer-in-charge may require.
- 14.12 Except for deductibles and losses in excess of coverage arising out of damages caused by the owner and/or his agencies and employees in which case the deductibles and losses in excess of coverage shall be to the account of the owner, otherwise, all deductibles and losses in excess of coverage under insurance policies of the contractor shall be to the account of the contractor. The contractor shall not cancel or significantly modify any or all the policies without obtaining the written approval of the owner. The contractor shall enter into a separate agreement with the insurers to the effect that any or all the policies shall not be cancelled or significantly modified without the written approval of the owner and a copy of such agreement shall be delivered by the contractor to the owner.
- 14.13 The contractor shall be liable for any damage or loss that may happen to the works or any part thereof caused by its negligence, fault, or breach of contract except the loss or damage occasioned by force majeure risks covered under the EAR Policy. Any such loss or damage shall be made good conforming to the requirements of the contract on receipt of instructions from the engineer-in-charge at contractor's cost.
- 14.14 If the contractor fails to effect insurance as required in terms of this contract and/or fails to produce to the owner satisfactory evidence that there is the requisite insurance in respect of various matters for which it is required to effect insurance in terms of the contract, then and in any such case, the owner may effect and keep records of such insurance and pay such premium or premia as may be necessary for the purpose and from time to time, and deduct the amounts so paid or recover the same from any amount due to the contractor or by encashment of bank guarantees provided by the contractor under this contract or otherwise.
- 14.15 The contractor shall, save and except, if and so far as the contract specifically provides otherwise, indemnify and keep indemnified and saved harmless, the owner at all times in respect of all injuries, losses or damages to the person or property of the owner, and third parties, which may arise out of or as a consequence of the execution and maintenance of the works or performance of the contractor's obligations under the contract, except where such losses are covered by the EAR Insurance policy. The indemnity hereunder shall include all

costs, charges and expenses on account of any claims, demands, actions and proceedings against the owner in respect of such injuries, loss or damage.

- 14.16 The contractor shall be responsible for making good to the satisfaction of the owner any loss of, and any damage to all structures and properties moveable or immovable belonging to the owner or being executed or procured or being procured by the owner or belonging to other agencies engaged by the owner and working within the site, if such loss or damage is due to the fault and/or the negligence or acts or omissions of the contractor, his sub-contractors and their employees, agents and representatives.

## 15 LIQUIDATED DAMAGE

Time is the essence of the contract. If the performance of the Contract is delayed beyond the time schedules incorporated in the Contract, due to reasons attributable to the Contractor, the Purchaser shall, without prejudice to his right, recover the following damages for breach of the Contract: -

- (i) Reduce the contract price by ½% (half percent) per week or part thereof of delay in completion time of the individual unit subject to a maximum of 10% of the contract price of the individual unit.
- (ii) Execute or authorize the incomplete/unfinished work from elsewhere departmentally or through any other Agency at the risk and cost of the Contractor. Action against this sub-clause shall be taken after giving notice of 15(Fifteen) days by the Purchaser to the Contractor for any delay in performance of the Contract. The decision of the Purchaser in this regard shall be final and binding upon the Contractor. However, the above action shall be taken without canceling the Contract in respect of work not yet due for execution.
- (iii) Cancel the entire Contract or a portion thereof and, if so desired, execute or authorize the execution of the work departmentally or through any other agency at the risk and cost of the Contractor. If the Contractor had defaulted in the performance of the Contract, the Purchaser may ignore the rates quoted by him for respective work even though the lowest for executing through other agency.
- (iv) Where action is taken under Sub-clause (ii) or (iii) above for failure to complete the work, the Contractor shall be liable for any loss, which the Purchaser may sustain on that account. However, the Contractor shall not be entitled to any gain on such execution and the manner and method of such execution shall be at the entire discretion of the Corporation. It shall not be necessary for the Purchaser to serve a notice of such execution on the Contractor.

## 16 FORCE MAJEURE:

- i) The “Force Majeure” risks are those which are beyond the control of either the Corporation or the Contractor and are defined as below:
  - a) War (whether declared or not), hostilities, invasion, acts of foreign enemies, rebellion, revolution, insurrection of military or usurped power, or civil war;
  - b) Contamination by radio activity from any nuclear fuel, or from any nuclear waste or radioactive materials;
  - c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;



- d) Acts of God (like floods, Inundation, tornadoes, Storm/ Tempest/ Hurricane/ Typhoon/ Cyclone/ Lightning or other atmospheric disturbances, Earthquake, Landslide/ Rockslide/ Subsidence or any loss or damage caused by forces of nature);
- e) Damages due to any Political or Religious incidence;
- f) Act of Terrorism;
- g) Riots or commotion or disorder, unless solely restricted to employees of the Contractor or his sub-contractors and arising from the conduct of the Works;
- h) Martial law, damage from aircraft, nuclear fission, nuclear reaction, nuclear radiation, or radioactive contamination;
- i) Fire (not caused by negligence of the Contractor/its Sub-contractors/ their personnel); and
- j) Other such causes, over which the Contractor has no control and are accepted as such, by the Engineer-in-Charge, whose decision shall be final and binding.

In the event of either party being rendered unable by “Force Majeure” to perform any obligation required to be performed by them under the Contract, the relative obligation of the party affected by such “Force Majeure” shall be treated as suspended for the period during which such “Force Majeure” cause lasts, provided the party alleging that it has been rendered unable, as aforesaid, thereby shall notify within 10 (ten) days of the alleged beginning and ending thereof giving full particulars and satisfactory evidence in support of such cause. Engineer-in-Charge will subsequently confirm regarding the Force Majeure including period of occurrence.

- (ii) Loss to any party due to occurrence of Force Majeure risk shall be borne by the respective Party.

If however, the Force Majeure events causing such damage are insurable (as per Clause 13 hereof), re-construction/ repair shall also be done by the contractor upon receiving instructions from the Engineer-in-Charge at owner’s cost and the claim proceeds received from the Insurer against such damage shall be passed on to the Owner.

- (iii) Should there be a request for extension of time arising out of “Force Majeure”, the same shall be considered. No compensation, whatsoever, will be allowed to the Contractor for the delay arising out of Force Majeure condition.

## **17 TERMINATION OF THE CONTRACT ON THE PURCHASER’S INITIATIVE:**

- 17.0** The Contractor shall not neglect to execute the works with due diligence and expedition or shall not refuse or neglect to comply with any reasonable orders given to him, in writing, by the Engineer-in-Charge in connection with the works or shall not contravene the provisions of the Contract

### **17.1 Termination for Employer’s Convenience**

- 17.1.1** The Employer may at any time terminate the Contract either in part or in full for any reason and in such an event, give 15 days’ notice in writing to the Contractor of his decision to do so that refers to the Clause 17.1.

17.1.2 Upon receipt of the notice of termination under Sub-Clause 17.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination

- (a) Cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) Terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d)(ii) below
- (c) Remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition; and
- (d) subject to the payment specified in Sub-Clause 17.1.3
  - (i) Deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
  - (ii) To the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
  - (iii) Deliver to the Employer all non-proprietary drawings, specifications, as-built drawings and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities/works.

17.1.3 In the event of termination of the Contract under Sub-Clause 17.1.1, the Employer shall pay to the Contractor the following amounts:

- (a) The Contract Price, properly attributable to the parts of the Facilities /works executed by the Contractor as of the date of termination
- (b) The costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel
- (c) Any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges
- (d) Costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of above Sub-Clause 17.1.2
- (e) The cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

## **17.2 Termination for Contractor's Default**

17.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this Sub-Clause 17.2:

- (a) If the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a Corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt
- (b) If the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 8 (Assignment and Sub-letting).
- (c) If the Contractor, in the judgment of the Employer has engaged in corrupt, collusive, coercive or fraudulent practices, as defined in Cl. 28 of Vol-I Sec-II(b) of Bid Documents, in competing for or in executing the Contract.

17.2.2 If the Contractor

- (a) has abandoned or repudiated the Contract



- (b) has without valid reason failed to commence work on the Facilities /works promptly or has suspended the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed.
- (c) Persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause
- (d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Facilities/works in the manner specified in the program furnished under GCC Clause 51 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities/works by the Time for Completion as extended  
then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this Sub-Clause 17.2.

17.2.3 Upon receipt of the notice of termination under Sub-Clauses 17.2.1 or 17.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) Terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below
- (c) Deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
- (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as at the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors
- (e) Deliver to the Employer all drawings, specifications as-built drawings and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities

17.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities/works itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities/works for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities. Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

17.2.5 Subject to GCC Sub-Clause 17.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant and Equipment on the Site, and the costs, if any, incurred in protecting the Facilities / works and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 17.2.3. Any sums due the Employer from the Contractor accruing prior to

the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

17.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 17.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities/works, exceeds the Contract Price, the Contractor shall be liable for such excess. If such excess is greater than the sums due the Contractor under GCC Sub-Clause 17.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 17.2.5, the Employer shall pay the balance to the Contractor. The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

### 17.3 Termination by the Contractor

#### 17.3.1 If

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to GCC Clause 41, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or
- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities, which the Employer is required to obtain as per provision of the Contract or as per relevant applicable laws of the Country.

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 17.3.1, forthwith terminate the Contract.

17.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 17.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

17.3.3 If the Contract is terminated under GCC Sub-Clauses 17.3.1 or 17.3.2, then the Contractor shall immediately

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
  - (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d)(ii)
  - (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractor's personnel from the Site; and
  - (d) subject to the payment specified in GCC Sub-Clause 17.3.4,
    - (i) Deliver to the Employer the parts of the Facilities /works executed by the Contractor up to the date of termination
    - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
    - (iii) Deliver to the Employer all drawings, specifications, as-built drawings and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.
- 17.3.4 If the Contract is terminated under GCC Sub-Clauses 17.3.1 or 17.3.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 17.1.3, and reasonable compensation for all loss, except for loss of profit or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.
- 17.3.5 Termination by the Contractor pursuant to this GCC Sub-Clause 17.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 17.3.
- 17.4 In this GCC Clause 17, the expression "Facilities/works executed" shall include all work executed, Installation Services provided, and all Plant and Equipment acquired (or subject to a legally binding obligation to purchase) by the Contractor and used or intended to be used for the purpose of the Facilities/works, up to and including the date of termination.
- 17.5 In this GCC Clause 17, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to **GCC Clause 41.4(a)(i) and 41.4(c) (i and iii)**.
- 17.6 In the event of termination of the Contract due to Owner's convenience, Bank Guarantee for Contract Performance shall be released to the Contractor on receipt of a Bank Guarantee equivalent to 10% (Ten percent) of the value of Supply/Works completed by the Contractor.

This BG shall be valid for a period of 12 months plus 90 days thereafter upon completion of the works in all respects.

## **18 INSPECTION AND TESTING:**

- 18.1 The Engineer-in-charge and his duly authorized representative shall have, at all reasonable time, access to the Contractor's premises or works and shall have the power at all reasonable time, to inspect and examine the materials and workmanship of the plant / equipment during its manufacture, shop assembly and testing and if part of the plant is being manufactured in another premises, the Contractor shall obtain for the Engineer-in-charge and his duly authorized representatives, permission to inspect it as if the works were manufactured in the Contractor's own premises or works.

