



**NATIONAL FERTILIZERS LIMITED
VIJAIPUR (M P)**

ENERGY SAVING PROJECT (ESP)

OF

AMMONIA PLANT

TENDER DOCUMENT

FOR

CIVIL, STRUCTURAL & OTHER ALLIED WORKS

ENQUIRY NO. PNPM /EM0265/E/CV101

VOLUME – I OF II (COMM. PART)

PREPARED AND ISSUED BY:



PROJECTS & DEVELOPMENT INDIA LTD.



(A GOVT. OF INDIA UNDERTAKING)

PDIL BHAWAN, A-14, SECTOR-01

NOIDA-201301

DISTT. GAUTAM BUDH NAGAR

UTTER PRADESH, INDIA

	NATIONAL FERTILIZER LIMITED– VIJAIPUR E.S.P.IN AMMONIA PLANT CIVIL, STRUCTURAL & OTHER ALLIED WORKS	EM0265-E-CV101	0	
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XIII	Scope of Work, Technical Specifications, Schedule of Rates, Standards, Drawings and other related Documents

The Tenderer shall satisfy themselves before submitting that no page or document listed above is missing from their tender.

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SECTION-II

INSTRUCTIONS TO TENDERERS

	NATIONAL FERTILIZER LIMITED– VIJAIPUR E.S.P-II IN AMMONIA PLANT CIVIL, STRUCTURAL AND ALLIED WORKS INSTRUCTION TO TENDERERS	EM0265-E-CV101	0	
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INSTRUCTIONS TO TENDERERS

1.0 PROJECT SYNOPSIS

National Fertilizers Limited is a Government of India Undertaking engaged in the manufacture of Industrial Chemicals and Fertilizers at its Plants at Bathinda (Punjab), Nangal (Punjab), Panipat (Haryana) and at Vijaipur (M.P.). The present Vijaipur Ammonia Plant- II, Energy Saving Project is proposed at its Plant site at Vijaipur, District Guna, Madhya Pradesh - 473111, INDIA. See further information at the web address: www.nationalfertilizers.com.

NFL has appointed M/s Projects & Development India Ltd. as consultants for above Project.

2.0 PROCEDURE FOR SUBMISSION OF TENDERS

The following procedure shall be adopted for submission of tender by the tenderers. The sealed envelopes shall be submitted as follows:-

ENVELOPE NO. I

To be super scribed "EARNEST MONEY DEPOSIT" and to contain Earnest Money which shall be interest free deposit in the form of "the EMD through electronically i.e. NFET/RGTS.

After depositing the EMD through NFET/RGTS, bidder shall intimate name and complete address of depositor, amount deposited, NIT no. & nature of deposit to the following, at the earliest, through e-mail for proper accounting of deposited amount :-

- (1) DGM (TS), NFL, Vijaipur :- Email address : facashvp@nfl.co.in & vkgupta@nfl.co.in
- (2) DGM (Projects), PDIL, Noida :- Email address : dksant@pdilin.com



The Bank details of NFL for issuance of EMD/BG are as below :--

SBI Current Account No. – 00000010346673311, Branch Code – 30282 , IFSC Code – SBIN0030282, SBI, Branch – NFL, Vijaipur (NFL Complex).

OR

Bid Security in the form of Bank Guarantee from a Scheduled Bank in the BG Format attached at Section – XIII, the bids received incomplete /unsigned/ late / unsolicited / without EMD/without requisite documents in Envelope I / II / III mentioned above shall be considered non responsive and shall be rejected outrightly.

Bank Guarantee towards EMD must be valid for 06 Months beyond bid validity Plus another 06 Months for lodging claims.

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ENVELOPE NO. II

To be super scribed “TECHNICAL AND UNPRICED COMMERCIAL TENDER” and to contain the following:-

- i) TWO set of complete tender documents duly signed and stamped;
- ii) Tender form duly filled in , signed, stamped and witnessed
- iii) Proposal sheet duly signed and stamped.

Document at Sl. No. (ii) And (iii) shall be in six sets (i.e. one original + 5 copies).

ENVELOPE NO. III

To be superscribed “PRICED COMMERCIAL TENDER” and to contain schedule of rates with quoted rates and amounts duly filled in signed and stamped.

Envelope No. I containing EMD will be opened first on the due date of opening. Envelope No. II and III will be considered only, if the earnest money condition is satisfied. The Envelope No. II will then be opened and after the study of tender, discussion will be carried out, if required, with respective tenderers for clarifications of the conditions put forth by tenderer.

The tenderer shall send their authorized representative to participate in discussions who should be able to take immediate decisions on all matters pertaining to this tender. Subsequent to the discussions, tenderers will be given an opportunity to submit another sealed envelope No. IV super-scribed “RESULTANT MODIFICATION ARISING OUT OF DISCUSSIONS” containing six copies (one Original + 5 copies) of the resultant modifications the tenderer may like to make regarding financial implications.

Envelope IV should not contain any conditions whatsoever except prices in case tenderer desires to change the same. The Envelope No. III and IV will be opened at a later date, which will be intimated to the tenderers whose tenders are found to be responsive. Tenderers will note that no cognizance of any conditions/stipulations put forth in Envelope III or Envelope IV shall be taken in the evaluation of tender.

All envelopes, in addition to above superscription, should also be superscribed and addressed as below:-

“TENDER NOT TO BE OPENED BEFORE DUE DATE AND TIME”



TENDER/ENQ. NO. :
DUE DATE:
TIME :

To,

PROJECTS & DEVELOPMENT INDIA LTD.
PDIL BHAWAN, A-14, SECTOR-1
NOIDA – 201 301, DIST. GAUTAM BUDH NAGAR,
UTTAR PRADESH.

KIND ATTN. : MR. D K SANT

3.0 ACCEPTANCE / REJECTION OF TENDER

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NFL/CONSULTANT reserves the right to accept or reject any tender in whole or part and/or accept other than the lowest quotation without assigning any reason. The whole work may be split up between two or more contractors if considered expedient by the NFL / Consultant on their sole and absolute discretion. The tenderer shall have no claim in this regard whatsoever.

4.0 TRANSMISSION OF CORRESPONDENCE OTHER THAN TENDER

Correspondence other than Tender, in triplicate, shall be addressed as per address given in Cl.2.0 above. Two copies of correspondence are to be mailed to owner also at the following address:-

V. K. Gupta, DGM (TS)
National Fertilizers Limited
P.O.Vijaipur
Distt. Guna M.P.
PIN 473 111

5.1 EVALUATION OF QUOTATION

The following conditions shall be considered in the evaluations of quotations:-

- Prices quoted
- Experience for the same or similar works and materials or the intended services.
- Bidder's financial stability.
- Terms of payment
- Completion period
- Acceptance to terms of enquiry documents
- Availability & development of suitable resources in sufficient number.

NFL/Consultant reserves the right to review and verify all statements and to inspect tenderer's facilities for the purpose of allowing the tenderer to establish, to NFL/Consultant's satisfaction, his capability to perform the work.

5.2 Pre- Qualification Criteria (POC) for the Bidders :-

(A) Technical Criteria :-

(a) The Bidder should have satisfactorily completed similar type of one work in last 07 (seven) years ending April,2019.

One (1) similar work of value- 4.0 Crore

Or

Two (2) similar works of value-2.5 Crore each



Or

Three (3) similar works of value- 2.0 Crore each

Similar works means :- Civil, structural works and other allied works for plant / non-plant in field of oil / gas / refinery / power / petrochemicals / fertilizers /infrastructure and other industrial plants..

To meet the above criteria, Bidder shall submit copies of following documents :-

- PO/WO/Contract Agreement.

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(ii) Completion Certificate/Documents for proof of completion/Self certified document, with details of contact person of the Client/Owner for verification purpose.

(B) Financial Criteria :-

- (a) The Bidder should have Positive Net Worth for financial year ending 31st March 2018.
- (b) The Average Annual Financial Turnover of Bidder during last 3 years, ending 31st March'2018, should not be less than Rs. 1.5 Crore.

To meet the above criteria, Bidder shall submit copies of Audited Annual Financial Reports (Balance Sheet and P&L Account).

6.0 TENDERER TO QUOTE FOR ALL ITEMS

- a) The tenderer shall quote their rates with reference to each item and must tender for all the items shown in the attached schedule of Rates.
- b) Tenderers are advised to submit their offers in line with the tender documents without any deviations. No deviations / exceptions should be included in the covering letters. Exceptions / Deviations, if any, must be specifically and clearly stated in the proposal Form-I only. And must be filled in as per Form I strictly, Exceptions / Deviations stated at places other than form shall not be recognized and shall be deemed as non- existent.

7.0 TENDERER TO SIGN ALL PAGES

All pages of the tender documents (including deleted, if any), shall be signed and stamped by the tenderer as a token of acceptance of all the terms and conditions of the tender.

8.0 ERASURES AND ALTERATIONS

Tenders containing erasures and alterations in the tender documents may be rejected. All rates shall be indicated both in words and figures and in case of any controversy in the rates written in figure & words, the rates written in words shall be determined and considered as final.

9.0 INCOMPLETE AND LATE TENDER

Unsolicited/Incomplete/Late tenders or tenders received without required Earnest Money shall be liable to be rejected without any further reference there so.



10.0 EXECUTION OF CONTRACT

The successful tenderer shall be required to execute contract with owner within reasonable time.

11.0 APPLICABLE TAXES

11.1 The prices are inclusive of all taxes & duties except GST. **GST** shall be extra and the tenderer shall quote the applicable GST rate separately in the schedule of rates and the same shall be paid on GST invoice.

11.2 Goods & Service tax (GST) : GST, as applicable shall be paid by NFL against GST invoice. It may further be noted that prime responsibility for assessment in respect of GST rests with the contractor. Therefore, liability of NFL is restricted to the extent of GST only i.e excluding interest

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or penalty if any. It must therefore be ensured by the contractor himself that GST is deposited with appropriate authority in time & manner as prescribed by the law.

11.3 Bidders are required to ascertain themselves the prevailing rates of applicable taxes and duties including income tax rates applicable on the scheduled date of submission of bids and owner would not undertake any responsibility whatsoever in this regard.

11.4 Any changes in statutory rules and regulations under GST regime shall be followed by contractor. TDS on GST or any other statutory deduction will be deducted as per prevailing rules / laws.

12.0 VALIDITY OF QUOTATION

The rates quoted by tenderer shall be valid for a period of 120 days from the date of price bid opening for the purpose of placement of LOI.

13.0 EARNEST MONEY

NFL shall refund Earnest money, where applicable, to all unsuccessful tenderers after award of contract. However, Earnest Money to successful tenderers shall be returned only after submission of Bank Guarantee for performance.

14.0 NO COST PAYABLE FOR PREPARING TENDER

The tenderer shall not be entitled to claim any costs, charges, expenses for or incidental to in connection with preparation and submission and subsequent clarification of his tender even if NFL/consultant decides to withdraw the invitation to tender or the tender is rejected on any count.

15.0 JURISDICTION



Notwithstanding any other court or courts having jurisdiction to decide the questions forming subject matter of a suit, any and all actions and proceeding arising out of or relating to this contract (including any arbitration in terms thereof) shall be only subject to the jurisdiction of District Court, Guna (M.P.).

16.0 SERVICES OF NOTICES OF CONTRACT

All the notices, communications and reference shall be deemed to have been given to the contractor if delivered to contractor at the address given on Article 9.0 above by contractor or his authorized representative OR left out or posted to the address so given in case of posting on the day on which it would have reached such address in the normal course of post or on the day they were so delivered or left.

17.0 Singular and plural are interchangeable in the text of any clause.

18.0 EXTENSION OF TIME

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The time allowed for execution of this contract as specified in Section V shall be the essence of the contract. However, the contract period may be extended by three months (03) at the same rates and terms & condition.

If contractor commits default in commencing and or execution of the work as aforesaid, the NFL/CONSULTANT shall without prejudice to any right or remedy, be at liberty to forfeit the earnest money/BANK guarantee for performance.

If the work is delayed (apart from Force Majeure conditions) by any other condition which, in absolute discretion of the NFL is beyond the control of the contractor, then upon happening of any such event causing delay, the contractor shall immediately give notice thereof in writing to the NFL/CONSULTANT but shall nevertheless use constantly his best endeavours to prevent or make good the delay and shall do all that may be reasonably required to the satisfaction of the NFL/CONSULTANT to proceed with the work.

Request for extension of time, to be eligible for consideration, shall be made by the contractor in writing within fourteen days of the happening of the event causing delay. The contractor may also, if applicable, indicate in such a request the period for which extension is desired. The OWNER/CONSULTANT may give a fair and reasonable extension of time for completion of work, depending upon the merit of the case. Owner/Consultant's determination in this regard shall be final and binding on the contractor; and any determination of refusal or part extension will not be a subject matter of claim before the court or arbitration thereafter.



19.0 INCONVENIENCES TO OTHER

The contractor shall plan his work in such a way as not to cause any inconvenience to public, NFL and/or other contractors at site.

20.0 Contractor shall be responsible for the manner and method of execution of work. The work shall be subject to the approval of NFL/consultant from time to time for the purpose of determination of the question whether the work is being executed in accordance with provision/ Scope of contract.

21.0 GENERAL

- a) In any case clarifications are required the tenderer shall approach the NFL/Consultant in writing. The NFL/Consultant shall provide such clarifications in writing only. All clarifications provided shall be binding on NFL/Consultant and the tenderer. The clarification in writing shall form & construct the part of the contract.
- b) No tenderer can withdraws his tender or revoke the same within the validity period .If a tenderer withdraw or revokes his tender or revises the tender rates for any item within the validity period, his earnest money deposit will be forfeited without prejudice to any other right/claim that NFL/Consultant may have against the tenderer.
- c) Tenders shall be forwarded under cover of a letter type-written on the tenderer's letter head and duly signed, in long hand using ink, by the tender himself or a duly authorised representative of the tenderer.
- d) Wherever it is mentioned –"shall be done by contractor or supplied by the contractor" it shall be deemed to mean shall be done or supplied by contractor at his cost.



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- e) At any time prior to the deadline for submission of bids, the NFL/consultant for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder, may modify the bidding documents by amendment thereto.
- f) The amendment will be notified in writing or by fax or Email to all prospective bidders who have received the bidding documents and will be binding on them.
- g) In order to afford prospective bidders reasonable time in which to take the amendment into account in preparing their bids, the NFL / Consultant may, at their discretion, extend the deadline for the submission of bids.
- h) The NFL / Consultant may, at their discretion, extend the deadline for the submission of bids by amending the bidding documents in accordance with Articles(e) to (g) above, in which case all rights and obligations of the NFL / Consultant and bidders previously subject to the deadline will thereafter be subject to the deadline as extended.
- i) Effective date of the contract shall be the date of notification of award of work or the date indicated in LOI / TOI.
- j) NFL may consider any tender incomplete, not prepared in accordance with the provisions set forth in the invitation to tender and even otherwise and may reject the same or waive of any formalities in any or all the tenders. Any tender received after the closing date is liable to be rejected without any further consideration and no communication in this regard shall be entertained from any of the tenderers.
- (k) In case any information submitted by the tenderer in the tender is found incorrect, untrue , or false or it is noticed during the execution of the tender that any information having material bearing on the contract has been concealed by the contractor, the owner shall have right to terminate the contract

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SECTION-III

TENDER FORM

	NATIONAL FERTILIZER LIMITED– VIJAIPUR E.S.P.IN AMMONIA PLANT CIVIL, STRUCTURAL AND ALLIED WORKS TENDER FORM	EM0265-E-CV101	0	
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TENDER FORM

From

Dated

To
Project Manager
Projects & Development India Ltd.
PDIL Bhawan, A-14, Sector-1
Noida – 201 301, Dist. Gautam Budh Nagar,
Uttar Pradesh.
Kind Attn. : Mr. D K Sant
Telephone : 0120-2529804
Fax No. : 0120-2529801, 0120-2541493
E-Mail : dksant@pdilin.com

(Herein after referred to as NFL)

Dear Sir,



I/we, have read and examined the following documents relating to the work of **CIVIL, STRUCTURAL AND ALLIED WORKS FOR ESP-II** at NFL Vijaipur.

- a) Notice Inviting Tender
- b) Special conditions of contract
- c) General conditions of contract including contractor's Labour Regulations Model Rules for Labour Welfare And Safety Code appended to these conditions.
- d) Payment Terms
- e) Scope of Work & Technical Specifications
- f) Standards , Drawings and documents
- g) Bill of quantities
- h) and the others.

I/we hereby tender for execution of the work referred to in the aforesaid documents upon the terms and conditions contained or referred to therein and in accordance in all respects with the specification, designs, drawings and other relevant details at the rates quoted in schedule of Rate and within period(s) of completion as stipulated in Section-V.

In consideration of I/we invited to tender, I/we agree to keep the tender open for acceptance for 120 days (one hundred twenty) from the date of price bid opening, thereof and not to make any modifications in its terms and conditions which are not acceptable to NFL.

It has been explained to me/us that the time stipulated for and completions of works in all respects as mentioned in the time schedule of completion of jobs and signed and accepted by me/us is the essence of contract. I/we agree that in case of failure on my/our part to strictly observe the time of completion mentioned for the work I/we agree to pay compensation to the NFL as per provisions stipulations contained in General conditions of contract and I/we agree to recovery being made as specified therein. In exceptional circumstances extension of time which shall always be in writing may, however, be granted by the competent authority at his entire discretion and I/we agree that such extension of time will

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not be counted for the extension of completion dates stipulated for job and for the final completion of work as stipulated in the time schedule of completion of work.

I/we agree to pay the earnest money and Financial Guarantee for security and performance and accept the terms and conditions as per the memorandum below in this respect.

I/we am/are fully aware that I/we would be required to fulfil all statutory provisions and obligations under various labour laws in regard to deployment of contract labour under my/ our control.

I/we understand that the rates specified in the tender shall be inclusive of all the taxes except GST in respect of the contract and the rates shall be firm irrespective of any variation in the prevailing rates of taxes, duties, levies ,octroi etc., and any fresh imposition of any of these by state/central/statutory bodies and I/we shall indemnify NFL against levy of any taxes etc. in regard to this contract and in the event of NFL being assessed for any of the said imports, the NFL shall have the right to recover the total amount so assessed from my/our dues and I/we shall also be responsible for all costs or expenses that may be incurred by NFL in connection with any proceeding or limitation in respect of the same.

MEMORANDUM

a) General Description of work: _____

b) Earnest Money _____
(Rupees _____
_____only)

The Earnest Money is payable in the manner set in the tender.



c) Financial Guarantee for Security & performance Will be paid in the manner set out in the general conditions of Contract

d) Time allowed for starting work: Fifteen days from date of issue of letter of intent.

Should this tender be accepted, I/we hereby agree to abide by and fulfil all terms conditions referred to above and in default thereof, to forfeit and pay to the NFL or its successors or its authorized nominees such sums of money as are stipulated in conditions contained in the tender notice and other tender documents.

I/We hereby pay the Earnest Money of Rs. _____
_____ (rupees _____ only) through NEFT/RTGS or through BG No. _____ issued by _____ (name and office of the State Bank of India or any scheduled Bank) in favour of National Fertilizers Limited, Vijaipur.

If I/We fail to commence the work specified in the Memorandum above, or I/We fail to submit Financial Guarantee for Security & Performance specified in the Memorandum above, I/we agree that the NFL or its successors without prejudice to any other right or remedy be at liberty to forfeit the said earnest money in full. The NFL/ Consultant shall also be at liberty to cancel the tender if I/we fail to submit Financial Guarantee for Security & Performance aforesaid or to execute an agreement or to start the work as stipulated in the tender document.

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Dated the _____ day of _____

Witness:

Name in Block Letters:

Yours faithfully,

Address:

Signature of Tenderer(s) with the
Seal of the firm

Witness:

Name in Block Letters:

Name & Designation of authorized
Person signing the tender on behalf of the
Tenderer(s)

Address:

Date:

Dated:

Tel. No.

Postal Address:

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SECTION-IV

AGREEMENT

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ARTICLE	DESCRIPTION
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2.	WORK TO BE PERFORMED
3.	JURISDICTION
4.	ENTIRE CONTRACT
5.	NOTICE
6.	WAIVER
7.	CONSIDERATION
8.	NON-ASSIGNABILITY

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AGREEMENT

This agreement is executed at Vijaipur, Guna (MP) this _____ day of 2019 between NATIONAL FERTILIZER LIMITED (NFL), a company incorporated under the Companies Act, 1956, and having its Registered Office at Scope Complex , Core- III-7, Institutional Area Lodhi Road, New Delhi 110003 (hereinafter referred to as “OWNER”) which expression shall unless repugnant to the context include its successors and permitted, assigns of the ONE PART and _____ whose registered office is situated at _____ (hereinafter referred to as the “CONTRACTOR”) which expression shall be deemed to include its successors and permitted assigns, of the SECOND PART.

Whereas the owner desires to have executed certain works more specifically mentioned and described in the contract documents (hereinafter called the “work” which expression shall include all amendments therein and/or modifications thereof) and has accepted the tender of the Contractor for the said work.

Whereas the owner has invited tender vide NIT No. -----dated-----for execution of work as specified in the contract including all amendments/modifications at its Vijaipur Unit from the eligible parties/tenderers;

AND whereas the tender of Contractor was found suitable in terms of the criteria signified in the NIT;

AND whereas the owner has accepted the tender of Contractor vide acceptance dated---;

AND whereas it has been decided by the owner to award the contract to contractor in terms of the NIT to execute the work to be performed as per the scope of work/work order or any amendment thereto;



AND whereas the parties i.e. owner and contractor have agreed to enter into this contract to perform/execute the works required to be performed under this contract.

NOW, THEREFORE, THIS CONTRACT WITNESSES as follows:

ARTICLE 1 - CONTRACT DOCUMENTS

The following documents shall construct form part and parcel of this agreement:

- a. Tender documents
- b. Acceptance of LOI/Work Order.
- c. Minutes of meeting if any between NFL and contractor held after opening of bid and before award of work.
- d. Addendums to tender documents if any issued by NFL / Consultant

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- e. Any clarifications issues from time to time in writing. The correspondence exchanged between the parties in relation to this contract.

ARTICLE 2 - WORK TO BE PERFORMED

The contractor shall perform the work as mentioned in the work order upon the terms and conditions and within the time specified in the contract documents.

ARTICLE 3 - JURISDICTION

In the event of any dispute arising out of this contract, the court of law at **Guna** alone shall have the jurisdiction to try such dispute.

ARTICLE 4 - ENTIRE CONTRACT



The contract documents mentioned in Article 1 hereof embody the entire contract between the parties hereto, and the parties declare that in entering this contract they do not rely upon any previous representation, whether express or implied and whether written or oral, or any inducement, understanding or agreement of any kind not included within the contract document and all prior negotiations, representative, contract, any/or agreement and understanding are hereby cancelled.

ARTICLE 5 - NOTICE

- 5.1 Subject to any provision in the contract documents to the contrary, any notice, order or communication sought to be served by the Contractor on the owner with reference to the contract shall be deemed to have been sufficiently served upon the Owner (notwithstanding any enabling provisions under any law to the contrary) only if delivered by hand or by registered acknowledgment due post to the owner as defined in the General Conditions of Contract.
- 5.2 Without prejudice to any other mode of service provided for in the contract documents or otherwise available to the Owner, any notice, order or other communication sought to be served by the Owner on the contractor with reference to the contract, shall be deemed to have been sufficiently served if delivered by hand or through registered post acknowledgment due to the principal office of the contractor at _____.

ARTICLE 6 - WAIVER

No failure or delay by the owner in enforcing any right or remedy of the owner in terms of the contract or any obligation or liability of the contractor in terms thereof shall be deemed to be a waiver of such right, remedy, and notwithstanding such failure or delay, the Owner shall be entitled at any time to enforce such right, remedy, obligation or liability, as the case may be.

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ARTICLE 7 - CONSIDERATION

Subject to / and upon the terms and conditions contained in the contract document. The owner shall pay to the contractor CONSIDERATION as specified in the contract documents upon the satisfactory performance of the said work and/or otherwise as may be specified in the contract documents.

ARTICLE 8 - NON-ASSIGNABILITY

The contract and benefits and obligations thereof shall be personal to the contractor and shall not on any account be assignable or transferable by the contractor except with specific prior permission of NFL.

IN WITNESS WHERE of the parties here to have duly executed this contract in duplicate the place, day and year first above written.

SIGNED AND DELIVERED
For and on behalf of
NATIONAL FERTILIZER LIMITED

SIGNED AND DELIVERED
for and on behalf of
M/s_____ (Contractor)

by _____ .

by _____

in the presence of :



(this day of _____ 2019)
in the presence of

1. _____

1. _____

2. _____

2. _____



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SECTION – V
SPECIAL CONDITIONS OF CONTRACT

PROJECT: ESP-II NFL, VIJAIPUR

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GENERAL

The SPECIAL CONDITIONS OF CONTRACT shall be read in conjunction with the GENERAL CONDITIONS OF CONTRACT, specifications of work, DRAWINGS and any other document forming part of this CONTRACT wherever the context so requires.

Where any portion of the GENERAL CONDITIONS OF CONTRACT is repugnant to or at variance with any other provisions of the SPECIAL CONDITIONS OF CONTRACT, then unless a different intention appears, the SPECIAL CONDITIONS OF CONTRACT shall be deemed to over-ride the provisions of GENERAL CONDITIONS OF CONTRACT and shall prevail to the extent of such repugnancy or variations.

1.0 CONTRACTOR'S OBLIGATIONS

1.1.0 General Responsibility

1.1.1 The CONTRACTOR acknowledges that this CONTRACT is basically a Works Contract and CONTRACTOR'S obligation hereunder, notwithstanding anything to the contrary contained herein, is to provide OWNER with fully operational PLANT, complete in all respects under and in accordance with the provision of CONTRACT, within the stipulated time and for the purpose designated herein by OWNER, and to do, furnish and provide everything necessary in connection therewith.



Without prejudice to the foregoing and except as otherwise expressly set forth in the CONTRACT as within the scope of OWNER'S obligations under the CONTRACT, the CONTRACTOR shall perform or cause to be performed all WORK and services required in connection with the supply of planning/engineering (as required), supply of equipment/items/materials, procurement (including, without limitation, all transportation services in connection therewith), construction, erection/installation, pre-commissioning, commissioning, testing including conducting of Performance Tests and other work and services upto the PRELIMINARY ACCEPTANCE OF PLANT by the OWNER.

For Scope of Work and Contractor's Responsibilities, the CONTRACTOR to read the Technical Part also

CONTRACTOR will provide all materials, equipment, machinery, tools, labour, transportation, administration and other services and items required to complete the PLANT in all respects upto the PRELIMINARY ACCEPTANCE OF PLANT and having the performance as guaranteed under the CONTRACT by the CONTRACTOR on a total, fixed price basis in accordance with this CONTRACT. The WORK shall, without prejudice to the generality of the foregoing or those enumerated in Clause 1.2.0 include but not be limited to the following:

The WORK shall, without prejudice to the generality of the foregoing or those enumerated in Clause 1.2.0 include, but not be limited to the following:

(a) Engineering (as required) including necessary investigation required for

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a completely engineered PLANT/SYSTEM including necessary documentation;

- (b) Provision of all equipment, instruments, systems, materials, CONTRACTOR's EQUIPMENT, temporary works and all other items, whether of a temporary or permanent nature including those required for the design, erection, completion commissioning, conducting of Tests and remedying of DEFECTS during DEFECTS LIABILITY PERIOD.
- (c) Transportation from works, port of entry and import clearance and handling services in and into India and inland transportation from the relevant points of delivery of EQUIPMENT/MATEREIALS required in connection with the completion of the PLANT/WORK, and the performance of the other WORK
- (d) Project management.
- (e) Receipt of MATERIALS / ITEMS at SITE including stores management.
- (f) Instrument erection and installation services; testing and Commissioning, including all relevant applicable permits, with CONTRACTOR having responsibility for overall co-ordination of permits required by the OWNER and all training activities;
- (h) All the necessary superintendence/supervision , labour, installation tools, DG fuels, safety provisions, etc. for erection/installation, commissioning, testing will be under scope of Contractor.
- (i) Rectification of defects during DEFECTS LIABILITY PERIOD.



1.1.2 CONTRACTOR shall provide services, for PLANT, in accordance with good engineering practice. CONTRACTOR shall provide services of engineers, designers, draftsmen, buyers, inspectors, expeditors and other persons required for the performance of WORK pursuant to CONTRACT.

1.1.3 In the event that there is any item of EQUIPMENT/MATERIAL or WORK of the type provided for in CONTRACT, which is not specifically mentioned in the specifications or drawings set out in FINAL PROPOSAL, but which is necessary (even though not mentioned in CONTRACT) for normal, safe and continuous operation of PLANT, based on mutual agreement between OWNER and CONTRACTOR, the CONTRACTOR shall include such item of EQUIPMENT in the design and perform such items of WORK, for such EQUIPMENT/INSTRUMENT or WORK free of cost to OWNER as if the same had been originally included in its Scope of Work/FINAL PROPOSAL.

1.1.4 Subject to prior consent of OWNER, CONTRACTOR may make use of the services of SUB-CONTRACTOR/ VENDOR (previously approved in writing by the OWNER) in accordance with the provisions in CONTRACT provided, however, the CONTRACTOR shall remain responsible and liable for the work done by such SUB-CONTRACTOR/vendor.

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- 1.1.5 The CONTRACTOR shall be responsible for obtaining necessary approvals which are to be issued in the OWNER's name from the various statutory authorities.
- 1.1.6 The CONTRACTOR shall provide full technical assistance including follow-up to OWNER for obtaining the necessary approvals to be issued in the name of OWNER from the various statutory authorities.
- 1.1.7 The CONTRACTOR shall furnish Security Deposit / Contract Performance Bond as per the enclosed format in line with the provisions of GENERAL CONDITIONS OF THE CONTRACT.
- 1.1.8 The enumeration in subsequent Clauses of SPECIAL CONDITIONS OF CONTRACT, in GENERAL CONDITIONS OF CONTRACT and other documents of CONTRACT shall not in any manner limit the general scope of obligations and responsibilities of designing, engineering, procurement, supply, erection/installation, commissioning and proving the performance guarantees of PLANT within the scope of CONTRACT.
- 1.2.0 CONTRACTOR's Scope of Work**
- 1.2.1 CONTRACTOR shall provide and be responsible for the tasks specified in this Clause under the following heads:
- 1.2.2 Deleted**
- 1.2.3 Planning/Engineering (as required)**
- 1.2.3.1 CONTRACTOR shall provide planning/engineering services necessary for completion of the WORKS/SYSTEMS in conformity with the CONTRACT and Good Engineering Practices and the NIT including but not limited to:
- (a) Engineering, wherever necessary to describe and detail the WORK/SYSTEM and the Project.
 - (b) Provision of criteria for the acceptance of equipment/items being procured from other suppliers, for incorporation into the PLANTS.
 - (c) Preparation of drawings/sketches (as and if required), plans, bill of material, schedule and estimates for the PLANT/SYSTEM and the project and the performance by CONTRACTOR of its obligations hereunder so that the PLANT erected/installed and commissioned by the CONTRACTOR is capable of meeting the performance guarantees and will be such as could be legally, safely and reliably placed in commercial operation by the OWNER.
 - (d) CONTRACTOR shall perform the necessary planning, design/engineering for WORKS/PLANT/SYSTEMS, to ensure successful completion and operation

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1.2.4 Review and Analysis

1.2.4.1 CONTRACTOR shall allow OWNER/CONSULTANT to review WORK under CONTRACT. Subject to Clause 3 – CHANGE IN WORK/CHANGE ORDER CONTRACTOR shall incorporate in its engineering/planning such additions and changes suggested by OWNER/CONSULTANT as long as these do not conflict with the responsibility of CONTRACTOR in fulfilling its guarantees under CONTRACT. CONTRACTOR shall not use any technical data, drawing, or document given by OWNER except for purpose of CONTRACT.

1.2.5 Codes and Standards

1.2.5.1 The engineering/planning shall be performed and MATERIALS/EQUIPMENT/ INSTRUMENTS shall be supplied and erected/installed according to acceptable international standards, as specified in the Technical Specification/FINAL PROPOSAL, meeting safety and other requirements of various national/international Codes and Regulations being in force as on submission of the FINAL PROPOSAL. The design of PLANT shall be based on the criteria enumerated in CONTRACT. However, it shall be CONTRACTOR'S responsibility to follow all Indian Rules and Regulations as applicable.

CONTRACTOR shall comply with and shall cause the WORK and all components thereof (including, without limitation, the design and engineering of the PLANT) to comply with all APPLICABLE LAWS and APPLICABLE PERMITS as they may be in effect at the time of CONTRACTOR'S performance under the CONTRACT.

The CONTRACTOR shall ensure that all actions on its behalf in connection with the WORKS shall be in compliance with applicable laws of India. The CONTRACTOR agrees to take all reasonable steps to ensure that Persons appointed by it in connection with the WORK shall comply with the applicable laws/ regulations/ guidelines and obligations.

1.2.6 Drawings and Documents



1.2.6.1 CONTRACTOR shall prepare or secure and furnish to OWNER all data, specifications, drawings, plans and other documents as required/used for WORK, as specified in Technical Specifications.

1.2.7 Owner's Review

1.2.7.1 CONTRACTOR shall associate with OWNER for all the Works carried out by CONTRACTOR and SUB-CONTRACTOR / vendor.

OWNER shall review all documents (including QAP/ITP) and give its comments to CONTRACTOR within 14 (fourteen) days from the date of receipt of the same. If the comment, if any, is not communicated by OWNER to CONTRACTOR within 14 (fourteen) days, document shall be deemed to be reviewed by OWNER.

Review as aforesaid by OWNER and furnishing of comments by OWNER or the failure of OWNER to review or comment as aforesaid shall not

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relieve CONTRACTOR in any manner of its obligations including performance guarantees under this CONTRACT.

1.2.8 **Procurement Services**

1.2.8.1.1 As part of the WORK, the CONTRACTOR shall procure and pay for, in CONTRACTOR's name as an independent contractor and not as agent for OWNER, i.e. all the CONTRACTOR and SUB-CONTRACTOR'S labour, materials, equipment, supplies, etc., (whether on or off the PLANT Site) for construction/erection of and incorporation in the PLANT or which are otherwise required for completion of the WORK in accordance with the Specification and the CONTRACT and are not explicitly specified to be furnished by OWNER pursuant to the terms and provisions of the CONTRACT including FINAL PROPOSAL.

1.2.8.1.2 CONTRACTOR shall procure and provide all MATERIALS/EQUIPMENT/ITEMS required for PLANT.

MATERIALS/EQUIPMENT/ITEMS procured shall be according to specifications as set forth in the CONTRACT, proven record of performance and with suitable delivery time to meet the MECHANICAL COMPLETION.

MATERIALS/EQUIPMENT/ITEMS shall be procured from the vendor list agreed between CONTRACTOR and OWNER.



In connection with its procurement work, CONTRACTOR shall be responsible for the shipping, transportation and delivery of all items fabricated, manufactured, constructed or procured as set forth in the FINAL PROPOSAL and the CONTRACT.

All such items and equipment, materials and supplies to be provided by the CONTRACTOR pursuant to the CONTRACT shall be new and of required quality, free from improper workmanship or defects and properly warranted or guaranteed in accordance with the CONTRACT. Any apparent omission or error in the equipment specifications will be corrected by the CONTRACTOR to the extent required by the CONTRACT including FINAL PROPOSAL.

1.2.8.2 **Materials/Instruments/Equipment/Items**



1.2.8.2.1 CONTRACTOR agrees that MATERIALS/INSTRUMENTS/EQUIPMENT/ITEMS procured shall be strictly in accordance with the specifications as provided, however, that any apparent omission or error in the specifications will be corrected by CONTRACTOR if it is necessary for the functioning of EQUIPMENT. CONTRACTOR shall inform OWNER for such omission or error or ambiguity in the specifications and corrections made for the same.

1.2.8.2.2 Completeness of MATERIALS/EQUIPMENT/ITEMS shall be the responsibility of CONTRACTOR. Any fittings, accessories, etc. which may not be specifically mentioned in Technical Specifications/FINAL PROPOSAL but which is required for the satisfactory functioning of MATERIALS/INSTRUMENTS/ EQUIPMENT/SYSTEMS and realization of SUCCESSFUL

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OPERATION/PERFORMANCE GUARANTEES shall be provided by CONTRACTOR without any extra cost.

- 1.2.8.2.3 CONTRACTOR shall ensure that the modern practices in the manufacture of high grade MATERIALS/EQUIPMENT/ITEMS are followed notwithstanding any omission in the specifications.
- 1.2.8.2.4 The supplies including fittings, accessories, etc. shall be in strict compliance to the specifications/codes/standards. Components for which no relevant standards exist, the same shall be designed and manufactured as per good engineering practices.
- 1.2.8.2.5 The true intent and meaning of this Clause is that CONTRACTOR shall in all respects design, engineer, ensure quality of manufacture and supply MATERIAL/EQUIPMENT in a thorough workman like manner, within prescribed time and in accordance with good engineering practice in order to enable proper operation of EQUIPMENT and PLANT.
- 1.2.8.2.6 CONTRACTOR shall furnish drawings and documents of WORKS/EQUIPMENT as described under Clause -1.2.6. These documents shall include but not limited to technical documents, final drawings, preservation instructions, manuals, test certificates, spare parts catalogues, etc. in a bound book, as applicable for the Elect. Equipment/Items, before despatch under intimation to OWNER.
- 1.2.8.2.7 The documents, required for statutory approvals once submitted during construction/erection/installation period by CONTRACTOR shall be firm and final and not subject to subsequent changes. CONTRACTOR shall be responsible for any payment of penalty as imposed by the Statutory Agencies consequent to furnishing of the incorrect data/drawings.
- 1.2.8.2.8 All dimensions and weights shall be in metric system.
- 1.2.8.2.9 MATERIAL/EQUIPMENT to be supplied and WORK to be carried out under CONTRACT shall conform to and comply with the provision of relevant Regulations/Acts (of both) as may be applicable in the State of MP and in India to the type of EQUIPMENT/ WORK carried out and necessary certificates shall be furnished.
- 1.2.8.2.10 CONTRACTOR shall provide cross sectional drawings wherever applicable to identify the spare part numbers and their location. Also their make and number shall be furnished.
- 1.2.8.2.11 MATERIAL/INSTRUMENTS/EQUIPMENT supplied under CONTRACT shall conform to the standards as specified in Clause -1.2.5.1.
- 1.2.8.3 CONTRACTOR shall furnish unpriced copy of Purchase Orders for equipments and major items as per the list to be mutually agreed (Priced copy of Purchase Orders as required by the statutory authority) together with spares and special maintenance tools covering accurately all terms and conditions such as specifications requirements for quality, inspection, and test, warranties

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and guarantees, erection and commissioning assistance by vendor, delivery schedule, packing, transportation and insurance, and documentation.

- 1.2.8.4 CONTRACTOR shall arrange & furnish/provide to OWNER,
- a) Lubrication schedule from VENDOR, as applicable
 - b) Instt. specifications and equipment data sheets for review by OWNER for ALL EQUIPMENTS/ INSTRUMENTS/ ITEMS before manufacture is started,
 - c) Shop fabrication drawings from vendor,
 - d) Certified drawings and loading data, pertinent bulletin, installation, operation and maintenance manuals, test certificates, etc. received from vendor,
 - f) Final revised vendor's drawings including one reproducible, as described in Technical Specifications, before PRELIMINARY ACCEPTANCE.

Any changes necessary during commissioning period to be incorporated in the as- built drawing and will be submitted, as per the mutually agreed schedule.

- 1.2.8.5 CONTRACTOR shall provide services of vendor's specialist for installation and commissioning of EQUIPMENT whenever necessary.



- 1.2.8.6 **CONTRACTOR shall be responsible for the accuracy and completeness of CONTRACT. Any comments by OWNER shall not relieve CONTRACTOR of such responsibility.**

- 1.2.8.7 Inspection, Expediting & Testing

- 1.2.8.7.1 CONTRACTOR shall establish an inspection and expediting system and use its services for obtaining EQUIPMENT which conforms to the required technical and quality specifications and delivery according to PURCHASE ORDER. CONTRACTOR shall send copies of expediting and inspection reports regularly to OWNER. CONTRACTOR shall arrange Third Party Inspection and quality certification of EQUIPMENT, as described in FINAL PROPOSAL.



- 1.2.8.7.2 OWNER or its INSPECTOR shall have the right to inspect and/or to test MATERIAL/EQUIPMENT to check its conformity to the specifications. CONTRACTOR shall specify the inspections and tests to be carried out giving reference of applicable codes/standards and the location of inspection/test to OWNER. OWNER shall notify CONTRACTOR in writing the name of INSPECTOR retained for this purpose.

- 1.2.8.7.3 The inspection and tests may be conducted at the premises of CONTRACTOR or SUB-CONTRACTOR/vendor before delivery and/or at SITE. All reasonable

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facilities and assistance including access to all drawings and production data shall be furnished to INSPECTOR at no charge to OWNER.

- 1.2.8.7.4 Should any inspected or tested MATERIAL/ EQUIPMENT fail to conform to the specifications, OWNER may reject it and CONTRACTOR shall either replace the rejected MATERIAL/EQUIPMENT or make all alterations necessary to meet specification requirements free of cost.
- 1.2.8.7.5 OWNER's right to inspect and wherever necessary, comment about MATERIAL/EQUIPMENT after its arrival at SITE or its participation in tests in respect of any MATERIAL/EQUIPMENT shall in no way be limited or waived by reason of MATERIAL/EQUIPMENT having previously been inspected, tested and passed by OWNER or INSPECTOR/representative prior to its shipment/despatch.
- 1.2.8.7.6 INSPECTOR shall follow the progress of the manufacture of MATERIAL/EQUIPMENT under CONTRACT to ensure that the requirements outlined in CONTRACT are not being deviated from with respect to Schedule and Quality.
- 1.2.8.7.7 CONTRACTOR shall allow INSPECTOR to visit, during working hours, the workshops relevant to execution of CONTRACT during the contractual period and INSPECTOR will have the right to inspect MATERIAL/EQUIPMENT at all stages of manufacture right from identification of material up to its shipment/despatch, to the extent that the delivery schedule shall not be delayed, with prior notice to CONTRACTOR in writing.
- 1.2.8.7.8 In order to enable INSPECTOR to obtain entry visa in time, CONTRACTOR shall notify OWNER two months before assembly, testing and packing of main MATERIAL/EQUIPMENT and if requested assist INSPECTOR in getting visa in the shortest possible time.
- 1.2.8.7.9 CONTRACTOR shall place at the disposal of INSPECTOR free of charge all tools, instruments and other apparatus necessary for the inspection and/or testing of MATERIAL/EQUIPMENT. INSPECTOR is entitled to prohibit the use and despatch of EQUIPMENT that has failed to comply with the characteristics/specifications of EQUIPMENT during test and inspection.
- 1.2.8.7.10 CONTRACTOR shall ensure that the permission for inspection/test is granted by its SUB-CONTRACTOR/VENDOR.
- 1.2.8.7.11 In respect of the inspection, CONTRACTOR shall advise in writing of any delay in the programme at the earliest possible date, describing in detail what has caused the delay and the proposed corrective action.
- 1.2.8.7.12 All tests and trials in general of MATERIAL/EQUIPMENT shall be witnessed by INSPECTOR. Therefore, CONTRACTOR shall confirm to OWNER by E-mail/fax about the exact date of inspection at least 15 DAYS in advance. CONTRACTOR shall specify the items and quantities ready for testing and indicate whether a Preliminary or Final Test is to be carried out.