- 18.2 The Contractor shall give the Engineer-in-Charge / Inspector 15 (fifteen) days written notice of any material being ready for testing. The Engineer-in-Charge / Inspector, unless the inspection of the tests is in writing waived, shall attend such tests within 15 (fifteen) days of the date of which the equipment is notified by the Contractor as being ready for test / inspection, failing which the Contractor may proceed with the tests which shall be deemed to have been made in the Inspector's presence and he shall forthwith forward to the Engineer-in-charge duly certified copies of test results in quadruplicate, for approval of the Engineer-in-charge. However, waiver accorded by the Engineer will not absolve the Contractor towards the execution of the Contract in conformity with the Contract Agreement.
- 18.3 The Engineer-in-Charge or Inspector shall, within 15 (fifteen) days from the date of inspection as defined herein, give notice in writing to the Contractor, of any objection to any drawings (unless already approved earlier), testing procedures and testing facilities and all/ or any equipment and workmanship which in his opinion is not in accordance with the Contract. The Contractor shall give due consideration to such objection and shall make the modifications that may be necessary to meet the said objection at no extra cost to the Purchaser.
- 18.4 When the factory tests have been completed at the Contractor's or Sub-Contractor's works, the Engineer-in-Charge / Inspector shall issue a certificate to this effect within 15 (fifteen) days after completion of tests. However, if the tests are not witnessed by the Engineer-in-Charge / Inspector, the certificate shall be issued within 15 (fifteen) days of receipt of the Contractor's test certificate by the Engineer-in-Charge / Inspector only when the tests have been carried out as per relevant codes / standards. The completion of these tests, on the issue of the certificate, shall not bind the Purchaser to accept the equipment, should it, on further tests after erection, be found not to comply with the Contract.
- 18.5 In all cases where the Contract provides for inspection / tests to be carried out, whether at the premises of the Contractor or of any Sub – Contractor, the Contractor / Sub- Contractor shall provide free of charges such items as labour, materials, electricity, fuel, water, stores, apparatus, instruments etc. as may reasonably be demanded by the Engineer-in-Charge / Inspector or his authorized representative(s) to carry out efficiently such test / inspection of the plant / equipment in accordance with the Contract and shall give facilities to the Engineer / Inspector or to his authorized representative to accomplish testing.
- 18.6 Charges for any special test(s), other than those specified in the Contract, if required, will be paid by the Purchaser. Rate(s) for such special test(s) shall be mutually discussed and agreed. Cost for attending test/inspection by Purchaser shall be borne by NEEPCO.
- 18.7 Immediately after the acceptance of the bid, the Contractor shall submit 4 (four) four copies of mill or shop orders for materials purchased / to be purchased for use in the works or in the manufacture of plant / equipment, which will require inspection / testing by the Corporation's representative at the places other than the Contractor's works before shipment. In such cases, all the above mentioned clauses will apply. When the inspection/test has been satisfactorily completed, the Corporation will issue a certificate to that effect.

- 18.8 Neither the waiver of inspection / testing nor acceptance after inspection and or testing by the Corporation shall relieve the Contractor in any way of the responsibility of supplying the plant/equipment/materials strictly in accordance with the specifications, drawings, etc. In any case, the Contractor shall remain fully responsible for satisfactory performance of the plant/equipment/materials.
- 18.9 The following stipulations of Order No.25-111612018-PG dated 02/07/2020 of Ministry of Power, Government of India, shall be strictly followed:
- All equipment, components, and parts imported for use in any equipment to be supplied under this contract shall be tested in India to check for any kind of embedded malware/trojans/cyber threat and for adherence to Indian Standards.
  - All such testings shall be done in certified laboratories that will be designated by the Ministry of Power (MOP).
  - Any import of equipment/components/parts from "prior reference" countries as specified or by persons owned by, controlled by, or subject to the jurisdiction or the directions of these "prior reference" countries will require prior permission of the Government of India
  - Where the equipment/components/parts are imported from "prior reference" countries, with special permission, the protocol for testing in certified and designated laboratories shall be approved by the Ministry of Power (MOP).

The above shall apply to any item imported for end use or to be used as a component, or as a part in manufacturing, assembling of any equipment or to be used for equipment to be supplied under this contract.

## **19 NO WAIVER OF RIGHTS:**

- 19.1 Subject to Clause 19.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or granting of time by other party shall prejudice, affect or restrict the rights of that party under that Contract.
- 19.2 Neither the inspection by the Purchaser or the Engineer or any of their officials, employees, or agents nor any order by the Purchaser or the Engineer-in-charge for payment of money or any payment for, or acceptance of, the whole or any part of the works by the Purchaser or the Engineer-in-charge, nor any extension of time, nor any possession taken by the Engineer-in-charge, shall operate as a waiver of any provision of the Contract, or any power herein reserved to the Purchaser, or any right to damages herein provided, nor shall any waiver of any breach in the Contract be held to be a waiver of any other or subsequent breach.

## **20 CERTIFICATE NOT TO AFFECT RIGHT OF PURCHASER AND LIABILITY OF THE CONTRACTOR:**

No interim certificate of the Engineer, nor any sum made on account, by the Purchaser, nor any extension of time for execution of the works granted by the Engineer-in-charge shall affect or prejudice the rights of the Purchaser against the Contractor or relieve the Contractor of his obligations for the due performance of the

- Contract or be interpreted as approval of the works done or of the equipment furnished and no



certificate shall create liability for the Purchaser to pay for alterations, amendments, variations or additional works not ordered, in writing, by the Engineer-in-charge or discharge the liability of the Contractor for the payment of damages whether, due ascertained or certified or not of any sum against the payment of which he is bound to indemnify the Purchaser, nor shall any such certificate nor the acceptance by him of any sum paid on account or otherwise affect or prejudice the rights of the Purchaser against the Contractor.

## **21 SETTLEMENT OF DISPUTES AND CONCILIATION/ ARBITRATION**

### **21.1 Appointment of Independent Engineer (IE) for Dispute Avoidance:**

- (i) Within 6 (six) months of the Commencement Date (LOI), the Parties shall jointly appoint an Independent Engineer, (hereinafter referred to as “IE”) from the list of Experts circulated by the MOP vide its O.M. No. 15-18/1/2020-HYDEL-II (MoP)-Part(1) Dtd. 29-11-2021 as available on website of Ministry of Power, Government of India (MoP). The ‘IE’ shall function as per terms and conditions included in the MoP’s O.M. No. 15-18/1/2020-HYDEL-II (MoP) Dated 27-09-2021. The Contractor and the Corporation shall equally bear cost & expenses of the IE.

If a dispute of any kind, whatsoever, arises between the Parties in connection with or arising out of the Contract or the execution of the works under the said Contract, whether during the execution of the work or after completion thereof and whether before or after repudiation or otherwise termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, either Party may refer the dispute within 15(fifteen) days from the date when such dispute or difference of opinion arises in writing to the IE with copy to the other party in line with provisions of MoP’s O.M. No. 15-18/1/2020-HYDEL-II (MoP) Dated 27-09-2021. Such reference shall state that it is given pursuant to this sub-clause.

#### **(ii) Obtaining Independent Engineer's (IE's) Decision:**

The IE shall prescribe a resolution timeline depending upon the nature and number of disagreements subject to a maximum duration of thirty (30) days of reference of dispute to it by the Party(ies) or within extended timeline under extraordinary circumstances and for reasons to be recorded in writing.

Both Parties shall promptly make available to the IE all required information, further access to the Site, and the appropriate facilities as the IE may require for the purposes of arriving at a decision on such dispute.

Unless the Contract has already been abandoned, repudiated or terminated, the Contractor, in every case, shall continue to proceed with the Works with all due diligence in accordance with the Contract.

If the IE has given its decision and both the parties agree and sign the decision, the decision shall become final and binding upon both parties. Thereafter, such issues shall not be subjected to either Conciliation or Arbitration.

If either Party is dissatisfied with the IE's decision, then either Party may, within 15 (fifteen) days of receiving the decision of IE, give notice to the other Party of its dissatisfaction. The party which is dissatisfied with the decision, may, without prejudice to any other rights it may have, refer the dispute to either conciliation under

Sub-Clause 21.3 [Conciliation mechanism for dispute resolution] or arbitration under Sub-Clause 21.4 [Arbitration] within 28 (twenty eight) days of receiving the decision of the IE, failing which the decision of IE will be final and binding.

## **21.2 Amicable Settlement:**

In case a dispute remains unresolved following the decision of the Independent Engineer (IE) i.e. where notice of dissatisfaction has been given under Sub-Clause 21.1 (ii) above, both Parties shall attempt to settle the dispute amicably before the parties can take recourse to either Conciliation or Arbitration, as hereinafter provided. However, unless both Parties agree otherwise, Conciliation or Arbitration proceedings may be commenced on or after 30(thirty) days of the notice of dissatisfaction even if the dispute remains unresolved through amicable settlement.

## **21.3 Conciliation mechanism for dispute resolution** (which shall be applicable for the amount involved in the dispute / claim amount of more than or equal to Rs. 5 Crore, below which it would not go into the exercise of conciliation, based on Para 4.3 of SOP of MOP's O.M. No. 11/22/ 2021-Th.II dated 29-12-2021):

If amicable settlement has not been reached within the period stated in Sub-Clause 21.2 above, then the Parties may either resort to Conciliation Mechanism for resolution of dispute through Conciliation Committee of Independent Experts (CCIE) constituted by the Ministry of Power, Government of India (MoP) vide Office Order No. 11/22/2021-Th.II dated 22.03.2022 or take recourse to Arbitration.

The dispute resolution by Conciliation process through Conciliation Committee of Independent Experts (CCIE) shall be proceeded as per the procedure, terms and conditions as included in the MOP's O.M. No. 11/22/ 2021-Th.II dated 29-12-2021. The Parties shall equally bear all expenditure incurred on the conciliation proceedings including payment of fees to the Conciliators, office space, logistic, secretarial assistance and other incidental expenses etc., as per said O.M. No. 11/22/ 2021-Th.II dated 29-12-2021 of MoP. The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996. The Conciliation Committee would either be able to resolve and settle dispute(s) between the Parties, or the process may fail. In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to the laid down legal process of Courts. However, the option of Arbitration would not be available once the conciliation mechanism has been exercised. In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996.

After successful conclusion of proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.



## 21.4 ARBITRATION

If an amicable settlement has not been reached within the period stated in Sub-Clause 21.2 above and the Contractor opts for Arbitration instead of Conciliation, then the dispute shall be finally settled through Arbitration as below:

- (i) Amount of Dispute not exceeding Indian Rupees 100 million/10 Crore, arising out of and relating to the Contract between the Parties and of or relating to the construction, interpretation, application, meaning, scope, operation or effect of this Contract or the validity or the breach thereof, shall be settled by arbitration in accordance with Arbitration & Conciliation Act, 1996 including amendments made from time to time and the Rules of Institution named “Construction Industry Arbitration Council (CIAC)” Registrar of the Arbitration Institution shall appoint a sole arbitrator for resolution of dispute between the Parties.
- (ii) The expenses of the arbitration, as determined by the Arbitral Tribunal, shall be shared equally by the Employer and the Contractor as per terms of Institution. However, the expenses incurred by each Party in connection with the preparation, presentation etc. of its case prior to during and after the arbitration proceedings shall be borne by each party itself.
- (iii) The reference to arbitration may proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer and the Contractor shall not be altered by reason of the Arbitration being conducted during the progress of the works. The Contractor will ensure that the work under the Contract shall continue during arbitration proceedings and no payment due from or payment by the Employer shall be withheld on account of such proceedings except to the extent that may be in dispute.
- (iv) The language of the arbitration proceedings and that of all documents and communications between the Parties shall be English.
- (v) In the event of dispute or differences arising between the Employer and a Government Department/Organisation or in between the Employer and another Central Public Sector Enterprise (CPSE), settlement of disputes through the Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) shall be done as under:  
“In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments/ Organisations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018”.
- (vi) The Arbitrator appointed shall have no power to award interest on any claim referred to the Arbitration. No claims for interest or damages on whatsoever count will be entertained by the Corporation with respect to any dispute, difference or misunderstanding between the Corporation and the Contractor.
- (vii) Issues/Disputes arising out of the same cause of action cannot in any case be referred to Arbitration more than once subject to agreement by the Parties.
- (viii) The Arbitral Tribunal shall give a written reasoned Award and the final award by a majority of Arbitrators rendered in writing shall be binding upon the parties.

**22 GRAFTS AND COMMISSIONS ETC:**

Any graft, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner, agent officers, director, employee or servant or any one, on his or their behalf in relation to the obtaining or to the execution of this or any other Contract with the Purchaser, shall in addition to any criminal liability, which it may incur, subject to the Contractor to the cancellation of this and all other Contracts and also to payment of any loss or damage to the Purchaser resulting from any cancellation. The Purchaser shall then be entitled to deduct the amounts so payable from any monies otherwise due to the Contractor under this Contract.

**23 LANGUAGE AND MEASUREMENT:**

All documents pertaining to the Contract, including specifications, schedules, notices, correspondences, operation and maintenance instructions, drawings or any other writings shall be written in English language. The Metric system of measurement shall be used exclusively in the Contract.

**24 RELEASE OF INFORMATION:**

The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs and other reproductions of the works under the Contract or descriptions of the site, dimensions, quantity, quality or other information concerning the works unless prior written permission has been obtained from the Purchaser.

**25 SEVERABILITY:**

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions or conditions of the Contract.

**26 ENFORCEMENT OF TERMS:**

The failure of either party to enforce, at any time, any of the provisions of the Contract or any right in respect thereto or to exercise any option herein provided shall, in no way, be construed to be a waiver of such provisions, rights or options or in any way to effect the validity of the Contract. The exercise by either party of any of its rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have hereunder.

**27 DECISION OF THE ENGINEER-IN-CHARGE:**

- 27.1 In respect of all matters which are left to the decision of the Engineer-in-charge, including the granting or withholding of certificates, the Engineer-in-charge shall, if required to do so, give in writing a decision thereon and the reasons for such decisions.
- 27.2 If, in the opinion of the Contractor, the decision of the Engineer-in-charge is not in accordance with the meaning and intent of the Contract, the Contractor may file with the Engineer-in-charge, a written objection to the decision within 15 (fifteen) days after receipt of the same. However, in the process, that Contractor shall continue to execute the work as per instruction of the Engineer-in-charge. Failure to file an

objection within the allotted time will be considered as acceptance of the decision of the Engineer-in-charge and the decision shall become final and binding.

- 27.3 The Purchaser's decision and filing of the written objection thereto shall be a condition precedent to the right to request for Arbitration. It is in the intent of the Agreement that there shall be no delay in the execution of the works and the decision of the Engineer-in-charge as rendered, shall be promptly observed.

## **28 Co-operation with other contractors and consulting engineers:**

The Contractor shall agree to co-operate with the Purchaser's other Contractors and Consulting Engineers and freely exchange with them such technical information as is necessary to obtain the most efficient and economical design and to avoid unnecessary duplication of efforts. The Engineer-in-charge shall be provided with 4 (four) copies of all correspondences addressed by the Contractor to the other Contractors and consulting engineers in respect of such exchange of technical information.

## **29 Training of personnel:**

- 29.1 The Contractor shall undertake to train in installation, operation and maintenance, free of cost, engineering personnel selected and sent by the Purchaser and the principal consultant at the works of the Contractor or at installations using similar equipment. The period and nature of training for the individual personnel shall be agreed upon mutually between the Contractor and the purchaser. The engineering personnel shall be given special training in the shops, where the equipment will be manufactured and / or in their collaborator's works where possible, in any other plant where equipment manufactured by the Contractor or his collaborator is under installation or test, to enable those personnel become familiar with the equipment, being supplied by the Contractor. The Contractor shall also make necessary arrangements for the trainees to get trained on simulators. The exact format of training course shall be mutually discussed and finally subject to approval by the Purchaser.
- 29.2 To and fro rail / road/ air fare of the trainees between the place of posting of the trainees and the place of training shall be borne by the Purchaser. Local transport during the training period, lodging and boarding expenses and other incidental expenses shall be borne by the Contractor during the entire period of training. The number of trainees in each group shall be decided in mutual consultation with the Contractor.
- 29.3 In addition to above the Contractor shall also arrange training at site for the Purchaser's engineers. The Contractor shall have no liability towards traveling and of boarding, lodging expenses of trainees during this training. The liability shall be restricted to providing training and training material.

## **30. Foreign Field Personnel**

The Contractor shall submit to the Engineer, a complete list of foreign field personnel (including necessary data as may be required by Engineer), required for the performance of the works in India. He shall also intimate the programme of their visit to India and their departure from India during the currency of the Contract. The Engineer will have the right to review the list of the personnel and ask for the increase in the strength or reschedule the visit of such personnel if, in the opinion of the Engineer, the list of personnel mentioned is not sufficient for effective performance of the Contract.

## **31. SUSPENSION OF WORK:**

- i) The Contractor shall, on the instructions of Engineer-in-Charge, suspend the progress of the works or any part thereof for such time and in such manner as the Engineer-in-charge may consider necessary and shall, during such suspension, properly protect and secure the works or such part thereof so far as is necessary in the opinion of the Engineer-in-charge. Unless such suspension is:
  - (a) otherwise provided for in the Contract,
  - (b) necessary by reason of some default of or breach of Contract by the Contractor or for which he is responsible,
  - (c) necessary by reason of climatic conditions on the site, or
  - (d) necessary for the proper execution of the works or for the safety of the works or any part thereof, the sub-clause 31(ii) shall apply.
- ii) Determination of the Engineer-in-charge following the suspension: - Where pursuant to sub-clause 31(i), this sub-clause applies and the Engineer-in-Charge, after due consultation with the Contractor, shall determine: -
  - (a) any extension of time to which the Contractor is entitled to under Sec-III A GCC, Clause 11, and
  - (b) the amount which shall be entitled to the Contractor in respect of the cost incurred by him by reason of such suspension. Such amount shall be payable to the Contractor, in accordance with GCC Clause 31 (iii) below
- iii) Suspension
  - (a) The Employer may request the Engineer In-Charge, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefore. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Engineer In-Charge. If, by virtue of a suspension order given by the Engineer In-Charge, other than by reason of the Contractor's default or breach of the Contract and other reasons as specified in Clause 31(i) above, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Engineer In-Charge requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with Sec-III A GCC Clause 33 (Power to vary/ omit work), excluding the performance of the suspended obligations from the Contract. If the Employer fails to do so within such period, the Contractor may, by a further notice to the Engineer In-Charge, elect to treat the suspension, where it affects a part only of the Facilities/ works, as a deletion of such part in accordance with Sec-III A GCC Clause 33 (Power to vary/ omit work) or, where it affects the whole of the Facilities/ works, as termination of the Contract under GCC Sub-Clause 17.1 (Termination for Employer's Convenience).
  - (b) If
    - (i) The Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without justification / cause pursuant to GCC Clause 41 or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the

breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or

- (ii) The Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with Sec-IIIB ECC Cl. 2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities/works;

Then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

- (c) If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 31, then the Time for Completion shall be extended in accordance with GCC Clause 11, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction as determined provided that such costs are substantiated to the satisfaction of the Engineer-in-charge shall be paid by the Employer to the Contractor in addition to the Contract Price as stipulated in clause No.59 of this section, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract and other reasons as specified in Clause 31(i) above.
- (d) During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment, any part of the Facilities/works or any Contractor's Equipment, without the prior written consent of the Employer, which shall not be unreasonably withheld.

### 32. FRUSTRATION OF THE CONTRACT:

32.1 In the event there is frustration of the Contract because of supervening impossibility in terms of relevant section of the **Indian Contract Act**, then the parties shall be absolved of their responsibilities to perform the balance portion of the Contract, subject to provisions contained in Sub-clause 32.3 below.

32.2 In the event, at any time, the funds are no longer available or suspended for any reason whatsoever (except for reasons of willful or flagrant breach by Purchaser or Contractor), then the work under the Contract shall be suspended. Furthermore, if the Purchaser is unable to make satisfactory alternative arrangement of finance for the Contractor within 4 (four) months after the event, the parties hereto shall be relieved from carrying out further obligations under the Contract, treating it as frustration of the Contract.

32.3 The parties shall mutually discuss to arrive at reasonable settlement on all issues including amounts due to either party for the work already done on "Quantum Meruit" basis which shall be determined by the mutual Agreement between the parties. If either party disputes that there is frustration of the Contract as above, then the dispute will be determined by Arbitration as provided under the Contract.

### 33. POWER TO VARY/OMIT WORK

33.1 No alterations, amendments, omissions, additions, subtraction or variations of the work *including change of location etc.* (hereinafter referred to as variations) under the Contract shall be made by the Contractor, except as directed in writing by the Engineer-in-charge. However, the Engineer-in-charge shall have full power, subject to provisions hereinafter contained, to instruct the Contractor from time to time during the execution of the Contract by notice in writing to make such variations without prejudice to the Contract. The Contractor shall carry out such variations and shall be bound by the same terms and



conditions as far as applicable as though the said variations occurred in the Contract documents.

- 33.2 If any suggested variations would, in the opinion of the Contractor, if carried out, prevent him from fulfilling any of his obligations or guarantees, under the Contract, he shall notify the Engineer-in-charge thereof in writing and the Engineer-in-charge shall decide forthwith whether or not the same shall be carried out. If the Engineer-in-charge confirms his instructions, the Contractor's obligation and guarantees shall be modified to such an extent as may be mutually agreed.
- 33.3 Any agreed difference in cost, occasioned by such variations, should be added to or deducted from the Contract price, as the case may be. The amount of such difference, if any, shall be ascertained and determined in accordance with the rates specified in the Contract Agreement. In case such rates are not available in the Contract Agreement they shall be settled as per formula laid down in Clause No. 69.0, Volume –I, Section IIIB, of Erection Conditions of Contract for Erection work, hereinafter provided. If there is disagreement regarding the rates to be paid, the Contractor shall carry out the work inclusive of the variations. Provided that, in case no final settlement is arrived for such rates, then the Purchaser shall have the power to determine the rates finally and such rates shall be binding on the parties.
- 33.4 In the event of the Engineer-in-charge requiring any variation, reasonable and proper notice shall be given to the Contractor to enable him to make his arrangement accordingly and, in cases where goods or materials are already prepared / procured, or any designs, drawings, drawing or pattern made or work done that requires to be altered, a reasonable sum in respect thereof shall be allowed by the Engineer-in-charge.
- 33.5 In any case in which the Contractor shall receive instruction from the Engineer-in-charge for carrying out any work, which either then or later, will in the opinion of the Contractor involve a claim for additional payment, the Contractor shall immediately and, in no case, later than 15 (fifteen) days after the receipt of such instructions and before carrying out the instructions, inform the Engineer-in-charge of such claim for additional payment. However, the Engineer-in-charge shall not be liable for payment of any charge in respect of any such variation, unless the instruction for the performance of the same has been confirmed in writing by the Engineer-in-charge.
- 33.6 In all above cases, in the event of any disagreement as to the reasonableness of the said sum, the decision of the Purchaser shall be final and binding

#### 34 **GUARANTEE / WARRANTY:**

- 34.1 For a period of 12(twelve) calendar months from the date of unit wise successful commissioning, and for common items, 12(twelve) calendar months from the date of successful commissioning of last unit or 18 (Eighteen) calendar months from the date of receipt of equipment of individual units at site whichever is earlier (called the Warranty Period), the Contractor shall remain liable to replace any defect and/or rectify any damage/deficiency that may develop or remained undetected in the equipment/works of his own or those of his sub Contractors.