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1.2.8.7.13 On receipt of this notice, if OWNER decides to waive the right to witness the test, information shall be given to CONTRACTOR within 15 DAYS of receipt of the notice from CONTRACTOR and CONTRACTOR then shall have right to proceed with the inspection.

1.2.8.7.14 Any and all expenses incurred in connection with tests, preparation of reports and analysis made by qualified laboratories, necessary technical documents, testing documents and drawings shall be at CONTRACTOR's cost. Technical documents shall include the references and numbers of the standard used in the fabrication/construction and, wherever deemed practical by INSPECTOR. INSPECTOR shall attach importance to the views given by CONTRACTOR or its SUB-CONTRACTOR/VENDOR. Any and all expenses for living, lodging and airfare/rail fare incurred in connection with INSPECTOR shall be borne by OWNER.

1.2.8.7.15 Nothing in Clause -1.2.8.7.2 to 1.2.8.7.14 shall in any way relieve CONTRACTOR from any warranty or other obligations under this CONTRACT.

Not performing or failing to perform the inspection by OWNER hereunder shall not be a waiver of any of CONTRACTOR's obligations hereunder nor it be construed as an approval or acceptance of any of the WORK hereunder nor it shall absolve the CONTRACTOR in any way or manner of its liabilities, responsibilities and obligations under the CONTRACT.

1.2.8.7.16 Arrangements for all inspections required by Statutory Authorities (local) and as specified in Technical Specifications/FINAL PROPOSAL shall be made by CONTRACTOR.



Certain category of MATERIAL/EQUIPMENT, which fall under the jurisdiction of SPECIFIC GOVT. AUTHORITIES, irrespective of the fact whether these are proprietary in nature or not, certification from an internationally/nationally recognised agency approved by SPECIFIC GOVT. AUTHORITIES is considered necessary to to allow their installation and operation. In such cases, inspection and certification from such authorities will also have to be arranged by CONTRACTOR.

1.2.8.7.17 Rejections, Removal of Rejected EQUIPMENT and Replacement

1.2.8.7.17.1 Preliminary inspection at SUB-CONTRACTOR's / vendor's works by INSPECTOR shall not prejudice OWNER for commenting on EQUIPMENT including its specifications on final inspection at SITE or claim under warranty provisions.

1.2.8.7.17.2 If MATERIAL/EQUIPMENT is not of specification or fail to perform specified duties, OWNER shall be entitled to reject MATERIAL/EQUIPMENT or part thereof and ask for modification, repair or free replacement within reasonable time subject to the relevant provisions in the CONTRACT.

1.2.8.7.17.3 In the event of such rejection, OWNER shall be entitled to use MATERIAL/EQUIPMENT in a reasonable and proper manner for a time reasonably sufficient to enable it to obtain replacement. from contractor.,. After

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free replacement of such rejected MATERIAL/EQUIPMENT by contractor, the rejected equipment shall become the property of CONTRACTOR.

1.2.8.7.17.4 Nothing in this Clause shall be deemed to deprive OWNER and/or affect any of its rights under CONTRACT which it may otherwise have in respect of such defects or deficiencies or in any way relieve CONTRACTOR of its obligation under CONTRACT.

1.2.8.7.17.5 MATERIAL/EQUIPMENT rejected by OWNER shall be removed by CONTRACTOR, within reasonable time, at its own cost after replacement of the said EQUIPMENT. OWNER shall in no way be responsible for any deterioration or damage to rejected EQUIPMENT under any circumstances whatsoever.

1.2.8.7.17.6 In case, the rejected MATERIAL/EQUIPMENT is to be taken out of OWNER's premises for repair, Owner shall have the right to withhold the payment for such cost of equipment to the extent of payment made by Owner towards the equipment until the equipment is returned / replaced.

1.2.8.8 Packing

1.2.8.8.1 CONTRACTOR shall ensure that packing of MATERIAL/EQUIPMENT is as required to prevent their damage or deterioration during transit to its final destination.

1.2.8.8.2 The packing, markings and documentation within and outside the packages shall comply strictly with the provisions of CONTRACT.

1.2.8.8.3 CONTRACTOR shall be responsible for any eventual consequence occurred to MATERIAL/EQUIPMENT due to improper packing of the same.



1.2.8.9 Delivery and Documents

1.2.8.9.1 Deleted.

1.2.8.9.2 Delivery schedule shall include time for submission of documents/drawings for review/approval, incorporation of comments, if any, and final review of drawings by PROJECT MANAGER. Within 14 (fourteen) Days after receipt by PROJECT MANAGER of any document requiring OWNER's review,

PROJECT MANAGER shall either return one copy thereof to CONTRACTOR as it is, if PROJECT MANAGER has no comments or with its comments and reasons thereof. If PROJECT MANAGER fails to return the document/ drawing within 14 (fourteen) DAYS, the said document/drawing shall be deemed to have been reviewed by OWNER.

1.2.8.9.3 Special care shall be taken by CONTRACTOR to furnish Manufacturer's Test Certificates, material of construction, make, type, pressure ratings wherever applicable and included in the scope of supply of MATERIAL/EQUIPMENT/ ITEM.

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1.2.8.9.4 In case of delayed delivery beyond the stipulated delivery period, for reasons not attributable to OWNER, FORCE MAJEURE and suspension of WORK by OWNER, even though normal extension of GUARANTEED COMPLETION DATE time is allowed by OWNER, all extra costs on account of changes of statutory regulations/Acts or increase in price on any other account including price variation clause, shall not apply to CONTRACT PRICE and the same shall be borne by CONTRACTOR.

1.2.8.10 Despatch, Transportation/Shipping

1.2.8.10.1 CONTRACTOR shall be responsible for despatch of MATERIAL/EQUIPMENT by sea/ rail/ road/air after proper packing and protection. The consignment shall be despatched after inspection by OWNER unless otherwise agreed to in writing however such inspection shall not constitute waiver of the CONTRACTOR's obligations, responsibilities for the EQUIPMENT including care, safety and preservation in any way and manner and the CONTRACTOR's responsibility and obligation in this behalf shall continue till PRELIMINARY ACCEPTANCE OF PLANT.

1.2.8.10.2 Generally, on-Deck shipment shall not be made without prior permission of OWNER. However, in case of towers, reactors, vessels and other large-sized MCHINES/EQUIPMENT, CONTRACTOR may, at its own discretion, make on-deck shipment, without OWNER's prior permission. In case of damage to such MACHINES/EQUIPMENT, during delivery or at any stage before PRELIMINARY ACCEPTANCE OF PLANT, CONTRACTOR shall be responsible for repair/replacement of EQUIPMENT.

1.2.8.10.3 Deleted

1.2.8.10.4 Property in EQUIPMENT

1.2.8.10.4.8 CONSTRUCTION EQUIPMENT used by the CONTRACTOR and its SUB-CONTRACTORS in connection with the execution of works shall remain the property of CONTRACTOR or its SUB-CONTRACTORS.



All duties, levies, taxes etc payable on account of CONSTRUCTION EQUIPMENT shall be borne by the CONTRACTOR.

CONTRACTOR shall indemnify the OWNER on this count.

1.2.8.10.4.9 All imported surplus materials other than CONSTRUCTION EQUIPMENT which is brought to the SITE after availing concessional rate of custom duty shall be the OWNER's property and be returned by the CONTRACTOR to the OWNER's designated stores.

All such materials shall be subject to reconciliation and a proper accounting procedure shall be developed and strictly followed by the CONTRACTOR recorded in the inspection reports, proforma of which will be approved by the PROJECT MANAGER.



These reports shall form part of the completion DOCUMENTS. Inspection and acceptance of the WORK shall not relieve the CONTRACTOR from any of his

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responsibilities under this CONTRACT.

However, Surplus Material will be allowed to be taken back by Contractor after compliance of statutory formalities.

- 1.2.8.10.4.10 The care and custody responsibility of CONTRACTOR for EQUIPMENT shall terminate upon PRELIMINARY ACCEPTANCE of PLANT.
- 1.2.8.10.5 Assembly Marks and Name Plates
- 1.2.8.10.5.1 All component/parts of EQUIPMENT shall be indelibly hard marked with identification marks, comprising EQUIPMENT, part numbers, and CONTRACT number/PO number which shall also be shown on drawing to facilitate speedy identification, assembling or dismantling.
- 1.2.8.10.5.2 On each EQUIPMENT, a nameplate indicating basic details, pressure rating, wherever applicable, code number of EQUIPMENT, electrical characteristics in case of electrical EQUIPMENT, name of instrument with tag no., manufacturer's name shall be fixed at proper place.
- 1.2.8.10.5.3 For packages where marking is not possible at least two metallic nameplates must be affixed. Marking on the plates will be by means of engraving or indelible paint and will include the information listed above.
- 1.2.8.10.6 Despatch/Shipping notice
- 1.2.8.10.6.1 CONTRACTOR shall notify OWNER by fax/E-mail for its information the expected date of delivery of a consignment, date of readiness of EQUIPMENT for shipment, total gross weight and total volume with dimensions.
- 1.2.8.10.7 For Heavy Lift Consignment (HLC) or Over Dimensional Consignments (ODC)
- 1.2.8.10.7.1 CONTRACTOR shall the follow the guidelines of Ministry of Road Transport and Highways (MORTH), India, for the shipping/transportation of the all packages/ consignments. The CONTRACTOR shall be responsible to comply with rules relating to E-way Bills and other related provisions under the GST laws for movement of packages / Consignments.
- 1.2.8.10.7.2 Deleted
- 1.2.8.10.7.3 CONTRACTOR shall make his own arrangements for movement of all consignments including ODC. For obtaining the approval of the Indian Railways, CONTRACTOR shall need to submit the following particulars regarding each ODC to Railways:
- Length of package
 - Height of the package at the top (in center) & insides
 - Width at top, center and bottom
 - Dimension of the projections, nozzles, if any alongwith their location on the equipment.

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- e) Gross and net weight of the package
- f) Center of Gravity on different axis
- g) Packing and lashing arrangement
- h) Mode of loading and unloading
- i) If the special wagon/mode is to be adopted for the transport of the package, the details of the same are to be provided in drawings.

1.2.8.10.7.4 The above is as per information available with OWNER. However, CONTRACTOR shall verify the same with concerned authorities. OWNER shall not be liable for any extra cost, which CONTRACTOR incurs due to use of above information without verifying it.

1.2.8.10.7.5 CONTRACTOR confirms that it has surveyed the route for transportation of ODC items of EQUIPMENT and CONTRACTOR further confirms that it has included all cost of repairs of road, civil works, strengthening of bridges, culverts, widening of roads, etc. as required for transportation of ODC items of EQUIPMENT in its CONTRACT PRICE. OWNER shall not be responsible for repairs of road, civil works, strengthening of bridges, culverts, widening of roads, etc. as required for the transportation of ODC items of EQUIPMENT and shall not be liable to reimburse the cost of such repairs of road, civil works, strengthening of bridges, culverts, widening of roads, etc. to CONTRACTOR.

1.2.8.10.8 Marking

1.2.8.10.8.1 DELETED

1.2.8.10.8.2 Depending on the characteristics of the contents in the packages, the packages have to be marked with appropriate international marking (“HANDLE WITH CARE”; “THIS SIDE UP”; “SLING MARK”; ETC.) and other indications necessary for correct handling such as Centre of Gravity and points of slinging (in case of heavy loads).



1.2.8.10.8.3 For packages where marking is not possible, at least two metallic nameplates must be affixed. Marking on the plates will be by means of engraving or indelible paint and will include the information listed above.

1.2.8.10.8.4 All corners of the packages shall be painted with indelible ‘Blue’ paint at least 125 mm in depth for easy identification/location of the packages for clearance and handling at the port.



1.2.8.10.9 Packing List

1.2.8.10.9.1 CONTRACTOR will include in each package an item-wise packing List, Invoice No. and associated drawings.

1.2.8.10.9.2 The packing list and any other documents shall be put in a closed polyethylene envelope and included in each package.

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- 1.2.8.10.9.3 A second copy of the packing list shall be placed in a polyethylene envelope on the outside of the each package by means of metallic plate marked "Documents". As regards columns, exchangers and similar equipment, the envelope shall be placed in a nozzle being identified by an arrow, in indelible paint, followed by the word "Document".
- 1.2.8.10.9.4 Shipping documents must always be presented in the number of copies indicated in this CONTRACT.
- 1.2.8.10.10 Ready for shipment notice.
- 1.2.8.10.10.1 Independent of the type of delivery agreed in this CONTRACT, CONTRACTOR shall advise OWNER and the appointed Forwarding Agent six weeks in advance, only and exclusively by fax or E-mail, of the exact date of readiness for shipment of the imported equipmentmaterials (if any) from CONTRACTOR's SUB-CONTRACTOR's/vendor's shop indicating - Statement
- "Ready for Shipment"
"CIVIL, STRUCTURAL & ALLIED WORKS (INST.) FOR NFL's ESP-II PROJECT"
- CONTRACT /PO NO.
- Description and Item No. of equipment and/or parts to be shipped.
- Number, size and gross weight of packages.
- Forwarding Agent will inform CONTRACTOR about the place and the date on which imported EQUIPMENT shall be delivered.
- 1.2.8.10.11 Shipping Arrangements and Forwarding of Documents.
- 1.2.8.10.11.1 OWNER requires ocean transportation by Conference line vessels or by Indian flag Vessels. Only in case of extreme exigencies, if the specified carrier is not available within the delivery period required by CONTRACTOR, alternate carrier can be used with prior approval of OWNER. All shipping arrangements shall be made by CONTRACTOR with the help of Secretary, Govt. of India, Ministry of Surface Transport (Chartering Wing), 1, Parliament Street, Parivahan Bhawan, New Delhi – 110 001 through their Forwarding Agent.
- 1.2.8.10.11.2 Adequate notice of not less than six (6) weeks about the readiness of Cargo for shipment should be given to Forwarding Agent from time to time for finalising the shipping arrangements.
- 1.2.8.10.11.3 For the purpose of ascertaining the availability of suitable Conference Lines vessels and Indian Member Lines vessels and granting dispensation in the event of their non-availability, CONTRACTOR shall give adequate notice about the readiness of each consignment from time to time at least six weeks in advance of the required position to the forwarding agent and also endorse a copy thereof to Secretary, Govt. of India, Ministry of Surface Transport (Chartering Wing), 1, Parliament Street, Parivahan Bhawan, New Delhi-110 001 as also OWNER.

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1.2.8.10.11.4 CONTRACTOR shall send, copies of notices described under Clause - 1.2.8.10.11.3, to OWNER.

1.2.8.10.11.5 CONTRACTOR shall avoid the use of over aged vessels for the shipment of the imported EQUIPMENT under this CONTRACT and if so used, the cost of additional insurance, if any, shall be borne by CONTRACTOR.

1.2.8.10.11.6 DELETED

1.2.8.10.11.7 DELETED

1.2.8.10.12 **Despatch/Shipment Notice for Insurance.**

1.2.8.10.12.1 CONTRACTOR shall send intimations of despatches indicating items despatched, quantity, value, weight and carrier particulars directly through fax to the insurance company fixed by CONTRACTOR. A copy of this letter/ intimation shall also be given to commercial negotiating bank for payment against Letter of Credit. Copies shall also be sent to OWNER.

1.2.8.10.12.2 Insurance for transit risks and other risks shall be covered by CONTRACTOR.

1.2.9 DELETED

1.2.9.1 DELETED

1.2.9.2 Deleted

1.2.9.3 Deleted

1.2.9.4 Deleted

1.2.9.5 Deleted

1.2.9.6 Deleted

1.2.9.7 Deleted

1.2.9.8 **Mandatory Spares / Two year Operational Spares and Vendors Recommended Spares (if and as required)**

1.2.9.8.1 DELETED



1.2.9.9 **Construction/Erection/Installation Tools**

1.2.9.9.1 CONTRACTOR shall arrange at their own cost for special construction aids, tools, tackles and fixture, required for construction of PLANT/WORKS.

1.2.9.10 **General**

1.2.9.10.1 CONTRACTOR shall furnish to OWNER, the blue prints, drawings and specifications of the spare parts.

1.2.9.10.2 CONTRACTOR shall provide to OWNER all addresses and particulars of its SUB-CONTRACTOR/VENDOR on whom PURCHASE ORDER for EQUIPMENT covered under CONTRACT has been placed and will further ensure with its SUB-CONTRACTOR/VENDOR that, OWNER if so desired, shall have the right to place order for operational spare parts directly on them

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on mutually agreed terms based on offers of such SUB-CONTRACTOR/ VENDOR.

- 1.2.9.10.3 Spare parts shall be new and of quality as per engineering standards/codes, free of any defects (even concealed), deficiency in Design, Materials and Workmanship and also shall be completely interchangeable with the corresponding parts.
- 1.2.9.10.4 Type and sizes of bearing/seals shall be clearly indicated.
- 1.2.9.10.5 Spare parts shall be packed for long storage under tropical climatic conditions in suitable cases, clearly marked as to their intended purpose.
- 1.2.9.10.6 Any scrap, Surplus Material, upon completion of the WORKS, as certified by OWNER will be allowed to be taken back by Contractor after compliance of statutory formalities

1.2.10 Warrantees



1.2.10.1 Materials and Workmanship Warranty

1.2.10.1.1 CONTRACTOR warrants that EQUIPMENT supplied under CONTRACT are new, unused, of the recent or current models and incorporates all recent improvements in design and materials unless provided otherwise in CONTRACT. CONTRACTOR further warrants that EQUIPMENT supplied under this CONTRACT shall be according to specifications, have no defect (even concealed) arising from design, materials or workmanship or from any act or omission of CONTRACT that may develop under normal use of the supplied EQUIPMENT in the conditions prevailing in the country of final destination.

1.2.10.1.2 The warranty period for the EQUIPMENT supplied by CONTRACTOR shall be valid for 12 months for all EQUIPMENT from the date of PRELIMINARY ACCEPTANCE.

1.2.10.1.3 The warranty shall be valid for the period as described under Clause - 1.2.10.1.2 from the date of PRELIMINARY ACCEPTANCE and shall be governed by Clause 17 of SPECIAL CONDITIONS OF CONTRACT. Should any DEFECTS be noticed in design, material and/or workmanship within the said warranty period, NFL/PDIL PROJECT MANAGER shall inform CONTRACTOR and CONTRACTOR shall immediately on receipt of such intimation depute their personnel within 10 DAYS to investigate the causes of DEFECTS and arrange rectification / replacement / modification of the defective EQUIPMENT at SITE without any cost to OWNER, within a reasonable period.

If CONTRACTOR fails to take proper corrective action to replace/ repair defective Equipment satisfactorily within a reasonable period, OWNER shall be free to take such corrective action as may be deemed necessary at CONTRACTOR's risk and cost, after giving notice to CONTRACTOR. OWNER shall promptly notify CONTRACTOR in writing of any claims arising under this warranty.

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1.2.10.1.4 In case defects are of such nature that EQUIPMENT shall have to be taken to CONTRACTOR's/ SUB-CONTRACTOR's/ vendor's works for rectification etc., CONTRACTOR shall take EQUIPMENT at its cost after giving necessary undertaking or security as may be required by OWNER. OWNER shall, if so required by CONTRACTOR, despatch EQUIPMENT by quickest mode on freight to pay basis to CONTRACTOR's / SUB-CONTRACTOR's / vendor's works. After repairs CONTRACTOR shall deliver EQUIPMENT at SITE on freight paid basis. All risks to transit to and from shall be borne by CONTRACTOR.

1.2.10.1.5 EQUIPMENT or part thereof so repaired or replaced shall have further warranty for a period of 12 months from the date of its acceptance after repair/replacement and the Performance Bank Guarantee shall be suitably extended for the same. The value of the Performance Bank Guarantee during the extended warranty period shall be 100 (Hundred) percent of the cost of such repaired/replaced EQUIPMENT or its parts. However, the extended DLP shall have an upper limit of 36 Months from the PRELIMINARY ACCEPTANCE.

1.2.10.1.6 If the repairs, replacements or modifications referred to above are of such nature which may affect the efficiency of EQUIPMENT, OWNER shall have right to give notice in writing to CONTRACTOR within one month of such repair/ replacement/ modification to carry out tests as may be required for acceptance of EQUIPMENT.



1.2.10.1.7 If CONTRACTOR fails to meet its obligation to repair or replace defective EQUIPMENT and make it good within a reasonable period of time and or if CONTRACTOR refuses to carry out WORK under the guarantee clause and implied guarantee conditions and/or in case of severe urgency, OWNER shall be entitled to carry out repair/replacement/WORK or arrange to carry out repair/ replacement/WORK by a third party. The entire cost of such repair/ replacement/WORK including taxes and duties etc. shall be borne by the CONTRACTOR.

In case, the cost of such repair/replacement/WORK has been incurred by OWNER, CONTRACTOR shall reimburse the same immediately on demand by OWNER.

1.2.10.1.8 Damages to EQUIPMENT/ITEMS deriving from incomplete, erroneous instructions issued by CONTRACTOR will be considered CONTRACTOR's fault and will be treated according to the provision of warranty clause. Normal wear and tear shall not come under purview of this clause.

1.2.11 Performance Guarantee of PLANT / EQUIPMENT/ITEMS

1.2.11.1 CONTRACTOR guarantees that the performance of PLANT/EQUIPMENT/ITEMS supplied under CONTRACT shall be strictly in conformity with the specifications and shall perform the duties and have consumption, production and other guarantees set forth in CONTRACT.

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1.2.11.2 If the performance of PLANT and/or any of EQUIPMENT fails to be as guaranteed and set forth in CONTRACT, CONTRACTOR shall investigate the causes and provide free of cost to OWNER, design, engineering, MATERIALS and services and EQUIPMENT within a reasonable period to prove guarantees. CONTRACTOR's liability in this respect shall be unlimited, in accordance with the provisions of CONTRACT.

1.2.12 Government Clearances, Permits and Certificates

1.2.12.1 CONTRACTOR shall procure at its expenses, all necessary APPLICABLE PERMITS, certificates and licenses required by virtue of all APPLICABLE LAWS, regulations, ordinances and other rules in effect at the place where any of WORK is to be performed, and CONTRACTOR shall further hold OWNER harmless from liability or penalty which might be imposed by reason of any asserted or established violation of such laws, regulations, ordinances or other rules.

OWNER will provide the necessary assistance to CONTRACTOR for obtaining PERMITS for CONTRACTOR's personnel to undertake WORK in India in connection with CONTRACT.



1.2.12.2 CONTRACTOR shall furnish necessary data/specifications/drawings etc. of EQUIPMENT likely to be imported to OWNER for obtaining import licence / necessary Government Clearances, for the same. CONTRACTOR shall also furnish necessary technical information, data, drawing, etc. as and when required to OWNER for submission to Government/Statutory Agencies.

1.2.13 Network Schedule



1.2.13.1 OWNER would be using a computerized time and cost monitoring system and CONTRACTOR shall provide necessary input data for the same. CONTRACTOR shall prepare within 30 (thirty) days from EFFECTIVE DATE OF CONTRACT and provide to OWNER a PROJECT MASTER SCHEDULE indicating the important milestones of activities relating to WORK from EFFECTIVE DATE OF CONTRACT to the date of FINAL ACCEPTANCE. This PROJECT MASTER SCHEDULE shall be discussed with and approved by OWNER.

Based on the approved PROJECT MASTER SCHEDULE, CONTRACTOR shall also prepare network schedules for activities relating to WORK. CONTRACTOR shall obtain the details of progress of various activities of WORK from SUB-CONTRACTOR and vendor wherever required and update the network schedules and PROJECT MASTER SCHEDULE incorporating the progress achieved by CONTRACTOR, SUB-CONTRACTOR and vendor and submit the same to PROJECT MANAGER on monthly basis.

1.2.13.2 CONTRACTOR shall clearly indicate any delay in WORK in the above schedules and shall inform PROJECT MANAGER the action taken to achieve the GUARANTEED COMPLETION DATE.

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- 1.2.13.3 Time Schedule Network/Bar Chart
- 1.2.13.3.1 Within 30 (thirty) DAYS from EFFECTIVE DATE OF CONTRACT, CONTRACTOR shall submit to PROJECT MANAGER its time schedule regarding delivery of documentation, supply and manufacture of EQUIPMENT, time schedule for placement of purchase order and SUB-CONTRACT, etc.
- 1.2.13.3.2 The time schedule will be in the form of a network and a bar chart clearly indicating all main or key events regarding documentation, supply of raw materials, manufacturing, testing and delivery of equipment, civil works, elect. works, erection, commissioning, testing etc.
- 1.2.13.3.3 The original issue and subsequent revisions of such time schedule shall be sent to OWNER in two copies (of which one shall be a reproducible/soft copy). The time schedule network/bar chart shall be updated at least every month during the period of CONTRACT.
- 1.2.13.4 Progress of WORK
- 1.2.13.4.1 CONTRACTOR shall report monthly to OWNER of the execution of CONTRACT and achievement of targets set out in time bar chart, in a monthly progress report on 7th working day of every Month.
- 1.2.13.4.2 The progress shall be expressed in percentages for all activities.
- 1.2.13.4.3 The first issue of the progress report shall be forwarded together with the time bar chart.
- 1.2.13.4.4 OWNER shall also review the physical/actual progress of WORK on the basis of CONTRACTOR's time schedule documentation.
- 1.2.13.4.5 Irrespective of such review, CONTRACTOR shall advise OWNER at the earliest possible date of any anticipated delay in the progress.
- 1.2.13.4.6 In the event that the delay is caused by a delay in the delivery of a sub-contracted EQUIPMENT, CONTRACTOR shall be responsible for such delay and submit details together with copies of the appropriate orders and agreements with SUB-CONTRACTOR/vendor.
- 1.2.14 Transportation and Storing of EQUIPMENT
- 1.2.14.1 CONTRACTOR shall be responsible for proper packing, transportation from vendor's workshop to port or railway station (whether by road, rail, ship or aircraft), handling and clearances at port or railway station including loading and unloading, customs clearance, carriage to SITE, unloading at SITE, warehousing, coding and tagging, storage including proper preservation, etc. of EQUIPMENT.
- Any special clearance, lifting, handling, loading/unloading, and transport arrangements for over dimensional consignments shall also be done by CONTRACTOR. CONTRACTOR shall ensure timely delivery of EQUIPMENT. CONTRACTOR shall endeavour to have the consignments in the upper part of the hold to enable early discharge at the Port of disembarkment.

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The above arrangement shall be in accordance with the guidelines set forth in the Co-ordination Procedure. CONTRACTOR shall be responsible for inspection of EQUIPMENT on receipt at SITE and for maintenance and management of stores and warehousing of EQUIPMENT at SITE including all activities connected with the issue of EQUIPMENT, accounting and final reconciliation and handing over of stores to OWNER.

1.2.14.2 OWNER shall provide area at SITE for making shed/covered stores etc. for storing EQUIPMENT. CONTRACTOR shall be responsible for making shed/covered stores etc. for safe storage of EQUIPMENT.

1.2.15 Construction

1.2.15.1 CONTRACTOR shall be responsible for all civil and structural work (as mentioned in the Technical Part of NIT), including foundations, insulating & painting works, erection, site fabrication, piping, instrumentation, electrical installation, and other miscellaneous construction jobs of PLANT leading to MECHANICAL COMPLETION and PRELIMINARY ACCEPTANCE of PLANT.

CONTRACTOR shall organise these activities in appropriate sequence and use proper methods giving due regard to the requirements of safety, quality, sound engineering practice, compliance with relevant Codes and Regulations, and for achieving PRELIMINARY ACCEPTANCE of PLANT on or before GUARANTEED COMPLETION DATE.

The CONTRACTOR shall within the scope of work observe in addition to specifications, all national and local laws, ordinances, rules and regulation and requirements pertaining to the WORK.



Various procedures and methods to be adopted by CONTRACTOR during the construction as required in the respective specifications shall be submitted to OWNER in due time and well in advance of the specific work for approval.

The CONTRACTOR shall carry out required supervision as per Quality Assurance Plan and furnish all assistance required by the OWNER in carrying out inspection work. The OWNER will have authorised representatives present who shall have free access to the work at all times. If an OWNER's representative notifies the CONTRACTOR's representative of any deficiency in any work or in the supervision thereof, the CONTRACTOR shall make every effort to carry out such instructions consistent with best industry practice.

The CONTRACTOR shall so far as reasonably feasible employ skilled workers who are Certified Tradesmen in the field(s) of their relative activities(s).

1.2.15.2 CONTRACTOR shall submit and adhere to the completion schedule of construction leading to MECHANICAL COMPLETION.

1.2.15.3 In case of delay in completion beyond the stipulated completion period as specified under clause 1.2.15.2 for reasons attributable to Contractor, all extra costs on account of changes of statutory regulations / Acts, shall not apply to Contract price and the same shall be borne by Contractor.

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1.2.15.4 Civil Work Warranty

1.2.15.4.1 CONTRACTOR shall certify that the all civil works, reinforced concrete, structures, permanent buildings and foundations has been designed in accordance with stipulations of relevant BIS Codes.

1.2.16 Safety and Plant Security

1.2.16.1 CONTRACTOR shall observe and also use its best efforts to ensure that all parts of WORK carried out at SITE is being done in a safe and satisfactory manner conforming to the applicable Safety Rules and Regulations.

Further, CONTRACTOR shall observe and make provisions in SUB-CONTRACT that employees working for PLANT observe all the Safety Rules as required under the Factories Act and Regulations and other Local Laws and SUB-CONTRACTOR to provide safety apparel and equipment to its employees. OWNER shall have the right to object to any unsafe practice followed by SUB-CONTRACTOR's employees or any CONTRACTOR's personnel and direct them to carry out the job in a manner considered safe by OWNER. CONTRACTOR shall further abide by all the Security Regulations imposed by OWNER.

1.2.16.2 CONTRACTOR shall observe all safety rules so that no harm is done to OWNER's employees or property. If on account of CONTRACTOR, OWNER's property or personnel are likely to suffer any damage, in such cases any directions issued by OWNER shall be carried out by CONTRACTOR.

1.2.17 PRE-COMMISSIONING Services of PLANT



1.2.17.1 CONTRACTOR shall render and be responsible for pre-commissioning activities leading to MECHANICAL COMPLETION. These activities will include relevant checking, adjustment, testing, calibration, running in and trial runs of individual items of EQUIPMENT, and other similar jobs. OWNER shall provide experienced/trained and suitable operating and maintenance personnel who will perform their tasks under the supervision and direction of CONTRACTOR.

1.2.17.2 CONTRACTOR shall provide experienced personnel as required for carrying out the PRE-COMMISSIONING activities with OWNER's personnel.



1.2.17.3 CONTRACTOR shall provide SUB-CONTRACTOR's / VENDOR's specialists wherever required. Suitable provision for such services shall be made by CONTRACTOR in PURCHASE ORDER/SUB-CONTRACT.

1.2.18 MECHANICAL COMPLETION

1.2.18.1 CONTRACTOR shall be responsible for completing the engineering, erection/installation, procurement, inspection and expediting, arranging for transportation of EQUIPMENT, construction and PRE-COMMISSIONING for making PLANT ready for acceptance of feed stock before the MECHANICAL COMPLETION.

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- 1.2.19 Commissioning Services of PLANT
- 1.2.19.1 CONTRACTOR shall be responsible for COMMISSIONING after PRE-COMMISSIONING activities have been completed giving due regard to safety of EQUIPMENT according to sound international practice. OWNER shall provide experienced trained operating and maintenance personnel who shall work under the supervision and direction of CONTRACTOR. The COMMISSIONING activities shall include the following:
- a) Introduction of raw materials, utilities, lining-up of various sections of PLANT leading to production of Power and Steam.
 - b) Stabilising PLANT and stepping up production to full plant capacity.
 - c) Demonstrating and Conducting reliability load test and Performance & Guarantee Test as per Part-II, Technical.
- 1.2.19.2 CONTRACTOR shall provide engineers as required to commission PLANT. CONTRACTOR shall be responsible to provide supervision personnel for operation of PLANT until PRELIMINARY ACCEPTANCE and OWNER will operate the PLANT under the supervision and instructions of CONTRACTOR. During the reliability load test and the performance & guarantee test, the range of operating conditions shall be within the limits of the design conditions and shall meet the requirements of safety and compliance with relevant Codes and Regulations.
- 1.2.20 Performance Test
- 1.2.20.1 CONTRACTOR shall successfully complete PERFORMANCE TEST as early as possible after MECHANICAL COMPLETION.
- 1.2.20.2 CONTRACTOR shall, when PLANT is stabilized at full plant capacity to the satisfaction of OWNER, shall carry out PERFORMANCE TEST and prove Guarantees.
- 1.2.21 Deleted
- 1.2.22 Deleted
- 1.2.23 Laws and Regulations
- 1.2.23.1 CONTRACTOR shall abide, while fulfilling its obligations, by all applicable codes and APPLICABLE LAWS from time to time in force in the State of MADHYA PRADESH and in India. FINAL PROPOSAL shall be based on the codes, and regulations applicable on EFFECTIVE DATE OF CONTRACT.
- In the event of change in any codes, laws or regulation applicable to PLANT after date of submission of FINAL PROPOSAL, which alters the scope of CONTRACTOR's obligations under CONTRACT, CONTRACTOR shall agree to make the necessary changes in scope of WORK. Such changes shall be governed by CHANGE IN WORK as per the provisions of Clause -3.

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1..2.24 Statutory Obligations

1.2.24.1 CONTRACTOR shall comply with the requirements of all statutory provisions and shall be solely responsible for fulfilment of all legal obligations under Contract Labour (Regulation and Abolition) Act, Inter-state Migrant Workmen (Registration of Employment and Condition of Service) Act, Payment of Wages Act, Workmen Compensation Act, Factories Act, Employees Provident Fund and Misc. Provisions Act, Payment of Bonus Act, Payment of Gratuity Act, Industrial Disputes Act and all other applicable Industrial/Labour enactment and Rules made there under as applicable from time to time.

In case OWNER incurs any liability towards payment of any kind whatsoever, due to non-fulfilment of statutory provisions under any industrial/labour law by CONTRACTOR, the same shall be made good by CONTRACTOR.

1.2.24.2 SUB-CONTRACTOR engaged by CONTRACTOR for performing civil and erection work/other jobs at SITE shall have PF Code No. in its name issued by Regional Provident Fund Commissioner (RPF).

1.2.24.3 The CONTRACTOR shall ensure that the SUB-CONTRACTOR shall comply with the Statutory Requirements, as applicable, for the execution of this CONTRACT.

1.2.25 Progress Monitoring and Reporting



1.2.25.1 CONTRACTOR shall develop a suitable system for monitoring and reporting progress on the various activities up to PRELIMINARY ACCEPTANCE. CONTRACTOR shall submit PROJECT MASTER SCHEDULE and detailed Network Schedule covering the activities and milestones starting from EFFECTIVE DATE OF CONTRACT until PRELIMINARY ACCEPTANCE, as described under Clause -1.2.13.

These schedules shall include the activities of CONTRACTOR, SUB-CONTRACTOR and vendor. CONTRACTOR shall monitor progress continuously and submit to PROJECT MANAGER monthly progress reports giving the status of the activities, indicating those delayed and action being taken, or required to be taken, to bring back those activities on schedule. These reports will also include progress at vendor's workshops and shall be supplemented with photographs, wherever necessary.

The Network Schedule shall be updated once in a month. CONTRACTOR shall also furnish information to PROJECT MANAGER as may be required by any other Government Authority or any other agency such as Financing Institution etc.

1.2.26 Technical Information

1.2.26.1 CONTRACTOR shall furnish to OWNER, CONTRACTOR's Technical Information and know-how as may be necessary for the operation of PLANT and relating to its process according to the provisions of clause 53 of General Terms and Conditions. CONTRACTOR shall grant or cause to be granted to

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OWNER an irrevocable right to use all such above technical information for PLANT and shall further advise OWNER for a period of five (5) years from date of PRELIMINARY ACCEPTANCE of any improvements in process, know-how, engineering, operation methods, and other conditions which will result in more efficient operation of PLANT that are developed by CONTRACTOR or process licensor or have come to the knowledge of CONTRACTOR, at no extra cost to OWNER. OWNER shall also grant to CONTRACTOR, at no extra cost to CONTRACTOR, to the benefit of process licensor the same right on OWNER's improvements as per the provisions of this Clause. Notwithstanding the generality of the foregoing, ownership of data, technical information processes, technology or software proprietary to CONTRACTOR and/or SUBCONTRACTORS shall remain with CONTRACTOR and/or SUBCONTRACTOR. CONTRACTOR and/or SUBCONTRACTOR shall ensure that OWNER is legally entitled to use of such data, processes, technology and software in the form of a perpetual, non-terminable, non-exclusive, royalty-free licence for the purpose of the operation and maintenance of the PLANT



1.2.27 Work of SUB-CONTRACTOR and vendor

1.2.27.1 CONTRACTOR shall remain responsible for proper execution of such part of WORK as are carried out by its SUB-CONTRACTOR and vendor and any failure of SUB-CONTRACTOR/vendor shall not relieve CONTRACTOR of its obligations under CONTRACT. Furthermore, in the event of any default by SUB-CONTRACTOR/vendor, CONTRACTOR shall either take over SUB-CONTRACTOR/vendor's part of WORK on mutually agreed terms or take remedial action as may be necessary in order to comply with GUARANTEED COMPLETION DATE and any other activities leading to PRELIMINARY ACCEPTANCE by OWNER.

1.2.28 Co-ordination

1.2.28.1 CONTRACTOR shall render all necessary assistance to PROJECT MANAGER required for overall co-ordination of all activities connected with WORKS. For this purpose, CONTRACTOR and PROJECT MANAGER shall agree on a meeting as soon as practicable after EFFECTIVE DATE OF CONTRACT, with SUBCONTRACTOR/vendor's and such other parties as are necessary to settle the following:

- a) Review the basic design conditions set forth in FINAL PROPOSAL and where appropriate, review possibilities of standardisation.
- b) Assess the priorities and key dates required to be included in CONTRACTOR's PROJECT MASTER SCHEDULE.
- c) Make an assessment of all items requiring co-ordination.
- d) Fix up a date and agenda of any subsequent meeting as may be required in association with OWNER.
- e) Discuss with PROJECT MANAGER and furnish all technical information about various effluents/emission and discharge points from different sources indicating the quality and quantity of gaseous and liquid emission of pollutants from PLANT. CONTRACTOR shall also supply PROJECT MANAGER any additional information required on the above

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matter during the performance of process design and basic engineering design.

In the event, PROJECT MANAGER pursuant to its responsibilities of overall co-ordination requests CONTRACTOR to make any alteration to the programme, scope of responsibility under CONTRACT, CONTRACTOR shall do the same, subject to the provisions of Clause 3.0.

1.2.29 Notices and Reports

1.2.29.1. CONTRACTOR shall submit the following copies of notices to PROJECT MANAGER as part of the Scope of Work:

- a) Immediate notification of safety incidents and accidents, including near misses, of any kind or type followed as soon as possible after such event by a full report.
- b) Notices from any Government / Statutory Agency or any other Person for a violation of any Law or Government Approval, immediately upon receipt by CONTRACTOR and no later than twenty-four (24) hours after its receipt.
- c) Inspection reports by any inspector whether relating to any accident, accepting any test reports or otherwise immediately upon receipt by CONTRACTOR and no later than two (2) working DAYs after its receipt.



1.2.30 CONTRACTOR's Representative and Key Personnel

1.2.30.1 CONTRACTOR shall with prior consent of PROJECT MANAGER appoint a CONTRACT MANAGER to manage the execution of WORK and he shall be CONTRACTOR's authorized Representative in India. CONTRACTOR's personnel stationed at SITE for providing services during the execution of WORK shall work under the supervision and guidance of CONTRACT MANAGER. The CONTRACT MANAGER shall have the full authority to make binding and enforceable in the name of CONTRACTOR and shall receive all notices/correspondence that OWNER serves on CONTRACTOR.

1.2.30.2 CONTRACTOR shall be responsible for the work performed by CONTRACT MANAGER and CONTRACTOR's personnel and shall under no circumstances be relieved of its responsibilities and obligations under CONTRACT on account of acts or omissions of CONTRACT MANAGER and personnel.

1.2.30.3 The Key Personnel shall hold the staff positions as indicated in CONTRACT. CONTRACTOR shall use reasonable efforts to ensure that such Key Personnel will be engaged in the execution of WORK continuously until their role is completed unless prior release is approved by OWNER, such approval not to be unreasonably withheld or delayed.

Replacement of or addition to Key Personnel shall only be made with persons having qualifications and experience equal to or better than those replaced or added to, and shall be similarly subject to OWNER's prior approval. In the event, any person identified in CONTRACT decides to leave the employment

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of CONTRACTOR, CONTRACTOR shall use reasonable efforts to retain the services of such person until his portion of WORK is complete. CONTRACTOR further agrees not to remove from WORK Key Personnel, which OWNER considers to be necessary for the proper performance of WORK without the prior written approval of OWNER.

1.2.31 General Warranties

- a) CONTRACTOR shall perform WORK in full compliance with its FINAL PROPOSAL and all other terms and conditions set forth herein.
- b) WORK shall be performed, in a good and workmanlike manner and in accordance with the FINAL PROPOSAL, all other terms and conditions of this CONTRACT, all DOCUMENTS, all Government Approvals, all APPLICABLE LAWS, and Good Industry Practices.
- c) All EQUIPMENTS/INSTRUMENTS, installed as part of PLANT, (i) shall be free from any encumbrance or lien and shall conform to the specifications and descriptions set forth in CONTRACT and (ii) shall be new and unused, free from DEFECTS and Deficiencies of any kind and shall meet the requirements of the Scope of Work.
- d) The completed PLANT shall be free of DEFECTS and Deficiencies and shall be designed, constructed and engineered, in compliance with the Scope of Work.
- e) PLANT shall be designed, engineered, constructed, tested, completed and delivered based on Good Industry Practices, CONTRACTOR's specifications and guidelines for operation and maintenance in accordance with the Scope of Work, for CONTRACT PRICE and no later than the GUARANTEED COMPLETION DATE.
- f) All SUB-CONTRACTOR/vendor shall perform their portion of the Scope of Work or supply or install EQUIPMENT in accordance with the applicable terms set forth herein.
- g) Adherence to the Operations Manual shall allow safe start-up, operation, maintenance and shut-downs of the completed PLANT, in accordance with CONTRACTOR's guidelines and will not impair any warranty or guarantee of EQUIPMENT incorporated or to be incorporated into PLANT.

1.2.32 Additional Tests

- 1.2.32.1 Except for tests required as per the provision of CONTRACT, OWNER may at any time prior to FINAL ACCEPTANCE OF PLANT request re-testing or additional testing of any EQUIPMENT/INSTRUMENT, incorporated or to be incorporated into PLANT, or WORK if in the opinion of OWNER, the results of earlier tests are not accurate or do not establish the true condition of EQUIPMENT or WORK being tested.

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- 1.2.32.2 If a portion of WORK or any EQUIPMENT, incorporated or to be incorporated into PLANT, fails any additional test or retest requested by OWNER pursuant to Clause 1.2.32.1, then CONTRACTOR shall correct or replace, or cause its SUB-CONTRACTOR/VENDOR to correct or replace, such item or portion so as to pass additional testing or re-testing and otherwise meet or conform to such requirements.

No changes to time schedule or increase in the CONTRACT PRICE shall be granted with respect to such additional testing. CONTRACTOR shall solely bear any cost resulting thereof (including the cost of any required uncovering and recovering of WORK). Neither the failure by OWNER to discover Defects and Deficiencies, nor any payment to CONTRACTOR in respect thereof shall prejudice the rights of OWNER thereafter to require and obtain from CONTRACTOR the satisfactory performance of WORK hereunder.

1.2.33 General

- 1.2.33.1 CONTRACTOR shall incorporate during design stage maximum utilization of goods manufactured and/or available in India and also avail shipping, insurance, banking, catering and any other services available from India-owned companies for installation of plant, if quality, delivery and overall cost characteristics are equivalent.
- 1.2.33.2 CONTRACTOR shall arrange insurance pursuant to Clause 28.0 of GCC, at its own cost.
- 1.2.33.3 CONTRACTOR shall provide necessary information, documentation, and assistance for obtaining any approvals from Financial Institutions or any other agencies or authorities.

2.0 OWNER'S OBLIGATIONS



OWNER shall be responsible for fulfilling all obligations as specified under the following heads:

2.1 Basic Conditions for Design/planning

OWNER shall furnish information concerning the basic conditions for design/planning to CONTRACTOR as soon as practicable, but in any event not later than as per the requirements of CONTRACTOR's engineering schedule established and made available to OWNER during the early stages of WORK. CONTRACTOR shall review the basic conditions, including soil data, and other conditions furnished by OWNER. If CONTRACTOR observes any inconsistency or insufficiency in these data, CONTRACTOR shall bring to the notice of OWNER the same, before use of such data/information.

2.2 Overall Co-Ordination

The objective of overall co-ordination is to organise orderly execution of WORK, bring about requisite integration amongst the various project activities of executing agencies, to achieve the technical quality, cost objective of

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WORK and to avoid interference between the various activities of the parties in order to achieve the earliest possible completion of WORK. The aim will be to integrate, have compatibility between plants and uniform standardisation of design, engineering, layout, etc.

2.3.0 Review and Approval of Work

2.3.1 CONTRACTOR shall associate OWNER's representatives with WORK as carried out by CONTRACTOR's personnel. For this purpose, OWNER shall associate with WORK at all stages. Specifically, OWNER shall undertake the following tasks:

- a) Review/APPROVAL of drawings as per Part-II, Technical and other documents connected with basic and detailed engineering.
- b) Review of specifications for EQUIPMENT, lists of spare parts and special maintenance tools, and lists of special construction aids, tools, tackles, fixtures, etc.
- c) Participation in inspection, expediting and testing of EQUIPMENT at SUB-CONTRACTOR's / vendor's works and at SITE, wherever considered necessary by OWNER.

2.3.2 For the smooth functioning OWNER will nominate an individual who will act as PROJECT MANAGER under the CONTRACT. The PROJECT MANAGER will have full authority to act on behalf of the OWNER in connection with the CONTRACT. Except as otherwise provided in the CONTRACT, all communications between the OWNER and the CONTRACTOR relating to the WORKS shall be between the PROJECT MANAGER and the CONTRACT MANAGER.



2.3.3 OWNER shall depute its representatives to carry out above work at the office of CONTRACTOR. OWNER shall bear the cost of travel and stay of its personnel for such deputation. CONTRACTOR shall provide office accommodation, secretarial assistance, etc. in its office to OWNER's personnel. Number of OWNER's personnel to be deputed at CONTRACTOR's office on single location shall not exceed 10 (ten) at a time.

2.4 Government Clearances

All approvals/clearances shall be obtained by CONTRACTOR. CONTRACTOR shall provide necessary services and assistance in obtaining Government clearances to be obtained in the name of OWNER. However, OWNER shall be responsible to obtain import licence and TEC for Concessional Duty / Deemed Export Benefits as per prevailing rules.

2.5 Facilities for CONTRACTOR's Personnel

OWNER shall assist CONTRACTOR in obtaining Visas and other PERMITS from the appropriate authorities for CONTRACTOR's and SUB-CONTRACTOR's / vendor's expatriates to enter and stay in India as necessary for performance of WORK. OWNER shall also provide facilities to

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CONTRACTOR's expatriates in accordance with the provisions described in Clause-2.8.

2.6 Operating and Maintenance Personnel

OWNER shall provide operating and maintenance personnel, as available, during the PRE-COMMISSIONING and COMMISSIONING activities, who will work under the direction, control and supervision of CONTRACTOR.

2.7 Feed stock and Utilities

OWNER shall make available the feedstock and utilities subject to limit specified in CONTRACT and take over all products and effluents at BATTERY LIMIT as specified in CONTRACT.

2.8 Site Facilities

OWNER shall provide the following SITE facilities:



- a) Organisation and personnel for general co-ordination of site activities.
- b) General safety and security services.
- c) Construction water and power shall be provided, free of cost, by OWNER at a **single location at site**.
- d) SITE
- e) OWNER shall not provide any facilities for travelling to and from SITE to the place of residence to the personnel of CONTRACTOR, deputed at SITE for performing WORK under CONTRACT.
- f) OWNER may provide accommodation on chargeable basis subject to availability.
- g) Area for making shed/covered storage for storing EQUIPMENT

3.0 CHANGE IN WORK/CHANGE ORDER

3.1 OWNER shall have the right to request in writing changes in WORK within the scope of CONTRACT. When the request for a change in WORK by OWNER has been agreed and complied by CONTRACTOR, CONTRACTOR's obligations under CONTRACT shall remain unaffected unless otherwise agreed.

3.2 Deleted

3.3. On each request for a CHANGE IN WORK, CONTRACTOR shall promptly inform OWNER in writing whether this request will fall within the provision of CONTRACT. If this request does not fall under the provision of CONTRACT and CONTRACTOR has to incur additional expenses, then CONTRACTOR shall promptly submit a cost estimates, and terms of payment for making the requested change in WORK together with the details of any variation required

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to be made to any of CONTRACTOR's or OWNER's obligations and/or guarantees.

- 3.4 If in CONTRACTOR's opinion fulfillment of any of its obligations under CONTRACT would be jeopardised by a CHANGE IN WORK requested by OWNER, then CONTRACTOR shall explain in writing to OWNER the reasons for not accepting these changes within thirty (30) days of receipt of OWNER's written request.
- 3.5 OWNER and CONTRACTOR shall agree upon the basis and terms of the CHANGE IN WORK in writing.
- 3.6 It is understood that no change shall become effective and no change will alter the scope of WORK until all of the matters referred to in this Clause 3 have been mutually agreed upon in writing by OWNER and CONTRACTOR.
- 3.7 It is agreed by both parties that the following changes shall not be considered a CHANGE IN WORK in the meaning in this Clause:
- Minor changes requested by OWNER and accepted by CONTRACTOR which do not involve any substantial additional cost or manhour effort, and have no effect on contractual completion period, and/or
 - Changes in CONTRACTOR's WORK required on account of CONTRACTOR not having included any item of EQUIPMENT or WORK which, in the opinion of OWNER/CONTRACTOR is necessary for the normal safe and continuous operation of PLANT.
 - Any change necessitated due to requirements of prevalent laws in India.



4.0 ACCEPTANCE OF PLANTS AND FACILITIES

CONTRACTOR's liabilities for the Performance Guarantees given for the PLANTS and Facilities in respect of capacity, consumption, product quality and pollution level shall be discharged only when the PERFORMANCE TESTS as stipulated in Part-II, Technical of NIT have been successfully carried out as per acceptance criteria specified below or alternatively, Agreed Compensation as stipulated in clause 31 of GCC have been paid by the CONTRACTOR and OWNER has issued PRELIMINARY ACCEPTANCE CERTIFICATE.

5.0 PLANT ACCEPTANCE CRITERIA

Subject to fulfilling PERFORMANCE AND GUARANTEE TESTS as per Part-II, Technical Section of NIT and Clause 18.0 of SCC, OWNER shall be in readiness to accept the PLANTS. CONTRACTOR shall take all steps to fulfil the provisions of the CONTRACT for OWNER to issue PRELIMINARY ACCEPTANCE CERTIFICATE.

6.0 ISSUANCE OF PRELIMINARY ACCEPTANCE CERTIFICATE

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Within 30 (thirty) DAYS from completing successfully PERFORMANCE TESTS by the CONTRACTOR, and CONTRACTOR fulfilling all the obligations under the provision of the CONTRACT, OWNER shall issue PRELIMINARY ACCEPTANCE CERTIFICATE to CONTRACTOR. If OWNER does not issue the certificate, owner will provide written notice stating the reasons for refusing to issue the certificate within 60 days of request. On issue of this Certificate by OWNER, CONTRACTOR shall become entitled to receive all payment as per provisions of the CONTRACT due to CONTRACTOR subject to CONTRACTOR's fulfilling the obligations stipulated under CONTRACT

7.0 LABOUR AND STAFF



- 7.1 The CONTRACTOR shall make his own arrangement for labour, erection and COMMISSIONING engineers and all other staff required for carrying out the CONTRACT. The necessary permissions from Government of India regarding work permit and visa requirement shall be obtained by the CONTRACTOR.
- 7.2 The CONTRACTOR shall make his own arrangements for providing canteen service to his labour and staff. Open space for this purpose may be provided by OWNER.
- 7.3 The CONTRACTOR shall at his own cost provide office and other accommodation for his staff and workmen. The CONTRACTOR shall also provide communication, transport and medical facilities to his staff and workmen.
- 7.4 The CONTRACTOR shall be responsible for all statutory obligations and any other laws in this regard in force from time to time regarding the employment or conditions of service of CONTRACTOR's labour, workman or employees.
- 7.5 The CONTRACTOR shall observe all safety rules as required under various rules, regulations and laws in India and shall also strictly adhere to safety regulations of OWNER.

8.0 TRAINING OF OWNER'S PERSONNEL

Class room Training for operation and maintenance employees of NFL at NFL sites.

9.0 MODE OF CONTRACTING

- 9.1 Notwithstanding anything stated elsewhere in the CONTRACT documents, the CONTRACT is awarded with single source responsibility, for jobs under scope of Contractor.
- 9.2 The CONTRACT shall be in all respect being construed and governed in accordance with the Indian laws.
- 9.3 It is clearly understood that the total consideration for the CONTRACT has been broken up into various components only for the convenience of payment

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of advance under the CONTRACT and for the measurement of deviation or modification under the CONTRACT(s).

10.0 BID PRICES

10.1 CONTRACTOR shall quote as per SOR.

10.2 The **RATES** shall remain firm and fixed and shall be valid until FINAL ACCEPTANCE and shall not be subject to variation/escalation on any account except as otherwise specifically provided in the CONTRACT.

10.3 The TOTAL PRICE shall be derived from SCHEDULE OF PRICES comprising the total of the price of Equipments/Materials, price of Services, prices for Elect Supply & Installation Works (and related Civil, Structural, Instt. And Mech. Works, as required).

10.4 CONTRACTOR to note that Total Contract Price shall be as per 10.2 and 10.3



10.5 **The quoted price shall be deemed to be inclusive of all taxes, statutory levies, and duties including but not limited to municipal taxes, royalties, Custom duty and customs related duties, Compensation cess, Surcharge, Taxes on built-in import content, irrespective of whether same is categorically specified or not.**

10.6 The price/rates shall be firm for the entire scope of work, whether specifically mentioned or not. Unless the basic parameter changes or additional / extra requirements (Scope of work and / or supply and / or services) are made.

10.7 Obligation of the CONTRACTOR is not limited to the quantities that the CONTRACTOR may either indicate in the breakup of prices along with his bid or in further detailed breakup of prices furnished after award of Work. CONTRACTOR shall carry out entire scope of work / supplies / Services as detailed in various sections of bidding documents within the quoted Price.

10.8 Price shall be deemed to be inclusive of the cost of any other supplies / work(s)/ services not specifically mentioned in the Bidding Document but are essentially required for the efficient, trouble free operation of the complete package, irrespective of whether the above unspecified supplies / work(s) / services are specifically mentioned in the Bidders bid or not.

10.9 The CONTRACTOR shall carefully examine the various clauses / sections of the Bidding Document inclusive of Scope of WORK, General Terms and Conditions Works Contract, Special Conditions Of Contract, and Tender Specifications, Technical and Commercial amendments, if any etc. The CONTRACTOR shall include in his prices any sum he may consider necessary to cover the fulfilment of the various clauses contained therein. The items of work described and price stated shall be inclusive of everything necessary to complete the said item of work within the contemplation of the CONTRACT.

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10.10 Spares for Start-up/Commissioning and Two years Operational spares and any other Tools and Tackles as required are in CONTRACTORS scope and deemed to be included in their quoted TOTAL CONTRACT PRICE, irrespective of whether such spares / items are categorically mentioned or not in the CONTRACTORS bid. No claim on this issue shall be entertained at later date after award of work and at any stage during the faithful execution of the CONTRACT.

10.11 It shall be the sole responsibility of the CONTRACTOR to duly observe and faithfully perform and fulfil all obligations of all laws, rules, regulations, orders and formalities during the entire period / currency of the CONTRACT, applicable to Goods and Service Tax (GST), Custom duty etc, on the import, manufacture, sale and / or supply of any material(s)/ equipment to the OWNER and faithful performance of the Works Contract Service under the CONTRACT.

The CONTRACTOR shall keep the OWNER and its Project Management Consultant (PMC) indemnified from and against any and all claims, demands, prosecutions, actions, proceedings, penalties, damages, demurrages and / or other levies whatsoever made or levied by any Court, Tribunal or the Customs or other Authorities with respect to any alleged breach or infractions of any applicable laws, rules, regulations, orders or formalities concerning the same and from the consequence thereof.

In view of GST regime, CONTRACTOR shall quote the Prices Considering Input Tax credit (ITC).

10.12 The price of Works Contract Service shall be deemed to cover various factors including but not limiting to cost of materials / equipments / services, overheads, bidding cost, financing cost, profits, mobilization & demobilization cost etc, as applicable. Unless the scope expressly excludes certain provision from the CONTRACTOR's scope in the Bidding document / CONTRACT, no additional payment on any such head expressly not mentioned herein in the bidding document / contract shall be entertained at later date.



10.13 OWNER will issue forms/documents periodically (as may be required under GST regime) wherever applicable on all interstate sale of materials by the CONTRACTOR to enable the CONTRACTOR to comply with and avail benefits of GST.

11.0 CURRENCIES OF BID AND PAYMENT

11.1 The Bidder shall quote in Indian Rupees and shall be paid in Indian Rupees only.

11.2 The price quoted by the CONTRACTOR shall be gross of Indian Income Tax and the price(s) shall be deemed to include Indian Income Tax including withholding tax (if any).

12.0 PRICES, TAXES AND DUTIES AND OTHER LEVIES

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12.1 Except as specifically provided to the contrary in the SPECIAL CONDITIONS OF CONTRACT:

- (i) The CONTRACTOR shall within the price of MATERIALS and scope of supply be responsible to pay any and all duties, taxes, levies and cesses including education cess etc lawfully payable on MATERIALS imported into India or within any local limits for permanent incorporation in the WORK(S), and on materials sold and supplied to the OWNER pursuant to the CONTRACT.
- (ii) The CONTRACTOR shall within the price of services and scope of services be responsible to pay any and all duties, taxes, levies and cesses including education cess etc, lawfully payable on any goods or EQUIPMENT imported into India or within any local limits for use in the performance of the WORK(S), and on services performed pursuant to the CONTRACT.
- (iii) The CONTRACTOR shall be liable for and shall pay any and all Indian fees, taxes, duties, levies and cesses including education cess etc., assessable against CONTRACTOR in respect of or pursuance to the CONTRACT.
- (iv) In addition, the CONTRACTOR shall be responsible for payment of all Indian duties, levies, and taxes etc., assessable against the CONTRACTOR or CONTRACTOR's employees or SUB-CONTRACTOR'S whether corporate or personal or applicable in respect of property.



12.2 Deleted

12.3 TAX INDEMNITY



It will be the duty of the CONTRACTOR to duly observe and perform all laws, rules, regulations, orders and formalities applicable to GST, any applicable cess, Customs Duty, surcharge and other taxes on the manufacture, sale, import and/or supply of any material to OWNER and/or applicable Tax and levies on the services performed by the CONTRACTOR pursuant hereto.

The CONTRACTOR shall keep the OWNER indemnified for and against any and all claims, demands, prosecutions, penalties, damages, demurrages and/or other levies whatsoever made or levied by the Court or Customs Authorities with respect to any alleged breach, evasion or infraction of such duties, taxes, charges or levies or any breach or infraction of such laws, rules, regulations, orders or formalities concerning the same and from the consequence thereof.

12.4 All the applicable taxes, duties etc. on supply of materials, services, Civil works and otherwise required for execution of contract as quoted in Annexure 1.2 shall be included in the TOTAL PRICE

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- 12.5 The CONTRACTOR confirms that it has included all taxes, duties, levies etc., as applicable at prevailing rates, in its CONTRACT PRICE. In case, CONTRACTOR has not included any such taxes, duties, levies etc., at all and/or at prevailing rates and CONTRACTOR has to pay such taxes, duties, levies etc., OWNER shall not be liable for payment of such liabilities and/or OWNER shall not reimburse such taxes, duties, levies etc. to CONTRACTOR.
- 12.6 Within the contractual period, any differential tax liability arising on account of statutory variation in India in percentage of taxes, duties as shown and quoted by the CONTRACTOR in Annexure-1.2 shall be paid by OWNER to CONTRACTOR or vice versa and the same may be reflected therefore in CONTRACT PRICE on submission of documentary evidence. However, in case of delay in PRELIMINARY ACCEPTANCE OF PLANT due to reasons attributable to CONTRACTOR, any increase in percentage of taxes/duties over and above those specified and quoted by the Bidder in Annexure-1.2 during the delayed period shall be to CONTRACTOR's account and shall not be reimbursed by OWNER.
- 12.7 Any other taxes / duties in relation to this CONTRACT, which in terms of relevant legislation is the liability of CONTRACTOR, is discharged by OWNER, would be recovered from the CONTRACTOR from any subsequent payment due to the CONTRACTOR.
- 12.8 INCOME TAX
- 12.8.1 TOTAL CONTRACT PRICE shall be inclusive of any and all Indian Income Tax payable in India. OWNER shall deduct Indian Income Tax as per rates prescribed for such contracts from time to time, from the payments due to CONTRACTOR and issue tax deducted at source certificate to CONTRACTOR. It is the responsibility of the CONTRACTOR to file proper income tax return and pay taxes thereon if any, or claim refund thereof if any. The CONTRACTOR shall give OWNER all necessary documents relating to its income tax assessments and to keep the OWNER informed about their assessments.
- 12.8.2 Personal income tax payable, if any, in respect of salary and perquisites of CONTRACTOR's personnel / SUB-CONTRACTOR's personnel in India shall be payable by the individual so deputed by CONTRACTOR or SUB-CONTRACTOR. It is the responsibility of the individual or CONTRACTOR to file proper income tax return and pay taxes thereon if any, or claim refund thereof if any. The CONTRACTOR shall give OWNER all necessary documents relating to income tax assessments of its personnel and to keep the OWNER informed about their assessments.
- 12.9 **Building and Other Construction Worker's (BOCW) Cess:** Bidder to include BOCW Cess, as applicable in their quoted price.
- 13.0 **STATUTORY VARIATION IN TAXES AND DUTIES**

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- 13.1 If any new taxes or duties (including any increase in rate of any existing taxes or duties) are levied in India after the date of submission of bids/revised price bids (whichever is later) on any payments due to the CONTRACTOR under the CONTRACT other than tax on income, wealth or profits of the CONTRACTOR, the OWNER shall reimburse the CONTRACTOR the amount of such taxes or duties lawfully paid and borne by the CONTRACTOR against proof of payment at actual on submission of document/tax paid invoice of the vendor to be submitted by the Contractor. However, this is applicable within the GUARANTEED COMPLETION DATE only and shall not be reimbursed by OWNER during the delayed contractual project completion attributable to CONTRACTOR'S account.
- 13.2 If any existing taxes or duties are withdrawn or the rate is decreased after the date of submission of the bids / revised bids (whichever is later) on any payments due to the CONTRACTOR under the CONTRACT other than tax on income, wealth or profits of the CONTRACTOR, the OWNER shall receive the benefit of the reduced rate equivalent to the amount of such taxes or duties. This is applicable within the GUARANTEED COMPLETION DATE and also during the delayed contractual Project completion.
- 13.3 In case of delayed completion beyond the GUARANTEED COMPLETION DATE even though extension of completion time is allowed by OWNER, for reasons solely attributable to Contractor, all extra costs on account of changes of statutory regulations/ acts, or increase in price on any other account including price variation clause, if any, shall not apply to the Contract price and shall be borne by the CONTRACTOR.

However, any decrease in taxes and duties during the delayed period shall be passed on to the OWNER.

14.0 TERMS OF PAYMENT



- 14.1 The payment to CONTRACTOR for the performance of the works for supply of fully commissioned plants after performing the test runs to ensure that the PLANT meet the specifications stipulated under the CONTRACT will be made as per terms of payment set forth herein.

No payments shall become due and payable before:

- a) Acceptance of Letter of Award (LOI).
- b) Submission of Security cum Performance Bank Guarantee for 10% of the Total Contract Price and acceptance of the same by Owner.
- c) Contract Agreement

14.1.1 Secured Advance Payment

No advance payment shall be admissible. However in exceptional circumstances, advance of not more than 10% of Total Contract Price as interest

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bearing Advance, against submission of Advance Bank Guarantee for 110% of the advance amount shall be made.

This Advance Bank Guarantee shall be valid till the recovery period of advance. Such advance will carry simple interest @ SBI MCLR rate +1 % prevalent on the date of priced bid opening till full recovery with interest in six instalments from the starting progressive payments.

Advance shall be paid to the Contractor on fulfilment of following conditions:



- a) Unconditional acceptance of LOI
- b) Submission of Bank Guarantee for Advance Payment for 110% of Advance Amount value valid for 3 months beyond Completion Period as per format attached with the NIT. The CONTRACTOR shall at the request of the OWNER suitably extend the validity of the Bank Guarantee for Advance Payment for such period or periods as may be required to fully recover the amount of the Advance not recovered before the expiry of the validity of such Bank Guarantee for Advance Payment, failing which, without prejudice to any other right or remedy available to the OWNER, the OWNER shall be entitled to encash the Bank Guarantee for Advance Payment.
- c) Submission of SECURITY CUM PERFORMNCE BANK GUARANTEE by way of Security Deposit as stipulated in Clause 8.0 of the GENERAL CONDITIONS OF CONTRACT. The CONTRACTOR shall at the request of the OWNER extend the validity of the SECURITY CUM PERFORMNCE BANK GUARANTEE(S) for such further period or periods as may be required failing which, without prejudice to any other right or remedy available to the OWNER, the OWNER shall be entitled to encash the SECURITY CUM PERFORMNCE BANK GUARANTEE(S).

Notes:

1. The advance paid to the CONTRACTOR shall be used only for execution of this CONTRACT and the CONTRACTOR shall satisfy the OWNER in this regard whenever required. If it is found that the said advance has been utilised by the CONTRACTOR in whole or part for any other purpose, the OWNER may at its discretion forthwith recall the entire advance and without prejudice to any other right or remedy available to the OWNER, recover the same by recourse to any Bank Guarantee(s).
2. Advance shall be fully recovered with interest in 6 instalments starting from the first bill (payment) itself.

14.1.2 Progressive Payments shall be as per Payment term elsewhere mentioned in commercial parts.

14.2 All payments other than the Advance Payment shall be released only after finalization of the planning and monitoring documents and Progress Schedule.

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14.3 All invoices shall be submitted in duplicate to PROJECT MANAGER by the Bidder. The payment (except for FINAL BILL) shall be released within 30 days of submission of undisputed invoice.

14.4 **deleted**

15.0 **BILLING SCHEDULE**

The CONTRACTOR shall provide a billing schedule based on agreed payment terms within 30 days from the EFFECTIVE DATE OF CONTRACT for approval by the OWNER. The CONTRACTOR shall raise invoice in the prescribed format with all the required information within the due date in terms of the provisions of GST laws. The invoices shall be supported by necessary documents as may be required by the OWNER.

16.0 **Deleted.**

17.0 **LIABILITY FOR DEFECTS**

17.1 If at any time before the PRELIMINARY ACCEPTANCE or during the DEFECTS LIABILITY PERIOD stated below, the OWNER

(a) Decides that any matter is a DEFECT; and



(b) as soon as reasonably practicable gives to the CONTRACTOR notice of the particulars of the DEFECT; the CONTRACTOR shall as soon as reasonably predictable make good the DEFECTS so notified and the OWNER shall so far as may be necessary place the PLANT at the CONTRACTOR's disposal for this purpose. The CONTRACTOR shall, if so required by the PROJECT MANAGER, submit his proposals for making good any DEFECT to the PROJECT MANAGER for his approval.

Subject to clauses 17.4, 17.8 and 17.9, the **DEFECTS LIABILITY PERIOD shall be a period of 12 months from the date of PRELIMINARY ACCEPTANCE.**

17.2 If any DEFECT arises from any breach of the CONTRACT by the CONTRACTOR the CONTRACTOR shall bear his own cost of making good the DEFECT. In the case of any other matter made good by the CONTRACTOR, the work done by the CONTRACTOR shall be the subject of CHANGE ORDER.



17.3 The performance guarantees are demonstrated only through the Performance & Guarantee tests carried out before the achievement of the PRELIMINARY ACCEPTANCE CERTIFICATE.

Bidder is available to carry out further test(s) on the repaired/replaced item during the DEFECT LIABILITY PERIOD having the sole purpose to verify that said item is capable of working in compliance with contractual requirements. Such test(s) shall not be intended as a repetition of the performance tests already performed.

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If DEFECT is made good after the issue of a PRELIMINARY ACCEPTANCE CERTIFICATE the PROJECT MANAGER may require the CONTRACTOR to repeat any appropriate performance test for the purpose of establishing that the DEFECT has been made good. The CONTRACTOR shall be responsible for the cost of any repeat inspection or test in the event of an inspection or test failure.

- 17.4 If in the course of making good any DEFECT which arises during the DEFECTS LIABILITIES PERIOD and CONTRACTOR repairs, replaces or renew any part of the PLANT, this Clause 17 shall apply to the repair or to that part of the PLANT so replaced or renewed and shall further apply until the expiry of a period of 12 months from the date of such repair, replacement or renewal (the extended DEFECTS LIABILITY PERIOD).
- 17.5 If the CONTRACTOR does not make good with a reasonable time any DEFECT which he is liable to make good under Sub-Clause 17.1 then the OWNER may, in addition to any other remedies or relief available to him under the CONTACT, proceed to do the work, provided that the OWNER gives at least fourteen DAYS notice of his intention.
- 17.6 If the OWNER reasonably requires that any DEFECT notified to the CONTRACTOR under Sub-clause 17.1 which arises during the DEFECT LIABILITY PERIOD be made good urgently and the CONTRACTOR is unable or refuses to comply within a reasonable time, the OWNER may, in addition to any other remedies or relief available to him under the CONTRACT, proceed to do the work in such a manner as the OWNER may decide, including the employment of a third party.
- 17.7 If the OWNER has made good a DEFECT in accordance with Sub-clause 17.5 or 17.6, the CONTRACTOR shall reimburse the OWNER his reasonable cost of so doing provided that the OWNER gives a notice to the CONTRACTOR of his intention and submits a claim supported by DOCUMENTS. The OWNER and the CONTRACTOR may agree the amount to be paid by the CONTRACTOR, or in the absence of agreement the PROJECT MANAGER shall decide such amount as may be reasonable. Such amount shall be:
- a) deducted from any money that would otherwise be payable under the CONTRACT; or
 - b) paid by the CONTRACTOR to the OWNER
- 17.8 If the PLANT cannot be used because of a DEFECT to which this Clause 17 applies, the DEFECTS LIABILITY PERIOD, or if applicable the extended DEFECTS LIABILITY PERIOD, shall be extended by a period equal to the period during which it cannot be used. Similarly the DEFECTS LIABILITY PERIOD, or if applicable the extended DEFECTS LIABILITY PERIOD shall be extended by any period wherein the PLANT cannot be used by reason of the CONTRACTOR putting the PLANT into such condition that it passes any relevant performance test or attempting to do so.
- 17.9 If any part of the PLANT has a working life, which is specifically notified by the CONTRACTOR under this CONTRACT, to be less than 12 months the DEFECTS LIABILITY PERIOD for such part shall be the working life so stated.

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18.0 PERFORMANCE TESTS

Without affecting the specific conditions, in this regard, mentioned in the Technical part of NIT, following general provisions shall apply:

- 18.1 The specific guarantees under the CONTRACT in respect of the performance of the PLANT made by the CONTRACTOR which is verifiable by performances tests shall be governed by this Clause 18.
- 18.2 The performance test shall be carried out by the CONTRACTOR in the presence of OWNER as soon as is practicable under direction, control and direct supervision of CONTRACTOR.
- 18.3 The CONTRACTOR shall give a notice to the PROJECT MANAGER about his readiness to carry out the performance and guarantee test.
- 18.4 The performance test shall be carried out to completion unless its continuance is unsafe.
- 18.6 Deleted.



The OWNER shall permit to CONTRACTOR to make adjustments and modifications to any part of the Plant before the repetition of any performance test and shall, if the CONTRACTOR reasonably requires, shut down any part of the PLANT for such purpose and restart it after completion of the adjustments and modifications, which shall be made by the CONTRACTOR with all reasonable speed. The timing of such shutdown shall be agreed between the CONTRACTOR and the PROJECT MANAGER.

The CONTRACTOR shall, if so required by the PROJECT MANAGER, submit to the PROJECT MANAGER for his approval details of the adjustments and modifications which he proposes to make.

The CONTRACTOR shall make such adjustment and modifications at his own cost.

19.0 FINAL ACCEPTANCE CERTIFICATE

- 19.1 Subject to Sub-clause 17.8 and 19.2 as soon as DEFECT LIABILITIES PERIOD for the PLANT has expired or the CONTRACTOR has made good all DEFECTS that have within such period appeared in the PLANT or a Section in accordance with Clause 17 (Liability for Defects), whichever is later, the PROJECT MANAGER shall issue a certificate (a 'FINAL ACCEPTANCE CERTIFICATE') to the CONTRACTOR stating that the PLANT or Section and any related work have finally been completed and the date of that completion.
- 19.2 If Sub-clause 17.4 continues to apply to any part of the PLANT, the PROJECT MANAGER shall as soon as Sub-clause 19.1 is otherwise satisfied, issue a FINAL ACCEPTANCE CERTIFICATE for the remainder of the PLANT or Section in which the repair or part is included, provided that such repair or part is then free from



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DEFECTS which the CONTRACTOR is bound to make under Clause 17. Such repair or part shall then be treated as if it were a separate Section and shall be the subject of separate FINAL ACCEPTANCE CERTIFICATE.

- 19.3 The FINAL ACCEPTANCE CERTIFICATE shall constitute conclusive evidence for all purposes and in any proceedings whatsoever between the OWNER and the CONTRACTOR that the CONTRACTOR has completed that part of the PLANT and made good all DEFECTS therein in all respects in accordance with his obligations under the CONTRACT.

Where there is more than one FINAL ACCEPTANCE CERTIFICATE the last to be issued shall be identified as being the last FINAL ACCEPTANCE CERTIFICATE.

No FINAL ACCEPTANCE CERTIFICATE shall be conclusive as stated above if it or any other FINAL ACCEPTANCE CERTIFICATE was issued in reliance upon any fraudulent act, misrepresentation or concealment.

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GENERAL CONDITIONS OF CONTRACT

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1.0 SCOPE OF CONTRACT



The scope of work includes engineering (as required), procurement and supply of complete materials & bought-out items whatever deemed necessary for **Civil, Structural & Allied Works** (including its related Elect. and Mech. Works) at shop/site as required, loading, unloading & transportation, storage at site, assembly, erection/installation, inspection, testing, painting, statutory approvals (as required), commissioning, calibration, trial runs and demonstration of guarantees along with spares & whatever work required for completion of job.

- 1.1 Supply of Engineering, Supply of Materials/Equipment/Items and Associated Facilities, Machinery, accessories, auxiliaries, spares and other related items, packing, supplying, arranging comprehensive insurance, primary protection and testing of individual items and assembly where necessary, construction, erection, testing, PRE-COMMISSIONING and Commissioning, Reliability run, Tests Runs, as per CONTRACT specifications, supply of final DRAWINGS & DOCUMENTS etc.
- 1.2 Arrange services of ocean transportation and carry out the services of port clearance as required, handling, loading on Trailer / Trucks and inland transportation up to SITE, comprehensive insurance, unloading, storage at SITE, transportation within SITE, unloading, storage ,handling, site Assembly, fabrication, insulation, painting, testing, arranging commissioning spares, complete services of erection, structural and PRE-COMMISSIONING, COMMISSIONING and TEST RUNS for PLANT
- 1.3 The CONTRACTOR shall take all necessary steps, and comply with all formalities to get the CONTRACT registered with the appropriate Indian Custom Authorities to have the various imported equipments including spares, assessed as applicable. Any statutory Government Clearances / Permissions like Labour License/Import License etc. shall be obtained by CONTRACTOR without any additional cost to OWNER.
- 1.4 The CONTRACTOR shall be responsible on completion of CONTRACT or whenever required to undertake Customs reconciliation work with Indian custom authorities and finalise the Customs assessment by furnishing the necessary Technical Documents, technical information etc. to the said Authorities.
- 1.5 Any additional material/equipment whether mentioned or not, but which is necessary for the satisfactory completion of the PLANT allowing subsequent operation and maintenance of plant and for achieving the guaranteed performance of the plant shall be supplied, erected and commissioned by CONTRACTOR at no additional cost to the OWNER as though such equipments were originally specified and formed part of scope of WORK.
- 1.6 The scope of CONTRACT shall include spare parts necessary for commissioning, and operational spares for satisfactory operation and maintenance of the plant and shall be supplied along with the main EQUIPMENT and all special tools and tackles required for the maintenance of PLANT. OWNER shall specify in the CONTRACT the spares to be purchased and TOTAL PRICE shall be inclusive of price of such spares.
- 1.7 Handing over all operational spare parts to OWNER item-wise with item tags with information and in the manner desired by OWNER either upon receipt or after

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PRILIMINARY ACCEPTANCE OF PLANT at option of OWNER. CONTRACTOR shall also give such DRAWINGS, catalogues, sketches and literature that the OWNER shall specify in the CONTRACT.

- 1.8 Completeness of the EQUIPMENT shall be the responsibility of the CONTRACTOR. Any equipment, fittings and accessories which may not be specifically mentioned in the specifications or drawings but which are usual or necessary for the satisfactory functioning of the equipment (successful operation and functioning of the MATERIAL/EQUIPMENT being CONTRACTOR'S responsibility) shall be provided by the CONTRACTOR without any extra cost.
- 1.9 The CONTRACTOR shall follow the best modern practices in the manufacture of high quality equipment notwithstanding any omission in the specifications. The true intent and meaning of these documents is that CONTRACTOR shall in all respects design, engineer, and manufacture and supply the MATERIAL/EQUIPMENT in a thorough workmanship like manner and supply the same in prescribed time to the entire satisfaction of OWNER as required in accordance with the terms and conditions of the CONTRACT.
- 1.10 The CONTRACTOR shall furnish Four copies in English language of technical DOCUMENTS (like specifications of materials/equipment/electrical), final DRAWINGS, preservation instructions, manuals, test certificates, spare parts catalogues, softwares and hardwares. For all the documents and drawings the soft copy is to be given in the form of CD & hard disk. The contractor shall give (02) Two sets of CD's for each drawing/document.
- 1.11 The DOCUMENTS once submitted by the CONTRACTOR shall be firm and final when they submitted as "As-built". The CONTRACTOR shall be responsible for any loss to the OWNER consequent to furnishing of the incorrect data/drawings.
- 1.12 All dimensions and weights should be in metric system.
- 1.13 All MATERIAL/EQUIPMENT to be supplied and WORK to be carried out under the CONTRACT shall conform to and comply with the provisions of relevant regulations/acts of Government of India as may be applicable to the type of EQUIPMENT/WORK carried out and necessary certificates shall be furnished.
- 1.14 The CONTRACTOR shall provide drawings wherever applicable and mentioned in the Technical Part of NIT.
- 1.15 Specifications, design and drawings issued to the CONTRACTOR along with tender specifications and CONTRACT are not sold or given but loaned. These remain property of OWNER or his assignees and are subject to recall by OWNER. The CONTRACTOR, his employees, and SUB-CONTRACTOR and his employees shall not make use of the drawings, specifications and technical information for any purpose at any time except for manufacture against the CONTRACT and shall not disclose, the same to any person, firm or corporate authorities, without written permission of OWNER. All such details shall be kept confidential.
- 1.16 CONTRACTOR shall pack, protect, mark and arrange for despatch of MATERIAL/EQUIPMENT as per instructions given in the CONTRACT.

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2.0 CONTRACT DOCUMENTS

The term 'CONTRACT DOCUMENTS' shall mean and include the following documents which shall constitute the Contract and shall be deemed to form an integral part of the Contract:

- a) Contract Agreement and its Appendices
- b) Letter of Award (LOA)
- c) Special Conditions of Contract as amended by the Amendment to the NIT Document
- d) General Conditions of Contract as amended by the Amendment to the NIT Document
- e) Part II, Technical , of the NIT documents as amended by the Amendment to the NIT Documents
- f) Technical Specifications and Drawings as amended by the Amendment to the NIT Documents
- g) The Bid and Schedule of Prices including Supplementary Price, if any submitted by the Contractor,
- h) Integrity Pact (IP) signed between the Owner and the Bidder/Contractor
- i) clarification and replies exchanged between Owner and Contractor
- j) Instruction to Bidders



The above documents are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

2.1 INTERPRETATION OF CONTRACT DOCUMENTS



2.1.1 Notwithstanding the sub-division of the CONTRACT into these separate documents and/or volumes and/or heads, every part of each separate section/volume/head shall be deemed to be supplementary of every other part and shall be read with and into the CONTRACT so far as it may be practicable to do so.

2.1.2 If in respect of any commercial term or condition, if any provision in the GENERAL CONDITIONS OF CONTRACT is repugnant to or at variance with any provision(s) of the SPECIAL CONDITIONS OF CONTRACT and / or the Agreed Variations or if any provision of the SPECIAL CONDITIONS OF CONTRACT is repugnant to or at variance with any provision(s) of the Agreed Variations, and the two cannot be reconciled or otherwise co-exist, then unless a different intention appears, the provision(s) of the SPECIAL CONDITIONS OF CONTRACT shall be deemed to override the provision(s) of GENERAL CONDITIONS OF CONTRACT and the provision(s) of the Agreed Variations shall be deemed to override the provision(s) of the SPECIAL CONDITIONS OF CONTRACT, but only to the extent that such repugnancy in the GENERAL CONDITIONS OF CONTRACT cannot be reconciled with the SPECIAL CONDITIONS OF CONTRACT and/or Agreed Variations or to the extent that such repugnancy in the SPECIAL CONDITIONS OF CONTRACT cannot be reconciled with the Agreed Variations, as the case may be.

2.1.3 Without prejudice to the provisions of the GENERAL CONDITIONS OF CONTRACT, whenever in the Bidding documents it is mentioned or stated that the CONTRACTOR shall perform certain work or provide certain facilities, it is understood that the CONTRACTOR shall do so at his own cost and the Price shall be deemed to have included the cost of such performance and/or provision, as the case may be.