Such defects and / or damage shall be repaired or replaced as per the decision of the Engineer-in-charge and solely at the cost of the Contractor. The replaced defective parts will be returned to the Contractor at his own expense, unless otherwise arranged. No repairs or replacement shall normally be carried out by the Engineer-in-charge when the equipment is under the erection / supervision of the Contractor's engineers. If, during the period of warranty, any portion of the goods supplied is found defective and is

rectified/replaced, the provision of this clause shall apply to the portion of the equipment so replaced/rectified until expiry of 12(twelve) months from the date of such replacement / rectification or 36 (thirty six) months from the date of first commercial operation whichever is earlier. The rectification / replacement / repairs shall be done at the shortest possible time to minimize the loss of the Purchaser and as mutually agreed to. If any defects are not remedied within a reasonable period of time, the Purchaser may proceed to do the work through any other Agency at the Contractor's risk and expenses, but without prejudice to any other rights which the Purchaser may have against the Contractor.

- 34.2 In the event of emergency where, in the judgment of the Engineer-in-charge, delay would cause serious loss or damage, repairs, replacement, rectification, adjustment etc. may be done by the Engineer-in-charge or by any other Agency chosen by the Engineer-in-charge at the cost of the Contractor and without any advance notice to the Contractor. However, the Contractor will be notified promptly and he shall assist the Purchaser/other Agency employed for necessary corrections. This shall not relieve the Contractor from any of his liability under the terms of the Contract. In case of defective parts which are not repairable at site but are essential for the commercial operation of the equipment, the Contractor and the Engineer-in-charge shall mutually agree to a programme of replacement or renewal, which will minimize interruption to the maximum extent, in the operation of the equipment.
- 34.3 The repair or new parts will be furnished and erected free of cost by the Contractor. If any repair is carried out on his behalf at the site, the Contractor shall bear the cost of such repair/replacement.
- 34.4 In respect of goods supplied and or works done by the Sub-Contractors to the Contractor where a longer guarantee is provided by such sub-Contractors, the Purchaser shall be entitled to the benefit of such longer guarantee period.
- 34.5 In case of defective parts which are not repairable at site but are essential for the operation of the equipment, the Contractor and the Engineer-in-charge shall mutually agree to an improvised arrangement to be made by the Contractor to ensure continued plant operation and to a programme of replacement or renewal which will minimize interruption/dislocation to the maximum extent in the operation of the equipment. The cost of transportation, including all taxes & duties etc. as applicable, Insurance of defective parts from site and replacement will be borne by the Contractor.
- 34.6 The above mentioned Clauses shall also be applicable to spares purchased before or after the completion of the Contract.
- 34.7 The provision of latent defects shall be applicable up to the end of 6 (six) years from the date of successful commissioning of the unit.
- 34.8 It shall be expressly understood that all expenses in respect of replacement / repair during the warranty period or extended warranty period or as latent defects as noted above including, but not limited to, transportation cost, all taxes, duties and levies as applicable, etc. till such spare parts are installed in the main equipment/ plant after necessary repairs/ replacement and the main equipment/ plant is put back into operation, shall entirely be to the Contractor's account.

### **35 REJECTION OF DEFECTIVE PLANT:**

- 35.1 If, during the erection, testing & commissioning of the equipment , the Engineer-in-charge shall decide and inform in writing to the Contractor that the Contractor has manufactured any plant or part of the plant unsound or imperfect or has furnished any plant inferior to the quality specified, the Contractor, on receiving details of such



defects or deficiencies shall, at his own expense, within 15 (fifteen) days of receiving notice or otherwise, and for a period of time as may be decided by the Engineer-in-charge for making it good, proceed to alter, reconstruct or remove such work and furnish fresh equipment up to the standard of specifications. In case the Contractor fails to do so, the Engineer-in-charge may, on giving the Contractor minimum 7 (seven) days' notice in writing of his intentions to do so, proceed to remove the portion of the work so complained of and at the cost of the Contractor, perform all such work or furnish all such equipment, provided that nothing in this Clause shall be deemed to deprive the Purchaser of or affect any rights under the Contract which the Purchaser may otherwise have in respect of such defects and deficiencies.

- 35.2 In case of such replacement / rectification by the Purchaser, the Contractor shall be liable to pay to the Purchaser the extra cost, if any, for such replacement / by delivery and / or erected, as provided for in the original Contract, such extra cost being the ascertained difference between the price paid by the Purchaser under the provision above mentioned, for such replacement and the Contract price for the plant so replaced. If the Purchaser does not so replace the rejected plant within a reasonable time, the Contractor shall be liable only to repay to the Purchaser all money paid by the Purchaser to him in respect of such plant.
- 35.3 In the event of such rejection, the Purchaser shall be entitled to the use of the plant in responsible and proper manner till a time reasonably sufficient to enable him to obtain other replacement plant.

### **36 DEFENCE OF SUIT:**

If any action in Court is brought against the Purchaser or Engineer-in-charge or an Officer or Agent of the Purchaser, for the failure, omission or neglect on the part of the Contractor to perform any acts, matters, covenants or things under the Contract or for damage or injury caused by the alleged omission or negligence or any other act on the part of the Contractor, his Agents, representatives or his Sub-Contractors, or in connection with any claim based on lawful demands of the Sub-Contractors' workmen, supplier or employees whether the Contractor has been impleaded in the suit or not, the Contractor shall, in all such cases, indemnify and keep the Purchaser and the Engineer-in-charge and / or his representatives, Office / Agent harmless from all losses, damages, expenses or decrees arising out of such action.

### **37 LIMITATION OF LIABILITIES:**

- 37.1 Except in cases of criminal negligence or willful misconduct,
- 37.1.1 The Contractor and Employer shall not be liable to the other party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer, and
- 37.1.2 the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price provided that this limitation shall not apply to the cost of repairing or replacing defective equipment or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.
- 37.2 All payments to sub-contractor/sub-vendor if any shall be made by the

contractor. Contractor shall indemnify Employer from any legal issues related to delay in payment or not making any payment to sub-contractor/sub-vendor.

### **38 MARGINAL NOTES AND CAPTIONS:**

The headings and marginal notes to any Clause of the Contract have been provided for the facility of references and shall not affect or control the construction of the Contract.

### **39 PROJECT MANAGEMENT, PROGRESS REPORTS AND PHOTOGRAPHS**

- 39.1 The Contractor shall appoint a senior level officer as Project Manager for Project Planning and management who shall be the single point of contact for all issues related to design & engineering, manufacturing, dispatches, civil, architectural and structural works, erection, testing commissioning and Performance Guarantee Test of the equipments. Before nominating the Project Manager, the Contractor shall submit to the Purchaser, the profile of 3-4 proposed candidates giving the details of their experience in handling similar kind of works for Purchaser's approval. The proposed candidates should have experience in independently handling at least one similar project. The Contractor shall not change the approved Project Manager during execution of the Contract without the written consent of the Purchaser.
- 39.2 The Contractor shall submit, within (15) fifteen days from the date of LOI, an extensive L1 network covering various key phases of the work such as design, procurement, manufacturing, shipment, civil and structural works and field erection activities in line with the agreed work schedule. The network shall also indicate the interface facilities to be provided by the Purchaser, if any, and the dates by which such facilities are needed. The Contractor shall discuss the network so submitted with the Purchaser and the agreed network, which may be in the form as submitted or in revised form in line with the outcome of discussions, shall form part of the Contract Documents.
- 39.3 The Contractor shall submit the L2 and L3 Networks to the Engineer-in-Charge for approval, after signing of the Contract Agreement.
- 39.4 Monthly progress reports shall be submitted by the Contractor, indicating the progress achieved during the month, total progress upto the month against scheduled and anticipated completion dates in respect of activities covered in programme/schedule referred above. These shall detail the status of design, procurement of raw materials, approval of Contractor's drawings, manufacture of the equipment, procurement of sub-contractors' item, etc.
- 39.5 The Contractor shall furnish, along with the progress report, photographs indicating various stages of manufacture, civil and architectural and erection activities, each Photograph shall contain the date, the name of the Contractor and the title of the view taken

### **40 SPARES:**

- 40.1 All spares for the equipment under the Contract will strictly conform to the specification and documents and will be identical to the corresponding main equipment /components supplied under the Contract and shall be fully interchangeable
- 40.2 Mandatory spares, as per list detailed in the technical specification, shall form a part of the Contract.
- 40.3 The Contractor will provide the Purchaser with all the addresses and particulars of his

- sub-suppliers while placing the order on vendors for items/components/equipment covered under the Contract and will further ensure with his vendors that, the Purchaser will have the right to place the order for spares directly on them on mutually agreed terms based on offers of such vendors, if so desired.
- 40.4 The spares will be warranted for a period of 12 (twelve) calendar months from the date of successful commissioning of the unit or 18(eighteen) calendar months from the date of last supply whichever is earlier.
- 40.5 Without any extra cost, the contractor shall provide the purchaser with Dimensioned assembly drawings indicating clearances, forces etc. , catalogues, part numbers and any other information/documents required by the purchaser ,in the form of manual(s) so as to enable the purchaser to identify the mandatory, recommended and all other spares required during the whole life of all the equipment to be supplied.
- 40.6 The Contractor shall guarantee the long term availability of spares to the Purchaser for the full life of the equipment covered under the Contract. The Contractor shall guarantee that before going out of production of spare parts of the equipment covered under the Contract, he shall give the Purchaser at least 12 (twelve) months advance notice so that the latter may order his bulk requirement of spares, if he so desires. The same provision will also be applicable to subcontractors. Also, the Contractor / Sub- Contractors will provide the Purchaser Dimensioned assembly drawings indicating clearances, forces etc., material specifications and technical information required by the Purchaser for the purpose of manufacture of such items for his own use or to procure such spares from alternate source.
- 40.7 Further in case of discontinuance of supply of spares by the Contractor or his Sub-Contractors, the Contractor will provide the Purchaser with full information for replacement of such spares with other equivalent make's if so required by the Purchaser.
- 40.8 The quality plan and the inspection requirement finalized for the main equipments will also be applicable for corresponding spares.
- 40.9 All spares covered under the Contract shall be produced and delivery of the spares will be effected along with the main equipments in a phased manner and the delivery would be completed by the respective dates for various categories of goods as per the agreed schedule.

#### **41 PAYMENT:**

##### **41.1 General:**

The payment to the Contractor for performance of works under the Contract will be made by the Purchaser as per the guidelines and conditions specified herein. The final payment will be made on completion of the works and on fulfillment by the Contractor of all his liabilities under the Contract.

##### **41.2 Currency of Payments**

The Contract Price stated in the Contractor's bid will be paid in Indian Rupees.

##### **41.3 Mode of Payment:**

Payment against Cl. 41.4(a) (ii) and (iii) will be effected through an irrevocable, operable, at sight Letter of Credit (LC) from scheduled Bank/ first-class bank, within sixty (60) days after issuance of LOI. LC format and document to be presented under LC shall be mutually agreed between NEEPCO and the successful Bidder after the award of the Contract. Charges towards

opening of LC shall be borne by the Contractor.

All other payments due to the Contractor shall be disbursed under e-payment system.

The Engineer in Charge or his authorized representatives will verify and certify the Contractor's invoices, indicating payment instructions (full bank details) for disbursement.