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- 2.1.4 The MATERIALS, design and workmanship shall satisfy the applicable relevant Indian standards, the job specifications contained herein and the codes referred to by expression or implication. Where the job specifications stipulate requirements in addition to those contained in the standard codes and specifications, these additional requirements shall also be satisfied. In the absence of any standard/specification/code of practice for detailed specifications covering any part of the work covered in this tender, the instructions/directions agreed between OWNER and CONTRACTOR based on good international engineering practise shall be binding on the CONTRACTOR.
- 2.1.5 In the event of any ambiguity or conflict between the CONTRACT DOCUMENTS listed in clause 2.0, the order of precedence shall be the order in which the CONTRACT DOCUMENTS are listed in Clause 2.0 above.
- 2.1.6 Should there be any doubt or ambiguity in the interpretation of the CONTRACT documents or contradiction therein or should there be any discernable error or omission in any CONTRACT document, the CONTRACTOR shall, prior to commencing the relative work or supply, as the case may be, apply in writing to the Project Manager for his decision for resolution of the doubt, ambiguity or contradiction or correction of the error or making good the omission, as the case may be. Should the CONTRACTOR fail to apply to the PROJECT MANAGER for his decision as aforesaid prior to commencing the relative work or supply, the CONTRACTOR shall perform the said work or make the said supply, as the case may be, at his own risk, and the provisions of Clause 2.1.9 hereof shall apply to any such work performed or supply made by the CONTRACTOR.
- 2.1.7 Notwithstanding anything provided in Clause 2.1.6 hereof above, either the CONTRACTOR or any representative of the OWNER or CONSULTANT may, at any time prior to or during the execution of the work or supply of any material or any part thereof (if the CONTRACTOR has failed to make an application as provided for in Clause 2.1.6), apply to the PROJECT MANAGER in writing for his decision in resolution of any doubt, ambiguity or contradiction or for the correction of any error or for making good the omission as the case may be.
- 2.1.8 The decision of the PROJECT MANAGER on any application under Clause 2.1.6 or Clause 2.1.7 hereof shall be in writing and shall be final and binding upon the CONTRACTOR and shall form part of the CONTRACT documents, with the intent that the CONTRACT documents shall be read as though the said decision is and was at all times incorporated therein.
- 2.1.9 In the event of the CONTRACTOR performing or executing any work or making any supply at variance with the decision of the PROJECT MANAGER as aforesaid, then such work shall, if the PROJECT MANAGER so consider necessary, be deemed to be a defective work / supply and the provision of Clause 15.0 of GCC and associated clauses there under shall apply thereto.
- 2.2 Any work or supply shown, indicated or included in any description of the work, plans, drawings, Specifications and/or Price Schedule or other Contract or Bid documents shall be deemed to form part of the WORK and/or supply contracted for, as the case may be, notwithstanding failure to show, indicate or include such work or supply in any other or others among the documents aforesaid with the intent that the indication or inclusion of the work or supply within any one of the said documents shall be deemed to be a

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sufficient indication or inclusion of the work or supply, as the case may be, within the work and supply covered by the CONTRACT.

2.3 No verbal agreement, assurance, representation or understanding given by any employee or officer of the OWNER or so understood by the CONTRACTOR, whether given or understood before or after the execution of the contract, shall any-wise bind the OWNER or alter the CONTRACT documents unless specifically given in writing and signed by the OWNER or by the PROJECT MANAGER on behalf of the OWNER and CONTRACTOR'S authorized representative as an Agreed Variation and amendment of the relative term(s) in the contract documents.



2.4 Clause headings given in this or any other contract documents are intended only as a general guide for convenience in reading and segregating the general subject of the various Clauses, but do not form part of the contract documents, with the intent that the Clause headings shall not govern the meaning or import of the Clauses there under appearing or confine or otherwise affect the interpretation thereof.

3.0 DEFINITION OF TERMS AND INTERPRETATION

In the **CONTRACT**, unless the context otherwise requires, the following expressions shall have the following meanings. The singular shall include the plural and the plural include the singular except where the context otherwise requires and the words 'he', 'him', and 'his' shall be taken to mean 'she', 'her' and 'hers' where appropriate.

1. 'APPROVAL' shall mean and include the written approval by the OWNER of a documents, drawing or other particulars in relation to this CONTRACT.
2. 'BATTERY LIMIT' shall mean the outer limits of boundaries of the areas within which the Plants and associated facilities shall be located.
3. 'BID' shall mean the proposal/document that the BIDDER submits in the requested and specified form in the specification in response to this NIT.
4. 'BIDDER' shall mean the firm/party who quotes in response to an invitation to bid, from the OWNER.
5. 'CHANGE ORDER' means an order by which a change is ordered or other notification made to the Contractor in accordance with the CONTRACT.
6. 'CODES' shall mean the following, including the latest amendments, and/or replacements, if any:
 - a) All relevant Indian Acts, and Rules and Regulations made there under;
 - b) American Society of Mechanical Engineers(ASME) Codes
 - c) American Institute of Electrical Engineers(AIEE) Codes
 - d) American Society of Testing of Materials (ASTM) Codes
 - e) Other internationally applicable standards and/or Regulations related to the subject matter of the CONTRACT.
 - f) Indian Employees Provident Fund Act,



- g) Pollution Control norms of INDIA
- h) Contract Labour (Regulation & Abolition) Act, 1971.
- i) Payment of Minimum Wages Act
- j) Any other Laws including labour laws of INDIA applicable during execution of contract and any subsequent statutory modifications thereof.
- k) Any other Laws/codes/standards specified in the contract documents.
7. 'COMMERCIAL OPERATION' shall mean the condition of operation in which the complete equipment covered under the CONTRACT is officially declared by the OWNER to be available for continuous operation at different loads upto and including rated capacity after completion of commissioning as per CONTRACT. Such declaration by the OWNER however, shall not relieve or prejudice the CONTRACTOR any of his obligations under the CONTRACT.
8. 'COMMERCIAL USE' shall mean that use of the PLANT, which the CONTRACT contemplates or of which it is commercially capable.
9. 'COMMISSIONING' shall mean the putting into operation of PLANT by CONTRACTOR with the assistance from OWNER'S Personnel.
10. "COMMISSIONING AND PERFORMANCE & GUARANTEE TEST" shall mean complete erection, testing and providing guarantees as per the CONTRACT."
11. 'CONSULTANT' shall mean the agency nominated/appointed by the OWNER for the project/job/WORKS.
12. 'CONTRACT' shall mean the written agreement made between the OWNER and the CONTRACTOR, with their free consent, for the execution of the WORK, including all attachments and annexures thereto and all documents incorporated by reference therein.
13. 'CONTRACTOR' shall mean the successful Bidder whose bid has been accepted by the OWNER and who has been selected by the OWNER for the award of Works and shall include his heirs, legal representatives, successors and permitted assigns/entities.
14. 'CONTRACT PERIOD' shall mean the time period (as extended by the OWNER from time to time wherever appropriate) during which the CONTRACT shall be executed as agreed to between CONTRACTOR and the OWNER in the CONTRACT.
15. 'CONTRACTOR'S EQUIPMENT' means all equipment, construction plant, vehicles, temporary facilities, material, tools or things brought on to the Site by or on behalf of the Contractor for carrying out the Works but not for permanent incorporation in the Plant.
16. 'CONTRACTOR'S SOFTWARE' means standard Software owned by the CONTRACTOR.
17. 'CONTRACTOR'S WORKS' OR 'MANUFACTURER'S WORKS' shall mean the

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place or places of work used by the CONTRACTOR/SUB-CONTRACTOR or their collaborator (s) for the manufacture of EQUIPMENT or performance of WORKS.

18. 'COST' means the cost properly incurred by the Contractor in carrying out any of his obligations under the Contract, and 'Costs' shall be construed accordingly.
19. 'DAY' shall mean a calendar day of 24 hours.
20. Deleted
21. 'DEFECT' means any work done or any Material or the Plant or any part of it which does not comply with the CONTRACT.
22. 'DEFECT LIABILITY PERIOD' shall mean a period of 12 months commencing from the date of PRELIMINARY ACCEPTANCE. CONTRACTOR shall warrant that the EQUIPMENT and MATERIAL supplied under the CONTRACT shall be new and free from any DEFECT with respect to design, material and workmanship.



In the event of any such DEFECT arising during the DEFECT LIABILITY PERIOD, CONTRACTOR shall repair or replace the defective or deficient EQUIPMENT and MATERIAL at its own cost. In such event the defect liability period for the particular equipment shall be another 12 months from the date of acceptance by OWNER of such replaced/repared EQUIPMENT and MATERIAL. However, extended DEFECTS LIABILITY PERIOD shall have an upper limit of 36 months, starting from the PRELIMINARY ACCEPTANCE.
23. 'DOCUMENTATION' means any relevant documents in paper or electronic form, including drawings, technical software, images, designs, manuals or records.
24. 'DRAWINGS', 'PLAN' shall mean all:
 - a) Drawings furnished by the OWNER as a basis for proposals;
 - b) Supplementary drawings furnished by the OWNER to clarify and to define in greater detail the intent of the CONTRACT;
 - c) DRAWINGS submitted by the CONTRACTOR with his proposal provided such drawings are acceptable to the OWNER.
 - d) DRAWING furnished by the OWNER to the CONTRACTOR during the progress of the works; and
 - e) Engineering data and DRAWINGS submitted by the CONTRACTOR during the progress of the work provided such drawings are acceptable to the OWNER.
25. 'EFFECTIVE DATE OF CONTRACT (EDC)' The date of issue of LOI shall be considered as EFFECTIVE DATE of the CONTRACT.
26. 'ENGINEER'S INSTRUCTIONS' shall mean any drawings and/or instructions in writing, details, directions and explanations issued by the OWNER from time to time during the CONTRACT PERIOD to the CONTRACTOR/ SUB-CONTRACTOR for carrying out the WORK.

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27. 'EXTENDED PERFORMANCE TEST PERIOD' has the meaning stated in clause 18 of Special Conditions of Contract.
28. 'EQUIPMENT' OR 'STORES' shall mean the equipment, machinery and structure of any kind which the CONTRACTOR is obliged to design, supply, deliver, unload, store at site, erect, set to work and test under the CONTRACT.
29. 'FINAL ACCEPTANCE' shall mean that date when all of the conditions set forth in Clause 19 of SPECIAL CONDITIONS OF CONTRACT have been satisfied, all liabilities and obligations under this CONTRACT have been discharged, except those specially to be continued or performed after FINAL ACCEPTANCE, and OWNER has issued the FINAL ACCEPTANCE CERTIFICATE to CONTRACTOR.
30. 'FINAL ACCEPTANCE CERTIFICATE' shall mean that certificate issued by the PROJECT MANAGER or OWNER to the CONTRACTOR subject to clause 19 of SPECIAL CONDITIONS OF CONTRACT at the end of the DEFECTS LIABILITY PERIOD.
31. 'FINAL COMPLETION' shall mean the completion of guarantee tests and handing over of the PLANTS and facilities to OWNER.
32. FINAL PROPOSAL means the document containing up to date technical offer of CONTRACTOR and technical information, data, etc., including drawings as agreed to in writing between the CONTRACTOR and OWNER, which is annexed to CONTRACT.
33. 'FORCE MAJEURE' has the meaning stated in Sub-clause 35.0.
34. 'GCC' or GENERAL CONDITIONS OF THE CONTRACT shall mean all the terms and conditions forming part of this agreement as defined in the Part I Section 2.
35. 'GUARANTEED COMPLETION DATE' shall mean the date corresponding to the Complete Time/Completion Schedule from effective date as mentioned at Clause 6.0 of ITB, subject to any extensions expressly provided for within which date CONTRACTOR shall have achieved PRELIMINARY ACCEPTANCE and upon which OWNER has issued the PRELIMINARY ACCEPTANCE CERTIFICATE.
36. DELETED.
37. 'INITIAL OPERATION' shall mean the first integral operation of the complete EQUIPMENT covered under the CONTRACT with sub-systems and supporting equipment in service or available for service and shall be undertaken as part of COMMISSIONING after completion of start-up activities.
38. 'INSPECTOR' shall mean the duly authorised representative of the OWNER for stage wise or final inspection of WORKS or of EQUIPMENT or MATERIALS to be supplied under the CONTRACT.
39. 'LEGISLATION' means all applicable laws, directives, codes, statutes, rules,



ordinances, approvals, licences, decrees, authorizations, by-laws, regulations, standards and any other requirement of any governmental authority or agency whether international, national, state, municipal, local or other government subdivision, having the force of law in any place where the WORKS or any part of the WORKS are being carried out.

40. 'MANUFACTURER' shall mean a person or firm who is the producer and supplier of material and/ or designer and/or fabricator of equipment to either the OWNER, the CONTRACTOR or both under the CONTRACT.
41. 'MATERIALS' means machinery, plant and other items of equipment and materials intended to form part of the PLANT and other things needed for its operation, to be supplied by the CONTRACTOR.
42. MECHANICAL COMPLETION" shall mean completion of erection to such an extent that the PLANT is ready for commissioning. This shall happen when:
- A) The EQUIPMENT capable of producing to rated capacities are installed, aligned and grouted (wherever applicable) in accordance with drawings, specifications as per finally approved P&I Diagrams after HAZOP Studies and in accordance with all applicable codes, and laws.
 - B) All pressure EQUIPMENT are hydrostatically or pneumatically tested once either in CONTRACTOR'S shop or in the field in accordance with Technical Specifications.
 - C) Boilers, if any, are hydrostatically or pneumatically tested. All non-operating preferring checks are made in accordance with the manufacturer's instructions.
 - D) Compressor, Pumps, Machinery etc. are cold aligned. Couplings are assembled and guards installed.
 - E) Instruments, control system, instrument cable, safety interlock are installed, inspected and such non-operating checks are made as to ensure operability in the manner required for the process application. Instrument air lines are checked for correct hook up. Air lines are leak tested.
 - F) Relief valves are installed, prior to this these should have been checked by the CONTRACTOR in the CONTRACTOR's shop.
 - G) Piping is hydrostatically or pneumatically tested in accordance with the specifications. Special treatment such as chemical cleaning is done as required by drawing or specifications. Suction screens are installed and test blinds are removed. Spring support anchors and guide are checked for removal of all shipping locks.
 - H) The electric system is installed and tested in accordance with and to the extent required by electrical specifications. All wiring is checked for correct hook up. Motor rotation is checked. All power system protective devices are set.
 - I) Insulation and drying out are completed to the extent necessary to permit start of commissioning and start up.
 - J) Pipe support system installed as per drawings.
 - K) Painting is completed. EQUIPMENT /MACHINERY, piping duly marked and labelled.
 - L) Safety equipments, systems are installed and checked for operations. Effluent management and treatment systems are installed and operational.

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- M) PRECOMMISSIONING has been completed.
N) The PLANT is ready to take feed

43. 'MONTH' shall mean the calendar month.
44. 'NOTICE OF AWARD OF THE CONTRACT'/'LETTER OF INTENT' shall mean the official notice issued by the OWNER notifying the CONTRACTOR that his bid has been accepted, subject to such conditions as may have been stated therein as agreed on between CONTRACTOR and OWNER and that the CONTRACTOR is required to sign the CONTRACT Agreement.
45. 'NOTICE IN WRITING', 'WRITTEN NOTICE' shall mean a notice in written, typed or printed characters sent (unless delivered personally or otherwise proved to have been received) by registered post/ Speed Post to the last known private or business address or registered office of the addressee and shall be deemed to have been received when in the ordinary course of post it would have been delivered. Fax with Post copy confirmation.
46. 'OTHER CONTRACTOR/OTHERS' shall mean any person(s) having a contract with the OWNER to design, supply, erect, set to work, or do any other thing to or in connection with any other plant and shall include their, heirs, legal representatives, successors and permitted assigns.
47. 'OWNER' shall mean the NATIONAL FERTILISER LIMITED (NFL) having registered office at Scope complex, Core III, 7 Institutional Area, Lodhi Road, Scope complex, New Delhi and shall include all their legal representatives, successors and assignees.
48. 'PERFORMANCE & GUARANTEE TESTS' shall mean all operational checks and tests required to determine and demonstrate capacity, efficiency and operating characteristics as specified in the CONTRACT documents of the equipment by the CONTRACTOR, before the plant is taken over under guarantee by the OWNER.
49. 'PLANT' means process units, Plant and Associated Facilities as defined in the PART-II, (TECHNICAL) of NIT.
50. 'PRELIMINARY ACCEPTANCE' shall mean that following milestones have been achieved (i) MECHANICAL COMPLETION has occurred, (ii) PRE-COMMISSIONING and COMMISSIONING of the PLANT have been accomplished, (iii) the Reliability load Test has been passed, (iv) the PLANT has passed all Performance & Guarantee Tests and is in compliance with all applicable Laws (v) OWNER has Accepted the Plant (vi) CONTRACTOR and OWNER agree that the PLANT is ready for normal continuous operation (vii) all Government approvals required to operate and maintain the PLANT have been obtained by contractor (viii) OWNER has confirmed that the PLANT conforms with the requirement under the WORK (ix) OWNER has received all DOCUMENTS required hereunder for OWNER to start up, operate and maintain the PLANT (x) OWNER has received all operations, maintenance, and spare parts manuals and instruction book necessary to operate and maintain the PLANT in a safe, efficient and effective manner (xi) all special tools and spare

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parts purchased by CONTRACTOR as provided herein have been delivered to OWNER; and (xii) CONTRACTOR has completed the training program of OWNERS personnel as required under this CONTRACT.

51. 'PRELIMINARY ACCEPTANCE CERTIFICATE' shall mean that certificate issued by the PROJECT MANAGER or OWNER to the CONTRACTOR following satisfaction of conditions under PRELIMINARY ACCEPTANCE, the acceptance of which commences the DEFECT LIABILITY PERIOD.
52. "PRE-COMMISSIONING" shall mean preparation of PLANT so that it is capable of operating on a continuous basis at or near rated capacity for carrying out COMMISSIONING activities.
53. 'PROJECT' shall mean the Project specified in the Technical specification.
54. PROJECT MANAGER shall mean the person designated by the OWNER and shall include those who are expressly authorised by the OWNER to act for and on his behalf for operation of this CONTRACT.
55. Deleted.
56. 'PURCHASER' shall mean OWNER
57. 'SCC' or SPECIAL CONDITIONS OF THE CONTRACT shall mean all the terms and conditions forming part of this agreement as defined in the Part I Section 3
58. 'SITE' shall mean and include the land and other places on, into or through which the EQUIPMENT and related facilities shall be erected and any adjacent land, paths, streets or reservoirs which may be allocated or used by the OWNER or CONTRACTOR in the performance of the CONTRACT.
59. 'SOFTWARE' means all forms of software and firmware and their documentation.
60. 'SPECIFICATION' shall mean collectively all the terms and stipulations in Conditions of the CONTRACT, the Technical Specifications, schedules, detailed descriptions, statement of Technical Data, performance characteristics, standards & codes etc., and subsequent addenda issued thereto before the date of closing of bid and all written agreements made or to be made pertaining to the method and manner of performing the Work or to the quantities and the qualities of the materials to be furnished under this CONTRACT.
61. 'START UP' shall mean bringing the equipment covered under the CONTRACT from an inactive condition, when construction is essentially complete, to the state ready for initial operation. The start-up shall include preliminary inspection and checkout of EQUIPMENT and supporting sub-systems; perform calibration and corrective action and chemical cleaning of the plant/system/equipment covered under the CONTRACT.
62. 'SUB-CONTRACTOR' shall mean any person or persons, or firm(s) including his/ their, heirs, legal representatives, successors and permitted assigns selected by the CONTRACTOR with prior written approval of the OWNER for



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undertaking any part of the Works under the CONTRACT or to whom any part of the CONTRACT is sublet by the CONTRACTOR with the consent in writing of the OWNER.

63. 'TAKE OVER', 'TAKING OVER' AND 'TAKEN OVER' shall mean OWNER taking possession of and use of the PLANT following issue of PRELIMINARY ACCEPTANCE CERTIFICATE.
64. 'TEMPORARY WORKS' means all temporary works and structures of every kind construed at the Site and required for the provision and construction of the PLANT.
65. 'TEST ON COMPLETION', shall mean all such tests as prescribed in NIT/contract Documents to be performed by the CONTRACTOR have been carried out satisfactorily.
66. 'THIRD PARTY SOFTWARE' means standard Software which is owned by a third party.
67. 'TOTAL CONTRACT PRICE/CONTRACT PRICE' shall mean the total price payable to the CONTRACTOR for the full and proper performance of it's contractual obligations under the CONTRACT.
68. Deleted.
69. 'WEEK' shall mean continuous period of 7 (Seven) DAYS.
70. 'WORK' OR 'WORKS' means the design, engineering and other services to be provided by the Contractor including, but not limited to, the provision and construction of the PLANT and any Temporary Works and the subsequent dismantling or removal of the Temporary Works when no longer required, and any other works to be carried out by the CONTRACTOR in accordance with the CONTRACT.
71. 'WRITING' shall include any manuscript, typewritten or printed statement, under or over signature and/or seal as the case may be.
72. NOTICE INVITING TENDER (NIT) means Tender as originally issued and any addendum/Amendment(s) issued thereafter.

4.0 CONTRACT CONFIRMATION

- 4.1 Within fifteen (15) days from date of receipt of the CONTRACT, CONTRACTOR shall sign the CONTRACT and return it to the OWNER. The copy of the CONTRACT shall be signed by an authorised officer of the CONTRACTOR in whose name Power of Attorney has been issued.
- 4.2 After CONTRACT confirmation/signing, the terms and conditions contained therein take precedence over CONTRACTOR's bid conditions and all previous correspondence.

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- 4.3 If after award of CONTRACT, the CONTRACTOR does not acknowledge receipt of award of order and/or fails to deposit the SECURITY CUM PERFORMANCE BANK GUARANTEE within the time period specified in the CONTRACT, the OWNER reserves the right to cancel the CONTRACT and forfeit the EMD without prejudice to various rights and remedies the OWNER may be entitled to as per terms and conditions of CONTRACT and without being liable in any manner whatsoever to the CONTRACTOR.

5.0 MODIFICATIONS IN CONTRACT

- 5.1 All modifications leading to changes in the CONTRACT with respect to technical or commercial aspects including terms of completion period shall be considered valid only when accepted in writing by OWNER by issuing amendment to the CONTRACT. Issuance of acceptance or otherwise in such cases shall not be any ground for extension of agreed completion date and also shall not affect the performance of CONTRACT in any manner except to the extent mutually agreed to, through a modification to CONTRACT.

The PARTIES shall have the right to modify or amend the CONTRACT subject to an adjustment in the CONTRACT PRICE and/ or COMPLETION DATE in accordance with the applicable provision of the CONTRACT, if any, or pursuant to mutual agreement.

- 5.2 OWNER shall not be bound by any printed conditions, provisions in the CONTRACTOR's bid forms or acknowledgement of CONTRACT, packing list and other documents which support to impose any condition at variance with or supplemental to CONTRACT.

6.0 USE OF CONTRACT DOCUMENTS AND INFORMATION

- 6.1 The CONTRACTOR shall not, without the OWNER's prior written consent, disclose the CONTRACT or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the OWNER in connection therewith, to any person other than a person employed by the CONTRACTOR in the performance of the CONTRACT. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purpose of such performance.



- 6.2 The CONTRACTOR shall not without the OWNER's prior written consent, make use of any document or information enumerated in Clause 6.1 except for purpose of performing the CONTRACT.

- 6.3 Any document other than CONTRACT, itself, enumerated in Clause 6.1 shall remain the property of the OWNER and shall be returned (all copies) to the OWNER on completion of the CONTRACTOR's performance under the CONTRACT if so required by the OWNER.

7.0 PATENT INFRINGEMENT AND INDEMNIFICATION

7.1 PATENT INFRINGEMENT



- 7.1.1 CONTRACTOR shall at all times, indemnify and keep indemnified OWNER against all claims or suits and defend, at its own cost, any suit or action brought against OWNER and hold OWNER free and harmless against all costs of such claims or suits which may

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be made against OWNER in respect of any infringement of any rights protected by patent, copyright, trademarks, and trade secrets to the extent that such claim, suit, or action is a result of the use of CONTRACTOR's Technical Information for the construction, maintenance, and operation of PLANT and the use of CONTRACTOR's and/or any other process licensor's processes used in PLANT. OWNER shall pass on all claims made against it to CONTRACTOR for settlement.

- 7.1.2 CONTRACTOR declares that to the best of its knowledge and belief, the use of CONTRACTOR's Technical Information for the construction, maintenance, and operation of PLANT and the use of CONTRACTOR's and/or any other process licensor's processes used in PLANT will not infringe any valid patent rights of a third party. However, if at any time such infringement arises, CONTRACTOR agrees to keep OWNER indemnified and harmless against such claims and costs thereof and make arrangements that will allow OWNER to continue the operation of PLANT.
- 7.1.3 OWNER shall promptly advise CONTRACTOR in writing of any claim of infringement or any action for infringement of patents brought against it by a third party and based upon the use of CONTRACTOR's Technical Information. If such use is in accordance with instructions given in writing by CONTRACTOR, CONTRACTOR shall undertake the defence, or assist OWNER in the defence, of the claim or suit up to final judgment or settlement.
- 7.1.4 CONTRACTOR shall undertake the defence on behalf of OWNER and shall have sole charge and direction of the defence, and shall bear all costs related thereto. CONTRACTOR shall further hold OWNER harmless from any damages or other sums that may become payable by OWNER under a final judgment or settlement. However, OWNER shall render to CONTRACTOR all reasonable assistance that may be required by CONTRACTOR in the defence, and shall have the right to be represented therein by advisory counsel of its own selection and at its own expense.
- 7.1.5 In addition to the measures specified in Clause-7.1.4, CONTRACTOR may further, at its option, however, in reasonable consultation with OWNER, seek to abate the alleged infringement by modification of PLANT or its operation without adversely affecting the performance and/or secure for OWNER immunity from suit for infringement. In such case, CONTRACTOR shall bear/ reimburse OWNER for all costs related to said modification and to said immunity.
- 7.1.6 In the event that OWNER is legally restrained from operating PLANT on account of any infringement action or suit, CONTRACTOR shall take all possible actions to allow OWNER to operate and use PLANT.
- 7.1.7 Neither CONTRACTOR nor OWNER shall settle or compromise any suit or action without the written consent of the other if settlement or compromise obliges the other to make any payment or part with any property or assume any obligations or surrender any rights or to be subjected to any injunction by reason of such settlement or compromise.
- 7.1.8 Notwithstanding any other provisions under this CONTRACT, the liabilities arising on account of patent infringement shall be unlimited and all costs to these liabilities shall be borne by contractor.

7.2 INDEMNITIES

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7.2.1 INDEMINIFICATION FOR LIABILITIES

7.2.1 CONTRACTOR Indemnification for Liabilities

To the fullest extent permitted by Law, CONTRACTOR assumes liability for, and agrees to indemnify, protect, save and hold harmless OWNER from and against any and all Liabilities (including, any strict liability), of whatsoever kind and nature and whether or not involving damage to WORKS or SITE that may be imposed on, suffered or incurred by or asserted against OWNER and in any way relating to or arising out of (i) WORK, any EQUIPMENT (ii) the presence, discharge, treatment, storage, transportation, disposal, escape or release of any Hazardous Substance, or the threat thereof, at, to or from SITE after commencement of work (iii) The performance of WORK, or as a result of personal injuries (including wrongful death); (iv) the violation by CONTRACTOR or any SUB-CONTRACTOR/VENDOR of any Government Approval or applicable Law relating to WORK (v) any breach of CONTRACT with any SUB-CONTRACTOR/VENDOR, provided, however, that CONTRACTOR shall not be required under this Clause to indemnify OWNER for any liability arising out of or resulting from events or circumstances occurring or existing after PRELIMINARY ACCEPTANCE OF PLANT .However the contractor shall indemnify the owner where the liability arises from an act or omission of CONTRACTOR or any SUB-CONTRACTOR/VENDOR or any other Person directly or indirectly employed by either of them or anyone for whose acts either of them may be liable that was a contributory cause of such liability after preliminary acceptance..

Contractor shall ensure that in addition to “Erection All risk policy” the coverage in respect of workmen compensation,(including medical treatment cost) Medi claim Policy, Professional Indemnity (with the amount of minimum excess) or any other law, rule or regulation as applicable, has been appropriately taken.

“However, the CONTRACTOR shall not be liable for any indirect or consequential losses or loss of profit suffered by OWNER in connection with or arising out of performance of WORK under the CONTRACT.”



7.2.2 CONTRACTOR Indemnification for Taxes

It is specifically understood that CONTRACTOR hereby accepts and assumes exclusive liability for and save and hold OWNER harmless from and against of all Taxes/duties/cess/surcharge arising from the performance of WORK, and all such Taxes/duties/cess/surcharge shall be deemed to be included in CONTRACT PRICE or any statutory modification thereof. However, OWNER shall reimburse only the GST amount extra at actual, limited to that indicated under Price Bid.

7.2.3 Indemnification by SUB-CONTRACTOR/VENDOR

CONTRACTOR shall obtain from each SUB-CONTRACTOR/VENDOR, which is an affiliate, and shall use all reasonable efforts to obtain from each SUB-CONTRACTOR/VENDOR, an indemnification materially similar in form and substance to Clause-7.1, and Clause-7.2.2 of which the OWNER shall be named as beneficiary.

7.2.4 Payment of Amounts under this Clause

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Except to the extent covered by insurance, all amounts payable and due by CONTRACTOR to OWNER under this Clause shall be deducted from CONTRACT PRICE or any other amounts owed by OWNER to CONTRACTOR here under. If such amounts payable by OWNER to CONTRACTOR are less than the amounts payable and due by CONTRACTOR under this Clause, CONTRACTOR shall be liable to OWNER for such excess and shall pay such amount to OWNER immediately suomoto or upon demand as the case may be.

7.2.5 **Permits and Certificates**

CONTRACTOR shall procure, at its expense, all necessary permits, certificates, NOCs and licences etc required by virtue of all applicable laws, regulations, ordinances and other rules in force at the place where any of the works is to be performed, and CONTRACTOR further agrees to hold OWNER harmless from liability or penalty which might be imposed by reason of any asserted or established violation of such laws, regulations, ordinances or other rule. OWNER shall provide the necessary help in obtaining permits for CONTRACTOR's personnel to undertake any work in India in connection with CONTRACT.

7.2.6 **Mechanics Lien**

CONTRACTOR agrees to indemnify and hold harmless OWNER against all labourers' material, man's and/or mechanic's liens arising from its work, and shall keep the premises of OWNER free from all such claims, liens and encumbrances.



8.0 **SECURITY CUM PERFORMANCE GUARANTEES**

8.1 Within 30 days after receipt of Letter of Intent by CONTRACTOR, the CONTRACTOR shall furnish to the OWNER security in the form of a bank guarantee for faithful completion of Project, as per terms and conditions of the NIT/Contract, issued by any nationalised bank / Indian Scheduled Bank (except Gramin & Co-operative bank) or branch of any foreign bank in India for an amount equivalent to 10% of the value of CONTRACT.

8.2 The proceeds of Security cum Performance Guarantee shall be appropriated by the OWNER as compensation for any loss resulting from the CONTRACTOR's failure to complete their obligations under the CONTRACT without prejudice to any of the rights or remedies the OWNER may be entitled to as per terms and conditions of the CONTRACT and/or at law.

8.3 The Security cum Performance Guarantee shall be denominated in the currency/currencies of the CONTRACT.

8.4 The Security cum Performance Guarantee in the form of a bank guarantee shall be valid for the duration of the Completion Period and DEFECTS LIABILITY PERIOD plus 03 (three) months' claim period. The period of defects liability shall be 12 months from the date of PRELIMINARY ACCEPTANCE of WORKS. The bank guarantee shall be suitably extended in event of repair/replacement of equipment or any part thereof during DEFECT LIABILITY PERIOD to take care of extended warranty period of repair/replacement. The Proforma for this bank guarantee is enclosed as Annexure-1.7. The bank guarantee will be discharged by the OWNER after the CONTRACTOR's performance obligation including any warranty obligation under the CONTRACT. For any component replaced during DEFECT LIABILITY PERIOD, the component should work satisfactorily for a period of 12 months from the date of replacement.

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The security deposit cum performance bank guarantee shall be retained by OWNER during the currency of CONTRACT as indicated above, or till settlement of all the accounts thereof whichever is later. In case of any dispute or differences not settled within the validity of bank guarantee, contractor shall arrange to get the bank guarantee extended for the period asked for by OWNER. In case bank guarantee is not extended as asked, OWNER shall have the sole discretion to 'call in' the bank to pay the whole or part of the amount of bank guarantee. The above deposit shall be deemed to be security for the faithful performance of the CONTRACT and for the purpose of section 74 of the Indian contract act, 1872 and for the extension of that section. The CONTRACT shall be deemed to be bond given by the CONTRACTOR for the performance of essential duty. In the event of breach of any of the terms and conditions of the CONTRACT, OWNER shall have the right to draw from the security deposit cum performance bank guarantee whole or part of the value of security deposit cum performance bank guarantee. The amount so drawn shall not in any way affect any remedy to which OWNER may otherwise be entitled or any liability incurred by contractor under the contract or any law for the time being in force relating thereto or bearing here upon. This security-cum-performance deposit shall be refunded after CONTRACT has been successfully completed and certificate to this effect has been issued by OWNER. It shall be lawful for OWNER if any differences or dispute is likely to arise to defer payment of the security deposit cum performance bank guarantee or any portion thereof which may be due for release until such differences and dispute has been finally settled or adjusted. Security deposit cum performance bank guarantee amount shall not bear any interest.



NOTE

- 1) Any bank guarantees may it be for Bid Security or Performance shall be issued by any nationalised bank / India Scheduled Bank (except Gramin & Co-operative bank) or branch of any foreign bank in India.
- 2) The non-judicial Stamp paper or equivalent document in the country of the CONTRACTOR, of applicable value shall have to be purchased in the name of the bankers executing the bank guarantee and not in the name of the CONTRACTORS.

9.0 Deleted

10.0 MANNER OF EXECUTION OF CONTRACT

- 10.1 All documents as per Clause 2.0 of GCC shall be included in the CONTRACT document and detailed specifications be inserted as mutually agreed between OWNER and CONTRACTOR.
- 10.2 Every page of the CONTRACT agreement shall be initialled by the authorised representatives of OWNER and CONTRACTOR under the Seal of their respective Companies.
- 10.3 The CONTRACT agreement shall be prepared on stamp paper as per specified Form of Contract as per Annexure- 1.9.
- 10.4 The CONTRACTOR shall present the above CONTRACT so prepared in three copies along with proper power of attorney and other requisite material on the day of signing the agreement.

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10.5 One signed copy shall be returned to CONTRACTOR while the other two including the original shall be retained by OWNER.

10.6 Notwithstanding anything mentioned in any other clause, any conditions imposed from time to time by Government of India shall be followed by the CONTRACTOR.

11.0 EFFECTIVENESS AND JURISDICTION OF CONTRACT

11.1 The CONTRACT shall be considered as having come into force from the EFFECTIVE DATE of the CONTRACT.

11.2 The laws applicable to this CONTRACT shall be the laws in force in India as modified from time to time and shall be subject to the jurisdiction of the Court at GUNA (MP) to the exclusion of all other courts in India.

12.0 ASSIGNMENT OR SUBLETTING OF CONTRACT AND SUB-CONTRACTING

12.1 Neither CONTRACTOR nor OWNER shall assign CONTRACT or any part of it or any share of interest therein, without the prior written consent of the other party. This consent shall not be unreasonably denied.



12.2 CONTRACTOR shall not subcontract the whole or any part of WORK without the prior written consent of OWNER provided always that CONTRACTOR may subcontract any part of WORK to any of its affiliates or subsidiaries in which event CONTRACTOR shall remain fully responsible to OWNER for the work performed by such affiliates or subsidiaries.

12.3 Sub-Contracts and Purchase Orders

12.3.1 General

All vendors, suppliers, consultants and SUB-CONTRACTORS providing equipment, materials, construction equipment, or services to CONTRACTOR under a SUBCONTRACT, purchase order or similar purchase form or arrangement with CONTRACTOR for the performance of the WORK under this CONTRACT are herein referred as "SUB-CONTRACTORS"/ "VENDORS", and any such SUBCONTRACTS, purchase orders and similar purchase forms and arrangement entered into by or on behalf of CONTRACTOR with SUB CONTRACTORS/VENDERS are herein referred to as "SUBCONTRACTS" provided that none of OWNER's CONTRACTORS or SUBCONTRACTORS shall be deemed to be a SUBCONTRACTORS under of the CONTRACTOR. The CONTRACTOR shall be obligated to select SUBCONTRACTORS it retains in connection with the performance by CONTRACTOR of the WORK from a SUBCONTRACTORS list which would be finalised and approved by the OWNER in the FINAL PROPOSAL. OWNER and CONTRACTOR may by mutual agreement add to or delete from such list from time to time and approve any successor or replacement of any person listed on such list or any other vendor, supplier, material-man, consultant or SUBCONTRACTOR.

12.3.2 Approval of Major SUB-CONTRACTOR/VENDOR

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12.3.2.1 The vendor list for procurement of EQUIPMENT and the list of SUB-CONTRACTOR shall be as attached in the NIT. Any changes to such list of VENDOR/SUB-CONTRACTOR shall require the prior approval of OWNER. CONTRACTOR shall provide name, address, fax/telex number and name of contact person of major VENDOR/SUB-CONTRACTOR for use in future, to OWNER.

12.3.2.1.1 As it is not possible to ascertain credentials of all the vendors suggested by Bidders at this stage, following prequalification criteria, shall be adopted:

The BIDDER should specify, while pre-qualifying the vendors, that during the past 15 years the Vendor should have supplied at least two similar plant equipments or machinery. The BIDDER should satisfy themselves that sufficient documentary proof is submitted by the Vendors in support of this criterion.

The Bidder would be ultimately responsible for verifying the credentials, the quality of the equipment, machinery and timely supply.



12.3.2.2 The review, approval and consent by OWNER as to the agreed SUB-CONTRACTOR's/VENDOR List or as to CONTRACTOR's entering into any SUB-CONTRACT / PURCHASE ORDER shall not relieve CONTRACTOR of any of its duties, liabilities or obligations under this CONTRACT and CONTRACTOR shall be liable hereunder to the same extent as if any such Subcontract had not been entered into.

12.3.2.3 (a) CONTRACTOR shall provide to OWNER such information concerning the SUB-CONTRACTORS as OWNER may from time to time reasonably request and shall ensure that each SUBCONTRACT contains provisions in all material respects not less stringent than the provisions of the CONTRACT and shall include terms and provisions required to be included pursuant to the CONTRACT. In the event of termination of the CONTRACT under Clause 34.0 herein, CONTRACTOR shall forthwith deliver to OWNER a copy of each SUBCONTRACT.

(b) CONTRACTOR shall supervise and direct the work of all SUB-CONTRACTORS/VENDORS and shall be responsible for all design; engineering; procurement; manufacturing; transportation; delivery; fabrication; construction; commissioning; start-up and testing means, erection; operation, maintenance, repair; methods; techniques; sequences and procedures of; and for co-coordinating the work of SUB-CONTRACTORS/ VENDORS.

(c) If CONTRACTOR fails to correct, or commence to correct and prosecute the correction with due diligence of deficient or defective work performed by any SUB-CONTRACTOR/VENDOR within reasonable time (provided it doesn't materially impact safe operation of plant), after receipt by CONTRACTOR of a notice from OWNER with respect thereto, OWNER may (but shall not be obligated to), after seven days following receipt by CONTRACTOR of an additional notice, and without prejudice to any other right or remedy take all reasonable steps to remedy such defective or deficient work at risk and cost of CONTRACTOR.

(d) CONTRACTOR shall require all SUB-CONTRACTORS/VENDORS to perform the SUB-CONTRACTS in accordance with the relevant requirements of the CONTRACT including FINAL PROPOSAL, all APPLICABLE LAWS and



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APPLICABLE PERMITS, Prudent Utility Practice, Good Engineering Practices, the requirements of the NIT, and all Warranties of SUB-CONTRACTORS/VENDORS and Manufacturers and all insurance policies relating to the PLANT or the WORK.

- (e) CONTRACTOR shall be solely responsible for paying each SUB-CONTRACTOR/VENDOR and any other person to whom any amount is due from CONTRACTOR for services, equipment, construction equipment, materials or supplies otherwise related to or inconvenience with the PLANT or the WORK. CONTRACTOR shall take all reasonable steps and actions to ensure that such services, equipment, construction equipment materials and supplies and the like have been or will be received, inspected and approved and that such services have been or will be properly performed.
- (f) In performing the duties incidental to its responsibilities hereunder, CONTRACTOR shall issue to the SUB-CONTRACTORS/VENDORS such directives and impose such restrictions as may be required to obtain such compliance/approvals/licences etc. herewith and with the terms of the SUBCONTRACTS.

12.3.2.4 **SUB-CONTRACTOR/VENDOR and Manufacturer Warranties**

- (a) CONTRACTOR shall, ensure that all equipment and other items used in connection with the performance of the WORK or incorporated in the PLANT (other than minor items) will be purchased in compliance with CONTRACT Technical Specification and Requirements in order to allow the Plant to achieve the Guarantee and Warranty as provided for in the CONTRACT, unless otherwise agreed with Owner. Any residual warranty from sub-contractor/vendor shall be passed to the OWNER after expiry of DEFECT LIABILITY PERIOD.
- (b) Neither CONTRACTOR nor its SUBCONTRACTORS/VENDORS, nor any person under the control of either thereof, shall take any action which could release, void, impair or waive any Guarantee or Warranty on EQUIPMENT or services relating to the PROJECT or the WORK. Any residual warranty from subcontractor/vendor shall be passed to the OWNER after expiry of DEFECT LIABILITY PERIOD.
- (c) Nothing in this clause shall derogate from the obligations of CONTRACTOR to provide the Guarantees and Warranties described in, and to comply with the provisions hereinabove.
- (d) CONTRACTOR shall, based on its part professional judgement enforce all guarantees and warranties provided hereunder to the fullest extent thereof till such time they are transferred to the OWNER pursuant to sub-clause (g) below.
- (e) Upon the expiration or termination of any of the guarantees or warranties provided by CONTRACTOR pursuant to the CONTRACT, the CONTRACTOR shall assign, and hereby assigns, effective as of such date, or otherwise make available, to OWNER all of CONTRACTOR's rights under all such SUB-

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CONTRACTOR's residual Guarantees and warrantee as per 12.3.2.4(a) & (b) (except to the extent CONTRACTOR has thereof provided warranty services to OWNER and is enforcing CONTRACTOR's rights with respect to such services under the applicable guarantee or warranty) and shall deliver to OWNER copies of all contracts providing for such guarantees and warranties.