The successful Bidder shall have to furnish the following information for receiving payment against the work through e-payment system:

- a) Name of beneficiaries:
- b) Name of the Bank:
- c) Branch of the Bank:
- d) IFSC code of the Branch:
- e) Account No.:
- f) City/Town:
- g) Fax No.:
- h) Telephone No.:
- i) E-mail address.

#### **TRADE RECEIVABLE DISCOUNTING SYSTEM(TReDS)**

It may be noted that Government of India has implemented Trade Receivable Discounting System (TReDS) to address the challenges faced by MSMEs in delayed payments (after receipt/acceptance of materials/services) from corporate and other buyers, including government departments and Public Sector Undertakings (PSUs) leading to shortfall of working capital.

TReDS is an online electronic institutional mechanism/platform for facilitating the financing of trade receivables of MSMEs from corporate and other buyers including government departments and Public Sector Undertakings(PSUs) , through multiple financiers. NEEPCO has registered on the following TReDS platform:

- a) "Invoicemart" of 'A. TReDS Ltd.', Mumbai

MSME vendors can avail the TReDS facility, if they want to, by registering on the above-mentioned TReDS platform, for which MSME vendors can contact the following address of "Invoicemart"

Shri Mithilesh Jha, Email : [mithilesh.jha@invoicemart.com](mailto:mithilesh.jha@invoicemart.com), Ph: =91 9836953636

#### **41.4 Terms of Payment**

##### **(a) For Supplies:**

- (i) 10% (ten percent) of the total Ex Works price for supply shall be paid as non-recoverable down payment on submission of Bank Guarantee of equivalent amount, along with interest at the rate of 1.5% (one and half percent) above MCLR of State Bank of India, as per the Proforma of Bank Guarantee (enclosed), with validity period upto 90 (ninety) days after the scheduled date of successful completion, which will be subject to fulfillment of the following conditions.

- i. Unconditional acceptance of the LOI, Detailed Order.
- ii. Submission of Contract Performance Bank Guarantee and acceptance thereof.
- iii. Submission of bar chart indicating therein, various key phases of work such as, but not limited to design/drawing approval, manufacture, testing, transportation, receipt at final destination site.
- iv. Billing Break up and its approval
- v. Signing of the Contract Agreement.
- vi. Submission of Drawing Submission Schedule, which shall form a part of the Contract Agreement.

The value of the Bank Guarantee against Down payment shall be allowed to be reduced every 6(six) months in proportion to the value of materials received at site. The Bank Guarantee shall automatically become null and void and discharged when the Bank Guarantee amount is reduced to zero. However, validity of Bank Guarantee shall be valid till such time the subsequent Bank Guarantee for reduced amount is received and accepted by the Purchaser. Moreover, all the Bank Guarantees, except the 1<sup>st</sup> (First) Bank Guarantee shall be accepted by the site Engineer-in-Charge.

- (ii) 65% (sixty five percent) of Ex Works Price and 100% test charges along with all applicable taxes and duties shall be paid on despatch and production of the following documents to the consignee: -
  - i. Proof of despatch (Lorry receipt / railway receipt)
  - ii. Contractor's detailed Invoice.
  - iii. Detailed packing list.
  - iv. Test certificate and or duly approved inspection certificate, or proof of waiver of inspection / tests.
  - v. Despatch clearance.
  - vi. Documentary evidence against payment of Taxes and Duties.

In case, the contractor does not avail the down payment as per cl. (i), the above amount will be 75% instead of 65%.

- (iii) 15% (Fifteen percent) of Ex-Works Price along with 90% (Ninety Percent) Price Adjustment amount shall be paid on receipt of materials at site in full and good condition, and duly certified by Engineer In Charge.
- (iv) Balance 10% (Ten Percent) of the total Ex-Works Price along with 10%(Ten Percent) price adjustment amount shall be paid after Final Acceptance of the individual unit after erection testing & commissioning. However, balance 10% (Ten Percent) of the total Ex-Works Price along with 10%(Ten Percent) price adjustment amount in respect of the common systems shall be paid after Final Acceptance of the last unit. However, in case of any delay (for reasons not attributable to contractor) in Final Acceptance after erection, testing and commissioning, and on written request by the Contractor, this balance 10% (Ten percent) amount shall be released against submission of Bank Guarantee for equivalent amount and the BG to be kept valid till Final Acceptance of the equipment. However, such arrangement shall not relieve the Contractor of any of his obligations towards completion of all works as per terms of the Contract.



If the Contractor fails to complete the supply within stipulated period as per approved schedule, the Purchaser reserve the right to encash the Bank Guarantee submitted towards down payment. In case of encashment of BG, the 1.5% (One and half percent) interest above MCLR shall also be recoverable.

- (b) For Inland Transportation including Freight and Insurance, Storage and Preservation of all Equipment at any intermediate locations(if required), Delivery to Project Site, Comprehensive Insurance for taking care of eventualities till Handing Over of the Plant/ Work

Inland Transportation and inland Insurance charges shall be paid to the Contractor pro-rata to the value of the equipment received at site and on production of Invoices by the Contractor. However, where equipment-wise inland transportation charges have been called for in the bid proposal sheet and have been furnished by the Contractor, the payment of inland transportation charges shall be made after receipt of equipment at site, based on the charges thus identified by the Contractor in his proposal and incorporated. The aggregate of all such pro-rata payment shall, however, not exceed the total amount quoted by the Contractor and incorporated in the Contract. In case the schedule completion period gets extended due to reasons not attributable to the contractor, the additional insurance premium for such extended period shall be reimbursed by the Purchaser on production of documentary evidence

- (c) Loading and unloading at site, handling and transportation within site, Storage and Preservation at site and erection, testing and commissioning:
- i. 10% (Ten percent) of the Contract price for erection, testing and commissioning price shall be paid as interest-bearing recoverable Mobilization Advance at the rate of 1.5% (one and half percent) above MCLR of State Bank of India, against submission of Bank Guarantee, equivalent to 110% of total advance amount, as per proforma enclosed. The advance shall be paid in 2(two) installments; the first installment of 5% (five percent) shall be paid for site mobilization and site Office establishment on handing over of site by the Corporation. The remaining 5% (five percent) of the Contract sum for erection, testing and commissioning shall be released in such installments as may be considered commensurate with the progress of the initial mobilization, preliminary and ancillary works, duly certified and evaluated by the Engineer-in-Charge. For evaluation of initial mobilization, the Contractor shall have to furnish a programme of mobilization period, showing details of work to be done, machinery and labour to be engaged to start the work as per schedule. The programme shall form part of the Contract Agreement.
  - ii. If the Contractor fails to mobilize the work within stipulated period as per approved schedule, the Corporation reserves the right to encash the Bank Guarantee submitted towards interest bearing advance.
  - iii. The recovery of Mobilisation Advance along with the accrued interest thereon shall be time based and not linked with the progress of work, which shall



commence from the last day of the 2<sup>nd</sup> quarter of the scheduled time of completion, and shall be effected as follows:

Date of recovery	Amount of Recovery
Last day of the 2 <sup>nd</sup> quarter of the schedule time of completion	14% of Mob. Advance + eligible accrued interest
Last day of the 3 <sup>rd</sup> Quarter of the schedule time of completion	14% of Mob. Advance + eligible accrued interest
Last day of the 4 <sup>th</sup> Quarter of the schedule time of completion	14% of Mob. Advance + eligible accrued interest
Last day of the 5 <sup>th</sup> Quarter of the schedule time of completion	14% of Mob. Advance + eligible accrued interest
Last day of the 6 <sup>th</sup> Quarter of the schedule time of completion	14% of Mob. Advance + eligible accrued interest
Last day of the 7 <sup>th</sup> Quarter of the schedule time of completion	14% of Mob. Advance + eligible accrued interest
Last day of the 8 <sup>th</sup> Quarter of the schedule time of completion	16% of Mob. Advance + eligible accrued interest

The recovery of mobilisation advance shall be made from all interim bills as Running Account Bills, Escalation bills and any other interim bills related to works.

Mobilisation Advance alongwith accrued interest shall stand fully recovered on the last day of 8<sup>th</sup> (Eighth) Quarter of schedule time of completion of the work as specified in the Contract Agreement.

At any point in time, even if the Contractor's money on account of work done is not available with the Corporation or if the Contractor is not executing the work or executing it at a slow pace, recovery of Mobilisation Advance shall be made by encashing BG of required value submitted against Mobilisation Advance.

For the release of Mobilisation Advance, the Contractor is to submit 7 (Seven) numbers of BGs valued at 110% of each recovery amount matching with the above recovery schedule. The Validity Period of Bank Guarantees shall be kept 3 (three) months beyond the scheduled date of recovery as shown in the recovery schedule.

- iv. 90% (Ninety percent) of the Contract sum for erection, testing and commissioning along with 90% Price adjustment amount and 100% taxes and duties shall be paid on pro rata basis against progressive erection of the plant/equipment/. Billing Break-Up for the plant/equipment shall be finalized with the successful bidder before signing of the Contract Agreement and the same shall form a part of the Contract Agreement.
- v. Balance 10%(Ten Percent) of the total contract price Erection, Testing and Commissioning along with balance 10% Price adjustment amount shall be paid after "Final Acceptance" of the entire plant/equipment.

Alternatively, on written request by the Contractor, balance (Ten percent) of the total contract price for Erection, Testing and Commissioning along with balance 10% Price

adjustment amount shall be released against submission of Bank Guarantee for equivalent amount and the BG to be kept valid till “Final Acceptance” of the entire plant/equipment. However, such arrangement shall not relieve the Contractor of any of his obligations towards completion of all works as per terms of the Contract.

**(d) Payment for Model Test:**

- i. 90% of Model test Charges with all applicable taxes & duties thereon shall be paid upon successful completion of model test and the approval thereof by the purchaser. Taxes and duties shall be paid on production of documentary evidence.
- ii. Balance 10% shall be paid on final acceptance of the entire plant / equipments.  
Alternatively, on written request by the Contractor, balance (Ten percent) shall be released against submission of Bank Guarantee for equivalent amount and the BG to be kept valid till “Final Acceptance” of the entire plant/equipment. However, such arrangement shall not relieve the Contractor of any of his obligations towards completion of all works as per terms of the Contract

**41.5 Due date of Payment.**

Payments shall be released within 30(Thirty) days from the date of receipt of technically clear invoice/bill by the Engineer-in-Charge.

41.6 **Bank Charges:** All bank charges shall be to Contractor’s account

41.7 **Paying Authority:** Paying Authority for payments shall be the Head of Finance, Heo Hydro Electric Project, North Eastern Electric Power Corporation Ltd, Arunachal Pradesh.

41.8 In case the Purchaser incurs any demurrage / wharefage due to delay in receipt of despatch document or any other reason attributable to the Contractor, the same shall be to the Contractor’s account and shall be deducted or recovered from him.

**42. WITHHOLDING PAYMENT**

42.1 The Purchaser may withhold the whole or part of any payment for the work claimed by the Contractor which, in the opinion of the Purchaser, is necessary to protect himself from loss on account of:

- a) Defective work not remedied or guarantees not met.
- b) Failure by the Contractor to make payments for materials, labour employed by him and their PF dues.
- c) Claims filed against the Contractor.
- d) Loss to another Contractor directly employed by the Purchaser.
- e) Insufficient progress.
- f) Damage or loss to property or equipment of the Purchaser.
- g) Non-return of equipment/material supplied by the Purchaser when the same is due; and
- h) If legal case is instituted by the local Government for default of the Contractor.