- (f) CONTRACTOR, in accordance with the CONTRACT, shall require all SUB-CONTRACTORS/VENDORS to be covered by the insurance specified in the CONTRACT, during the time in which they are engaged in performing WORK.
- (g) CONTRACTOR shall require all SUB-CONTRACTORS/VENDORS to release and waive any and all rights of recovery against OWNER including its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters) and against CONTRACTOR and all other SUB-CONTRACTORS/ VENDORS which the releasing SUB-CONTRACTOR/ VENDOR may otherwise have or acquire, in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained pursuant to this the CONTRACT (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance. CONTRACTOR shall further require all SUB-CONTRACTORS/VENDORS to include in all policies of insurance maintained by the SUB-CONTRACTORS/VENDORS clauses providing that each underwriter shall release and waive all of its rights of recovery, under subrogation or otherwise, against OWNER, its promoters, affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, and against CONTRACTOR and all other SUB-CONTRACTORS/VENDORS.
- (h) OWNER shall not be deemed by virtue of the CONTRACT to have any contractual obligation to or relationship with any SUB-CONTRACTOR/VENDOR.

12.3.2.5 **CONTRACTOR's Liability for approved sub contractor**

The review by and approval and consent of, OWNER as to the approved SUB-CONTRACTORS list or as to CONTRACTOR entering into any SUB-CONTRACT with any approved SUB-CONTRACTOR or as to any WORK done or supply made or services provided by any such approved SUB-CONTRACTOR/VENDOR shall not relieve CONTRACTOR of any of his duties, liabilities or obligations under this CONTRACT, and CONTRACTOR shall be liable hereunder to the same extent as if any such SUB-CONTRACT had not been entered into. Any inspection review or approval by OWNER permitted under this CONTRACT of any portion of the work or of any work in progress by CONTRACTOR or SUB-CONTRACTORS/VENDORS shall not relieve CONTRACTOR of any duties, liabilities or obligations under this CONTRACT.

12.3.3 All WORK performed or EQUIPMENT supplied by SUB-CONTRACTOR/ VENDOR shall be pursuant to an appropriate SUB-CONTRACT, PURCHASE ORDER or similar agreement which shall, as appropriate, contain provisions that:

12.3.3.1 Preserve and protect all the rights of OWNER here under for WORK to be performed or EQUIPMENT to be supplied under PURCHASE ORDER or SUB-CONTRACT.

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- 12.3.3.2 Require that such WORK be performed or EQUIPMENT be fabricated, supplied and installed in strict accordance with the applicable requirements of this CONTRACT.
- 12.3.3.3 Obligate such SUB-CONTRACTOR/VENDOR to consent to and be bound by those obligations under this CONTRACT which by their terms are intended to also obligate such SUB-CONTRACTOR/VENDOR, including the provisions of this Clause.
- 12.3.3.4 Require such SUB-CONTRACTOR/VENDOR to provide and maintain adequate insurance consistent with requirements for companies of similar size and performing similar services. Permit the assignment of such SUB-CONTRACT/PURCHASE ORDER by CONTRACTOR to OWNER
- 12.3.3.5 Include a price list (which shall be valid for a period of at least for 24 12 months from the date of commissioning) covering all operational spares and replacement parts relating to the subject matter of such PURCHASE ORDER or SUB-CONTRACT.

12.3.3 CONTRACTOR Responsible for WORK

12.3.4.1 CONTRACTOR is responsible for WORK, and that the performance thereof conforms in all respects to the requirements of this CONTRACT, regardless of any failure of any SUB-CONTRACTOR/VENDOR to perform or any disagreement between any SUB-CONTRACTOR/VENDOR or between any SUB-CONTRACTOR/VENDOR and CONTRACTOR. CONTRACTOR shall furnish such information relative to its SUB-CONTRACTOR/VENDOR (including copies of unpaid SUB-CONTRACT or PURCHASE ORDER) as OWNER may request.

12.3.5 Damages

12.3.5.1 It is within the discretion of CONTRACTOR, that CONTRACTOR shall agree to hold all SUBCONTRACTOR / VENDOR, including all persons directly or indirectly employed by them, responsible for any damages due to breach of CONTRACT caused by them or any negligent act and to diligently endeavour to effect recoveries in such damages.



13.0 STANDARDS

“The goods and services supplied under this CONTRACT shall conform to the standards mentioned in the technical specifications and when no applicable standard is mentioned, the standards shall conform to the Bidder’s / manufacturer’s/licensor’s standards.”

14.0 INSTRUCTIONS, DIRECTIONS

14.1 The materials described in CONTRACT are to be supplied according to the standards, data sheets, tables, specifications and drawings attached hereto and/or enclosed with the CONTRACT itself and according to all conditions both general and specific enclosed with the CONTRACT, unless any or all of them shall have been modified or cancelled in writing as a whole or in part.

- a) All instructions and orders to CONTRACTOR shall, excepting what is herein provided, be given by OWNER/ CONSULTANT

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- b) All the work shall be carried out under the direction of OWNER and according to the CONTRACT requirements..
- c) All communications including technical/ commercial clarifications and/ or comments shall bear reference to the CONTRACT.
- d) Invoice for payment against CONTRACT shall be addressed to OWNER.
- e) The CONTRACT number shall be shown on all invoices, communications, packing lists, containers and bills of lading etc.

15.0 INSPECTION, TESTING AND EXPEDITING



- 15.1 The OWNER or his representatives shall have their right to inspect and/or to test the goods to conform to the specifications laid down in the CONTRACT. The SPECIAL CONDITIONS OF CONTRACT and/ or the TECHNICAL SPECIFICATIONS shall specify what inspections and test the OWNER require and where they are to be conducted. The OWNER shall notify the CONTRACTOR in writing of the identity of any other representatives retained for this purpose. Expediting by OWNER's representative in no way relieves the CONTRACTOR of his obligation under the terms and conditions of this CONTRACT.
- 15.2 The inspections and tests may be conducted on the premises of the CONTRACTOR or his SUB-CONTRACTOR at point of completion and/or at the good's final destination. When conducted on the premises of the CONTRACTOR or his SUBCONTRACTOR, all reasonable facilities and assistances including access to drawings and production data shall be furnished to the inspector at no charge to the OWNER.
- 15.3 CONTRACTOR shall be held responsible for any possible delay in the approval or testing phase as well as for any possible delay in the remittance of necessary certificates. Delay on the part of the above mentioned institutions will not be considered a case of 'Force Majeure'.
- 15.4 Participation or presence of OWNER or their representatives at any tests or their failure to be present at or to witness any tests to be undertaken pursuant here to shall not in any way or manner relieve or release the CONTRACTOR from any of its warranties, guarantees or other obligations under the CONTRACT.
- 15.5 Copies of all test results/report of the tests shall be furnished promptly by the CONTRACTOR to the OWNER.
Inspection shall be done as per approved QAP.
- For indigenous items, Inspection shall be done by PDIL. CONTRACTOR shall not quote such inspection charges/fee in their bid. TPI charges shall be to OWNER's account.
 - For overseas supplies, Inspection shall be arranged by CONTRACTOR through BV/Lloyds/TUV and such inspection charges/fee shall be included in their bid.

16.0 TIME SCHEDULE AND PROGRESS REPORTING

16.1 Time Schedule Network/Bar Chart

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- 16.1.1 Together with the CONTRACT confirmation, CONTRACTOR shall submit to OWNER, his time schedule regarding the documentation, supply and manufacture of equipment and materials as well as information of his SUBCONTRACTS to be placed with third parties, including the dates on which CONTRACTOR intends to issue such SUB CONTRACTS. A complete activity-wise time schedule shall be furnished by the contractor to meet the completion time quoted in months from the date of EFFECTIVE DATE OF CONTRACT
- 16.1.2 The time schedule will be in the form of a network or a bar chart clearly indicating all main or key events regarding documentation, supply of raw materials, manufacturing, testing, delivery, erection & commissioning.
- 16.1.3 The original issue and subsequent revisions of CONTRACTOR's time schedule and or SUB-CONTRACTORS' time schedules shall be sent in four copies (of which one shall be reproducible) to OWNER.
- 16.1.4 The time schedule network/bar chart shall be updated at least every month using the latest 'Project Management software', i.e. Primavera (latest version), acceptable to the OWNER.
- 16.2 Progress Trend Chart/Monthly Report**
- 16.2.1 CONTRACTOR shall report fortnightly to OWNER, the progress of the execution of CONTRACT and achievement of targets set out in time bar chart.
- 16.2.2 The progress will be expressed in percentages shown in the progress trend chart.
- 16.2.3 The first issue of the progress trend chart will be forwarded together with the time bar chart along with CONTRACT confirmation.
- 16.2.4 The monthly reporting will bear the updating of the progress trend chart.
- 16.2.5 OWNER or his representatives shall have the right to inspect CONTRACTOR's premises to evaluate the actual progress of work on the basis of CONTRACTOR's time schedule documentation.
- 16.2.6 Irrespective of such inspection, CONTRACTOR shall advise OWNER at the earliest possible date of any anticipated delay in the programme indicating the reasons thereof and corrective measures proposed thereto.
- 16.2.7 The time for completion and phased time schedule shall be subject to and in accordance with the provision of Sub-Clauses 16.2.8, and 16.2.9 below.
- 16.2.8 Neither OWNER nor CONTRACTOR shall be considered in default in performance of their obligations if such performance is prevented or delayed by FORCE MAJEURE conditions as stated in Clause 35.0.
- 16.2.9 Should the CONTRACTOR's preparation for the commencement of the work or any portion of it or its subsequent rate of progress be from any cause whatsoever, so slow

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and reasons for delay solely attributed to the contractor, the CONTRACTOR will not be able to complete the work or any portion thereof within the stipulated time for completion, the provisions of Clause 34 of GCC shall apply.

17.0 CONTRACTOR TO INFORM HIMSELF FULLY

17.1 Contractor to Inform Himself

17.1.1 The CONTRACTOR shall be deemed to have carefully examined the specification thoroughly and to have removed any doubts he may have had as to the meaning of the Specification and in addition to have fully informed himself as to the site and local conditions affecting the carrying out of the CONTRACT and to have made due allowance in his offer. If he shall have any doubt as to the meaning of any portion of the CONTRACT documents, he shall, at the time of bid submit the particulars in writing to the OWNER. The OWNER will provide necessary clarifications in WRITING to the CONTRACTOR. The soil investigation report furnished in the technical part is indicative only and is enclosed purely for information/guidance purpose to the bidders. The contractor shall carry out its own detailed soil investigation for the proposed plant. Design of the foundation system of the plant shall be based, only on the site specific report. Nothing extra shall be paid in case of any variation arising out of the soil report conducted report conducted by the bidders and the data given in the tender is only for guidance purpose

17.2 Discrepancies in Documents

17.2.1 If the CONTRACTOR finds any discrepancies between the Specification, drawings or schedules he shall immediately refer them to the OWNER for decision. Figured dimensions on the drawings shall be followed. Dimensions shall not be scaled unless permission is given in writing by the OWNER.



17.3 Any information otherwise obtained from the OWNER shall not in any way relieve the CONTRACTOR of his responsibility to fulfil his obligations under the CONTRACT.

18.0 SUITABILITY OF PLANT FOR INTENDED PURPOSE

18.1 The CONTRACTOR shall design, engineer and construct the PLANT as defined in the CONTRACT.

18.2 Without limiting the generality of the foregoing clause, the CONTRACTOR shall ensure before complying with any direction, that compliance by the CONTRACTOR with that direction will not render the plant unsuitable in any respect for the aforesaid purposes or otherwise prevent the CONTRACTOR from carrying out the CONTRACT in accordance with the terms thereof.

18.3 The CONTRACTOR shall give notice to the OWNER within fifteen (15) days after receipt of any requirement or direction which he considers will render the plant unsuitable in any respect or is not in accordance with the meaning and intent of the CONTRACT otherwise prevent the CONTRACTOR from carrying out the CONTRACT as aforesaid and submit to the OWNER a proposal or proposals for modifying the requirement or direction. Failure to file an objection within the allotted time will be

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considered as acceptance of the OWNER decision and the decision shall become final and binding.

19.0 FEES FOR ROYALTIES AND PATENT RIGHTS

19.1 Payment Due to be Included in CONTRACT PRICE

19.1.1 All payments for royalties, patent rights and fees due to or payable for or in connection with any matter or thing used or required to be used in performance of the CONTRACT or to be supplied under the CONTRACT, whether payable in one sum or by instalments or otherwise, shall be included by the CONTRACTOR in the prices named in the CONTRACT and shall be paid by CONTRACTOR to whom such payments may be due or payable.

19.2 Payment to the CONTRACTOR by OWNER

19.2.1 Final payment to the CONTRACTOR by the OWNER 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 at his own expense, either procure for the OWNER the right to continue use of the said apparatus, equipment or part thereof, replace it with non-infringing apparatus or equipment or modify it, so that it becomes non-infringing.

20.0 ACTS OF PARLIAMENT, LOCAL AND OTHER AUTHORITIES REGULATIONS AND BYE-LAWS

20.1 Complying With Regulations



20.1.1 Throughout the execution of the WORK, the CONTRACTOR shall comply with the requirements of all applicable laws and regulations and subsequent statutory modifications thereof bye-laws or orders made there under and to the requirements of public, municipal and other authorities in any way affecting or applicable to the work. The OWNER shall, when requested by the CONTRACTOR, give all reasonable assistance to the CONTRACTOR in obtaining information concerning local conditions.

20.1.2 Before making any departure from the specification or drawings which may be necessary to conform to such requirements, the CONTRACTOR shall give the OWNER written notice specifying the departure proposed to be made and the reason for making it and applying for instructions thereon from owner. If the CONTRACTOR does not receive such instructions from owner within thirty (30) days, he shall conform to those requirements and inform the OWNER accordingly.

20.2 Notices and Fees

The CONTRACTOR shall give all notices required to be given by the Acts, regulations, bye-laws, orders and requirements referred to in sub-clause 20.1 of this clause and shall pay all fees payable in connection herewith.

21.0 TIME - PROJECT SCHEDULE

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21.1 Without prejudice to anything contained in the CONTRACT, the time and the date of completion of the works as stipulated in the CONTRACTOR's proposal and accepted by the OWNER shall be deemed to be of the utmost importance. The CONTRACTOR shall so organise his resources and perform his work as to complete it not later than the date agreed to.

21.2 The contractor shall submit the primavera level 3 pert schedule within thirty (30) days or as specified elsewhere after effective date of the CONTRACT.

The primavera level 3 pert schedule shall be for OWNER's review and be based on a level 2 schedule as attachment to the CONTRACT. Such level 2 schedule shall show the execution periods for (i) engineering, (ii) procurement & delivery of equipment and materials, (iii) civil & erection and (iv) pre-commissioning, commissioning, reliability load test, testing.



Bidder consortium shall be contractually obliged to issue a primavera level 3 PERT schedule; provided that such schedule shall not (i) accelerate the OWNER obligations (to be agreed upon prior to Contract award) (ii) change the agreed GUARANTEED COMPLETION DATE

21.3 The above PERT network / Bar Chart shall be periodically reviewed and reports shall be submitted by the CONTRACTOR as directed by the OWNER.

22.0 CONTRACT PRICE

22.1 CONTRACT PRICE is inclusive of the cost/fees of CONTRACTOR's obligations as given below briefly but not limited to the following:

- a) Deleted
- b) Engineering
- c) Supply of all Instrument, Plant, Equipment, Bulk Materials, consumables, Chemicals, Lubricants, etc.
- d) Supply of spares as per Part-II-Technical
- e) Civil and Structural works (as required),
- f) Custom Clearance, Port Handling and onward despatch to SITE and forwarding charges, Octroi/entry tax if applicable,
- g) Freight up to SITE,
- h) Unloading, storage at Site, Site Assembly, Erection, PRE-COMMISSIONING and COMMISSIONING until PRELIMINARY ACCEPTANCE OF PLANT.
- i) Insurance.
- j) All taxes as applicable in India and outside India for execution of work under CONTRACT.
- k) Inspection and expediting charges
- l) Project management and overheads,
- m) Performance test and handing over of PLANT to OWNER.
- n) All other costs, expenses and outgoings of the CONTRACTOR not otherwise expressly set forth herein necessary, required or incidental to the full, complete and proper performance and discharge of the CONTRACTOR's obligations under and in accordance with the CONTRACT including completion of the PLANT in all respects and overheads of the CONTRACTOR.

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- o) All the costs related to obtaining all statutory clearances required for the execution of the project and completion of the project till the preliminary acceptance of the plant by owner.
- p) The other costs not mentioned but necessary for the completion of the scope as per NIT/contract conditions
- q) The contingencies and escalation if any

22.2 OWNER shall pay to CONTRACTOR at fixed rates, for the due and faithful performance of CONTRACTOR's obligations under the CONTRACT. CONTRACT PRICE provided for in this Clause covers entire consideration payable to CONTRACTOR for all obligations of CONTRACTOR. The CONTRACT ITEM RATE is fixed and firm and not subject to any escalation during the contract period unless and otherwise specified in the Contract documents.



22.3 CONTRACT PRICE is inclusive of cost of all travel, accommodation, living costs and all other expenses of management and personnel of CONTRACTOR, SUB-CONTRACTOR, VENDOR and their agents for travelling to and from plant SITE and other places/countries as may be necessary for the proper performance of CONTRACTOR's responsibilities under CONTRACT and shall also include all costs and expenses incurred in attending such meetings in connection with CONTRACT as OWNER may reasonably require.

22.4 CONTRACT PRICE is inclusive of cost of all CONTRACTOR's EQUIPMENT, materials, services, etc. required to complete WORK under CONTRACT.

22.5 The price quoted by the CONTRACTOR in his bid with additions and deletions as may be agreed upon before signing of the CONTRACT, for the entire scope of the work, viz. the Grant of Licence, Carrying out Engineering, Conducting Study and incorporating its recommendation in the Project, Supply of PLANTS and associated facilities, EQUIPMENT, Machinery, accessories, auxiliaries, spares and other related items, manufacturing, packing, supplying, arranging comprehensive insurance, primary protection and testing of individual items and assembly where necessary, construction, erection, Civil Works, testing, PRE-COMMISSIONING and COMMISSIONING, PERFORMANCE TEST as per CONTRACT specifications, supply of final DRAWINGS & DOCUMENTS etc..

22.6 The price quoted shall be firm and fixed without any escalation whatsoever on any account except the statutory variations in Taxes levied by the Government of India within GUARANTEED COMPLETION DATE and otherwise specified in the CONTRACT. Any variation in taxes and duties, Cess and surcharge will be reimbursed/adjusted at actual on submission of documentary evidence / Tax Paid Invoice of the vendors to be submitted by the Contractor. However any increase in taxes or introduction of new taxes beyond the contract period (where delay is attributable to the Contractor) shall be to the account of the Contractor.

22.7 All taxes, duties, licence fees and other such levies as may be applied to the CONTRACT both in CONTRACTOR's country and in India, including but not limited to Custom Duty, Goods and Service Tax ("GST") (the GST shall include SGST & CGST/IGST/UGST etc) and any applicable Cess, corporate income tax in respect of the performance of the CONTRACT as well as income tax on the personnel deputed by the CONTRACTOR to India in connection with the CONTRACT, are to the account of the CONTRACTOR.

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22.8 The prices indicated for spare parts in the item wise lists shall be fixed and not subject to any escalation.

23.0 DEDUCTIONS FROM CONTRACT PRICE

All costs, damages or expenses which the OWNER may have paid for which, under the CONTRACT, the CONTRACTOR is liable, will be claimed by the OWNER. All such claims shall be billed by the OWNER to the CONTRACTOR regularly as and when they fall due. Such claims shall be paid by the CONTRACTOR within fifteen days of the receipt of the corresponding bills and if not paid by the CONTRACTOR within the said period, the OWNER may then deduct the amount from any bill due or becoming due by him to the CONTRACTOR under the CONTRACT or may be recovered by action of law or otherwise, if the CONTRACTOR fails to satisfy the OWNER of such claims.

24.0 Deleted

25.0 PAYMENT TERMS

25.1 The payment to CONTRACTOR for the performance of the WORKS under the CONTRACT will be made by OWNER as per the guidelines & conditions specified herein in Section 3 of PART-1 i.e. SPECIAL CONDITIONS OF CONTRACT.

25.2 Schedule of Payment



The CONTRACTOR shall submit billing schedule which is to be approved by the OWNER. The CONTRACTOR shall submit one progressive bill every month based on the billing schedule duly certified by OWNER with related documents.

25.3 Due Date for Payment

OWNER will make progressive payments as and when the payment is due as per the terms of payment set forth in the CONTRACT. Payment will become due and payable by OWNER within 30 days from the date of receipt of CONTRACTOR'S bill/invoice by OWNER provided the documents submitted are complete in all aspects and are submitted as per billing schedule.

26.0 TAXES, PERMITS & LICENCES

The CONTRACTOR shall be liable and pay all taxes, duties, levies, lawfully assessed against the OWNER or the CONTRACTOR or the sub contractor in pursuance of the CONTRACT. The CONTRACTOR shall be solely responsible for all taxes that may be levied on the CONTRACTOR's turnover & profit or on the earnings of any of his employees or personnel engaged by him and shall hold the OWNER indemnified and harmless against any claims that may be made against the OWNER in this behalf. The OWNER does not undertake any responsibility whatsoever regarding any taxes levied on CONTRACTOR and/or his personnel/subcontractor by Centre/State/Local Authorities.

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The Taxes shall be deducted where the said provisions shall be applicable and/or obligatory on the part of the OWNER.

26.1 **Import Licence**

OWNER *may* obtain an import licence, **as** applicable to cover the complete scope of work defined earlier including spares etc. under this CONTRACT. CONTRACTOR shall furnish all the necessary information, technical data etc. and assist and cooperate with OWNER by preparing the application for import licence. CONTRACTOR shall also, if necessary accompany and take part in discussions necessary with government authorities in this respect at CONTRACTOR'S own cost.

26.2 For CONTRACTORS who have to bring equipment and material from outside Punjab, will have to obtain necessary registrations/permissions and take appropriate steps as required under Punjab State Laws.

26.3 CONTRACTOR is responsible for obtaining Customs clearance permit for temporary importation on re-export basis of CONTRACTOR'S EQUIPMENT, tools and tackles etc. If any duties, taxes and expenses are payable on this, the same will be to CONTRACTOR'S account.

27.0 **PACKING, FORWARDING AND SHIPMENT**

27.1 The CONTRACTOR shall give complete despatch information concerning the weight, size, content of each package including any other information the OWNER may require.



27.2 The CONTRACTOR, wherever applicable shall after proper painting, pack and crate all equipment in such a manner as to protect it from deterioration and damage during air, sea, rail and road transportation to the site and storage at the site till the time of erection. The CONTRACTOR shall be held responsible for all damages due to improper packing.

27.3 The CONTRACTOR shall notify the OWNER of the date of each shipment from his works, and the expected date for arrival at the site for the information of the OWNER. The CONTRACTOR will be responsible for arranging any requirement of over-dimensional, special rail/road wagon/trailor for transporting.

27.4 The CONTRACTOR shall also give all shipping information concerning the weight, size and content of each package including any other information the OWNER may require. The size of the largest packages shall be limited to following, being considered as over dimensional.

CONTRACTOR shall the follow the guidelines of Ministry of Road Transport and Highways (MORTH), India, for the shipping/transportation of the all packages/ consignments. The CONTRACTOR shall be responsible to comply with rules relating to E-way Bills and other related provisions under the GST laws for movement of packages / Consignments.

27.5 The CONTRACTOR shall prepare detailed packing lists of all packages and containers, bundles and loose materials forming each and every consignment despatched to the site. The CONTRACTOR shall further be responsible for making all necessary

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arrangements for loading, unloading and other handling, right from works till the SITE and also till the EQUIPMENT is erected, tested and commissioned. The CONTRACTOR shall be solely responsible for proper storage and preservation of all equipments & machineries etc.

28.0 INSURANCE

28.1 CONTRACTOR shall take in the joint name of CONTRACTOR and OWNER comprehensive transit insurance for imported and indigenous goods. Transit-cum-Storage-Erection or its equivalents and third party liability insurance policies with reputed underwriters to cover ALL RISK whatsoever during the whole period starting with dispatch of GOODS from CONTRACTOR's warehouses/ Ex works in foreign country to CIF port of shipment for imported GOODS and EXW at Contractor's works for indigenous GOODS and shall further cover for performing services in India for transportation, loading, unloading, assembly, erection, testing COMMISSIONING of PLANT till PRELIMINARY ACCEPTANCE.

28.1.1 CONTRACTOR shall ensure that in addition to "Erection All risk policy", the coverage in respect of workmen compensation ESI/Health Insurance, Professional Indemnity (with the amount of minimum excess) has been appropriately taken.



28.2 CONTRACTOR shall be fully responsible for pursuing and settling all claims under the underwriters. In the event of accident, injury, damage or loss likely to form a claim under the above insurance policies, CONTRACTOR shall, as quickly as possible submit the insurance claims by underwriters under intimation to OWNER. CONTRACTOR shall also keep OWNER fully informed about progress of each such case. CONTRACTOR shall undertake immediate repair and replacement of the equipment lost in transit, storage, assembly, erection and COMMISSIONING of PLANT pending settlement of claim thereafter by the underwriters.

28.3 The CONTRACTOR at his cost shall arrange, secure and maintain all insurance as may be pertinent to the works and obligatory in terms of law to protect his interest and interest of OWNER in the project, against all perils detailed herein. The Form and the limit of such insurance as defined herein together with the under-writer in each case shall be acceptable to the OWNER and OWNER's acceptance shall not be unreasonably withheld. However, irrespective of such acceptance, the responsibility to maintain adequate insurance coverage at all times including third party liability during the period of contract shall be as of CONTRACTOR alone. The contractor's failure in this regard shall not relieve him of any of his contractual responsibilities and obligations. The insurance covers to be taken by the CONTRACTOR shall be in the joint names of OWNER and the CONTRACTOR. The CONTRACTOR shall, however, be authorised to deal directly with insurance company or companies and shall be responsible in regard to maintenance of all insurance covers.

28.4 All insurance including marine insurance is to be covered from IRDA approved insurance company registered in India. There should be a single cover for marine cum inland transit, storage and erection up to PRELIMINARY ACCEPTANCE OF PLANT.

However adequacy, credibility and maintenance of Insurance policies is sole responsibility of CONTRACTOR and CONTRACTOR shall keep the OWNER indemnified against any such failure.

All insurance covers shall be taken by CONTRACTOR in joint name of CONTRACTOR and OWNER.

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Alternatively, the CONTRACTOR has the option to take separate Insurances as



1. Marine Cargo Insurance for transit of all imported and indigenous goods from Ex Works at Contractor's/ CONTRACTOR's works to Site.
2. Erection and All Risk (EAR) Insurance
3. Third Party Liability Insurance

Marine Cargo Insurance and Third Party Liability Insurance can be a part of Global Policy of the CONTRACTOR. However certificate of endorsement in favour of OWNER shall be provided by the CONTRACTOR from the insurance company. These two global policies of Marine Cargo Insurance and Third Party Liability Insurance shall be counter guaranteed by Indian Insurance Company. However, Erection and All Risk (EAR) is to be covered from Insurance Company registered in India and shall be separate dedicated policies for OWNER.

28.5 Any loss or damage to the equipment during handling, transportation, storage, erection, putting the equipment into satisfactory operation and all activities to be performed till the successful completion of trial operation of the plant shall be to the account of the CONTRACTOR. The CONTRACTOR shall be responsible for reference of all claims and make good the damages or loss by way of repairs and/or replacement of the equipment, damaged or lost. The transfer of title shall not in any way relieve the CONTRACTOR of the above responsibility during the period of CONTRACT. The CONTRACTOR shall provide the OWNER with copies of all insurance policies and documents taken out by him in pursuance of the CONTRACT. Such copies of documents shall be submitted to the OWNER immediately after such insurance coverage. However, if Marine cargo insurance or Third party liability Insurance is a part of their global policies; insurer certificate (including the main terms of policy) shall be submitted by CONTRACTOR. The CONTRACTOR shall also inform the OWNER in the writing at least thirty (30) days in advance regarding the expiry/ cancellation and/or change in any of such documents and ensure revalidation, renewal etc. as may be necessary well in time. However adequacy, credibility and maintenance of Insurance policies is the sole responsibility of CONTRACTOR and CONTRACTOR shall keep the OWNER indemnified against any such failure.

28.6 License /facilities, to the extent it remains the responsibility of the OWNER, in respect of supplies to be made by the foreign CONTRACTOR from outside India required for purposes of replacement of equipment lost in transit and /or during erection and /or during storage shall be made available by the OWNER. CONTRACTOR shall however, be required to follow the procedure as may be laid down by the Owner to facilitate him arranging such license /facilities. The perils required to be covered under the insurance shall include, but not be limited to fire and allied risks, miscellaneous accidents (erection risks) workman compensation risks, loss or damage in transit, theft, pilferage, riot and strikes and malicious damages, civil commotion, weather conditions, accidents of all kinds, war risks (during ocean transportation only) etc. The scope of such insurance shall be adequate to cover the replacement/reinstatement cost of the equipment for all risks till the equipment is taken over by the OWNER. The insurance policies to be taken should be on replacement value basis and/or incorporating escalation clause. Notwithstanding the extent of insurance cover and the amount of claim available from the underwriters, the CONTRACTOR shall be liable to make good the full replacement/rectification of all equipment/materials and to ensure their availability as per project requirements without additional financial liability to the OWNERS. The workman compensation policy taken by the SUB-CONTRACTOR of the CONTRACTOR shall be passed on to the OWNER.

28.7 All cost on account of insurance liabilities covered under the CONTRACT will be to the contractors account and will be included in the CONTRACT PRICE. The

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CONTRACTOR, while arranging the insurance, shall ensure to obtain all discounts on premium, which may be available for higher volume or for reason of financing arrangement of the project.

28.8 Irrespective of single or separate insurances, the CONTRACTOR shall take the same in the joint name of CONTRACTOR and OWNER, with CONTRACTOR as Primary Beneficiary and OWNER as Joint Beneficiary, to cover all risk including marine cum erection insurance (MCE), workmen compensation / Employees State Insurance (ESI) under ESI Act 1948 for Contractor's personnel, fire risk policy etc. till handing over of PLANT to OWNER duly commissioned and tested. However, for CONTRACTOR's EQUIPMENT, CONTRACTOR can be the sole beneficiary.

28.9 The CONTRACTOR shall be fully responsible for pursuing and settling all claims with the underwriters. In the event of accident, injury, damage or loss likely to form a claim under the above insurance policies, the CONTRACTOR shall as quickly as possible submit such details as are necessary for settling such claims by underwriters and shall also provide information and assistance necessary to settle the claim. The CONTRACTOR shall also keep OWNER fully informed about progress of each such case.

29.0 GUARANTEES



29.1 It shall be a condition of the CONTRACT and the CONTRACTOR shall guarantee that the PLANT shall achieve the requirement as set forth herein and as per Part II, Technical of NIT.

29.2 The CONTRACTOR shall guarantee that the Equipment/Items and machineries will be new and in accordance with the CONTRACT documents and free from defects in design, material & workmanship and shall give Defect Liability for a period of Twelve (12) calendar months commencing immediately upon PRELIMINARY ACCEPTANCE as per Clause 17 of SCC. The CONTRACTOR's liability shall be limited to the replacement of any defective parts in the equipment of his own manufacture or those of his SUBCONTRACTOR under normal use and arising from faulty design, materials and/ or workmanship provided always that such defective parts are not repairable at the site and are not in the meantime essential in the commercial use of the plant. Such replaced defective parts shall be returned to the CONTRACTOR unless otherwise arranged.



29.3 After the issue of the PRELIMINARY ACCEPTANCE CERTIFICATE, in the event of an emergency where, in the judgement of the OWNER, delay would cause serious loss or damage, repairs or adjustments may be made by the OWNER or a third party chosen by the OWNER without advance notice to the CONTRACTOR and the documented and direct cost of such work shall be paid by the CONTRACTOR but only to the extent that the repair or adjustment was due a defect attributable to CONTRACTOR.

29.5 The cost of any special or general overhaul rendered necessary during the guarantee period due to defects for which CONTRACTOR is liable under CONTRACT in the PLANT or defective work carried out by the CONTRACTOR shall be borne by the CONTRACTOR.

29.5 The acceptance of the equipment by the OWNER shall in no way relieve the CONTRACTOR of his obligation under this clause.

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- 29.6 In the case of those defective parts which are not repairable at site but are essential for the commercial use of the equipment and machineries, the CONTRACTOR shall mutually agree to a programme of replacement or renewal which will minimise interruption to the maximum extent, in the operation of the equipment and machineries.
- 29.7 At the end of the DEFECTS LIABILITY PERIOD or the extended DEFECTS LIABILITY PERIOD, the CONTRACTOR's liability ceases. In respect of goods supplied by the SUB-CONTRACTORS to the CONTRACTOR where a long guarantee (more than 12 months) is provided by such CONTRACTORS, the OWNER shall be entitled to the benefit of such longer guarantees.
- 29.8 During the guarantee period, the CONTRACTOR shall provide if required by the OWNER the services of operation engineers to advise the OWNER for such period and in such number as may be mutually agreed upon. The CONTRACTOR's operation engineers shall also train the OWNER's personnel, act as a liaison between the OWNER and the CONTRACTOR, assist the OWNER in ordering and obtaining spare parts, generally monitoring operation and maintenance and trouble shooting and supervising repair work under guarantee.
- 29.9 The provisions of Clause 48 including the cost of transport, insurance etc. shall be implemented at the CONTRACTOR's expenses.
- 29.12 The provisions contained in clause 48 will not be applicable. a) If after handing over of the PLANT the OWNER has not operated the equipment according to generally approved industrial practices and in accordance with the conditions of operation specified and in accordance with operation and maintenance manuals if any; b) In cases of normal wear and tear of the parts to be specifically mentioned by the CONTRACTOR in the offer.
- 29.13 **Guarantees for Time of Completion**
- The CONTRACTOR shall guarantee the date of PRELIMINARY ACCEPTANCE of the WORKS calculated from the EFFECTIVE DATE OF THE CONTRACT, for the purpose of determining pre-determined Price Reduction on account of delay in completion. No damages will be levied on account of delay in contractual completion for the reasons not attributable to the CONTRACTOR.
- 29.14 **Performance Guarantees**
- CONTRACTOR shall guarantee the performance of PLANT as specified in the Part-II, Technical.
- 29.15 **Design and Vendors'/ Sub-Contractors' Guarantees**
- 29.15.1 CONTRACTOR shall guarantee the engineering, planning and execution work carried out by him against mistakes, errors, defective specifications, inadequacy and other such items which lead to the supply of inadequate PLANTS and Facilities. In case of detection of such mistakes, errors, deficiencies etc. the CONTRACTOR shall redo the engineering and execution work to overcome all such mistakes, errors, deficiencies etc. at no extra cost to OWNER.
- 29.15.2 CONTRACTOR shall be responsible for all the items of the EQUIPMENT procured by him from VENDORS/ SUB-CONTRACTORS. Further, CONTRACTOR shall replace or

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repair any item of EQUIPMENT which is demonstrated to be defective under normal operating conditions within 12 (Twelve) MONTHS from the date of PRELIMINARY ACCEPTANCE of PLANTS.

30.0 LIABILITY FOR ACCIDENTS AND DAMAGES

30.1 Under the CONTRACT, the CONTRACTOR shall be responsible for loss or damage to the PLANT and provide new equipment and machineries in lieu of equipment/machineries lost/damaged beyond repairs, free of cost until the PLANT is handed over after successful completion of performance & guarantee tests.

30.2 The CONTRACTOR shall indemnify the OWNER in respect of all damage or injury to any person or to any property (other than property forming part of the Work) and against all actions, suits, claims, demands, costs, charges and expenses arising in connection therewith which shall have been occasioned by the negligence of the CONTRACTOR or any SUB-CONTRACTOR, or by defective design (other than a design made, furnished or specified by the OWNER and which the CONTRACTOR has disclaimed responsibility in writing within a reasonable time after receipt of the OWNER's instructions) material or workmanship, any breach of the CONTRACTOR's obligations.

31.0 PRICE REDUCTION CLAUSE



31.1 If for reasons not attributable to the OWNER or due to conditions not constituting Force Majeure as defined in this Contract, the Work is not completed in accordance with the provisions hereof, within and in accordance with the Time Schedule/ time for Completion as indicated in the terms and conditions of the Contract, it is agreed that the OWNER shall be entitled to recover and/or the CONTRACTOR shall pay to the OWNER, without prejudice to any other rights or remedy available to the OWNER, the following amount as per Price Reduction clause.

31.1.1 A sum equivalent to 0.5% of the Contract price for every complete week or part thereof, for delay in completion for "PRELIMINARY ACCEPTANCE" of PLANT by the Contractor, subject to a maximum 5% of TOTAL CONTRACT PRICE inclusive of escalation and contingencies, if any.

31.2 The amounts, as set in clause 31.0 is agreed upon and fixed by the parties due to difficulties in ascertaining, on the date hereof, the exact amount that will be actually incurred by the OWNER in such event, and parties hereby agreed that amount specified herein are a genuine pre-estimate made by the parties of the loss and damage which the OWNER would have suffered and as by way of mutually determined reasonable compensation payable to the OWNER and without the OWNER required to establish and prove the actual loss/ damage suffered by the Owner, not in the nature of penalty and shall be applicable regardless of the amount of such deduction in value actually sustained by the OWNER.

31.3 The CONTRACTOR agree and acknowledge that the amount set of in clause 31.0 above may be recovered by the OWNER from the amount to be paid to the CONTRACTOR and the Contract Price shall stand reduced by such amount.

31.4 A sum equivalent to 0.1% of the Contract price for every complete week or part thereof, for delay in supply of Technical documents and Drawings, subject to a maximum of 0.5% of TOTAL CONTRACT PRICE.

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31.5 In the event of applicability of Price reduction as per this clause, applicable GST thereon shall also be deducted.

32.0 **OVERALL CEILING ON TOTAL LIABILITY**

32.1 The maximum overall liability under the CONTRACT on account of Price Reduction Clause, Termination of CONTRACT & carrying out balance work at the risk and cost of the CONTRACTOR, re-engineering, make good, mechanical warranty and patent infringement as per relevant Clauses of CONTRACT shall be 100% of TOTAL CONTRACTPRICE.

32.2 Notwithstanding anything contained elsewhere in CONTRACT or implied to the contrary:

- a) CONTRACTOR shall, in no circumstances, be liable in respect of any indirect or consequential loss or loss of profit suffered by OWNER in connection with or arising out of performance of WORK under CONTRACT.
- b) OWNER shall, in no circumstances, be liable in respect of any indirect or consequential loss or loss of profit suffered by CONTRACTOR in connection with or arising out of performance of WORK by CONTRACTOR under the CONTRACT.

32.0 **TIME EXTENSION OF CONTRACT**

32.1 If the Contractor requires any extension of time for completing the Work under the CONTRACT he must apply to the OWNER within seven days from the date of the occurrence of the event on account of which he desires such extensions and the OWNER may, if he thinks such request reasonable, grant such extension of time as he may think necessary.

32.1.1 **Continued Performance**

The Contractor shall not stop work in case of any dispute pending before arbitrator/court/Tribunal in relation to the contract or otherwise unless further progress of works has been rendered impossible due to non-fulfilment of any reciprocal promise. Unilateral stoppage of work by the Contractor shall be considered a breach of CONTRACT and the OWNER shall be within its rights to take suitable and necessary action as it may deem fit to adequately protect its own interests.



It is understood by the contract that in the event of any losses/damages caused to the OWNER due to the reasons whatsoever within his control and the same losses/damages are approved, the contractor has to make good all the consequential damages/losses to the Owner without any protest and demur. The damages/losses shall be apart from other claims/damages to which the Owner is entitled under the contract or in the course of Law.

33.0 DELETED

34.0 **TERMINATION OF CONTRACT**

34.1 **Termination due to Legal Incapacity**

If the CONTRACTOR goes into liquidation or has an administrator order made against him or carries on his business or any part of it under an administrator or receiver or manager for the benefit of the creditors or any of them, without prejudice to any other

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rights or remedies, the OWNER may forthwith by notice in writing terminate the CONTRACT.

34.2 **Termination due to Default by CONTRACTOR**

34.2.1 If the CONTRACTOR is in default in that he:

- (a) Neglects to execute the work or part of the work; or
- (b) without reasonable cause, suspends or abandons the carrying out the works, either partly or wholly, before their completion; or
- (c) Fails to proceed regularly and diligently with the works; or
- (d) Defaults in the performance or observance of any conditions or terms of the CONTRACT or neglects to carry out any order, instruction, direction or determination which the OWNER is empowered to give or make under the CONTRACT and which is given or made in writing to the CONTRACTOR,

then, without prejudice to any other rights or remedies which the OWNER may possess, the OWNER may, by notice in writing (which shall specify with reasonable particularity the neglect, default or refusal on the part of the CONTRACTOR) require the CONTRACTOR:

- i) to put forward his proposals for
 - a) Rectifying such neglect, default or refusal as the case may be and
 - b) Commence and diligently pursue the rectification of the default.

34.2.2 If within 30 days after the posting of the notice addressed to the CONTRACTOR, the CONTRACTOR fails to comply with the notice or if in the opinion of the OWNER, the CONTRACTOR's reasons or proposals are not satisfactory, then the OWNER, without prejudice to any other rights that he may have under the CONTRACT against the CONTRACTOR, may either:

- a) Entrust the whole or part of the remaining work to any agency for undertaking the balance work not withstanding any provision of the contract in respect of confidentiality and license clauses
- or
- b) Terminate the CONTRACT and encash the SECURITY CUM PERFORMANCE BANK GUARANTEE and any bank gurantee for advance payment.



34.3 **Duration of suspension of payment due to CONTRACTOR:**

34.3.1 Owner shall have right to suspend making any payments to the contractor during the period of rectification of the defaults.

34.4 **Work taken out of the hands of the CONTRACTOR**

34.4.1 **Employment of other contractors:**

If the OWNER takes action under sub-clause 34.2.2 he may complete the work or any part of it by contracting with or employing any person or persons to execute further and complete work or any part of it and to provide all equipment, materials and labour as

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may be necessary for such further execution and completion. If practicable the further execution and completion shall be carried out in accordance with the specification and at prices obtained under competitive conditions.

The OWNER may also take possession of and permit such person or persons to use for the purposes of the CONTRACT only such materials, tools and equipment and all other things on or about the SITE which are the property of the CONTRACTOR as are requisite and necessary for such further execution and completion, and the CONTRACTOR shall have no right to any compensation or allowance in respect thereof.



On the completion of such work, all tools and equipment and the surplus of the materials so taken possession of shall be handed over to the CONTRACTOR but without payment or allowance for the fair wear and tear they may have sustained in the meantime, provided that if there by a deficiency as referred to in sub clause 34.4.2 of this clause, and if the CONTRACTOR fails to make good such deficiency such of the tools, equipment and materials as are necessary to make good the deficiency may be sold and a sufficient part of the monies received retained by the OWNER and applied in payment of such deficiency.

In addition the OWNER shall be entitled:

- a) To take possession of and remove from the CONTRACTOR's premises within a reasonable period anything (including but without limiting the generality thereof any design, drawings, specification, material or other goods) the property which is vested in the OWNER pursuant to the CONTRACT;
- b) To full particulars of any sub-contract made by the CONTRACTOR with any person for the execution of any portion of the WORKS and to peruse and copy any instrument (including but without limiting the generality thereof any agreement, letter or other paper) relating to any such SUB-CONTRACT made by the CONTRACTOR with any person for the execution of any portion of the WORKS.
- c) To pursue and copy any standard working drawing or other drawing or data necessary in the opinion of the OWNER for completion of the WORKS and the property which is not vested to the OWNER pursuant to the CONTRACT provided that the OWNER shall in no case make use of any copy made pursuant to sub paragraphs (b) or (c) hereof other than for the purpose of completing the WORKS and that on the fulfilment of the whole of the obligations of the CONTRACTOR under the CONTRACT the OWNER shall return to the CONTRACTOR any such copy.

The CONTRACTOR shall offer to the OWNER all rights of access and all reasonable facilities to enable the OWNER to remove any such thing or pursue or copy any such instrument, drawing or data and shall supply such particulars on request by the OWNER in that behalf.

For the purposes of sub-clause 34.4.2 the cost incurred by the OWNER in and about for such removal, perusal or copying or obtaining such particulars shall be deemed to be part of the cost of carrying out that portion of the work taken out of the CONTRACTOR's hands.

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34.4.2 Extra cost to the OWNER of completing work for deduction:

On the issue of the certificate of taking over, the OWNER shall ascertain the cost of the work to the purchaser comprising payments to the CONTRACTOR and costs incurred by the OWNER in carrying out of the work taken out of the CONTRACTOR's hands and he shall certify the amount to the purchaser, but such amount shall not include any extra cost due to departures from the specification unless such departures were necessitated by the CONTRACTOR's default. Should the amount so certified be greater than the amount which would have been paid to the CONTRACTOR, if the whole of the work had been carried out by him, the difference between the two amounts shall be deducted from any monies which may then be or thereafter become due to the CONTRACTOR or which may have been deposited by him as security under the CONTRACT, and if such monies be less than the amounts to be deducted the deficiency shall be a debt due by the CONTRACTOR to the OWNER and which may be recovered as provided in sub clause 34.4.1 of this clause or in any Court of Competent jurisdiction in both, such payment of excess amount shall be independent of penalty for delay if the completion of work is delayed.

34.5 Preservation of rights of the OWNER

No action taken by the OWNER under sub clause 34.3 and 34.4 of this clause shall vitiate the CONTRACT or shall operate to the prejudice of the right of the OWNER to recover from the CONTRACTOR or to deduct from any monies which may be or may become due to the CONTRACTOR all sums of money which may be or may become due to the OWNER under the CONTRACT as damages, penalties or otherwise.

34.6 Should the OWNER decide to terminate the CONTRACT under sub clause 34.2.2(b) of this clause, he may do so under notice in writing as from the date of such notice, and the termination shall be without prejudice to any right that may have occurred to the OWNER or to the CONTRACTOR under the CONTRACT.

34.7 Termination of Contract on Account of OWNER's Convenience



34.7.1 The OWNER, may, by written notice send to the CONTRACTOR, terminate the CONTRACT, in whole or in part, at any time for his convenience. The notice of termination shall specify that termination is for the OWNER's convenience, the extent to which performance of work under the CONTRACT is terminated and the date upon which such termination becomes effective.

34.7.2 The jobs that are complete and ready for handover, within 30 days after the CONTRACTOR's receipt of notice of termination shall be paid by OWNER at the CONTRACT terms and prices. For the remaining jobs, the OWNER may opt:

- a) To have any portion completed at the CONTRACT terms and prices; and/or
- b) To cancel the remainder and pay to the CONTRACTOR an agreed amount for partially completed jobs and for materials and parts previously procured by the CONTRACTOR, in which event such goods shall be the property of the OWNER.

34.7.3 Termination for Insolvency

OWNER may at any time terminate CONTRACT giving written notice to CONTRACTOR, without compensation to CONTRACTOR, if CONTRACTOR becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has occurred or will accrue thereafter to OWNER.

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34.8 **Surviving Obligations**



Termination of this CONTRACT (a) shall not relieve CONTRACTOR of its obligations with respect to the confidentiality as set forth in this CONTRACT, (b) shall not relieve CONTRACTOR of any obligation hereunder which expressly or by implication survives termination hereof, and (c) except as otherwise provided in any provision of this CONTRACT expressly limiting the liability of CONTRACTOR, shall not relieve CONTRACTOR of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of CONTRACTOR prior to the effectiveness of such termination or arising out of such termination, and shall not relieve CONTRACTOR of its obligations as to portions of SERVICES already performed or of obligations assumed by CONTRACTOR prior to the date of termination, except as otherwise agreed by OWNER in writing.

35.0 **FORCE MAJEURE**

35.1 Neither CONTRACTOR nor OWNER shall be considered in default in the performance of their obligations under CONTRACT, as long as such performance is prevented or delayed for reasons such as acts of God, severe earthquake, typhoon or cyclone (except monsoon), floods, lightening, land slide, fire or explosions, plague or epidemic, strikes of a whole National category of workers and concerted act of workmen or other industrial disturbances (lasting more than 14 consecutive calendar DAYS), lockouts (lasting more than 10 consecutive calendar DAYS), sabotage, blockade, war, riots, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power of confiscation or trade embargoes or destruction or requisition by order of any Government or any Public Authority, provided notice of any such cause is given forthwith and in any event not later than one week (7) DAYS of the happening of the event by the party claiming the benefit of this Clause to the other specifying the matter constituting FORCE MAJEURE explaining to what extent contractual obligations will thereby be prevented or delayed and the further period for which it is estimated that such prevention or delay will continue. CONTRACTOR shall provide justificatory documents countersigned by the local Chamber of Commerce. Notwithstanding the forgoing, FORCE MAJEURE shall not include (a) weather conditions reasonably to be expected for the climate in the geographic area of the SITE including but not limited to the monsoon season, (b) the occurrence of any manpower or material shortages unless such a shortage is itself caused by an event of force majeure, or (c) any delay, default or failure (direct or indirect) in obtaining materials, or in any SUB-CONTRACTOR/VENDOR or worker performing any WORK or any other delay, default or failure (financial or otherwise) attributable to SUB-CONTRACTOR/Vendor/worker, unless such delay, default or failure results from any act, event or condition which would, with respect to such SUB-CONTRACTOR/VENDOR/ worker, constitute an event of force majeure.

35.2 If the CONTRACTOR suffers delay in the due execution of the contractual obligations due to delays caused by force majeure as defined above, the agreed time of completion of job covered by this CONTRACT or the obligation of the CONTRACTOR shall be extended by a period of time on account of force majeure conditions, provided that on the occurrence of any such contingency, the CONTRACTOR immediately reports to the OWNER in writing, the cause of delay and likely duration of cause of delay with requisite documentary evidence.

35.3 Deleted.

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- 35.4 Should one or both the parties be prevented from fulfilling the contractual obligations by a state of FORCE MAJEURE lasting continuously for a period of 6 weeks, the two parties shall consult each other regarding the future implementation of the CONTRACT. The mere shortage of labour, materials or utilities shall not constitute FORCE MAJEURE unless caused by circumstances which are themselves FORCE MAJEURE.
- 35.5 CONTRACTOR and OWNER shall endeavour to prevent, overcome or remove the causes of FORCE MAJEURE.
- 35.6 No ground for exemption can be invoked if CONTRACTOR has failed to give timely notice by registered letter and subsequently supported it by documentary evidence.
- 35.7 Delay or non-performance by a party hereto caused by the occurrence of any event of FORCE MAJEURE shall not:
- (a) Constitute a default or breach of the CONTRACT,
- Or
- (b) Give rise to any claim for damages or additional cost or expense occasioned thereby, if such delay or non-performance is caused by the occurrence of any event of FORCE MAJEURE. FORCE MAJEURE conditions are not payable under any circumstances.
- 35.8 Force Majeure is no one's fault, therefore each party should bear its own cost and a provision to terminate the CONTRACT in case of Force Majeure extending beyond one year is provided. Should OWNER wish the CONTRACTOR to continue further, both parties may sit together and mutually agree on the future course failing which Parties will have the right to terminate. Such termination shall not be considered as Termination for Owner's Convenience. However, outstanding invoices, payment for supplies made and payment to the work already performed will be paid by OWNER on such termination and shall be detailed at the time of CONTRACT finalisation.



Contractor shall have the right to take action to mitigate the impact of the prolonged Force Majeure event in mutual consent with Owner; for instance Contractor shall have the right to demobilize Contractor's equipment and personnel from the Plant.

36.0 NO WAIVER OF RIGHTS

Neither the inspection by the OWNER or any of their officials, employees, or agents nor any order by the OWNER for payment of money or any payment for or acceptance of, the whole or any part of the WORKS by the OWNER nor any extension of time, nor any possession taken by the OWNER shall operate as a waiver of any provision of the CONTRACT, or of any power herein reserved to the owner 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 subsequent breach.

37.0 BANKRUPTCY AND LIQUIDATION OF CONTRACTOR OR BUSINESS UNDER RECEIVERSHIP

If the CONTRACTOR becomes insolvent or bankrupt, or have a receiving order made against him, or compound with his creditors, or being a corporation commence to be wound up not being a member's voluntary winding up for the purpose of reconstruction or carry on his business under a receiver/liquidator etc for the benefit of his credit, the CONTRACTOR shall within fourteen (14) days notify the OWNER accordingly. On the

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occurrence of any of the happenings stated in the first sentence of this clause, the OWNER shall be at liberty to:

- a) Determine the CONTRACT forthwith by notice in writing to the CONTRACTOR or to the receiver or liquidator or to any person in whom the CONTRACT may have become vested, and act in the manner provided in clause 34.1 (proceedings or default) or,
- b) Give to such receiver, liquidator or other person in writing the option for a period of one month of carrying out the CONTRACT subject to his providing a guarantee for the due and faithful performance of the CONTRACT upto the CONTRACT value of the work for the time being remaining unexecuted and subject to his taking all reasonable steps to prevent stoppage of the work. In the event of stoppage of the work, the period of the option under this clause shall be fourteen (14) days only.

38.0 CERTIFICATE NOT TO AFFECT RIGHT OF OWNER AND LIABILITY OF CONTRACTOR.



No interim payment certificate of the OWNER nor any sum paid on account by the OWNER nor any extension of time for execution of the WORKS granted by the OWNER shall affect or prejudice the rights of the OWNER against the CONTRACTOR or relieve the CONTRACTOR of his obligations for the due performance of the CONTRACT or be interpreted as approval of the WORK done or of the equipment furnished and no certificate shall create liability on the OWNER to pay for alterations, amendments, variations, or additional works not ordered, in writing, by the OWNER or discharge the liability of the CONTRACTOR for the payment of damages whether due, certified or not or any sum against the payment of which he is bound to indemnify the OWNER and the Consultant 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 CONTRACTOR against the OWNER.

39.0 SETTLEMENT OF DISPUTES

- 39.1 Except as otherwise specifically provided in the CONTRACT all disputes concerning questions of fact arising under the CONTRACT shall be considered by the OWNER subject to a written request by CONTRACTOR to the OWNER.
- 39.2 Any disputes or differences including those considered as such by only of the parties arising out of or in connection with the CONTRACT shall be to be extent possible settled amicably between the parties.
- 39.3 If, after 30 DAYs from the commencement of such informal negotiations OWNER and CONTRACTOR are unable to resolve amicably the dispute, either party may require that the dispute be referred for resolution to the arbitration as described under clause 40 below.

40.0 ARBITRATION

- 40.1 **For Indian Bidders:** Except where otherwise provided in the contract all matters, question, disputes or differences whatsoever, which shall at any time arise between the

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parties hereto, touching the construction, meaning, operation or effect of the contract or out of matter relating to the contract or the breach thereof or the respective rights or liabilities of the parties during or after completion of the works or whether before or after termination, shall after written notice by either party to the contract be referred to Designated Unit Head/ED/Functional Director/Chairman & Managing Director, National Fertilizers Ltd. for appointment of Arbitrator. ***(Appropriate designate authority may be inserted as per contract value)***

The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996. The Arbitration & Conciliation (Amendment Act, 2015) or any further statutory modification or re-enactment thereof and the rules made there under.

If the arbitrator to whom matter is referred, vacates his/her office by any reason whatsoever then the next arbitrator so appointed by the authority referred above may start the proceedings from where his predecessor left or at any such stage he may deem fit.

It is agreed by and between the parties that in case a reference is made to the Arbitrator or the Arbitral Tribunal for the purpose of resolving the disputes/differences arising out of contract by and between the parties hereto, the Arbitrator or the Arbitral Tribunal shall not award interest on the awarded amount more than the rate of SBI PLR/ Base rate as applicable to NFL on date of award of contract.

The seat of Arbitration shall be at Guna (MP).



40.1.1 **Arbitration for PSEs and Government Department: -**

In case of Contract with other PSEs/Government Department as described in circular NFL/LAW/64 dated 17.03.2016 the arbitration shall be through PMA, DPE. For ready reference, The Arbitration Clause in that case shall be as follows: -

In the event of any dispute or difference relating to the interpretation and application of the provisions of the contract, such dispute or difference shall be referred by either party for Arbitration to be sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not applicable to arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

40.2 **Continuation of Work and payments during Arbitration**

WORK shall be continued by CONTRACTOR during the arbitration proceedings unless the matter itself is the subject of Arbitration. Or unless the matter itself is such that WORK cannot practically be continued until the decision of the arbitrator is obtained and CONTRACTOR shall remain liable and bound in all respects under the Contract. Except

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as otherwise expressly provided in CONTRACT, no payment due and payable by OWNER shall be withheld on account of such arbitration proceedings unless it is the subject matter or one of the subject matters.

41.0 GOVERNING LAWS, LANGUAGE AND MEASURES

41.1 The applicable law shall be Indian Law and shall be subject to the jurisdiction of the Court in New Delhi to the exclusion of all other Courts in India. CONTRACT shall be governed and construed according to the Indian Law as in force and shall be subject to the jurisdiction of the Court at New Delhi to the exclusion of all other Courts in India

41.2 The governing language for all communication, notices, Technical Information, etc. pertaining to CONTRACT shall be English only. Any literature, correspondence, documents, etc., shall be considered only if its accompanied by English translation. For the purpose of interpretation, the English translation shall govern and be binding on all parties.

41.3 The metric system of measurement shall exclusively be used in the CONTRACT.

42.0 RELEASE OF INFORMATION

The CONTRACTOR shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of the WORKS under this CONTRACT or descriptions of the SITE, dimensions, quantity quality or other information, concerning the work unless prior written permission has been obtained from the OWNER. Notwithstanding the above, CONTRACTOR is entitled, under intimation to OWNER, to make such public Announcements, as it may be bound to in compliance with the Law, the Rules and any Governmental Agency or Stock Exchange Regulation etc., for time being in force the CONTRACTOR is subjected to.

43.0 COMPLETION OF CONTRACT



Unless otherwise terminated under the provisions of any other relevant clause, this CONTRACT shall be deemed to have been completed at the expiry of the DEFECT LIABILITY PERIOD as provided for under the clause entitled guarantee.

44.0 ENFORCEMENT OF TERMS

The failure of either party to enforce at any time any of the provisions of this CONTRACT or any rights 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 affect 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.

45.0 OWNER'S DECISION

45.1 In respect of all matters which are left to the decision of the OWNER including the granting or withholding of the certificates, the OWNER shall, if required to do so, by the CONTRACTOR, give in writing a decision thereon.

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45.2 In each case involving a financial commitment the written APPROVAL of the owner alone shall be binding.

45.3 In matters of difference of opinion on a decision passed by the OWNER to the CONTRACTOR stipulations of Clause 39.0 shall govern.

46.0 CO-OPERATION

46.1 Co-operation with OWNER

The CONTRACTOR and OWNER shall co-operate with each other in the discharge of their respective obligation under the CONTRACT with the aim of satisfactory completing the PLANT and the WORKS in accordance with the CONTRACT.

46.1.1 The parties shall deal fairly, openly and in good faith with each other. Subject to Clause 53 (Secrecy), each party shall disclose information which the other might reasonably need to order to exercise its rights and to perform its obligations under the CONTRACT. In particular, each party shall promptly disclose full information to the other concerning any matter which will or may prevent the Plant and Works being completed in accordance with the CONTRACT. The parties shall work together in a manner consistent with their respective obligations under the CONTRACT to resolve or mitigate any such problem.

46.1.2 OWNER shall be at liberty to object to employment of any person at SITE and the objection shall be communicated in writing and CONTRACTOR shall make immediate arrangements for removal of such person.



46.2 Cooperation with other contractors

The CONTRACTOR shall not object to the execution of the work by other contractors or tradesmen and offer them every facility for the execution of their several works simultaneously with CONTRACTOR's work. CONTRACTOR shall at all times provide sufficient fencing, notice boards, lighting and watchmen to protect and warn the public and guard the works and in default there of OWNER may provide such facilities at CONTRACTOR's cost.

The CONTRACTOR shall agree to cooperate with the OWNER and other CONTRACTORS 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 OWNER shall be provided with three (3) copies of all correspondence addressed by the CONTRACTOR to other SUB-CONTRACTORS in respect of such exchange of technical information.

47.0 SUSPENSION OF WORK

47.1 The OWNER reserves the right to suspend and reinstate execution of the whole or any part of the WORK without invalidating the provisions of the CONTRACT. Orders for suspension or reinstatement of the WORKS will be issued by the OWNER to the

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CONTRACTOR in writing. The time for completion of the WORKS will be extended for a period equal to the duration of the suspension.

47.2 If such suspension of WORK by OWNER delays or is likely to delay the progress of WORK or the carrying out of WORK under CONTRACT resulting in additional expenses or increased liability to CONTRACTOR, the OWNER shall pay to the CONTRACTOR all reasonable expenses, mutually agreed between OWNER and CONTRACTOR, arising from suspension of the work by an order in writing of the OWNER provided that such suspensions of work is more than a cumulative period of ninety (90) days and provided that such suspension is not due to some fault on the part of the CONTRACTOR or a SUB-CONTRACTOR.

48.0 REPLACEMENT OF PARTS AND MATERIALS DEFECTIVE / DAMAGED / LOST DURING TRANSIT/ ERECTION AND COMMISSIONING.



48.1 If during the progress of the WORKS, the OWNER 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 seven (7) days of his receiving the notice or otherwise within such time as may be reasonably necessary for making it good, proceed to alter, reconstruct or remove such work and furnish fresh equipment upto the standards of the specifications. In case the CONTRACTOR fails to do so, the OWNER may on giving the CONTRACTOR seven (7) days' notice in writing of his intentions to do so, proceed to remove the portion of the works 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 OWNER of or affect any rights under the CONTRACT which the OWNER may otherwise have in respect of such defects and deficiencies.

48.2 The CONTRACTOR's full and extreme liability under this clause shall be satisfied by the payments to the OWNER of the extra cost, of such replacement procured including erection as provided for in the CONTRACT, such extra cost being the ascertained difference between the price paid by the OWNER for such replacements and the CONTRACT price portion for such defective plants and repayments of any sum/ paid by the OWNER to the CONTRACTOR in respect of such defective plant.

48.3 If the material/ equipment or any portion thereof is damaged or lost during transit and handling, storage, erection, commissioning at site, the replacements of such material / equipment shall be effected by the CONTRACTOR within a reasonable time to avoid unnecessary delay in the COMMISSIONING of the EQUIPMENT and without waiting for realisation of cost of damages from the insurance company, appointed by him for this purpose. This will not alter the schedule of commissioning & guarantee tests in any way.

49.0 DEFENCE OF SUITS

49.1 If any action in Court is brought against the OWNER or an officer or agent of the OWNER 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

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caused by the alleged omission or negligence on the part of the CONTRACTOR, his agents representatives or his SUB-CONTRACTORS or in connection with any claim based on lawful demands of SUB-CONTRACTORS, workmen, suppliers or employees, the CONTRACTOR shall in all such cases indemnify and keep the owner and/ or his representative harmless from all losses damages, expenses or decrees arising out of such action.

- 49.2 The OWNER shall have full power and right at his discretion to defend or comprise any suit or pay claim or demand brought or made against him as aforesaid whether pending or threatened as he may consider necessary or desirable and shall be entitled to recover from the CONTRACTOR all sums of money including the amount of damages and compensation and all legal costs, charges and expenses in connection with any compromise or award which shall not be called into question by the CONTRACTOR and shall be final and binding upon him.

50.0 CONTRACTOR'S RESPONSIBILITIES

- 50.1 In consideration of payment by the OWNER, the CONTRACTOR shall regularly and diligently carry out and complete the WORKS in accordance with the CONTRACT.

- 50.2 All work carried out by the CONTRACTOR shall be carried out with sound workmanship and materials, safety and in accordance with good engineering practice, applicable Legislation and codes.

The Work shall be carried out in accordance with the Contract requirements, as per Clause 50.4.

Except as may otherwise be specifically provided in this CONTRACT, the CONTRACTOR shall be responsible to perform the WORKS and any other services/deliverables not specifically described in this CONTRACT if:

The provision of such additional services/deliverables is necessary in order for CONTRACTOR to satisfy the warranties and guarantees set forth in Clause 29 or to otherwise make the WORK comply with this Contract.



WORK undertaken and additional services/deliverables provided pursuant to this clause shall be deemed to have been included within the TOTAL CONTRACT PRICE and shall not give rise to any adjustment in TOTAL CONTRACT PRICE.

- 50.3 The CONTRACTOR shall set out the PLANT by reference to points, lines and levels of reference as defined in the approved SPECIFICATION.

- 50.4 The PLANT/WORKS as completed by the CONTRACTOR shall in every respect comply with the requirements defined in the Specification or any other provision of the CONTRACT.

- 50.5 If any time during the performance of the CONTRACT the CONTRACTOR is of the opinion that a change to the WORKS or the design or method of operation of the PLANT

- (a) is necessary to eliminate a potential defect in the PLANT or a specific hazard to any person or party in the performance of the WORKS or in the operation of the PLANT which has occurred or would otherwise occur' or
- (b) would improve operating or life cycle costs of the PLANT; or
- (c) would otherwise be beneficial to the OWNER;

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the CONTRACTOR shall bring the matter to the attention of the PROJECT MANAGER stating the reasons for his opinion and where appropriate submit his proposals for a Variation in accordance with Clause 3 of SPECIAL CONDITIONS OF CONTRACT.

50.6 The CONTRACTOR shall at all times have and maintain adequate resources available for the proper and timely execution of the WORKS, including financial resources, and competent, appropriately experienced and physically capable staff and labour whether employed by the CONTRACTOR, any SUB-CONTRACTOR or third parties.

50.7 The CONTRACTOR shall provide and maintain records as specified in the CONTRACT.

Unless otherwise agreed, the CONTRACTOR shall, at intervals of not more than one calendar month, report to the PROJECT MANAGER on the progress of the WORKS, supporting his reports with appropriate Documentation including any revisions to the approved programme.

50.8 The CONTRACTOR shall maintain, and cause SUB-CONTRACTORS to maintain, a quality assurance system as specified in the CONTRACT. The existence of such a quality assurance system shall not relieve the CONTRACTOR from any of his other duties, obligations or liabilities under the CONTRACT. The CONTRACTOR shall also prepare and implement a validation plan, if such a requirement is specified in the CONTRACT.

51.0 PROGRESS REPORTS AND PHOTOGRAPHS

51.1 The CONTRACTOR shall furnish six (6) prints each of progress photographs of the work done in his shop/site. Photographs shall be taken when and where indicated by the PROJECT MANAGER. Photographs shall be approximately 8 inches by 10 inches in size, including a margin on one 10 inch side for binding. Adequate number of photographs shall be submitted indicating various stages of manufacture and erection. Each photograph shall contain the date, the name of the CONTRACTOR and the title of the view taken.



51.2 Required number of monthly progress reports, in prescribed proforma, shall be submitted by the CONTRACTOR to the PROJECT MANAGER for review. These shall detail the status of design, procurement of raw materials and bought outs, approval of the CONTRACTOR's drawings, manufacture of the equipment, statutory approvals taken, inspection of equipment/material, completed despatches, materials received at site, damages, if any, during transit, actions taken or replacement of damaged equipment, progress of erection work and programme of work for succeeding month and statement showing position of payment.

52.0 SPARES

All the necessary commissioning spares shall be included in the scope of CONTRACT. Further bidder shall quote for Mandatory/ Two (02) Years Operational Spares and other requirements for spares as per Part-II, Spare Parts of Technical document.

53.0 SECRECY

The technical information, drawings, specifications and other related documents forming part of the NIT or the CONTRACT or such of those materials prepared during the

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execution of the project including photographs, micro-films, design, calculations etc. are the property of the OWNER and shall not be used for any other purpose, except for execution of contract. All rights, including rights in the event of grant of a patent and registration of designs are reserved. The technical information, drawings, specifications, records and other documents shall not be copied, transcribed, traced or reproduced in any other form or otherwise in whole and/or duplicated, modified, divulged and / or disclosed to a third party nor misused in any other form whatsoever, without the OWNER's previous consent in writing except to the extent required for the execution of this CONTRACT. Such technical information, drawings specifications and other related documents furnished shall be returned to the OWNER with all approved copies and duplicates, if any, immediately after they have been used for the agreed purposes.

In the event of any breach of this provision, the CONTRACTOR shall indemnify the OWNER from any loss, cost or damage or any other claim whatsoever from any parties claiming from or through them in respect of such breach.

53.2 **Records of Contract Documents**

53.2.1 The CONTRACTOR shall at all times make and keep sufficient copies of the DRAWINGS, Specifications and CONTRACT documents for him to fulfil his duties under the CONTRACT.

53.2.2 The CONTRACTOR shall keep on each SITE at least three copies of each and every Drawing, Specification and CONTRACT Document in excess of his own requirement and those copies shall be available at all times for use by the OWNER and PROJECT MANAGER and by any other person authorized by the OWNER who have a need to know the same for the PROJECT, who shall be provided an adequately sized site office or offices, for the safe-keeping and use of such documents, by the CONTRACTOR throughout the duration of the CONTRACT. Where one or more of CONTRACTOR'S yards/offices/offshore spreads are deployed in the WORKS, all requirements of the CONTRACT and CONTRACTOR'S obligation under the CONTRACT shall apply equally at each yard/office/offshore spread so deployed..

54.0 **CORRESPONDENCE**

54.1 All correspondence from the CONTRACTOR to the OWNER shall be as per the correspondence distribution schedule. All communications including technical-commercial clarification and/or comments shall be addressed to OWNER and shall always bear reference to CONTRACT.



54.1.1 Correspondence on technical and commercial matters shall be dealt with in separate letters and each copy of the letter shall be complete with all Annexure, if any.

54.2 Any notice to the CONTRACTOR under the terms of the CONTRACT shall be served by registered mail/Speed Post, fax , or courier.

54.3 Any notice to the OWNER shall be served from the CONTRACTOR's Principal office in the same manner.

54.4 Any written order or instruction of OWNER or his duly authorised representative, communicated to authorised representative of the CONTRACTOR at site office shall be deemed to have been communicated to the CONTRACTOR at his legal address.

54.5 A notice shall be effective when delivered or on date of the notice, whichever is later.

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55.0 MATERIALS AND EQUIPMENT

55.1 Materials

55.1.1 CONTRACTOR shall supply, to the OWNER, all materials required for incorporation in the permanent works as determined by the CONTRACTOR, within the scope of work, to be necessary to establish, commission and operate (so far as concerns mandatory spares) the PLANT/ Unit delivered on CIF basis at Indian port of CONTRACTOR's choice in respect of imported materials and delivered ex-factory at the price of materials specified in the Price Schedule. It is hereby clarified that the said contract shall include a contract for the sale and supply within the price of all materials (and any recoveries in respect thereof under any policy of insurance) required for the replacement of any defective materials and any materials lost, damaged or destroyed during transit, storage, fabrication, erection or otherwise prior to the issue of PRELIMINARY ACCEPTANCE CERTIFICATE.

55.1.2 INVOICES



CONTRACTOR's invoices shall be raised as per the approved billing schedule.

- (a) The CONTRACTOR's invoice shall be in the format with all the requisite information as prescribed under GST Laws.
- (b) Before raising GST invoices post appointed date, CONTRACTOR shall coordinate with the OWNER with respect to address and GSTIN number on which such invoices have to be raised.

55.1.3 The CONTRACTOR shall be responsible at his own cost and initiative within the scope of services, to take delivery of the materials from the port of delivery in India in respect of imported materials and from the factory or ware-house or other place(s) of delivery in respect of indigenous materials and to transport these to the CONTRACTOR's stockpiles, godowns or other places of storage approved by the PROJECT MANAGER, and to transport the same from said godowns or place(s) of storage to the work site for installation in the permanent WORKS.

55.1.4 The work of delivery and transportation of materials shall include (but not be limited to) the following:

- i) Clearance of the goods through custom and port clearance including filling and/or filing of all custom manifests, bills of entry, and custom declarations and other documents as may be required for the clearance of the goods from customs or port authorities, for which purpose the OWNER shall, from time to time, grant to the CONTRACTOR or the CONTRACTOR's designate(s), such authority(ies) as may be reasonably required by the CONTRACTOR in this behalf.
- ii) Stevedoring, clearing, forwarding and handling services as required for clearing, forwarding and handling imported and indigenous materials and consignments including payment at CONTRACTOR's cost of any demurrage, wharfage, port charges, siding charges, retention charges, detention charges or other charges whatsoever and howsoever designated or levied by any railway, air-port, ship

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and/or other authorities for or in connection with the loading, unloading or detention of any materials or vessels or other means of transport beyond the free period or unloading, clearance, retention or detention or loading, as the case may be, provided by the relevant authority(ies) or carrier(s) in this behalf.

- iii) All works and operations necessary to lift and to remove the material from port, ware-house, railway or other siding, factory or other places of delivery, loading, handling, transporting and unloading and safely stacking, placing or storing the same at approved godowns, yards or other place(s) of storage including lashing or other-wise securing or protecting the same in transit and during and in storage.
- iv) Supply, procurement, mobilization, and deployment of all labour thereof, equipment & machinery necessary for lifting, loading, handling, removing, transporting, unloading, stacking or securing the materials.
- v) Transit and storage insurance of all materials for the full replacement value thereof delivered at site.
- vi) All acts, deeds, matters or things required to fulfil all local, municipal and other statutory authorities with respect to the transportation of any materials through or into any State, municipal, local or other barriers or limits or for the import of the materials or any of them within the limits of such barrier, including payment of octroi/ entry tax or other local toll, terminal and/or entry or other taxes payable on the passage or entry of the materials through or within any local limits, for which purpose the OWNER shall give the CONTRACTOR and/or CONTRACTOR's designate(s) any and all authority(ies) as may be reasonably required in this behalf. If Road Permits, Entry Permits, Transit Permits or the like for the transportation of any materials is to be obtained in the name of the OWNER, the OWNER shall at the request of the CONTRACTOR sign and provide such documents as are required to be furnished by the OWNER to obtain the Permit(s).
- vii) All other acts, deeds, matters and things whatsoever ancillary, auxiliary or incidental to the above including but not limited to the grading of the site and/or creation of temporary approaches and ramps etc. as may be required.



55.2 GENERAL PROVISION WITH REGARD TO MATERIALS

55.2.1 The CONTRACTOR shall, within the scope of work, undertake the following activities and responsibilities with respect to and in addition and without prejudice to the activities and responsibilities under Clause 55.1 and associated clauses there under in respect of materials:

- i) The CONTRACTOR shall in taking delivery, ensure compliance of any condition for delivery applicable to deliveries from the concerned authority or carrier, and shall be exclusively responsible to pay and bear any detention, demurrage or penalty or other charges payable by virtue of any delay or failure by the CONTRACTOR in lifting the materials or in observing any of the conditions aforesaid, and shall keep the OWNER indemnified from and against all consequences thereof

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- ii) The CONTRACTOR shall maintain a day-to-day account of all materials indicating the daily receipt(s), consumption(s) and balance of each material and category thereof. Such account shall be in the format, if any, prescribed by the PROJECT MANAGER and shall be supported by all documents necessary to verify the correctness of the entries in the account. Such account shall be maintained at the CONTRACTOR MANAGER's office and site(s) and shall be open for inspection and verification (by verification of documents in support of the entry as also by feasible verification of the stock) at all times by the PROJECT MANAGER with authority at all times without obstruction to enter into or upon any godown or other place(s) or premise(s) where the materials or any part of them are lying or stored and to inspect the same himself and or through his representative(s).
- iii) All materials shall be taken delivery of, held, stored and utilised by the CONTRACTOR as Trustee of the OWNER, and delivery of the material to the CONTRACTOR shall constitute an entrustment thereof to the CONTRACTOR, with the intent that any utilization, application or disposal thereof by the CONTRACTOR otherwise than for permanent incorporation in the contractual works in terms of the contract shall constitute a breach of trust by the CONTRACTOR.
- iv) All MATERIALS, including materials in respect of which licences / release orders/permits/ authorization have been accorded in the name of the OWNER shall, without prejudice to the responsibility/liability of the CONTRACTOR in respect thereof, vest in the OWNER
- upon shipment from the country of manufacture [FOB basis] with respect to the items to be procured or supplied from the source outside India and,
- ex-works VENDOR shop with respect to the items to be procured in India.
- and the CONTRACTOR shall be deemed to be acting on behalf of the OWNER, importer of records, and as an agent of the OWNER in respect of deliveries taken by the CONTRACTOR
- v) The CONTRACTOR shall at all times be exclusively responsible for any and all losses, damages, deterioration, misuse, wastage, theft, or other application or misapplication or disposal of the materials or any of them contrary to the provisions hereof and shall keep the OWNER indemnified from and against the same and shall forthwith at its own cost and expenses replace any such material, lost, damaged, deteriorated, misused, wasted, stolen, applied, mis-applied and/or disposed as aforesaid with other material of equivalent quality and quantity delivered to site at the CONTRACTOR's risks and costs in all respects.
- vi) The CONTRACTOR shall take out, at his own cost and keep in force at all times, during transit, handling, storage, and erection upto completion in all respect of the work, policy(ies) with Insurance Company(ies) approved by the OWNER for the full replacement value of the materials at site against the risks hereinafter specified. Such policies shall be in the joint names of the OWNER and the CONTRACTOR, with exclusive right in the OWNER to receive all monies due in respect of such policy(ies) and with right in the OWNER (but without obligation to do so) to take out and pay the premia for any such policy(ies) and deduct the premia and any other costs and expense in this behalf from the monies for the time being due or in future becoming due to the CONTRACTOR.

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- a) Notwithstanding anything herein provided, the CONTRACTOR shall be and remain solely and exclusively liable to repair, restore or replace, as the case may be, the materials damaged or destroyed as a result of any act or omission, notwithstanding the existence or otherwise of any policy(ies) of insurance aforesaid, with the intent that any policy(ies) of insurance aforesaid taken out by the CONTRACTOR or by the OWNER, on default by the CONTRACTOR, shall not anyway absolve the CONTRACTOR from his full liability up to and until issue of the Completion Certificate as provided for herein in respect of the works, the work(s) and all materials incorporated therein shall be and remain at the risks of the CONTRACTOR in all respects, including (but not limited to) accident, lightning, earth-quake, fire, storm, flood, tempest, riot, civil commotion and/or war or otherwise with respect to the materials, but shall constitute merely an additional security and not a substitution of liability.
- b) It shall be the exclusive responsibility of the CONTRACTOR to lodge and pursue any or all claims in respect of the insurance aforesaid.
- c) The CONTRACTOR shall, as a condition to the certification of any Running Account Bill, satisfy the OWNER/ Project Manager of the existence of one or more policy(ies) of insurance, covering the materials as specified herein. The policy(ies) of insurance aforesaid shall cover all insurable risks, including but not limited to, any loss or damage commencing from the supplier's ware house in handling, transit, storage and during erection, theft, pilferage, riot, civil commotion, force majeure (including earth quake, flood, storm, cyclone, tidal wave, lightening and other adverse weather conditions), accidents of kinds, fire, war risks and explosion.
- vii) Notwithstanding anything herein provided and notwithstanding the transference of all risks in respect of the materials to the CONTRACTOR, the ownership in respect of the material shall at all times be and remain in the OWNER.
- viii) An inventory shall be made by the CONTRACTOR of all surplus construction materials and empties including but not limited to scrap, wastages and unserviceable material supplied and/or remaining in the hands of the CONTRACTOR upon completion of the CONTRACT for whatsoever reason, and the CONTRACTOR shall forthwith, upon being required to do so, place the OWNER in undisputed possession of and transport the said material to the OWNER's stores or otherwise as reasonably directed by the PROJECT MANAGER.
- ix) If the CONTRACTOR shall default in replacing at the job site, free of any cost to the OWNER, any material lost, damaged, deteriorated, misused, wasted, short, stolen, misapplied or disposed of within the provisions hereof above, or shall fail to return to the OWNER any surplus material or empties within the provision hereof above, the CONTRACTOR shall be liable to pay to the OWNER the cost of such materials or empties delivered at OWNER's stockpile/godown
Regarding Surplus Material, in case of any contradiction, provision under SCC shall prevail.

55.3.0 **BILLS OF MATERIALS**

- 55.3.1 The CONTRACTOR shall furnish to the OWNER a detailed Bill of Materials specifying the materials, which on preliminary determination made by the CONTRACTOR, will be required to be incorporated in the permanent works in order to establish the WORKS/

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Unit and to operate the PLANT/Unit (to the extent of the mandatory spares), including construction materials.

55.3.2 Each item entered in the Bill of Materials shall be priced, so far as possible, in conformity with the details given in this behalf in the priced bid. The Bill of Materials and said price break-up therein and in the price bid are intended only to form a basis for the purpose of calculating on account payments and for calculating payments due to the CONTRACTOR under Clause 34.0 of GCC upon cancellation of contract, and for no other purpose.



55.3.3 The OWNER shall review or cause to be reviewed the prima facie adequacy, sufficiency, validity and/or suitability of the materials listed in the Bill of Materials for the works for which they are intended, and of the prices indicated in the Bill of Materials in respect thereof. Such review shall be performed in conjunction with the design, engineering, specification and other technical reviews to be done by the OWNER and all provisions applicable thereto with reference to critical drawings shall be applicable to the review of the Bill of Materials.

55.3.3.1 The priced Bill of Materials as approved by the OWNER shall constitute the Bill of Materials envisaged in the contract documents. However, no such approval shall, in any manner, absolve the CONTRACTOR of his full responsibility under the CONTRACT to sell and supply to the OWNER at and within the price of materials quoted in the Price Schedule, all materials required for the permanent incorporation in the works and which are required to establish, commission and operate (to the extent of mandatory spares) the PLANT/ Unit in accordance with the CONTRACT and the specifications, complete in all respects including spares, tools, tackles and testing equipment, so far as included within the scope of supply, whether or not any particular material is actually included within or omitted in the Bill of Materials and whether or not the price thereof is included in the price indicated in the Bill of Materials and whether or not the price thereof is in conformity with the price thereof indicated in the Bill of Materials. The review and approval of the Bill of Materials and the prices therein are intended only for the satisfaction of the OWNER that the priced Bill of Materials, prima-facie covers the materials required to be supplied by the CONTRACTOR within the scope of supply.

55.3.4 The Bill of Materials shall be subject to amendment in both items and prices in so far as necessary consequent upon any amendment in any relevant related technical particulars, and upon any amendment, the amended Bill of Materials as approved by the OWNER, shall thereafter constitute the Bill of Materials as envisaged in the CONTRACT documents, provided that unless the amendment results from a CHANGE ORDER and/or agreed variation, no such amendment shall anyway impose any liability on the OWNER to pay customs and other import duties in excess of the customs and other import duties payable on the value of imported materials as indicated in the Price schedule but for such amendment.



55.4 **SUPPLY OF MATERIALS**

55.4.1 The CONTRACTOR shall supply the materials required to be supplied within the Contractor's scope of supply for incorporation in the permanent works in accordance with and to meet the requirements in quality, quantity and other particulars of the descriptions, specifications, plans, drawings, designs and other documents applicable thereto, and the CONTRACTOR shall be deemed to have undertaken that all materials selected, procured and supplied by the CONTRACTOR within the scope of supply shall

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be of the best quality and workmanship and shall be capable of producing the designed desired results and to perform the designed and desired functions to meet the contractual requirements in all respects for the project.

- 55.4.2 The CONTRACTOR shall undertake and complete the supply of materials within the scope of supply to meet the scheduled progress and requirements of the WORK within the scope of work.
- 55.4.3 Within 30 (thirty) days from the EFFECTIVE DATE OF CONTRACT, the CONTRACTOR shall submit to the OWNER for approval in respect of each work or groups of work, a detailed Delivery Schedule in Graphical or other suitable form giving dates of starting and finishing the various supplies relating to the WORK, providing sufficient margin to cover for contingencies. The PROJECT MANAGER and the CONTRACTOR shall thereafter, within 14 (Fourteen) days, settle the Delivery Schedule which shall form part of the CONTRACT with attendant obligations upon the CONTRACTOR to make the various deliveries/supplies involved on or before the date(s) mentioned in respect thereof in the Delivery Schedule.
- 55.4.4 All materials shall be deemed to have been accepted only when the material is received at the project site and accepted by the PROJECT MANAGER. Such acceptance shall however, be subject to the terms and conditions hereof, including the right of rejection and/or replacement as elsewhere herein specified.
- 55.4.5 Deleted.
- 55.4.6 Any reference in the CONTRACT documents to the “approved Delivery Schedule” or to the “Delivery Schedule” shall mean the approved Delivery Schedule specified in Clause 55.4.3 above or the Delivery Schedule prepared and issued by the PROJECT MANAGER, whichever shall be in existence.
- 55.4.7 Within 7 (Seven) days of the occurrence of any act, event or omission which, in the opinion of the CONTRACTOR, is likely to lead to delay in the commencement or completion of delivery of any particular material or of all material and is such as would entitle the CONTRACTOR for an extension of the time specified in this behalf in the Delivery Schedule(s), the CONTRACTOR shall inform the PROJECT MANAGER in writing of the occurrence of the act, event or omission and date of commencement of such occurrence. Thereafter, if even upon the cessation of such act or event or the fulfilment of the omission, the CONTRACTOR is of opinion that an extension of time specified in the Delivery Schedule related to particular material(s) or in relation to all materials is necessary, the CONTRACTOR shall within 7 (Seven) days after the cessation or fulfilment as aforesaid make a written request to the PROJECT MANAGER for extension of the relative time specified in the Delivery Schedule and the PROJECT MANAGER shall at any time, prior to completion of the work, extend the relative time of completion in the Delivery Schedule for such period(s) as he considers necessary, if he is of reasonable opinion that such act/event/omission constitutes a ground for extension of time in terms of the CONTRACT and that such act/event/omission has in fact resulted in insurmountable delay to the CONTRACTOR.
- 55.4.8 Notwithstanding the provisions of Clause 55.4.7 hereof, the OWNER may at any time after the completion of the work in all respects at the request of the CONTRACTOR made by way of appeal either against a decision of the PROJECT MANAGER taken under Clause 55.4.7 or against the PROJECT MANAGER's refusal to take a decision

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under the said clause, if satisfied of the existence of any ground(s) justifying the delay/omission, extend the date of delivery of any materials for such period(s) as the OWNER may consider necessary.