- 42.2 When the grounds for withholding payment are removed, payments of the amount due to the Contractor shall be made by the Purchaser without delay.
- 42.3 The bidder shall have to provide information regarding availability of necessary facilities for after sale services and shall have to certify that prompt after sale service will be provided even after expiry of warranty period.

#### **43 DEATH, INSOLVENCY, AND BREACH OF CONTRACT:**

- 43.1 If the Contractor dies or commits any act of bankruptcy or is imprisoned, or being a Corporation, commences to be wound up, not being voluntary winding up for the purpose only of amalgamation / reconstruction, or carries on its business under a receiver for the benefit of its creditors or any of them, or if the Engineer-in-charge is satisfied that the legal representative / heirs of the individual Contractor / proprietor and, in case of a partnership firm, the surviving partners are not capable of carrying out and completing the Contract, the Purchaser shall have the liberty to:
- 43.1.1 terminate the Contract forthwith by notice in writing to the liquidator or receiver or to any person to whom the Contract may become vested and to act in the manner provided in clause entitled "Contractor's Default" as though the last mentioned notice has been the notice referred to in such clause and the equipment and materials have been taken out of the Contractor's hands:
- 43.1.2 To give such liquidator, receiver or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract, upto an amount to be determined by the Purchaser.
- 43.2 The Purchaser may terminate the Contract by notice in writing if the Contractor commits breach of any provisions of the Contract, provided always that such determination shall not prejudice any right of action or remedy that has already accrued or shall accrue thereafter to the Purchaser. The Contractor shall be liable to pay compensation to the Purchaser for all losses, expenses or damages incurred by the Purchaser. The Contractor, however, shall under no circumstances, be entitled to any gain on account of such action by the Purchaser.
- 43.3 In case of breach of any terms and conditions, major or minor, of the Contract by the Contractor, the Purchaser shall have the full power to rescind, cancel or terminate the whole or a part of the Contract and get it done through any other Agency at the risk and cost of the Contractor and without any prejudice to any right of the Purchaser provided in the Contract. The decision of the Purchaser in this regard shall be final and binding.

#### **44 RESPONSIBILITY OF THE CONTRACTOR:**

- 44.1 The Contractor shall guarantee and be entirely responsible for the execution of the Contract in accordance with the specification. He shall further guarantee and be responsible for the quality and workmanship of all materials, correct designs and drawings, timely delivery of the materials within the agreed completion period and removal of defects in the equipment works during the warranty / guarantee period.

- 44.2 The Corporation shall have the right to direct the Contractor to make any change in the design which may be necessary in the opinion of the Engineer-in-charge to make the plant / equipment / materials / works conform to the provisions and contents of the specifications, without any extra costs to the Purchaser. Approval by the Engineer-in-charge or by the authorized representative of the Corporation of the Contractor's or Sub -Contractors drawings, designs, materials or the other parts of works involved in the Contract, or of tests carried out either by the Contractor or by the sub-Contractor as per requirement of the specification or of the Contractor's design and drawings, shall not relieve the Contractor of his responsibility and obligation. Any manufacture or other work performed prior to the approval of drawings and tests will be at Contractor's risk and responsibility.

**45 CONTRACT DRAWINGS:**

- 45.1 8(Eight) sets of all relevant drawings along with soft copies of drawings in editable format, as defined in the General Technical Specification shall be submitted as per the approved Drawing Submission Schedule. No extension in Contract completion time shall be allowed on account of the time consumed in submission and examination of defective drawings and re-submission of corrected drawings. Contractor shall submit 3D engineering drawings for all equipment layouts related to the scope of supply and installation. These drawings shall include all major electromechanical equipment and layouts, detailing spatial arrangements, interconnections, and maintainability considerations using industry-standard software such as AutoCAD, Civil 3D, Navisworks, Revit, or other equivalent platforms
- 45.2 In addition to the drawings defined in the technical specification, the Contractor may supply any other drawing, which, in his opinion, is necessarily required to describe the equipment in full details and interconnection thereof.
- 45.3 These drawings, when signed and approved, shall become the property of the Purchaser and shall be deposited with the Head of Plant and shall not be departed from it in anyway, whatsoever, except with the written permission of the Head of Plant hereinafter provided.
- 45.4 After approval, the Contractor shall supply 8 (eight) prints of all drawings, design documents & soft copy containing all the drawings, which may be reasonably required for the purpose of the Contract.
- 45.5 The Contractor shall also furnish 8 (eight) sets of "as built" drawings and the list of all "as built" drawings bearing numbers after commissioning, incorporating all site modifications/ changes etc.

**46 MISTAKE IN DRAWING:**

- 46.1 The Contractor shall be responsible for and shall pay for any alterations of the work due to any discrepancies, errors and omissions in the drawings or other particulars supplied by him whether such drawings or particulars have been approved by the Engineer-in-charge or not, provided that if such discrepancies, errors or omissions are due to inaccurate information of particulars furnished to the Contractor by the

Engineer-in-charge, any alterations in the work necessitated by reasons of such inaccurate information of particulars shall be paid for by the Purchaser.

- 46.2 If any dimension figures upon a drawing or a plan differ from that obtained by scaling the drawing or plan, the dimension as figured upon drawings or plan shall be taken as correct.

**47 MATERIALS AND WORKMANSHIP:**

- 47.1 The Contractor hereby guarantees, interalia, the following:

- a. Use of best quality and strength of materials
- b. Satisfactory operation during the period of the operation and maintenance period.
- c. Performance figures as specified for all parts under the severest condition of operation.

- 47.2 The Contractor hereby also guarantees that the plant, equipment and materials shall be new and of best quality workmanship and the materials shall have no defect in design and / or manufacture, and shall meet the requirements of the specification and shall be in all respects suited for purposes intended.

- 47.3 The Contractor shall remedy, without any cost to the Owner, all defects in design materials and workmanship which may develop under normal use and which have been called to the attention of the Contractor prior to the expiry of the warranty period.

- 47.4 Any equipment that fails more than 2 (two) times during Warranty Period, shall not be repaired but replaced. However, defective electric motor parts shall be replaced and not repaired.

**48 INTERCHANGEABILITY:**

All the parts shall be made accurately to standard gauges so as to facilitate replacement and repairs. All corresponding parts of similar apparatus / equipment / plant shall be interchangeable.

**49 ENGINEER-IN-CHARGE & CONSIGNEE:**

The following officials shall act as Engineer-in-charge.

1. For issue/signing of LOI/DO Contract Agreement and acceptance of Contract Performance Guarantee:  
Executive Director (Tech), Contract & Procurement, NEEPCO Ltd., Shillong
2. For execution of works:  
The Head of Project (or his authorized representative)  
Heo Hydro Electric Project
3. For approval of design/drawing/inspection reports etc. after issue of LOI/  
Detailed Order:  
Executive Director (Tech), Design & Engineering, NEEPCO Ltd., Guwahati

4. The equipment under this Contract shall be consigned to: - “The Head of Project, Heo Hydro Electric Project”

Copies of all the despatch documents are to be forwarded to the following addresses: -

1. Executive Director(Tech), Contract & Procurement
2. Executive Director(Tech), Design & Engineering
3. The Head of Project, Heo H.E. Project
4. The Head of Finance, Heo H.E. Project

#### **50 COMPLIANCE WITH REGULATIONS:**

- 50.1 Unless otherwise specified, all works / supply, to the extent applicable, shall be carried out in accordance with the Indian Electricity Act, 2003, the Indian Electricity Rules, 1956 or any amendment / order thereof, which may be issued during the currency of the Contract and the requirements of any other Rules, Regulations and Act in India to which the Corporation may be subjected to.
- 50.2 The Contractor shall comply with all applicable laws, or ordinances, codes, approved standards, rules and regulations and shall procure all necessary Municipal and Government permits, licenses etc., at his own cost. The Contractor shall leave the Purchaser and Engineer-in-charge harmless as a result of any infraction thereof.

#### **51 COMMENCEMENT, EXECUTION AND COMPLETION OF WORK:**

- 51.1 All works envisaged in this Contract shall be completed within the time limit specified herein and no deviation shall be allowed whatsoever. The Contractor shall provide full programme in the form PERT network for the entire scope of supply and work, within 30(thirty) days from the date of issue of the Letter of Intent.
- 51.2 The Contractor shall confirm his acceptance within 15 (fifteen) calendar days after the date of issue of the Letter of Intent and submit the Contract Performance Bank Guarantee within 30 (thirty) days of issue of the Letter of Intent for issue of Detailed Order, and signing of the Contract Agreement. The date of issue of the Letter of Intent will be considered as Zero date. The complete scope of Supply and work is to be completed within the period specified under Clause No. 10, of Section – IIIA, General Terms and Conditions of Bid Document.
- 51.3 The Contractor shall execute the work with faithfulness and in conformity with the specifications.
- 51.4 The Contractor shall, at all times during execution of the Contract, carry out the work with such labour force and equipment as, in the judgment of the **Head of Project / Engineer - in - charge** are sufficient to complete it within the specified completion period. The capacity of the Contractor's construction plant, sequence and methods of operation and the forces employed shall all the time during the continuance of the Contract be subject to the approval of the **Head of Project / Engineer - in - charge** and shall be such as to ensure the completion of the work within the specified period of time. The **Head of Project/ Engineer - in - charge** reserves the right to direct the Contractor to supplement the construction plant capacity provided by the Contractor, if it is felt that the same is not sufficient achieve the completion target of the work as



per schedule.

- 51.5 On completion of the work, the Contractor shall inform the Head of Project /Engineer-In-Charge in writing about the date of completion and shall request him for a certificate of completion. No such certificate will be given nor shall the work be considered as completed, until the Contractor has removed from the premises on which the work has been executed, all surplus materials and rubbish, which he may have had possession for the purpose of the execution thereof and the area is fully cleared to the satisfactory of the Head of Project / Engineer-In-Charge and if the Contractor fails to do so on or before the date fixed for completion of the work, the Head of Project / Engineer-In-Charge may do so and may sell such scaffolding and materials as have not been removed by the Contractor and the expenditure so incurred shall be recovered from the Contractor's outstanding dues. He shall have no claim in respect of any such scaffolding or surplus materials as aforesaid.
- 51.6 The Contractor shall employ sufficient number of qualified engineers and staff to carry out the work and they shall be available at work sites during working hours. He shall also communicate in writing to the Head of Project, the name of the **Chief Representative** to superintend the execution of the works. The said representative or if more than one shall be employed, then one of such representative shall also be present on the site during working hours.

## 52 DELIVERY OF PLANT / EQUIPMENT:

- 52.1 No plant / equipment/ material shall be despatched, until despatch instruction is given by the Head of Plant / Engineer-In-Charge in writing to the Contractor.
- 52.2 The Contractor shall deliver the plant / equipment / materials at the place (s) and in the manner as specified in the Contract. The Contractor shall comply with all instructions that may be given by the Purchaser from time to time regarding transportation of the plant/equipment/materials.
- 52.3 Immediately after despatch, delivery notification of delivery or despatch in regard to each and every consignment shall be made to the designated consignee and any other personnel as may be specified in the Contract.
- 52.4 In case of any damage or loss occurred in transit, it should be the liability of the Contractor to initiate or pursue the claim with the Insurance Company. He shall also take immediate steps to repair the damages or to replace the loss and damages as per the instruction of the Engineer-in-charge.
- 52.5 Property or title of the plant / equipment / goods shall not pass to the Purchaser unless these are actually delivered at the designated places.
- 52.6 The Purchaser shall not be responsible to the Contractor to secure/arrange/provide means of transport. Similarly, any road license and or permit, if necessary, shall be arranged by the Contractor. However, if any documentary assistance is necessary to facilitate transportation, these will be supplied to the Contractor to the extent possible.

## 53 STORAGE:

If the Purchaser desires that the plant/equipment or any portion thereof should not be despatched by the Contractor, when it is due for despatch, the Contractor shall store the plant / equipment or a portion thereof in his works as mere custodian in trust on behalf of

the Purchaser at no extra cost and shall be responsible for all risks not limited to losses and damages. However, in such cases, payment, which is due against dispatch, shall be released by the Purchaser. However, in case of any space constraint in the Contractor's works in such situation, arrangements shall be made by the Contractor for storage at any other convenient place on chargeable basis at the rates to be mutually agreed by NEEPCO and the Contractor at that time. The Contractor however shall be responsible for all risks not limited to losses and damages in such situation.

In case the equipments are not required by the Purchaser for a period of more than 6(six) months, the Purchaser shall intimate the Contractor for dispatch of the same. In the event storage of the same is necessary at some intermediate place designated by the Purchaser, it will be intimated at the time of dispatch clearance. In such a situation, the payment which is due against receipt shall be released by the Purchaser. Further, the additional expenses to be incurred due to intermediate storage shall be reimbursed to Contractor subject to acceptance of reasonability of rates against these expenses by Engineer In Charge.

#### **54. COMPLETENESS:**

The bid shall be complete in all respects and shall include all accessories, even though not specifically mentioned in the specifications, schedules etc., but which are required to for the satisfactory operation of the system as a whole.

#### **55. ADDRESS OF THE CONTRACTOR AND NOTICES AND COMMUNICATION ON BEHALF OF THE PURCHASER:**

- 55.1 For all purpose of the Contract, including Arbitration there under, the address of the Contractor mentioned in the bid shall be the address to which all communications addressed to the Contractor shall be sent, unless the Contractor has notified a change by a separate letter containing no other communication and sent by Registered Post with acknowledgement due to the Purchaser. The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid.
- 55.2 Any communication or notice on behalf of the Purchaser in relation to the Contract may be issued to the Contractor by the Engineer-in charge and all such communications and notice may be served on the Contractor either by registered or registered post/speed post/courier post or by ordinary post or hand delivery or e-mail at the option of such officer.
- 55.3 Any notice or instructions or communication to be given to the Contractor under the terms of the Contract shall be deemed to have been served if it has been delivered to his site Office.

#### **56. CONFIDENTIALITY OF THE CONTRACT DOCUMENTS & MATTERS:**

All documents, correspondences, decision and other matters concerning the Contract shall be considered as confidential & restricted nature by the Parties and either party shall not divulge or allow access there to unauthorised person of any kind.

#### **57. LABOUR REGULATIONS**

- 57.1 The Contractor shall, at his own cost, comply with all the provisions of all Acts, Laws, Regulation, Rules or bye-law of the Government of India, State Governments and or any local

and Statutory Authority amended from time to time and applicable is respect of engagement of labour, such as but not limited to:

- (i) The Code on Wages, 2019,
- (ii) The Industrial Relations Code, 2020
- (iii) The Code on Social Security, 2020
- (iv) The Occupational Safety, Health and Working Conditions Code, 2020

All references to old labour laws in the Bid Document shall be construed as references to the relevant provisions of new Labour Codes as mentioned above.

- 57.2 The Contractor shall indemnify the Owner against any payment to be made under the above mentioned Acts. In the event of the Contractor's failure to comply with the provision of any Act or in the event of any decree or award of order against the Contractor having been received from any Competent Authority on account of any default or breach of any provisions of the said Acts, the Engineer-in-Charge, without prejudice to any other right, shall be empowered to deduct such sum from the bills of the Contractor or from the Security Deposit or from any other payments under this Contract or any other Contract to satisfy the provision of the said Acts and the said Authority. The decision of the Engineer-in-Charge in this respect shall be final and binding in this regard.

#### **58. MANDATORY PROCUREMENT FROM MICRO AND SMALL ENTERPRISES:**

Public Procurement Policy for Micro and Small Enterprises (MSEs)-2012 has reserved 358 items (list attached as Annexure-I under this section) to be procured exclusively from MSEs. Accordingly, the bidder/ bidders to whom this contract shall be awarded shall procure the required items included in the list of 358 items exclusively from MSEs.

The bidder/ bidders to whom the contract shall be awarded shall procure minimum of **25%** of the required goods/ services from MSEs **including 4% from MSEs owned by SC/ST entrepreneurs and 3% from MSEs owned by women**. In the event of failure of such MSEs owned by SC/ST entrepreneurs and women, 4% **& 3%** sub- target for procurement from MSEs owned by SC/ST entrepreneurs **& women** shall be met from other MSEs.

A compliance report to the above attaching documentary evidence shall be submitted to the Engineer-in-charge quarterly. If such mandatory procurement could not be complied with, the reason for the same shall be indicated in the report, for acceptance of Engineer-in-charge.

#### **59. No Nuclear Use :**

Purchaser shall not trans-ship, re-export, divert or direct or otherwise make or allow any disposition of the equipment supplied under this contract to any country other than India. Purchaser hereby certifies that the equipment, materials, services, technical data, software or other information or assistance furnished by the Contractor under this Contract will not be

used in the design, development, production, stockpiling or use of chemical, biological, or nuclear weapons either by the Purchaser or by any entity acting on Purchaser's behalf.

#### **60. Idling Time Cost Claims: (Valuation of Idling Time Cost Claims)**

The idling time cost claims of Contractor on account of stoppage of Works entitled for extension of Time for Completion under the Contract shall be determined as under:

##### **1. Site expenses for extended period**

The Engineer-In Charge shall endeavour for cost cutting methods during idling period by way of partially demobilising as per the provision of the Contacts. In that case extra cost of demobilisation/ mobilisation shall be considered as per actual against production of documentary evidence. All items are to be evaluated on individuals basis only against production of documentary evidence (including his authorized sub-contractors also) and the amount calculated is to be capped by the amount calculated as per the formula reproduced as below:

Site expenses = [4% of contract (as defined in Clause No.25 of Sec-III of ITB) x authorized time extension for compensation event]/ [Contractual Completion Period]

Such charge would include the claim amount against sub clause No. (a), (b), (c), (d) & (e) given below:

##### **(a) Cost of owned Equipment**

Cost of owned equipment will comprise of the following elements:

##### **i. Depreciation Cost.**

Annual Depreciation (Based on life in years) =  $0.9 \times \text{Book Value} / \text{Life in years}$ .

Depreciation cost =  $\{(\text{Idle period in days} / 365) \times 0.50 \times \text{Annual Depreciation}\}$ .

However, if the equipment, as considered above, have completed their scheduled life in years in that case the depreciation shall be considered as zero.

##### **ii. Interest on capital Investment: $(\text{Rate of Interest}^{\#} / 100) \times \text{Average Annual Cost}$ The average annual cost is to be determined as follows:**

Average Annual Cost =  $\text{Book value of Equipment} \times (n+1) / 2n$

Where:

- "n" refer for number in years of life of equipment.
- Book value = purchase price plus freight, insurance, all taxes and duties, erection and commissioning charges and other incidental charges.

# the interest rate shall be the rate of interest applicable for Advance Payment in the Contract.

**(b) Cost of leased/ hired Equipment**

In case of leased/ hired equipment, the hire charges shall be admissible for the idle period. The value of the claim amount shall be assessed by the Internal Standing Committee keeping in view the documentary evidence provided by the Contractor, prevailing market rate and reasonableness of the claim in the opinion of the internal Standing Committee.

**(c) Cost of Labour**

The labour directly engaged for the works at Site by the Contractor or through subcontractor, as verified by the Engineer-In-Charge, will be reimbursed for idle period in case contractor produces proof that idle labour has been paid wages during the period of idling.

Cost of equipment related labour, as verified by the Engineer-In-Charge, will be worked out as per CWC norms limited to actual whichever is lower.

The above cost will be considered for payment based on the supporting details such as attendance sheet, receipt of deposit of Employees provident fund duly certified by the Contractor. In addition to actual cost of labour, indirect charges shall be considered. The indirect charges (other than salary) shall be 85% and 60% for skilled and unskilled labour respectively. Indirect charges shall be applicable on the basic wages. Basic wages means component of wages on which statutory deductions like Employee Provident Fund is deposited to the statutory authority.

**(d) Expenses on additional storage/preservation/ transportation/ double handling**

The above is to be paid on submission of documentary proof and verification by the Engineer-In-Charge as per actual based on merit of the case.

**(e) Other miscellaneous expenditure including establishment**

The cost under this head is to be limited maximum upto 2% off contract price, within the cap of 4%, as calculated by the formula as mentioned under Sl. No. (1) above but against documentary evidence only.

**2. Interest on outstanding Mobilization Advance**

Interest on outstanding mobilization advance beyond Scheduled Completion period on authorized extension of completion period shall be for cases where interest bearing mobilization advance(s) has been released to the Contractor.

Interest rate, for computing interest on Mobilization advance will be as mentioned in the contract agreement for such advance.

**3. Bank Guarantees and Insurance charges**

These charges shall be paid beyond Scheduled completion period on authorized extension of completion period upon production of documentary evidence.

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#### **4. Charges on account of extension of Warranty**

The Charges towards extensions of warranty are to be considered for only those equipments which have been supplied till the scheduled completion period/ extended completion period. Charges towards extended warranty shall be calculated upto 2% of composite contract price per annum on prorata basis.

#### **5. The taxes applicable on cost claims**

The applicable taxes on the above elements of cost claims shall be reimbursed to the Contractor as per actual based on documentary evidence.

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## ANNEXURE-I

### List of Items Reserved for Purchase from Micro and Small Enterprises

Sl No. Item Description

1. AAC/& ACSR Conductor upto 19 strands
2. Agricultural Implements
  - a. Hand Operated tools & implements
  - b. Animal driven implements
3. Air/Room Coolers
4. Aluminium builder's hardware
5. Ambulance stretcher
6. Ammeters/ohm meter/Volt meter (Electro magnetic upto Class I accuracy)
7. Anklets Web Khaki
8. Augur (Carpenters)
9. Automobile Head lights Assembly
10. Badges cloth embroidered and metals
11. Bags of all types i.e. made of leather, cotton, canvas & jute etc. including kit bags, mail bags, sleeping bags & water-proof bag
12. Bandage cloth
13. Barbed Wire
14. Basket cane (Procurement can also be made from State Forest Corpn. and State Handicrafts Corporation)
15. Bath tubs
16. Battery Charger
17. Battery Eliminator
18. Beam Scales (upto 1.5 tons)
19. Belt leather & straps
20. Bench Vices
21. Bituminous Paints
22. Blotting Paper
23. Bolts & Nuts
24. Bolts Sliding
25. Bone Meal
26. Boot Polish
27. Boots & Shoes of all types including canvas shoes
28. Bowls
29. Boxes Leather
30. Boxes made of metal
31. Braces
32. Brackets other than those used in Railways
33. Brass Wire
34. Brief Cases (other than moulded luggage)
35. Brooms
36. Brushes of all types
37. Buckets of all types
38. Button of all types
39. Candle Wax Carriage
40. Cane Valves/stock valves (for water fittings only)
41. Cans metallic (for milk & measuring)
42. Canvas Products :
  - a. Water Proof Deliver, Bags to spec. No. IS - 1422/70
  - b. Bonnet Covers & Radiators Muff. to spec. Drg. Lv 7/NSN/IA/130295
43. Capes Cotton & Woollen
44. Capes Waterproof