55.4.9 Subject as elsewhere herein or in the CONTRACT documents, otherwise expressly provided, only the existence of force majeure circumstances as defined in Clause 55.4.10 hereof, shall afford the CONTRACTOR a ground for extension of time for delivery of materials, and specifically without prejudice to the generality of the foregoing:

- i) Inclement or unforeseen weather, strike or lock-out (except as provided in Clause 55.4.10), shutdown, third party breach, delay in payment or commercial hardship shutdown or idleness or other impediment in progress or completion of the supply or work due to any reason whatsoever shall not afford the CONTRACTOR a ground for extension of time or relieve the CONTRACTOR of his/its full obligations under the CONTRACT.
- ii) No delay whatsoever in the supply of any material by the CONTRACTOR or any of the CONTRACTOR's vendors, suppliers or SUB-CONTRACTORS shall anyway entitle the CONTRACTOR to any extension of time for completion or to any claim for additional costs, remuneration or damages or compensation notwithstanding that an increase in the time of performance of the CONTRACT is involved by virtue of the delay or failure and notwithstanding that any labour, machinery or equipment brought to or upon the job site by the CONTRACTOR or any SUB-CONTRACTOR is rendered idle by such delay.

55.4.10 "Force Majeure" shall mean an event beyond the control of the CONTRACTOR and not involving the CONTRACTOR's fault or negligence and not foreseeable as per Clause 35.0 of GCC.

55.4.11 No assurance, representation, promise or other statement by any personnel, Engineer or representative of the OWNER regarding the extension of time for the supply by the CONTRACTOR of any material within the CONTRACTOR's scope of supply shall be binding upon the OWNER or shall constitute an extension of time for the supply of any material(s) within the provision of Clause 55.4.7 or Clause 55.4.8 hereof, unless the same has been communicated by the PROJECT MANAGER to the CONTRACTOR in writing under Clause 55.4.7 or by the Managing Director under Clause 55.4.8 and the writing specifically states that it constitutes an extension of time within the provisions of Clause 55.4.7 or 55.4.8, as the case may be. Without prejudice to the foregoing, it is clarified that the mere agreement, acceptance or prescription of a Delivery or other Schedule containing an extended time of commencement or completion in respect of the entire delivery(ies) or any of them shall not anyway constitute an extension of time in a terms of the CONTRACT so as to bind the OWNER or relieve the CONTRACTOR of all or any of his liabilities under CONTRACT, nor shall constitute a promise on behalf of the OWNER or a waiver by the OWNER of any of its rights in terms of the contract relative to the performance of the CONTRACT within the time specified or otherwise, but shall be deemed only (at the most) to be a guidance to the CONTRACTOR for better organising his work on a recognition that the CONTRACTOR has failed to organise his supplies and/or make the same within the time specified in the Delivery Schedule.

55.4.12 If the CONTRACTOR fails to supply the materials in accordance with the dates in this behalf specified in the Delivery Schedule which has an impact on the critical path of the schedule, the CONTRACTOR shall provide the OWNER with a suitable plan to recover

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the delay, but without prejudice to any other rights, discount or remedy available to the OWNER in respect of such delay or failure.

55.4.13 **MAKE OF MATERIALS**

- i) All equipment and materials to be supplied under this CONTRACT shall be from approved vendors as indicated in the Bidding Document or as otherwise approved by the PROJECT MANAGER / OWNER.
- ii) Wherever any item is specified by a brand name, manufacturer or vendor, the make mentioned shall be for establishing type, function and quality desired. Other makes will be considered, provided sufficient information is furnished to the OWNER/ PROJECT MANAGER, to assess the makes proposed by the CONTRACTOR as equivalent and acceptable and approved by PROJECT MANAGER.
- iii) Where the makes of materials are not indicated in the Bidding document, the CONTRACTOR shall furnish details of proposed makes and supplies and supply the same after obtaining the OWNER's/ PROJECT MANAGER's approval.

55.5.0 **CERTIFICATE OF VERIFICATION AND GOOD CONDITION**

- 55.5.1 The CONTRACTOR shall, before supply of material covered within the scope of supply, at his own risks, costs and initiative, undertake or cause to be undertaken all tests, analysis and inspections as shall be required to be undertaken with regard to the materials under the specifications and any codes, practices, orders and instructions with respect thereto and shall cause the results thereof to be recorded, reported or certified, as the case may be, and shall not offer for delivery or deliver any material(s) which has/have not passed such tests/analysis or inspection and which are not accompanied by the tests results, reports and/or certificates in this behalf provided in the applicable specifications, code(s) and/or practices.
- 55.5.2 On arrival of the material at site the CONTRACTOR shall give written notice thereof to the PROJECT MANAGER or Inspection Agency notified by the OWNER in this behalf, to inspect the materials, and shall keep in readiness for inspection, the materials and the relevant tests results, reports and certificates hereto.
- 55.5.3 Notwithstanding any other provisions in the contract documents for analysis or tests of materials and in addition thereto, the CONTRACTOR shall, if so required by the PROJECT MANAGER or Inspection Agency in writing at his own risks and costs, analyse, test, prove and weigh all materials (including materials incorporated in the works) required to be analysed, tested, proved and/or weighed by the PROJECT MANAGER or Inspection Agency in this behalf and shall have such analysis or tests conducted by the agency(ies), or authority(ies) if any specified by the PROJECT MANAGER or Inspection Agency. The CONTRACTOR shall provide all equipment, labour, materials and other things whatsoever required for testing, preparation of the samples, measurement of work and/or proof of weight of the materials as directed by the PROJECT MANAGER or Inspection Agency.
- 55.5.4 If on Inspection or proof, analysis or tests as aforesaid the PROJECT MANAGER or Inspection Agency nominated by the OWNER in this behalf is prima facie satisfied that the material received is in conformity with the material requirements of the Bill of Materials and description given in the shipping documents and in the CONTRACTOR's

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invoices in this behalf and that the test reports/results/certificates given in respect thereof are prima facie in conformity with the relevant result/reports/certificates required in respect thereof in terms of the specifications and/or relevant codes and practices, and that the material appears to be prima facie in good order and condition, the PROJECT MANAGER shall issue to CONTRACTOR, a Certificate of Verification and Good Condition in respect of such material, and this shall constitute the Certificate of Verification and Good Condition elsewhere envisaged in the CONTRACT documents.

55.5.5 Such certificate is only intended to satisfy the OWNER that prima facie the material supplied by the CONTRACTOR is in order and shall not anyway absolve the CONTRACTOR of his/its full responsibility under the CONTRACT in relation thereto, including in relation to specification fulfillment and/or performance or other guarantees.

55.5.6 Notwithstanding that any area(s) or source(s) has/have been suggested by the OWNER to the CONTRACTOR from which any material for incorporation in the WORKS can be obtained, the CONTRACTOR shall independently satisfy himself of the suitability, accessibility and sufficiency of the source(s) of supply suggested by the OWNER and suitability of the material available from such source(s) with the intent that any suggestion as aforesaid shall not anyway relieve the CONTRACTOR of his full liability in respect of the suitability and quality of the material(s) obtained from said source(s) and the CONTRACTOR shall obtain material(s) there from and incorporate the same within the permanent works entirely at his own risks and costs in all respects, with the intent that any such suggestion by the OWNER shall only be by way of assistance to the CONTRACTOR and shall not entail any legal responsibility or liability upon the OWNER.



55.6.0 **MATERIALS WITHIN THE CONTRACTOR'S SCOPE OF SUPPLY**

55.6.1 The OWNER does not warrant or undertake the provisions of any materials and the CONTRACTOR shall not imply, by conduct, expression or assurance or by any other means, any promise or obligation on the part of the OWNER in his respect understood by the CONTRACTOR.

55.7.0 **SHIPPING AND OTHER DOCUMENTS**

55.7.1 Without prejudice to any other obligations of the CONTRACTOR under the CONTRACT, and in addition to any other documents required to be furnished by the CONTRACTOR under the CONTRACT, the CONTRACTOR shall, in respect of all items and materials imported into India, obtain and furnish within 7(seven) working days to the OWNER, at his own cost and initiative, the following documents (hereinafter for the sake of brevity collectively referred to as the "the said documents") according to the provisions of the following clauses, namely :

- i) Signed Invoice(s);
- ii) Clean Bill of Lading;
- iii) Packing lists/Mill Tally Sheets;
- iv) Certificate of origin;
- v) Consular's Invoice, if necessary;
- vi) Export License/documents, if applicable; and
- vii) Any other document(s) or literature required for Custom clearance;
- viii) Phytosanitary Certificate for packing material as per International norms



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- 55.7.2. The Bill of Lading shall be drawn to show the OWNER's concerned project as the consignee, or otherwise as instructed by the OWNER, and shall clearly indicate the Contract Number specified in this behalf by the OWNER, the description of the items/materials giving the dimensions, quantities, weights, and all other details required for Customs clearance of the consignment, and/or as may be specified by the OWNER from time to time in this behalf.
- 55.7.3. The Bill of Lading shall show the gross freight amount, and shall either indicate or be accompanied by the carrier's statement of charges and shall carry all other particulars necessary to bind the carrier.
- 55.7.4 The CONTRACTOR shall not less than 7(seven) clear days before the contemplated date of shipment, inform the PROJECT MANAGER of the contemplated date of relative shipment of the item(s) or material(s) and of the contemplated date of arrival thereof in India.
- 55.7.5 In addition, within 14 (fourteen) working days of the date of shipment, the CONTRACTOR shall dispatch, by Air Courier, according to the instructions of the PROJECT MANAGER in this behalf, 10 (Ten) sets/copies of the said documents.
- 55.7.6 The CONTRACTOR shall also, within 48 (Forty-Eight) hours of shipment, send intimation of shipment by fax or scanned copy by email to the addresses of the OWNER and/or PROJECT MANAGER specified in this behalf.
- 55.7.7 The Invoice shall be drawn in the name of the OWNER and shall state the quantity and detailed description of each item supplied reflecting the value of each item/material and the basis of delivery as CIF.
- 55.7.8 The description of each item/material indicated in the Invoice and the Bill of Lading shall conform to the description of the item/material as given in the relative Import License(s)/Permit(s) issued to the OWNER in this behalf.
- 55.7.9 The Invoice and Bill of Lading shall also indicate on the face of it, the Number, date and validity of the Import License (if the Import License has been revalidated, Number and date of re-validation) against which the Import is being made.
- 55.7.10 Invoice(s) referred to with reference to the said documents are intended merely to comply with customs and Import formalities and will not create any obligation for payment thereof or against unless specifically as provided elsewhere in the CONTRACT.
- 55.7.11 The OWNER reserves the right to vary the said list of documents by addition thereto or subtraction there from and to vary applicable instruction(s) from time to time.

55.8 **PACKING AND FORWARDING**

(a) IMPORTED SUPPLIES

- The CONTRACTOR wherever applicable, shall, after proper painting, pack and crate all materials for shipment in a manner suitable for export to a tropical, humid climate in accordance with internationally accepted export



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practices and in such a manner so as to protect them from damage and deterioration in transit by road, rail and/or sea **and/or air** and during storage at the site till the time of erection. Without prejudice to any other liabilities or obligations of the CONTRACTOR, the CONTRACTOR shall be responsible for all damage(s) to the materials due to improper packing.

- The CONTRACTOR shall notify the OWNER and PROJECT MANAGER of the date of each shipment from the port of embarkation as well as of the expected date of arrival of such shipment at the designated port of arrival only for the OWNER's/ PROJECT MANAGER'S information.
- The CONTRACTOR's notification shall give complete shipping information concerning the weight, size and content of each package and such other information as the OWNER may require.
- The packing material used should be duly certified by a Phytosanitary Certificate issued as per international norms.
- Insurance Certificate (2 copies) or copy of MCE Policy
- Third Party Inspection Release Note or Inspection Certificate as per QAP approved by OWNER/ PROJECT MANAGER or waiver certificate issued by OWNER/ PROJECT MANAGER (2 copies).

(b) INDIGENOUS SUPPLIES

- The CONTRACTOR shall, wherever applicable, after proper painting, pack and crate all items in such a manner as to protect them from deterioration and damage during rail and road transportation to the site and during storage at the site till the time of erection. Without prejudice to any other liabilities or obligations of the CONTRACTOR, the CONTRACTOR shall be responsible for all damage(s) due to improper packing.
- The CONTRACTOR shall notify OWNER/ PROJECT MANAGER of the date of each shipment from the works and expected date of arrival at the site for the information of OWNER/ PROJECT MANAGER.
- The CONTRACTOR's notification shall also give all shipping information concerning the weight, size and content of each packing and such other information as the OWNER/ PROJECT MANAGER may require.
- The following documents shall be sent to the OWNER/ PROJECT MANAGER within 10 (ten) days from the date of shipment :
 - Invoice (2 copies)
 - Packing List (2 copies)
 - Test Certificate (4 copies)
 - Railway Receipt/Lorry Receipt (2 copies)
 - Insurance Certificate (2 copies) or copy of MCE Policy

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-Third Party Inspection Release Note or Inspection Certificate as per QAP approved by OWNER/ PROJECT MANAGER or waiver certificate issued by OWNER/ PROJECT MANAGER (2 copies).

55.9 EQUIPMENT

55.9.1 The CONTRACTOR shall be exclusively responsible to arrange for importation into India in its own name on drawback or re-export or other basis all equipment, if any, required to be imported into India for the purposes of the WORK and to pay and bear the customs, import and other duties and levies (if any) payable thereon or in respect thereof, and will be solely responsible for the timely and proper compliance of all applicable terms and conditions and formalities relative thereto.



55.9.2 The CONTRACTOR shall within 2 (Two) months from the date of receipt of Acceptance of Bid, furnish to the PROJECT MANAGER a list of the said equipment which he proposes to import into India on a draw-back/re-export basis for the purposes of the work, together with complete details thereof. The OWNER may without obligation or responsibility furnishes to the Import Licensing Authorities in India its recommendations relative to import of such equipment which the OWNER considers necessary for the work. The OWNER may also without obligation or responsibility render such assistance as may be reasonably required by the CONTRACTOR from the OWNER to enable the CONTRACTOR to obtain the relative Import License(s)/Permit(s) for the importation of the said equipment on a draw-back/re-export basis.

55.10 MISCELLANEOUS IMPORTS

55.10.1 The CONTRACTOR shall be exclusively responsible at his own costs and initiative to arrange for importation into India, to import into India, to pay Custom duties and Port and other charges and levies, to clear from Customs and to transport to job site all consumables, spares for the CONTRACTOR's equipment and other materials and things whatsoever not covered under the OWNER's obligation provided that the OWNER may, without obligation or responsibility, render the CONTRACTOR such assistance by way of recommendation to the Import Control authorities in India or otherwise as may be reasonably required by the CONTRACTOR from the OWNER to enable the CONTRACTOR to obtain Import License(s)/Permit(s) for importation of such consumables, spares, material and other items as the OWNER considers necessary for importation by the CONTRACTOR for the purpose of the CONTRACT, taking into account local availability.

55.10.2 Any obligation undertaken or recommendation, facility or assistance provided by the OWNER to the CONTRACTOR for or in relation to the importation of any equipment or material whatsoever into India by or on behalf of the CONTRACTOR pursuant to the provisions hereof or otherwise shall be without any responsibility or liability whatsoever upon the OWNER and without right in the CONTRACTOR to raise any claim or demand or to seek extension of time on account of any delay or failure on the part of the OWNER or any delay or failure by the CONTRACTOR in obtaining Import License(s) and/or permits for importation thereof into India.

55.10.3 All materials and equipment Imported into India by or on behalf of the CONTRACTOR for and in connection with the WORK and any obligation undertaken or recommendation, facility or assistance provided by the OWNER relative thereto shall be on the clear

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understanding that the MATERIALS and EQUIPMENT shall be utilised only for and relative to the performance of the WORK covered by the CONTRACT.

55.10.4 All the EQUIPMENT and temporary works and MATERIALS when brought to or erected on the job site, shall be exclusively intended for execution of WORKS and the CONTRACTOR shall not remove the same or any part thereof, except for the purpose of moving it from one part of the job site to another, without the prior consent in writing of the PROJECT MANAGER.

55.10.5 Upon completion of the works, the CONTRACTOR shall within the scope of work remove from the job site all the equipment and temporary works remaining thereon.

55.10.6 All EQUIPMENT, MATERIALS and temporary works shall at all times be and remain at the risks of the CONTRACTOR in all respects. The OWNER shall not, at any time, be liable for the loss or destruction of or damage to any EQUIPMENT, temporary works or MATERIALS for any reason whatsoever.

55.11 UTILITIES AND CONSUMABLES ETC.

55.11.1 Subject to any other provision to the contrary in the CONTRACT, the CONTRACTOR shall be and remain at all times exclusively responsible within the scope of work to provide all utilities, consumables, permits, licenses, easements and facilities and other items and things whatsoever required for or in connection with the WORK, including but not limited to those indicated by expression or implication in the bid documents and/or other CONTRACT documents or howsoever otherwise as shall be or may from time to time be necessary for or in connection with the WORK.

Construction water and power shall be provided, free of cost, by OWNER at a single location at site.

56.0 MEASUREMENTS, CERTIFYING INSPECTIONS AND PAYMENTS



56.1 Measurements

56.1.1 Within 15 (fifteen) days from the date of certification of works completed / milestone achieved in respect of the WORK, or of any portion of the WORKS, section, group or job site, as the case may be, Measurements for the works covered by such certification shall be jointly taken by the PROJECT MANAGER and the CONTRACTOR as herein provided.

56.1.2 If the CONTRACTOR fails to apply to the PROJECT MANAGER for Measurements within 15 (fifteen) days from the date of certification of works completed / milestone achieved as specified in Clause 56.1.1, the PROJECT MANAGER shall notify the CONTRACTOR in writing of the date(s) for Measurements, and require the CONTRACTOR to be present on date(s) so notified.

56.2 Mode of Measurement

56.2.1 All measurements shall be recorded in the metric system, and shall be taken in accordance with the procedures set forth or provided for in the Schedule of Rates, Specifications and other CONTRACT Documents.

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56.2.2 Where the mode of measurement is not provided for in the CONTRACT Documents in respect of any item of work, it shall be measured in accordance with the Indian Standard Specification No. 1200 (latest edition) and in the event of such item not being covered by Indian Standard Specifications, it shall be measured in accordance with the method of measurement in this behalf specified by the PROJECT MANAGER, whose decision in this regard shall be final and binding upon the CONTRACTOR.

56.2.3 All measurements shall be taken jointly by the PROJECT MANAGER and the CONTRACTOR or their respective representatives. The CONTRACTOR or his authorized representative shall be entitled to remain present at all times when joint measurements are being taken.

56.2.4 Despite due intimation, if the CONTRACTOR omits or fails to be present to witness joint measurements, the measurements shall be taken in the presence of the PROJECT MANAGER and the measurements so recorded and signed by the PROJECT MANAGER as correct, shall be final and binding upon the Parties.

56.2.5 Except in cases covered by Clause 56.2.4, in all other cases measurements shall be signed and dated on each page by the CONTRACTOR / CONTRACT MANAGER and PROJECT MANAGER or his representative. If the CONTRACTOR objects to any of the measurements recorded, including the mode of measurement, such objection shall be noted in the measurement book against the item objected to and such note shall be dated and authenticated by the CONTRACTOR / CONTRACT MANAGER and PROJECT MANAGER or his representative. In the absence of any objection noted as aforesaid, the CONTRACTOR shall be deemed to have accepted the relative measurements as entered in the Measurement Book / Sheets and shall be barred from raising any objection in respect of any measurements recorded in the Measurement Book.

56.2.6 All objections noted in the Measurement Book in terms of Clause 56.2.5 shall be considered and decided within 15 days by the PROJECT MANAGER. The decision of the PROJECT MANAGER relative thereto (whether on the correct measurement to be adopted or on the mode of measurement to be adopted) shall be final and binding upon the Parties.



56.2.7 The measurement as finally recorded in terms of Clause 56.2.4 or Clause 56.2.5 or 56.2.6, as applicable, shall be the Final Measurement.

56.3 CERTIFYING INSPECTIONS

All provisions referred to in Clauses 56.1 to 56.2, in respect of Mode of Measurement, shall apply to all inspections required to be made in order to qualify the CONTRACTOR for any payment(s) under the CONTRACT and any reference in the said clauses to measurements shall, for the purpose of this clause, be deemed to be a reference to certifying inspections and any reference therein to the measurement book shall, for the purpose of this clause, be deemed to be a reference to the certifying inspection book.

56.4.0 FINAL BILL



56.4.1 On the basis of the PRICE provided in the CONTRACT, the CONTRACTOR shall prepare a Final Bill in the prescribed form with reference to the total supplies covered by the scope of supplies and shall prepare a separate Final Bill with reference to the total

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services covered by the scope of services. Such Bill shall be prepared by applying the price of materials specified in Price Schedule in respect of supplies broken up with respect to the indigenous materials and with respect to imported materials (including plant, parts and components) in accordance with the break-up of the Price of Materials given the Price Schedule and the various formats there under, and by applying the price of services specified in the Price Schedule in respect of works/services broken up with respect to the various heads of services/works in accordance with the break-up of the Price of services given the Price Schedule and the various formats there under. Additions claimed to the PRICE or reductions there from resultant upon any CHANGE ORDER(S) shall be separately indicated in the Final Bill with reference to the relative CHANGE ORDERS(S).

- 56.4.2 The Final Bill shall, in addition to the payment entitlements arrived at according to the provisions of Clause 56.4.1 hereof separately state, include therein all claims of the CONTRACTOR if any with full particulars of the nature of such claim, grounds on which it is based and the amount claimed.
- 56.4.3 The Final Bill drawn in accordance with Clause 56.4.1 shall be submitted together with the PRELIMINARY ACCEPTANCE CERTIFICATE to the PROJECT MANAGER for certification, who shall certify the Final Bill, if drawn in accordance with Clause 56.4.1. After certification of the PROJECT MANAGER, the Final Bill shall be submitted in quadruplicate (or in such other number of copies as the OWNER may prescribe) accompanied by the PRELIMINARY ACCEPTANCE CERTIFICATE to the OWNER for payment.
- 56.4.4 All monies payable under the CONTRACT for WORKS to be performed and MATERIALS to be supplied up to and including successful completion and final tests and commissioning of the system and performance tests shall become due and payable to the CONTRACTOR only after submission to the OWNER of the Final Bill prepared in accordance with the provisions of Clause 56.4.1 hereof and associated provisions there under accompanied by the PRELIMINARY ACCEPTANCE CERTIFICATE in respect of the WORKS.
- 56.4.5 Payments of the amount(s) due on the Final Bill to the extent certified by the PROJECT MANAGER, shall be made within 84 (Eighty Four) days from the due date as specified in Clause 56.4.4 hereof, subject to the deductions provided in Clause 56.4.5.1.
- 56.4.5.1 All payments due to the CONTRACTOR on the Final Bill shall be subject to deduction of "on-account" payments and other amounts due from CONTRACTOR to the OWNER, tax deductions as provided for in Clause 56.7.2 and associated clauses there under, and any other deduction provided for herein or agreed to between the parties or required to be made under any law, rule or regulation having the force of law for the time being applicable, or elsewhere provided for in the CONTRACT documents.



56.5.0 PRICE SCHEDULE

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56.5.1 The remuneration determined due to the CONTRACTOR as provided for in Clause 56.4.1 hereof shall constitute the entirety of the remuneration and entitlement of the CONTRACTOR in respect of the WORK under the CONTRACT, and no further or other payment whatsoever shall be or become due or payable to the CONTRACTOR under the CONTRACT.



56.5.2 Without prejudice to the generality of the provisions of Clause 56.5.1 hereof, the Price Schedule and PRICE shall be deemed to include and cover (unless otherwise expressly specified to the contrary in any CONTRACT document(s)):

- (i) All costs, expenses, outgoings and liabilities of every nature and description whatsoever and all risks whatsoever (foreseen or unforeseen, including force majeure) to be taken or which may occur in or relative to execution, completion, testing, commissioning and/or handling over the WORKS to the OWNER and/or in or relative to acquisition, loading, unloading, transportation, storing, working upon, using, converting fabricating, or erecting any item, equipment, system, material or component in or relative to the WORKS, and the CONTRACTOR shall be deemed to have known the nature, scope, magnitude and the extent of the works and items, MATERIALS, EQUIPMENT, and components required for the proper and complete execution of the Works though the CONTRACT documents may not fully and precisely set out, describe or specify them, and the generality hereof shall not be deemed to be anywise limited, restricted or abridged because in certain cases the CONTRACT documents or any of them shall or may and/or in other cases they shall or may not expressly state that the CONTRACTOR shall do or perform any particular labour or service or because in certain cases the CONTRACT documents state that a particular work, operation, supply, labour or service shall be performed/made by the CONTRACTOR at his own cost or without additional payment, compensation or charge or without entitlement of claim against the OWNER or words to similar effect, and in other cases they do not, or because in certain cases it is stated that the same are included in or covered by the Price Schedule and in other cases it is not so stated.
- (ii) The cost of all construction and related vessels, craft, vehicles, movements, plant, equipment, distribution of water and power, construction of temporary roads and access, temporary works, pumps, wiring, pipes, scaffolding, piling, shuttering and other materials, supervision, labour, insurance, fuel, stores, spares, supplies, appliances and materials, items, articles and things whatsoever (foreseen or unforeseen) by expression or implication to be supplied, provided or arranged in or relative to or in connection with the performance and/or execution of the WORKS and/or related or incidental thereto, complete in every respect in accordance with the CONTRACT document, and the plans, drawing, designs, orders and/or instructions;
- (iii) The cost of mobilisation including but not limited to mobilisation of vehicles, movements, machinery, equipment, gear, tools, tackle, consumables and other items and goods and personnel necessary for or to perform the WORKS contemplated under the CONTRACT, preparation and erection of work yards and other work places and facilities necessary for or to perform the WORKS contemplated under the CONTRACT and/or to supply the material included within the scope of supplies including all work, labour, inputs, goods, EQUIPMENT, and other items and things whatsoever necessary for the performance of the WORKS, dismantling and/or removal of the same and

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restoration of the site, lifting the materials and transporting them to CONTRACTOR's stock piles/work yard, job sites and loading, stacking and/or storing the same.

- (iv) The costs and risks of all rents, royalties, licenses, permits, permission and other fees, duties, penalties, levies, and damages whatsoever payable for or in respect of any protected or patented goods, materials, equipment or processes employed in or relative to the works and of all rents, royalties, licenses, permits, permissions and any other fee, duty, penalty, levy, loss or damages payable on the excavation, removal or transportation of any material or acquisition or use of any right of way or other right, licenses, permit, privilege, permission or uses required for or relative to the performance of the WORK.
- (v) The cost of all sales taxes and/or octroi/entry tax or terminal taxes payable in India with regard to materials supplied by the CONTRACTOR within the scope of supplies, all customs and import duties, excise duties, Indian Income Tax, Sales Tax and other direct and indirect taxes and duties, quay, wharfage, demurrage, detention and landing charges and all other duties, taxes, fees, charges, levies, and/or cesses whatsoever imposed or to be imposed by the Central Government or State Government or Municipal or Local Bodies or other Authorities whatsoever and payable on any materials supplied and/or on works performed without any entitlement to the CONTRACTOR for any exemption, remission, refund or reduction thereof.
- (vi) The cost of all indemnities under the CONTRACT, and insurance premia on insurance required in terms of the CONTRACT documents or otherwise under any law, rule or regulation, and the cost of all risks whatsoever (foreseen and unforeseen) including but not limited to risks of delay or extension of time or reduction or increase in the work or scope of work and/or cancellation of CONTRACT, and/or accident, strike, civil commotion, war, strike, labour trouble, third party breach, fire, lightning, inclement weather, storm, tempest, flood, earthquake and other acts of God, Government regulation or imposition or restriction, dislocation of road, rail, sea, air and other transport, access or facility, flooding of site and/or access roads and approaches thereto, suspension of work, sabotage and other cause whatsoever.
- (vii) The cost of all inspections, tests and certificates relative thereto including third party tests and/or inspections where necessary, and of items, instruments, plant and/or tools and appliances required to conduct such inspection and tests.
- (viii) The cost of all materials supplied and/or intended for incorporation in the WORKS supplied within the scope of work, delivery thereof to the job site, loading, transportation and unloading thereof, waste on materials, and return of empties and surpluses.
- (ix) The cost of all escalations (foreseen and unforeseen) including but not limited to increase in Government taxes and duties (beyond contractual completion period and any extension hereof due to reasons attributable to CONTRACTOR), labour costs and material costs and other inputs whatsoever.
- (x) All supervision charges, establishment's overheads, finance charges and other costs and expenses and charges to the CONTRACTOR, and the CONTRACTOR's profit of and relative to the WORK and/or supply.

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(xi) The cost of all deductions, reductions, discounts, adjustments and withholdings whatsoever under or in connection with the CONTRACT.

56.5.3 The rates stated in the Price Schedule and the price(s) shall not be subject to escalation or increase for any reason whatsoever unless otherwise provided in the CONTRACT documents.

56.6.0 ADVANCE AND ON ACCOUNT PAYMENT

56.6.1 Without prejudice to the provisions of Clause 56.4.4 hereof, the OWNER shall by way of assistance to the CONTRACTOR, make “advance” or “on account” payments to the CONTRACTOR during the progress of the work and/or supply on the basis of Running Account Bills or otherwise as elsewhere more specially provided for in the CONTRACT documents.



56.6.2 The following provisions shall apply with respect to “advance” payments to the CONTRACTOR:

56.6.2.1 Advance(s) paid to the CONTRACTOR shall carry interest at the rates specified in the SPECIAL CONDITIONS OF CONTRACT, and shall be adjustable (without prejudice to the any other mode of recovery) from the Running Account Bills of the CONTRACTOR as provided in the SPECIAL CONDITIONS OF CONTRACT.

56.6.2.2 The advances paid to the CONTRACTOR shall be used for execution of this contract only and the CONTRACTOR shall satisfy the OWNER in this regard whenever required. If it is found that an advance has been utilised by the CONTRACTOR in whole or part for any other purpose, the OWNER may at its discretion forthwith recall the entire advance and, without prejudice to any other right or remedy available to the OWNER, recover the same by recourse to any Bank Guarantee(s).



56.6.3 The approved Bill of Materials shall form the basis for the calculation of “on account” payments with respect to supplies of materials. It is understood, however, that the Bill of Materials or approval thereof by the OWNER shall not in any way relieve the CONTRACTOR of its full responsibility to supply to the OWNER within the scope of supply, any and all materials whatsoever required for the performance of the WORK within the scope of work, or otherwise howsoever confine the responsibility of the CONTRACTOR within the scope of supply to the supply of MATERIALS indicated in the Bill of Materials, nor shall it otherwise be assumed or be deemed or construed as an acceptance by the OWNER of the adequacy or sufficiency of the MATERIALS listed in the Bill of Materials to meet the quantitative and/or qualitative requirements of the materials required to be supplied by the CONTRACTOR under the scope of supply or otherwise in any manner operate to bind the OWNER or to limit the liability of the CONTRACTOR, such Bill(s) of Materials being designed only to provide a basis for making “on account” payments to the CONTRACTOR for materials supplied, with a view that the OWNER shall make “on account” payments to the CONTRACTOR for the various materials supplied on the basis thereof in the manner and at the time in this behalf provided for in the CONTRACT.

56.6.4 The approved Schedule of Activities shall form the basis for the calculation of on account payments with respect to services/works performed by the CONTRACTOR. It is however understood that the Schedule of Activities or approval thereof by the OWNER shall not in

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any way relieve the CONTRACTOR of his full responsibility to perform within the scope of services/WORKS whatsoever is required for the performance of the WORK covered by the scope of work or otherwise however confine the responsibility of the CONTRACTOR to the performance of the services indicated in the Schedule of Activities, nor shall otherwise be assumed or be deemed or construed as an acceptance by the OWNER of the adequacy or sufficiency of the WORK/activities listed in the Schedule of Activities to meet the quantitative and/or qualitative requirements of services required to be performed or WORK required to be done by the CONTRACTOR under the scope of services or otherwise in any manner operate to bind the OWNER or to limit the liability of the CONTRACTOR, such Schedule of Activities being designed primarily to provide a basis for making On Account payments to the CONTRACTOR for works/services performed, with a view that the OWNER shall make “On Account” payments to the CONTRACTOR for the work/services performed on basis thereof in the manner and at the time in this behalf provided for in this CONTRACT.

- 56.6.5 For the purposes of making “on account” payments for the WORK performed, monthly or otherwise as the PROJECT MANAGER may specify in this behalf, the CONTRACTOR shall make a quantitative assessment of the WORK performed by the CONTRACTOR as listed in the Schedule of Activities during the preceding month or other specified period and shall submit a Running Account Bill (in the form prescribed by the OWNER) in quadruplicate to the PROJECT MANAGER for the WORKS performed during the said month/period with detailed measurement thereof, the said Running Account Bill(s) to be drawn by applying the rates applicable under the Schedule of Activities to the applicable items, which shall be subject to certification by the PROJECT MANAGER specified for the purpose. The PROJECT MANAGER shall thereafter have a summary verification undertaken of the and quantities entered in the Running Account Bills and shall certify the Running Account Bills for payments on basis of such verification.
- 56.6.5.1 For the purpose of making “On Account” payment for materials supplied within the scope of supply other than payments made in advance monthly or otherwise as the PROJECT MANAGER may specify in this behalf, the CONTRACTOR shall make a quantitative list of material supplied by the CONTRACTOR within the scope of supplies at the job site and of the “On Account” payment made in respect thereof prior thereto, and of the “On Accounts” payment(s) becoming due in respect thereof during the preceding month or other specified period as the case may be supported by the Certificate of Verification and Good Condition given by the PROJECT MANAGER in order to qualify for the relative on account payment claimed as due. The CONTRACTOR shall submit such assessment in the form of a Running Account Bill prepared in the format prescribed or approved by the OWNER in this behalf in quadruplicate to the PROJECT MANAGER. The Running Account Bill(s) shall be drawn by applying applicable parts of the price(s) for relative materials as indicated in the Bill(s) of materials for the applicable item(s) and shall be subject to certification by the PROJECT MANAGER. The PROJECT MANAGER shall thereafter have a summary verification undertaken of the materials and quantities entered in the Running Account Bill(s) and of the amount claimed and shall certify the Running Account Bill(s) for payment on the basis of such verification.
- 56.6.6. The amount certified for payment by the PROJECT MANAGER on any Running Account Bill within the provisions for “on account” payments in the CONTRACT documents shall be conclusive for the determination of any “on account” payments and no claim shall be entertained by the OWNER contrary thereto or in contradiction thereof.
- 56.6.6.1 In any certificate for on account payment, the PROJECT MANAGER shall be authorised to adjust in whole or part, any previous amount certified by error.

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56.6.7.0 All “on account” payments shall be subject to deduction of previous payments on account and of all claims of the OWNER, adjustments and/or deductions provided for in the CONTRACT or agreed to between the parties, tax deductions and any other deductions required to be made under any law, rule or regulation for the time being in force.

56.6.7.1 All “advance” and “on account” payments shall be regarded merely as advance payments against the amounts due to the CONTRACTOR in terms of the CONTRACT, and any such payments shall be without prejudice to the full rights of the OWNER under the CONTRACT and the liabilities of the CONTRACTOR thereunder, and specially shall not be regarded as an acceptance or completion of any works or the acceptance of any materials paid for in terms of any Running Account Bill or otherwise, notwithstanding any verification or certification by the PROJECT MANAGER or otherwise in respect thereof.

56.6.7.2 Except as elsewhere herein to the contrary provided, the Schedule of Activities or Bill of Materials or other criterion applied by the CONTRACTOR in respect of any work or supply in his Running Accounts Bill(s) or acceptance thereof by the PROJECT MANAGER in verifying the bill in respect of such work or supply or criterion applied shall not be deemed to be binding upon the OWNER as determining the completeness, acceptance or price payable for relative work or supply.

56.6.8 Not withstanding anything elsewhere provided in the CONTRACT documents, all advances made by the OWNER to the CONTRACTOR shall forthwith become repayable to the OWNER in the event of the CONTRACT being terminated for any cause.



56.7.0 MODE OF PAYMENT AND TAX DEDUCTIONS

56.7.1 All payments made under or in terms of the CONTRACT shall be made through Electronic Fund Transfer mechanism (EFT).

56.7.1.1 Subject to the other provisions hereof, if the execution of the WORKS or the supply of the materials shall necessitate the importation into India of MATERIALS, plant or EQUIPMENT within the CONTRACTOR’s scope of supply, or if the WORKS or any part thereof are to be executed by labour from outside India or if any other circumstances exists as shall render this necessary or desirable, a portion of the payments to be made under the CONTRACT shall be made in the appropriate foreign currencies as requested in the CONTRACTOR’S bid and accepted by the OWNER.

56.7.1.2 Payment to be released against dispatch document in Foreign exchange shall be paid through irrevocable Letter of Credit (LC) opened by Owner in the name of Contractor. All LC/Bank Charges, LC confirmation charges if insisted by Contractor and stamped duties payable outside India in connection with the Payment to be made shall be borne by the Contractor. LC shall provide for release of Payment in concerned currencies as stated in Contract

56.7.1.3 On written request from the CONTRACTOR, the payments by the OWNER to the CONTRACTOR may be made by wire transfer to an account or accounts to be designated by the CONTRACTOR and maintained by the CONTRACTOR with a bank or banks in India in respect of Rupee payments and to a bank or banks in the country in which CONTRACTOR’s relevant bank account is located in respect of the Dollar/Home Currency payments, and shall be deemed to have been fully discharged when deposited in Dollars/Home Currency or Rupees as the case may be, in the account or accounts designated by CONTRACTOR as aforesaid, provided that, once all acts necessary to

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initiate the relevant wire transfer have been completed within the time specified for such payment, any delays within the international or domestic banking system in the transfer of such payments to CONTRACTOR's account or accounts shall not give rise to a claim that OWNER has breached its payment obligations hereunder. If funds are not received in the account or accounts designated by CONTRACTOR, OWNER will furnish upon CONTRACTOR's written request, documentary substantiation that all steps necessary to initiate the transfer of such funds have been taken by OWNER's bank or banks. All costs associated with such wire transfer and incurred in India shall be for OWNER's account, and all other costs shall be borne by the CONTRACTOR.

56.7.2 The CONTRACTOR shall be primarily responsible for the payment of all Indian Income tax.

56.7.2.1 It is to understand that in terms of the Indian Law, the OWNER is responsible also to deduct at source Indian Income Tax at prescribed rates on any money paid or payable by the OWNER to a non-resident CONTRACTOR. With this in view, the following stipulations shall apply with respect to payments to non-resident CONTRACTOR.

(i) The CONTRACTOR shall promptly apply for instructions from Income Tax Authorities in India of the rate at which deductions of tax at source shall be made by the OWNER on payments to the CONTRACTOR. Any reasonable information required by the OWNER or Income Tax Authorities for such instructions shall promptly be furnished by the CONTRACTOR, in the form (if any) required. Pending such instructions, the OWNER shall not release any payment to a non-resident CONTRACTOR.



Notwithstanding the foregoing, it is also agreed that the OWNER and the CONTRACTOR acknowledge that any International Tax Treaty, if any, in force between India and the state of which CONTRACTOR is a resident for tax purposes shall be fully applied. Should the OWNER unduly apply any withholding tax in consideration of such international Treaty, CONTRACTOR shall be authorised to gross-up the CONTRACT PRICE accordingly and the OWNER shall pay CONTRACTOR the amounts become due.

(ii) The amount(s) deductible at source by way of Indian Income Tax in accordance with the instructions of the Indian Authorities in conformity with applicable laws and international treaty or otherwise as aforesaid shall be deducted from all amounts payable by the OWNER to the CONTRACTOR.

(iii) The amounts deducted shall be paid by the OWNER directly to the Income Tax Authorities on behalf of the CONTRACTOR. It is further agreed that the OWNER shall promptly provide CONTRACTOR with an official receipt in original issued by the relevant Administration in India of all the sums withheld and paid to the Indian tax Authorities.

(iv) In the event of the amounts deducted being found ultimately to be in excess of the Indian Income Tax assessed, the CONTRACTOR shall be exclusively responsible to apply for and collect the refund thereof from the Income Tax authorities concerned in this behalf.

(v) OWNER shall protect, defend, indemnify and hold CONTRACTOR or CONTRACTOR Group harmless, from any and all claims or liability with respect to the amount of Indian Income Tax deducted at source by OWNER on all amounts payable to CONTRACTOR, assessed or levied by the Government of India against CONTRACTOR for or on account of any act or omission on the part of the OWNER in breach of items (ii) and (iii) of this clause. Any interest,

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penalties or other liabilities arising from such failure shall be borne by OWNER. However, in the strict conformity with applicable laws and international treaty, in the event of the amount deducted being found to be less than the Indian Income Tax payable on assessment or otherwise, the CONTRACTOR shall forthwith pay the short- fall to the concerned Indian Income Tax Authorities.