45. Castor Oil
46. Ceiling roses upto 15 amps
47. Centrifugal steel plate blowers
48. Centrifugal Pumps suction & delivery 150 mm. x 150 mm
49. Chaff Cutter Blade
50. Chains lashing
51. Chappals and sandals
52. Chamois Leather
53. Chokes for light fitting
54. Chrome Tanned leather (Semi-finished Buffalo & Cow)
55. Circlips
56. Claw Bars and Wires
57. Cleaning Powder
58. Clinical Thermometers
59. Cloth Covers
60. Cloth Jaconet
61. Cloth Sponge
62. Coir fibre and Coir yarn
63. Coir mattress cushions and matting
64. Coir Rope hawserlaid
65. Community Radio Receivers
66. Conduit pipes
67. Copper nail
68. Copper Napthenate
69. Copper sulphate
70. Cord Twine Maker
71. Cordage Others
72. Corrugated Paper Board & Boxes
73. Cotton Absorbent
74. Cotton Belts
75. Cotton Carriers
76. Cotton Cases
77. Cotton Cord Twine
78. Cotton Hosiery
79. Cotton Packs
80. Cotton Pouches
81. Cotton Ropes
82. Cotton Singlets
83. Cotton Sling
84. Cotton Straps
85. Cotton tapes and laces
86. Cotton Wool (Non absorbent)
87. Crates Wooden & plastic
88. (a) Crucibles upto No. 200  
(b) Crucibles Graphite upto No. 500  
(c) Other Crucibles upto 30 kgs.
89. Cumblies & blankets
90. Curtains mosquito
91. Cutters
92. Dibutyl phthalate
93. Diesel engines upto 15 H.P
94. Dimethyl Phthalate
95. Disinfectant Fluids
96. Distribution Board upto 15 amps
97. Domestic Electric appliances as per BIS Specifications :-  
- Toaster Electric, Elect. Iron, Hot Plates, Elect. Mixer, Grinders Room heaters & convectors and ovens
98. Domestic (House Wiring) P.V.C. Cables and Wires (Aluminium) Conforming to the prescribed BIS

- Specifications and upto 10.00 mm sq. nominal cross section
99. Drawing & Mathematical Instruments
  100. Drums & Barrels
  101. Dust Bins
  102. Dust Shield leather
  103. Dusters Cotton all types except the items required in Khadi
  104. Dyes :
    - a. Azo Dyes (Direct & Acid)
    - b. Basic Dyes
  105. Electric Call bells/buzzers/door bells
  106. Electric Soldering Iron
  107. Electric Transmission Line Hardware items like steel cross bars, cross arms clamps arching horn, brackets, etc
  108. Electronic door bell
  109. Emergency Light (Rechargeable type)
  110. Enamel Wares & Enamel Utensils
  111. Equipment camouflage Bamboo support
  112. Exhaust Muffler
  113. Expanded Metal
  114. Eyelets
  115. Film Polythene - including wide width film
  116. Film spools & cans
  117. Fire Extinguishers (wall type)
  118. Foot Powder
  119. French polish
  120. Funnels
  121. Fuse Cut outs
  122. Fuse Unit
  123. Garments (excluding supply from Indian Ordnance Factories)
  124. Gas mantels
  125. Gauze cloth
  126. Gauze surgical all types
  127. Ghamellas (Tasllas)
  128. Glass Ampules
  129. Glass & Pressed Wares
  130. Glue
  131. Grease Nipples & Grease guns
  132. Gun cases
  133. Gun Metal Bushes
  134. Guntape
  135. Hand drawn carts of all types
  136. Hand gloves of all types
  137. Hand Lamps Railways
  138. Hand numbering machine
  139. Hand pounded Rice (polished and unpolished)
  140. Hand presses
  141. Hand Pump
  142. Hand Tools of all types
  143. Handles wooden and bamboo (Procurement can also be made from State Forest Corpn. and State Handicrafts Corporation)
  144. Harness Leather
  145. Hasps & Staples
  146. XXX
  147. Haver Sacks
  148. Helmet Non-Metallic
  149. Hide and country leather of all types
  150. Hinges

151. Hob nails
152. Holdall
153. Honey
154. Horse and Mule Shoes
155. Hydraulic Jacks below 30 ton capacity
156. Insecticides Dust and Sprayers (Manual only)
157. Invalid wheeled chairs.
158. Inverter domestic type upto 5 kVA
159. Iron (dhobi)
160. Key board wooden
161. Kit Boxes
162. Kodali
163. Lace leather
164. Lamp holders
165. Lamp signal
166. Lanterns Posts & bodies
167. Lanyard
168. Latex foam sponge
169. Lathies
170. Letter Boxes
171. Lighting Arresters - upto 22 kv
172. Link Clip
173. Linseed Oil
174. Lint Plain
175. Lockers
176. Lubricators
177. L.T. Porcelain KITKAT & Fuse Grips
178. Machine Screws
179. Magnesium Sulphate
180. Mallet Wooden
181. Manhole covers
182. Measuring Tapes and Sticks
183. Metal clad switches (upto 30 Amps)
184. Metal Polish
185. Metallic containers and drums other than N.E.C. (Not elsewhere classified)
186. Metric weights
187. Microscope for normal medical use
188. Miniature bulbs (for torches only)
189. M.S. Tie Bars
190. Nail Cutters
191. Naphthalene Balls
192. Newar
193. Nickel Sulphate
194. Nylon Stocking
195. Nylon Tapes and Laces
196. Oil Bound Distemper
197. Oil Stoves (Wick stoves only)
198. Pad locks of all types
199. Paint remover
200. Palma Rosa Oil
201. Palmgur
202. Pans Lavatory Flush
203. Paper conversion products, paper bags, envelopes, Ice-cream cup, paper cup and saucers & paper Plates
204. Paper Tapes (Gummed)
205. Pappads
206. Pickles & Chutney
207. Piles fabric

208. Pillows
209. Plaster of Paris
210. Plastic Blow Moulded Containers upto 20 litre excluding Poly Ethylene Terphthalate (PET) Containers
211. Plastic cane
212. Playing Cards
213. Plugs & Sockets electric upto 15 Amp
214. Polythene bags
215. Polythene Pipes
216. Post Picket (Wooden)
217. Postal Lead seals
218. Potassium Nitrate
219. Pouches
220. Pressure Die Casting upto 0.75 kg
221. Privy Pans
222. Pulley Wire
223. PVC footwears
224. PVC pipes upto 110 mm
225. PVC Insulated Aluminium Cables (upto 120 sq. mm) (ISS:694)
226. Quilts, Razais
227. Rags
228. Railway Carriage light fittings
229. Rakes Ballast
230. Razors
231. RCC Pipes upto 1200 mm. dia
232. RCC Poles Prestressed
233. Rivets of all types
234. Rolling Shutters
235. Roof light Fittings
236. Rubber Balloons
237. Rubber Cord
238. Rubber Hoses (Unbranded)
239. Rubber Tubing (Excluding braided tubing)
240. Rubberised Garments Cap and Caps etc
241. Rust/Scale Removing composition
242. Safe meat & milk
243. Safety matches
244. Safety Pins (and other similar products like paper pins, staples pins etc.)
245. Sanitary Plumbing fittings
246. Sanitary Towels
247. Scientific Laboratory glasswares (Barring sophisticated items)
248. Scissors cutting (ordinary)
249. Screws of all types including High Tensile
250. Sheep skin all types
251. Shellac
252. Shoe laces
253. Shovels
254. Sign Boards painted
255. Silk ribbon
256. Silk Webbing
257. Skiboots & shoes
258. Sluice Valves
259. Snapfastner (Excluding 4 pcs. ones)
260. Soap Carbolic
261. Soap Curd
262. Soap Liquid
263. Soap Soft
264. Soap washing or laundry soap

265. Soap Yellow
266. Socket/pipes
267. Sodium Nitrate
268. Sodium Silicate
269. Sole leather
270. Spectacle frames
271. Spiked boot
272. Sports shoes made out of leather (for all Sports games)
273. Squirrel Cage Induction Motors upto and including 100 KW 440 volts 3 phase
274. Stapling machine
275. Steel Almirah
276. Steel bedsstead
277. Steel Chair
278. Steel desks
279. Steel racks/shelf
280. Steel stools
281. Steel trunks
282. Steel wool
283. Steel & aluminium windows and ventilators
284. Stockinet
285. Stone and stone quarry rollers
286. Stoneware jars
287. Stranded Wire
288. Street light fittings
289. Student Microscope
290. Studs (excluding high tensile)
291. Surgical Gloves (Except Plastic)
292. Table knives (Excluding Cutlery)
293. Tack Metallic
294. Taps
295. Tarpaulins
296. Teak fabricated round blocks
297. Tent Poles
298. Tentage Civil/Military & Salitah Jute for Tentage
299. Textiles manufacturers other than N.E.C. (not elsewhere classified)
300. Tiles
301. Tin Boxes for postage stamp
302. Tin can unprinted upto 4 gallons capacity (other than can O.T.S.)
303. Tin Mess
304. Tip Boots
305. Toggle Switches
306. Toilet Rolls
307. Transformer type welding sets conforming to IS:1291/75 (upto 600 amps)
308. Transistor Radio upto 3 band
309. Transistorised Insulation - Testers
310. Trays
311. Trays for postal use
312. Trolley
313. Trolleys - drinking water
314. Tubular Poles
315. Tyres & Tubes (Cycles)
316. Umbrellas
317. Utensils all types
318. Valves Metallic
319. Varnish Black Japan
320. Voltage Stabilisers including C.V.T's
321. Washers all types



- 322. Water Proof Covers
- 323. Water Proof paper
- 324. Water tanks upto 15,000 litres capacity
- 325. Wax sealing
- 326. Waxed paper
- 327. Weighing Scale
- 328. Welded Wiremesh
- 329. Wheel barrows
- 330. Whistle
- 331. Wicks cotton
- 332. Wing Shield Wipers (Arms & Blades only)
- 333. Wire brushes and Fibre Brushes
- 334. Wire Fencing & Fittings
- 335. Wire nails and Horse shoe nails
- 336. Wire nettings of gauze thicker than 100 mesh size
- 337. Wood Wool
- 338. Wooden ammunition boxes
- 339. Wooden Boards
- 340. Wooden Box for Stamps
- 341. Wooden Boxes and Cases N.E.C. (Not elsewhere classified)
- 342. Wooden Chairs
- 343. Wooden Flush Door Shutters
- 344. Wooden packing cases all sizes
- 345. Wooden pins
- 346. Wooden plugs
- 347. Wooden shelves
- 348. Wooden veneers
- 349. Woollen hosiery
- 350. Zinc Sulphate
- 351. Zip Fasteners

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**List of Items Reserved for Purchase from Handicrafts Sector**

S. No.	Item Description	Source of Supply
351.	Cane Furniture	North Eastern Handicrafts & Handlooms Development Corporation Assam Govt. Marketing Corpn. Craft Society of Manipur Nagaland Handicrafts & Handlooms Development Corporation.
352.	Bamboo file tray, Baskets, Pencil stand, side racks etc.	-do-
353.	Artistic Wooden Furniture	Rajasthan Small Industries Corpn., U.P. Export Corporation
354.	Wooden paper weight, racks etc.	- do -
355.	Glass covers made of wood and Grass jute	- do -
356.	Jute furniture	West Bengal Handicrafts Dev. Corp. Jute mfg. Development Corporation Orissa State Handicrafts Dev. Corpn.
357.	Jute bags, file cover	- do -
358.	Woolen & silk carpets	U.P. Export Corporation J & K Sale & Export Corporation