56.7.2.2 The CONTRACTOR shall be exclusively liable to pay directly to the concerned Income Tax Authorities in India and to bear all Indian Taxes payable relative to employment of any personnel by the CONTRACTOR.

56.7.2.3 Payments to a CONTRACTOR resident in India shall be subject to deduction of taxes under Section 194 C of Income Tax and/or under other Section, law, rule or regulation for the time being in force providing for the deduction of tax at source.



56.8.0 CLAIMS BY THE CONTRACTOR

56.8.1 No claim(s) shall on any account be made by the CONTRACTOR after submission of the Final Bill, with the intent that the Final Bill prepared by the CONTRACTOR shall reflect any and all claims whatsoever of the CONTRACTOR against the OWNER arising out of or in connection with the CONTRACT or any supply made or work performed by the CONTRACTOR there under or in relation thereto, and notwithstanding any enabling provision in any law or CONTRACT and notwithstanding any claim that the CONTRACTOR could have with respect thereto, the CONTRACTOR hereby waives and relinquishes any and all such claims not included in the Final Bill and absolves and discharges the OWNER from and against the same, even if in not including the same as aforesaid, the CONTRACTOR shall have acted under a mistake of law or of fact, or shall claim to have acted under economic compulsion or necessity.

56.8.2 If required by the OWNER, the PROJECT MANAGER shall be authorised to require the CONTRACTOR to furnish, and the CONTRACTOR shall, upon the request of the PROJECT MANAGER /OWNER, furnish all invoices, vouchers and accounting records as may be deemed necessary by the PROJECT MANAGER /OWNER for the purpose of verifying any CONTRACTOR's claim.

56.9 DISCHARGE OF OWNER'S LIABILITY

56.9.1 The acceptance by the CONTRACTOR of any amount paid by the OWNER to CONTRACTOR in respect of the Final Bill of the CONTRACTOR in settlement of all said dues to the CONTRACTOR under the Final Bill shall, without prejudice to the claims of the CONTRACTOR included in the Final Bill in accordance with the provisions of clause 56.4.2 of GCC, be deemed to be in full and final settlement of all such dues to the CONTRACTOR notwithstanding any qualifying remarks, protest or condition imposed or purported to be imposed by the CONTRACTOR related to the acceptance of such payment, with the intent that upon acceptance by the CONTRACTOR of any payment made as aforesaid, the CONTRACT (including the arbitration clause) shall stand discharged and extinguished insofar as relates to and/or concerns the entitlements of the CONTRACTOR under the CONTRACT except for the CONTRACTOR's right, if any, to receive payment in respect of his notified claims included in his Final Bill and the right to receive payment of the unadjusted balance of the Security Deposit in accordance with the provisions of Clause 56.10.3 on successful completion of the DEFECT LIABILITY PERIOD. But nothing herein stated shall affect the CONTRACTOR's undischarged liabilities and obligations under the CONTRACT.

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56.9.2 The acceptance by the CONTRACTOR of any amount paid by the OWNER to the CONTRACTOR in respect of the notified claims of the CONTRACTOR included in the Final Bill, in settlement of the claims of the CONTRACTOR, shall be deemed to be in full and final settlement of all claims of the CONTRACTOR notwithstanding any qualifying remarks, protest or condition imposed or purported to be imposed by the CONTRACTOR relative to the acceptance of such payment made as aforesaid with the intent that upon acceptance by the CONTRACTOR of any payment made as aforesaid, the CONTRACT shall stand discharged and extinguished insofar as relates to and/or concerns the claims of the CONTRACTOR except for the CONTRACTOR's rights to receive payments of the unadjusted balance, if any, of the security deposit in accordance with clause 56.10.3.0 hereof on successful completion of the DEFECT LIABILITY PERIOD. But nothing herein stated shall affect the CONTRACTOR's undischarged liabilities and obligations under the CONTRACT.

56.9.3 Notwithstanding anything provided in Clause 56.9.1 and/or Clause 56.9.2, the CONTRACTOR shall be and remain liable for defects in terms of DEFECT LIABILITY PERIOD and associated clause thereunder and for any indemnity to the OWNER in terms of Clause 56.10.2 and shall be and remain entitled to receive the unadjusted balance of the Security Deposit remaining in the hands of the OWNER in terms of Clause 56.10.3 and associated clauses thereunder.



56.10.0 FINAL ACCEPTANCE CERTIFICATE AND RELEASE OF SECURITY

56.10.1 Forthwith on the CONTRACTOR's application made after the expiry of DEFECT LIABILITY PERIOD provided and associated clauses thereunder and satisfaction of all liabilities of the CONTRACTOR in respect thereof, the PROJECT MANAGER shall issue a FINAL ACCEPTANCE CERTIFICATE to the CONTRACTOR Certifying that the CONTRACTOR has performed his obligations in respect of the DEFECT LIABILITY PERIOD and associated clauses thereunder, and until issue of such FINAL ACCEPTANCE CERTIFICATE, the CONTRACTOR shall be deemed not to have performed such liabilities notwithstanding issue of the PRELIMINARY ACCEPTANCE CERTIFICATE or payment of the Final Bill by the OWNER.

56.10.2 Upon application for the FINAL ACCEPTANCE CERTIFICATE, the CONTRACTOR shall:

- (i) Be deemed to have warranted that it had been fully paid and satisfied all claims for or arising out of the WORK, labour, MATERIALS, supplies and EQUIPMENT used in or connected with the CONTRACT and all other liabilities whatsoever touching or affecting the CONTRACT, or its performance, including in relation to SUB-CONTRACTORS and suppliers, and
- (ii) To have undertaken to indemnify and keep indemnified the OWNER from and against all claims, demands, debts, liens, obligations and liabilities whatsoever arising there from or relating thereto, Infringement of patents, copy right etc.

56.10.2.1 Upon issue of the FINAL ACCEPTANCE CERTIFICATE, the CONTRACTOR shall be deemed to have released, acquitted and discharged the OWNER from and against all claims (known or unknown), liens, demands or causes of action of any kind whatsoever arising out of or relating to the CONTRACT or otherwise howsoever touching or affecting the same.

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56.10.3 Forthwith on application made by the CONTRACTOR in this behalf accompanied by the FINAL ACCEPTANCE CERTIFICATE, or within 84 (Eighty Four) days of the OWNER passing the CONTRACTOR's Final Bill, whichever shall be later, the OWNER shall cancel and return to the CONTRACTOR all previous Bank Guarantees remaining unutilised in the hands of the OWNER, and upon such cancellation and return, the OWNER shall stand discharged of all obligations/ liabilities under the CONTRACT provided that the cancellation and return of any Bank Guarantee(s) furnished by the CONTRACTOR as and by way of security deposit shall be subject to the CONTRACTOR replacing such Bank Guarantee(s) with a Bank Guarantee to the OWNER covering 100% (Cent percent) of the value (as determined by the OWNER) of equipments/works replaced or repaired during the DEFECT LIABILITY PERIOD for the unexpired term of extended defect liability period in respect thereof plus a 6 (six) months period. The claims or demands made during such additional 6 months period shall refer to events which have occurred before the expiry of the DEFECT LIABILITY PERIOD.

56.11 CLAIMS OF OWNER

56.11.1 The release/payment of any unadjusted balance of the Security Deposit (furnished in the form of a Bank Guarantee or otherwise) by the OWNER to the CONTRACTOR as aforesaid or otherwise shall not be deemed or treated as a waiver of any right(s) or claim(s) of the OWNER existing before the issuance of the FINAL ACCEPTANCE CERTIFICATE or shall not stop or prevent the OWNER from thereafter making or enforcing any claim or any rights existing before the issuance of the FINAL ACCEPTANCE CERTIFICATE against the CONTRACTOR with the intent that the claims of the OWNER, against the CONTRACTOR shall continue to survive and shall not get extinguished notwithstanding the issue of **FINAL ACCEPTANCE CERTIFICATE** and/or the release of Security Deposit to the CONTRACTOR.

57.0 UNDERGROUND OBSTRUCTIONS



Underground obstructions, if any will be removed by CONTRACTOR. The soil investigation report furnished in the technical part is indicative only and is enclosed purely for information/guidance purpose to the bidders. The contractor shall carry out its own detailed soil investigation for the proposed plant. Design of the foundation system of the plant shall be based, only on the site specific report. Nothing extra shall be paid in case of any variation arising out of the soil report conducted report conducted by the bidders and the data given in the tender is only for guidance purpose.

58.0 REGISTRATION OF THE CONTRACTOR WITH STATUTORY AUTHORITIES

58.1 Within 30 days of award execution of the CONTRACT, the CONTRACTOR shall, insofar as necessary, register itself and the CONTRACT at their own cost with the Reserve Bank of India, Income Tax, Sales Tax and/or any other applicable statutory authorities as required under the rules and regulations governing in India. The CONTRACT PRICE shall be deemed to include all costs towards the same. A copy of all documents related to all such registration shall be submitted to OWNER for record.

58.2 Immediately after notification of the Acceptance of Bid, the foreign CONTRACTOR shall obtain permission for opening of their office(s) in India from the Reserve Bank of India, and shall obtain Income Tax clearance from Indian Income Tax authorities. Among other formalities, these will be required by the OWNER to release any payment due to the CONTRACTOR.

59.0 STATUTORY APPROVALS

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59.1 Unless otherwise specified in Bidding Documents, it shall be the CONTRACTOR's sole responsibility to obtain all statutory clearances/approvals/permissions/licences etc from any authority, required under any statute, rule or regulation of the Central or State Government concerned with the performance of the CONTRACT and/or the contractual Work.

The application on behalf of the OWNER for submission to relevant authorities along with copies of required certificates complete in all respects shall be prepared and submitted by the CONTRACTOR well ahead of time so that the actual construction/COMMISSIONING of the WORKS is not delayed for want of the APPROVAL/inspection etc by the concerned authorities.

The CONTRACTOR shall arrange for the inspection of the works by the authorities and will undertake necessary coordination and liaison required and shall not be entitled to any extension of time for any delay in obtaining such approval. All statutory fees shall be paid by the CONTRACTOR and the same shall be reimbursed by the OWNER upon production of documentary evidence by the CONTRACTOR.

59.2 Any deficiency(ies) as pointed out by any such authority shall be rectified by the CONTRACTOR within the scope of relative supply and/or WORK at no extra cost to the OWNER. The inspection and acceptance of the WORKS by such authorities shall, however, not absolve the CONTRACTOR from any of its responsibilities under this CONTRACT.

59.3 No extension of time shall be granted for meeting the requirement and/or obtaining APPROVAL of statutory authorities.

60.0 UTILISATION OF LOCAL RESOURCES

60.1 The CONTRACTOR shall ascertain the availability of local SUB-CONTRACTORS and skilled/unskilled manpower and engage them to the extent possible for performance of the WORKS.

60.2 The CONTRACTOR shall not recruit personnel of any category from among those who are already employed by the other agencies working at the site. .



61.0 FUEL REQUIREMENT OF WORKERS

The CONTRACTOR shall be responsible to arrange for the fuel requirement of his workers and staff without resorting to cutting of trees and shrubs. Cutting of trees and shrubs is strictly prohibited for this purpose. The CONTRACTOR shall abide by the conditions put forth by the Environmental Clearance for the SITE as regards to construction workers.

62.0 SURPLUS MATERIAL

Notwithstanding anything provided elsewhere, all surplus materials shall be dealt as follows:

62.1 Any balance surplus MATERIALS including scrap shall belong to the CONTRACTOR

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upon completion of the WORKS.

- 62.2 For taking out balance surplus MATERIALS as mentioned above upon the completion of the project, the CONTRACTOR shall have to furnish proof of entry and ownership of such MATERIALS inside the SITE, certification of PROJECT MANAGER and OWNER in this regard.

63.0 COORDINATION WITH OTHER AGENCIES

- 63.1 CONTRACTOR shall be responsible for proper coordination with other agencies operating at the site so that WORK may be carried out concurrently, without any hindrance to others. The PROJECT MANAGER shall resolve disputes, if any, in this regard, and his decision shall be final and binding on the CONTRACTOR.

- 63.2 If and when required for the coordination of the WORKS with other agencies involved at SITE, the CONTRACTOR shall within the scope of work, re-route and/or prepare approaches and working areas as may be necessary.

64.0 ERECTION OF EQUIPMENT

All erection shall be carried out by deploying a crane(s) of suitable capacity. Erection by derrick shall not be permissible. The CONTRACTOR shall submit erection schemes for erection of critical equipment to PROJECT MANAGER for his APPROVAL. No EQUIPMENT shall be erected in the absence of an approved erection scheme for such EQUIPMENT.

The quoted rates of the CONTRACTOR shall be deemed to include load testing of the crane as required to establish the lifting capacity of the crane.

65.0 ELECTRICAL CONTRACTORS LICENCE



- 65.1 The CONTRACTOR or its nominated SUB-CONTRACTOR(s), as the case may be, shall have a valid electrical contractor's license for working in the State in which the job site is located. The CONTRACTOR shall furnish a copy of the same to PROJECT MANAGER before commencement of any electrical work or work pertaining to Electrical System.
- 65.2 No electrical work or work pertaining to electrical system(s) shall be permitted to be executed without a valid Electrical Contractors License being produced by the CONTRACTOR or SUB-CONTRACTOR, as the case may be, intending to execute the WORK.

66.0 RENTS & ROYALTIES

Unless otherwise specified, the CONTRACTOR shall pay all tonnage and other royalties, rents and other payments or compensation (if any) for getting stone, sand, gravel, clay, bricks or other materials required for the WORKS or any temporary works.

67.0 GOVERNMENT OF INDIA NOT LIABLE

It is expressly understood and agreed by and between the CONTRACTOR and the OWNER that the OWNER is entering into this 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 thereunder. It is expressly understood and agreed that the OWNER is an independent legal entity with power and authority to enter into contracts, solely in its own behalf under the applicable laws of India and general principles of Contract. The CONTRACTOR expressly agrees, acknowledges and understands that the OWNER is not an agent, representative or delegate of the Government of India. It is

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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, CONTRACTOR hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims or counter claims against the Government of India arising out of this CONTRACT and covenants not to sue the Government of India on any matter, claim, and cause of action or thing whatsoever arising of or under this CONTRACT.

68.0 SITE CLEANING

The CONTRACTOR shall take care to keep clean the job site at all times for easy access to the job site and also from the safety point of view in accordance with the CONTRACT requirements.

69.0 ACCESS TO SITE

69.1 The CONTRACTOR shall at his own cost and initiative arrange for and provide any access to the work area and stringing or other yards for labour, EQUIPMENT and MATERIAL as may be necessary for any cause in addition to the ingress and egress available. Any arrangements in respect thereof as may be entered into by the CONTRACTOR with any person interested in the land through which access is sought, shall be in writing and a copy of the writing (certified by or on behalf of the CONTRACTOR to be true copy thereof) shall forthwith be lodged with the OWNER. Such a writing shall specifically stipulate that the OWNER shall not be responsible for any claims under the CONTRACT or for any damage, loss or injury to the land or any material, item or thing thereon or in, and the CONTRACTOR shall keep the OWNER indemnified from and against any claim, action or proceedings in respect thereof.

69.2 The CONTRACTOR shall at his own cost and initiative arrange for and obtain all necessary permissions, permits, consents and licenses as may be necessary to transport the MATERIALS, tools, EQUIPMENT, machinery and labour along or across any highway, roadway, or other way, or railway, tramway, bridge, dyke, dam or embankment, or lake, pond, canal, river, state terminal toll octroi/entry tax, or other line, border or barrier. Traffic study if required, shall be carried out by CONTRACTOR independently without any liability on OWNER.



70.0 INDEPENDENT CONTRACTOR

70.1 OWNER shall have the right to instruct and direct CONTRACTOR, as to the results to be obtained under the CONTRACT, and shall be entitled to ascertain whether the WORK is carried out in accordance with the requirements of the CONTRACT, including the right to inspect the WORK at all stages of its performance. Such instructions direction and/or inspection by OWNER shall not relieve CONTRACTOR of his obligation, duties or liabilities under the CONTRACT.

70.2 Neither CONTRACTOR nor any SUB-CONTRACTOR nor the employees, agents or representative of either shall be deemed to be employees, agents or representative of the OWNER in the performance of the CONTRACTOR obligations here under, unless otherwise specified in the CONTRACT.

71.0 PAYMENTS TO THE SUB-CONTRACTOR

71.1 CONTRACTOR shall indemnify and hold harmless OWNER for any claim brought by SUBCONTRACTOR against OWNER in relation to CONTRACTOR's payment

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obligations for the relevant purchase orders and sub-contracts.

CONTRACTOR agrees that he shall furnish to OWNER, if required, satisfactory evidence that all SUB-CONTRACTORS, including vendor to CONTRACTOR have been paid on the time and in full for work done or good supplies in connection with the performance of the WORK.

71.2 If such satisfactory evidence is not supplied than the OWNER shall not be bound to make any further payment to CONTRACTOR for that part of work until it is supplies.

71.3 CONTRACTOR shall notify OWNER of any dispute of any kind between CONTRACTOR and any of his SUB-CONTRACTOR or vendors stating the nature of dispute, the amount of any payment which is being withheld by CONTRACTOR, the reasons thereof and the CONTRACTOR's plan to settle the dispute.

72.0 **ORDER OF WORKS / PERMISSION / RIGHT OF ENTRY / CARE OF EXISTING SERVICES**

CONTRACTOR is required to submit to OWNER the various details with respect to their personnel(s) to be deputed for the execution of WORK such as name(s), nationality and passport details in case of Foreign Nationals (Passport No., Date of Issue, Date of Expiry etc.). These details are required for granting permission to enter and work in the existing fertilizer complex. The OWNER reserves the right to declare any person(s) as non grata. No claim whatsoever shall be entertained by OWNER on this account.

OWNER shall have the right to object to any Representative or personnel deputed to India by CONTRACTOR for execution of WORK or in connection with WORK, due to their misconduct or breach of law and regulation or who are found to be incompetent or negligent. CONTRACTOR shall remove such persons from SITE forthwith and take immediate action for replacement at no cost to OWNER.



73.0 **GIFTS, COMMISSIONS, ETC.**

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

74.0 **LABOUR LAWS- PF, EPF AND ESI**

74.1 The CONTRACTOR shall obtain necessary license from the Licensing Authority under the Contract Labour (Regulation & Abolition) Act 1970 and the Central Rules framed there under and produce the same to the PROJECT MANAGER before start of WORK.

74.2 The CONTRACTOR shall not undertake or execute or permit any other agency or SUB-CONTRACTOR to undertake or execute any work on the CONTRACTOR'S behalf through contract labour except under and in accordance with the license issued in that behalf by the Licensing Officer or other authority prescribed under the Factories Act or

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the contract labour (Regulation & Abolition) Act 1970 or other applicable law, rule or regulation, if applicable or time being in force with any subsequent statutory modifications thereof.

74.3 The provision of EPF & MP Act, 1952 and Rules scheme there under shall be applicable to the CONTRACTOR and the employees engaged by him for the WORK. The CONTRACTOR shall furnish the code number allotted by the RPFC Authority, to the PROJECT MANAGER before commencing the WORK.

74.4 The CONTRACTOR shall be exclusively responsible for any delay in commencing the work on account of delay in obtaining a license under clause 74.1 above or in obtaining the code number under clause 74.3 above and the same shall not constitute a ground for extension of time for any purpose.

74.5 The CONTRACTOR shall enforce the provisions of ESI Act and Scheme framed there under with regard to all his employees involved in the performance of the CONTRACT and shall deduct employee's contribution from the wages of each of the employees and shall deposit the same together with employer's contribution of such total wages payable to the employees in the appropriate account.

74.6 All liabilities like salaries, wages and other statutory obligations in respect of the persons engaged by the CONTRACTOR shall be borne by the CONTRACTOR during the period of agreement. In view of the provisions of the ESI Act, PF and EPF Act and other Acts/Laws, as may be applicable to OWNER, the CONTRACTOR shall take necessary steps to cover its employees under the said enactments and shall submit proof of such compliance to PROJECT MANAGER periodically or at any date upon such request, as may be made by PROJECT MANAGER to the CONTRACTOR. In the event of non-compliance with the statute or the provisions thereof, referred to above, it shall be open to OWNER to withhold such amount as in its opinion is due and payable by the CONTRACTOR in respect of its employees from and out of dues, payable by OWNER to the CONTRACTOR and such due shall be held by OWNER with it until proof is submitted by the CONTRACTOR to OWNER indicating compliance with such statutes within reasonable time, failing which OWNER shall deposit such amounts with the authorities concerned on behalf of the CONTRACTOR and inform the CONTRACTOR of such deposit or deposits.



74.7 The Contractor shall ensure that the Payment of Wages to Labourer has been made in accordance with minimum Wages Act. If at any time, it is noticed or it comes to the knowledge the payment to the Labourer employed by the Contractor is not made in accordance with the Minimum Wages Act, NFL shall reserve the right to take remedial action to regulate the payment.

75.0 GENERAL PROVISIONS

75.1.0 Confidential Information

75.1.1 Non-disclosure

75.1.1.1 Each party agrees to hold in confidence any information imparted to it or in the case of CONTRACTOR, to any of its SUB- CONTRACTOR / VENDOR, by the other Party which pertains to that other party's business activity in any manner, and which is not be subject of general public knowledge, including, without limitation, proprietary processes,

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technical information and know-how, information concerning other projects, management policies, economic policies, financial and other data and the like. The preceding non-disclosure requirements shall not apply to:

- i) Information furnished without restriction by the other Party prior to the date hereof
- ii) Information in the public domain; or
- iii) Information obtained by a Party from a third Person not under obligation of non-disclosure to the other party.

75.1.2 **Disclosure to Govt. Agency**

75.1.2.1 Either Party may disclose any such information to the extent that such Party is required by any Government Agency to make such disclosure. In addition, OWNER may disclose such information to the extent that such disclosure is required by any Lender / Lender's Representative, etc.

75.1.3 Upon completion of the Works or in the event of termination pursuant to the provisions of the CONTRACT, CONTRACTOR shall immediately return to the OWNER all drawings, plans, specifications and other documents supplied to the CONTRACTOR by or on behalf of the OWNER or prepared by the CONTRACTOR solely for the purpose of the performance of the WORKS, including all copies made thereof by the CONTRACTOR.

75.1.4 This clause shall survive and remain in full force for a period of ten years following the issue of FINAL ACCEPTANCE CERTIFICATE.



75.2.0 **Training of Personnel**

CONTRACTOR shall make necessary arrangements for the practical training of reasonable number of Technicians/Engineers of OWNER, if so desired by OWNER at its office or SUB-CONTRACTOR's works of manufacture in the operation and maintenance of EQUIPMENT without any extra cost. The expenses for travelling, lodging and boarding of the personnel of OWNER deputed for training shall be borne by OWNER.

75.3.0 **Recovery of Sums / Dues**

75.3.1 All costs, damages or expenses which OWNER may have incurred, for which CONTRACTOR is liable under CONTRACT, shall be notified to CONTRACTOR and shall be recovered by OWNER from any payment due to or becoming due to CONTRACTOR under this CONTRACT or other CONTRACT and/or shall be recovered by action at law or otherwise. If the payment due to CONTRACTOR is not sufficient for recovery of the said sums/dues, CONTRACTOR shall pay immediately to OWNER such sums/dues or the balance sums/dues on demand.

75.3.2 All Agreed Compensation applicable and to be recovered from CONTRACTOR under CONTRACT, shall be recovered by OWNER from any payment due to or becoming due to CONTRACTOR under this CONTRACT or other CONTRACT and/or shall be recovered by action at law or otherwise. If the payment due to CONTRACTOR is not

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sufficient for recovery of the said Compensation as per clause 31.0 of GCC , CONTRACTOR shall pay immediately to OWNER such LIQUIDATED DAMAGES or the balance Compensation on demand.

75.3.3 For avoidance of doubt all the rights and remedies of OWNER and liabilities of the CONTRACTOR as set out in the CONTRACT shall be to the exclusion of any other rights, remedies or liabilities available at law.

75.4.0 Payments etc. not to affect rights of OWNER

No sum paid on account by OWNER nor any extension of the date for completion granted by OWNER shall affect or prejudice the rights of OWNER against CONTRACTOR or relieve CONTRACTOR of its obligation for the faithful performance of CONTRACT.

75.5.0 Cut-Off Dates

No claims or correspondence on claims on this CONTRACT shall be entertained by either parties after expiry of the Performance Bank Guarantee, unless specified otherwise in CONTRACT.

75.6.0 Paragraph Heading

The paragraph heading in those conditions shall not affect the construction thereof.

75.7.0 Site Working and Safety Conditions

CONTRACTOR shall follow the SITE working and safety conditions enclosed as Per Part-II, Technical.

75.8.0 Miscellaneous



75.8.1 No CONTRACT or understanding in any way modifying the conditions of CONTRACT shall be binding upon either parties hereto unless made in writing and approved by both parties.

75.8.2 Without prejudice to FORCE MAJEURE, CONTRACTOR shall, during inclement weather, carry out WORK in accordance with CONTRACT and CONTRACTOR shall not be entitled to any additional payment over and above the fees payable under CONTRACT by reason of its being unable to carry out WORK owing to inclement weather.

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SECTION-VII

ISSUE OF MATERIALS

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ISSUE OF MATERIALS



No	Particulars of Material	Place of issue
1.	Anchor Bolts for Equipments, Pumps, etc.	These Items/Materials shall be supplied by Owner as per Technical Specification of Contract, Schedule of rate and the drawings, from Owner's stores on free issue basis.

NOTE:

- a. Materials shall be issued to the Contractor solely for the purpose of incorporation in the works.
- b. Contractor shall submit his demand for the materials in writing to the Owner/Consultant at least 7 days in advance of his requirements. Materials shall be issued keeping in view the Contractor's progress of the work. Quantities issued may, however, be limited to the extent materials are required for the next 15 days.

1.0 GENERAL

- 1.1.0 The Contractor shall at this own expense; provide all consumable materials required for the works other than those which are to be supplied by Owner. Adequate stock of all the materials required for the work is to be maintained at site.
- 1.1.1 All materials to be provided by the Contractor shall be in conformity with the specifications laid down in the contract and the Contractor shall, if requested by the Owner/Consultant furnish proof to the satisfaction of the Owner/Consultant that the materials so conform to the laid down specifications.
- 1.1.2 The Owner/Consultant shall have full powers to require removal of any or all the materials brought at site by Contractor which are not in accordance with the contract specifications or do not conform in character or quality to the samples approved by him. In case of default on the part of the Contractor in removing erected materials, the Owner/Consultant shall be at liberty to have them removed by other means. The Owner/Consultant shall have full powers to direct other proper materials to be substituted for erected materials and in the event of the Contractor refusing to comply, he may cause the same to be supplied by other means. All risks and costs, which may arise upon such removal and/or substitution, shall be borne by the Contractor.
- 1.1.3 The Contractor shall indemnify the Owner or any agent, servant or employees of the Owner against any action, claim or proceeding relating to infringement or use of any patent or design or any alleged patent or design rights and shall pay royalties or other charges which may be payable in respect of any article or materials or part thereof included in the contract. In the event of any claim being made or action being brought against the Owner

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or any agent, servant or employee of the Owner in respect of any such matters as aforesaid, the Contractor shall immediately be notified thereof.

- 1.1.4 All charges on account of GST/Taxes/Octroi/Sales tax/VAT and other duties on materials obtained for the works from any source (excluding materials supplied by Owner) shall be borne by the Contractor.
- 1.1.5 The Owner/Consultant shall be entitled to have tests carried out as specified for any material supplied by the Contractor other than those for which, as stated above, satisfactory proof has already been furnished, at the cost of the Contractor and the Contractor shall provide at his expenses all facilities which the Owner/Consultant may require for the purpose. The cost of the materials consumed in tests shall be borne by the Contractor in all cases.
- 1.1.6 The free issue material as per drawings shall be supplied to Contractor as per detailed in drawing and specified in technical Specification of this contract from Owner/ Consultant's stores / storage yard.
- 1.1.7 The equipment/machinery shall be supplied as free issue material as per the requirement of their erection along with other accessories and spare items required for erection as per drawings, and technical specification of Contract.

1.2.0 **MATERIALS TO BE SUPPLIED BY THE OWNER TO CONTRACTOR**

Materials to be supplied by the Owner to the Contractor depending upon availability are shown above which also stipulates the place of issue.

1.2.1 **STRUCTURAL STEEL WORK:**

The Contractor shall make his own arrangements regarding required Structural steel. Owner will not provide any steel as free issue. However, on urgency of work and schedule Owner may provide steel on chargeable basis / returnable basis.



1.3 **METHOD OF STORING THE MATERIAL:**

The Contractor shall at his own cost, provide for all necessary storage on the site in specified area for all materials in such a manner that all materials, tools, etc. shall be duly protected from damage, by weather or any other cause.

- 1.4 The Contractor shall bear the cost of loading, transporting to site, unloading, storing under cover as required, assembling and joining the several parts together as necessary and incorporating or fixing materials in the work including all preparatory work of whatever description as may be required.

- 1.5 The Owner/Consultant officials concerned with the contract shall be entitled at all times to inspect and examine any materials intended to be used in or on the works, either on the site or at factory or workshop or other places where such materials are assembled, fabricated, manufactured or at any place where these are lying or from which these are being obtained and the Contractor shall give such facilities as may be required for such inspection and examination.

- 1.6 All the materials including Contractor's T&P brought by the Contractor at site shall become and remain the property of Owner and shall not be removed off the site without prior writing approval of the Owner/ Consultant. But wherever the works are finally

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completed and advances, if any, in respect of such materials are fully recovered, the Contractor shall be at his own expense forthwith remove from the site all surplus materials supplied by him and upon such removal, the same shall revert in and become the property of the Contractor.

1.7 **MOBILE EQUIPMENTS**

The Contractor has to arrange and made available the crane of appropriate capacity for erection of equipment/items.

M/s NFL has some mobile equipment can be made available subject to availability at the time of construction erection activities, required by Contractor. The same are as per list, rate, terms and condition of **annexure-IV (Attached)**.

The Contractor has to arrange and made available more mobile equipments if required for timely completion of project.

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Annexure-IV

RATES AND THE TERMS AND CONDITIONS FOR CRANES

1) Hiring charges

Cranes shall be provided by NFL on Chargeable basis if available. Hiring charges (Rupees per hours) applicable shall be as given below.

Revised Hire Charges for HES Cranes, Heavy Earth Moving Equipments and Works Shop Equipments, 2010-11.			
Sr.No.	Name of Equipment	Year of Purchase	Hiring Charges (Rs.) Per hour Rounded off as on 14.01.2019
1	Demag 400 Te Crawler Crane	1986	33800.00
2	Demag 120 Te Mobile Crane	1996	32050.00
3	HM 75 Te Crawler Crane	1986	5650.00
4	Voltas 35 Te Mobile Crane	1986	5330.00
5	Voltas 18 Te Mobile Crane	1986	3700.00
6	Godrej Fork Lifters I/II/III/IV	1986	720.00
7	Escorts 8 Te Hydra Cranes I/II/III	1986	1050.00
8	TATA 20 Te Trailor	1986	1690.00
9	Escorts JCB Old/New	1991/2001	2020.00
10	TATA 407 Truck	1988	780.00
11	Texmaco, Road Roller	1986	1100.00
12	Kirloskar Diesel Welding Set	1986	720.00
13	HMT Lathe , NH-22 I/II	1986	980.00
14	HMT Lathe , NH-26	1986	1100.00
15	HMT Lathe, L-50	1986	3970.00
16	HMT Boring Machine	1986	3840.00
17	HMT Surface Grinder, SE-28	1986	1760.00
18	HMT Tool & Cutting Grinder	1986	520.00
19	HMT Cylindrical Grinder, A-17	1986	1300.00
20	HMT Radial Machines RM62/65	1986	650.00
21	HMT Universal Milling Machine FN-3U	1986	1370.00
22	HMT MITR Milling Machine	1986	590.00
23	Modgil Shapper Machines I/II	1986	330.00
24	Hifin Lapping Machine	1986	650.00
25	Sura Make Rolling Machine	1986	1560.00
26	Plate Shearing Machine	1986	1430.00
27	Advani Plasma ARC Cutting Machine	1986	460.00
28	Advani TIG Welding Machine	1986	780.00
29	Advani Generator Welding Set	1986	650.00
30	Vankos Hydraulic Press, 100 Te Cap.	1986	460.00
31	Sagar Make Slotting Machine	1986	390.00



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2) **TERMS AND CONDITIONS FOR THE USING OF NFL MOBILE CRANES AND HEAVY EARTH MOVING EQUIPMENTS**

1. The equipment will be charged for a minimum period of one hour; part of an hour will be counted as full one hour.
2. The time will be counted from the time the machine is taken from its normal place of parking and back to the same place irrespective of the fact that machine is kept working or idle by the contractor.

Explanations:

- Normally the machines are parked in the specified parking yard and shall be available from there. The hours to be charged shall be counted from the time the machine leaves the yard to the time the machine comes back to the yard.
 - In case the machine is parked in a particular plant and comes back to the yard after doing the Contractor's work, the hours shall be counted from the time the machine leaves the plant till it comes back to the yard.
 - In case the equipment is parked in a plant and after doing the contractor's work is again sent back to the plant, the hours charged shall be from the time the equipment leaves the plant to the time it comes back there.
3. The requisition shall be submitted by the contractor in the prescribed format, signed by the authorized representative of the contractor and countersigned by the concerned officer of NFL, well in advance.
 4. Normally the equipment shall be made available only during normal working hours i.e 08 00 hrs to 1700 hrs, but in case the equipment is required to work beyond normal hours the overtime payable to the workmen of NFL shall be to the contractor's account. The security / safety of the machine will be the responsibility of the contractor during the time it is working for him.
 5. The logbook shall be signed by the Operator and the authorized representative of the contractor immediately after the work is over. It shall also be countersigned by the requisitioning officer of NFL or his representative.
 6. In case there is a breakdown on the machine while it is with the contractor, the time during which the machine is under breakdown shall not be charged. The breakdown will be reported to the NFL Engineer immediately and the effective time of breakdown shall be counted from the time the breakdown is reported to the NFL Engineer till the machine is made available in running condition to the contractor. This down time shall be recorded in the logbook and counter signed by the NFL Engineer.
 7. The machine can be withdrawn by the NFL from the contractor for repair maintenance and for any other reasons at the discretion of NFL.
 8. The contractor will not attempt overloading beyond the capacity of the machine.
 9. The machine will be operated only by the operators, assigned for this purpose by NFL.
 10. For taking the equipment outside the factory boundary wall special permission will be needed to do so.
 11. In case of any accident on the machine the same will be reported to the NFL Engineer immediately.
 12. The equipments are made available to the contractor with the clear understanding that in case of any loss due to the failure of the NFL equipment, while it is working with the contractor, NFL shall not be responsible for the same and all losses and claims shall have to be borne by the contractor himself. The contractor's liability shall also include the loss to the equipment.



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13. The equipment shall be made available to the contractor subject to their availability.
14. Extension / Shortening of the crane boom-length, if required by the contractor for facilitating execution for his job, shall be Contractor's responsibility. However, no hiring charges shall be leviable during the execution of the extension/shortening of boom-length.

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SECTION-VIII

**PROCUREMENT OF MATERIALS
AND CONSUMPTION**

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PROCUREMENT OF MATERIALS AND CONSUMPTION

1.0 GENERAL

- 1.1 The Contractor shall at his own expenses, provide all bought out materials and consumables required for the construction, fabrication, erection and installation works. Adequate stocks of all required materials for the execution work are to be maintained at site. No material (unless as provided elsewhere in this document) shall be supplied by the Owner.
- 1.2 All materials to be provided by the Contractor shall be in conformity with the specifications laid down in the contract and the Contractor shall, if requested by the Owner/Consultant to furnish prior the satisfaction of the Owner/Consultant that the materials conform to the laid down as per specifications.
- 1.3 All materials required for execution of work must be got approved by the site representative before they are actually put to use. All facilities for prior inspection of materials and subsequent inspection of work by Owner/Consultant's Site Engineer must be made available. Material procured by the Contractor must have test certificate which shall be furnished to the Owner/Consultant for reference. All the test report shall be maintained and a copy shall be provided to Owner/Consultant for reference. However, the same shall be handed over to Owner along with the final bill.
- 1.4 The Contractor shall, at his own expenses and without delay, supply to the Owner/Consultant samples of materials proposed to be used in the work. The Owner/Consultant shall within seven days of supply of samples, or within such further period as Owner/Consultant may require and intimate the Contractor in writing, whether samples are approved by Owner/Consultant, or not. If samples are not approved, the Contractor shall forth with arrange to supply, for their approval, fresh samples complying with the specification laid down in the contract.
- 1.5 The Owner/Consultant shall have full power to require removal of any or all the materials brought to site by the Contractor which are not in accordance with the contract specifications or do not conform in character or quality to the samples approved Owner/Consultant. In case of default on the part of the Contractor in removing rejected materials, the Owner/Consultant shall be at liberty to have them removed by other means. The Owner/Consultant shall have full powers to direct other proper materials to be substituted for rejected materials and in the event of the Contractor refusing to comply, Owner/Consultant may cause the same to be supplied by other means. All risks and costs which may attend upon such removal and/or substitution shall be borne by the Contractor.

Contractor shall be responsible for supply of all materials, consumables and construction/erection/installation equipments like cranes, chain pulleys, winches, trailer, etc. at works site. No delay due to Non availability of any material and or equipment will be entertained by Owner.

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SECTION-IX

TERMS OF PAYMENT





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5.	Provision of Extra/Additional Items
6.	Instruction for Invoicing and Payment Documentation

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TERMS OF PAYMENT

1.0 Financial Guarantee for performance

The contractor shall provide financial guarantee within 30 days of award of work for due and faithful performance of the contract as per Article 10 of General Conditions of contract.

2.0 Terms of Payment

Following terms of payment shall be applicable -

2.01 Mobilization Advance

Mobilization Advance not exceeding **10%** of contract value shall be payable on submission of Advance Bank Guarantee for 110% of advance amount from a Scheduled Bank in the prescribed profarma, subject to furnishing the Security cum Performance Bank Guarantee. An interest @SBI MCLR + 1% per annum shall, however, be charged on the above Mobilization Advance till it is recovered. Recovery of this Advance shall be in 6 installments starting from the 1st bill payment so that full Mobilization Advance including interest is recovered.

The interest shall be calculated on the advance up to the date of release of payment(s). Mobilization Advance shall be paid only on acceptance of LOI/Work Order, submission of Security cum PBG and Contract agreement **and establishment of Site Office by Contractor**. The payment of Mobilization Advance shall be released with certification by Consultant/Owner.

2.02 Running on Account Payment

90% against the value of actual work done shall be paid against running bills submitted by contractor duly certified by Owner / Consultant after recovery of the following payments.



Balance 10% shall be treated as retention money and shall be released at the time of settlement of final bill.

- a. Value of chargeable materials issued by Owner/Consultant.
- b. Mobilization advance as indicated above.
- c. Statutory deductions like GST/Income Tax, sales tax/commercial tax/VAT/MP State Construction workers welfare cess on works contract etc. as applicable.
- d. Any other recovery if becomes due.

2.03 Payment against 1st RA Bill

Payment shall not be released against 1st R/A bill until submission of following documents by contractor to the indenting department.

1. Financial Guarantee for Performance
2. Labour License (as per statutory requirements)
3. EPF Code Registration number with RPFC/ARPC
4. Insurance Contractor All Risk (CAR) Policy
5. Workmen compensation policy with medical coverage

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Further each bill shall also be accompanied by following documents for release of payment

1. Quality test reports
2. Material Reconciliation Statement
3. NOC from appropriate Government Authority against Royalty

2.04 Payment of 90 %

The Payment of 90% can be sub-divided as follows:

(A) CONSTRUCTION, INSTALLATION, TESTING AND COMMISSIONING.

- a) 80% after completion of construction/erection/installation.
- b) 10% after inspection, testing and commissioning.

(B) SUPPLY PORTION (If applicable)

- a) 80 % upon receipt .Preliminary inspection /acceptance of equipment /materials at site and receipt of equipment/materials at site and receipt of Equipments /materials test certificates.
- b) 10% after commissioning.

(C) Dismantling of Equipment/Items/Piping/Brickwork, etc.

- a) 80% after dismantling and shifting
- b) 10% after acceptance and take-over by Owner

(D) Per – Diem Rates (If applicable)



- a) 90% after completion of job as per instruction and due certification by Owner/Consultant in writing.

2.05 Balance 10% (Retention Money) shall be released along with final bill subject to the following:

However, if the amount recoverable exceeds the amount payable in final bill, the balance amount shall be recovered by the Owner, from the retention money and or security cum performance bank guarantee/any other moneys or bank guarantees available with the Owner for any other job being done by the contractor. The contractor shall restore the security cum performance guarantee to the requisite value to the extent of 10% of contract price in such case where recovery is required to be affected by the encashment of full amount or a part of the performance bank guarantee as soon as the contractor receives such intimation from the Owner/consultant.

2.06 The running on A/c Bills shall be submitted on monthly basis.

2.06.01 Payment of RA (Running on account) bills shall base on quantity of work executed at site (as per the item of work) & verified by Owner /Consultant as per the item rates in work orders. Owner /Consultant is authorised to allow part rate/reduced rate for any item of work. The engineer in charge of Owner /Consultant shall specify the reason for the part rate payment in the RA bill.

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2. 06.02 If, payment has been made in RA bill for any item of work, but later on some defect is noticed, Owner /Consultant is authorised to disallow the payment in successive bill till rectification of the work.
2. 06.03 70% of bill amount payable running “On Account” payment shall be released within 10 days after submission to Owner/Consultant.
20% shall be paid within 30 days after certification by Owner/Consultant.
- 2.07 The final bill complete in all respect shall be submitted by the contractor within three months of certified completion of work. The bill should be accompanied with the following documents.
1. Job completion certificate.
 2. No claim certificate on Owner’s prescribed proforma.
 3. Site clearance certificate.
 4. Security cum Performance guarantee duly amended to cover certified maintenance period.
 5. Material reconciliation statement (statement of material issued by Owner or consultant to be got certified from stores dept.).
 6. Indemnity certificate towards labour payment and all statutory payments.

No claim shall be entertained after receipt of final bill. Settlement of final bill shall be made subject to settlement of all disputes and furnishing of all required documents/clarifications and grant of extension of time, if any, by Owner’s competent authority.

2.08 **Secured Advance**

Secured advance payment against materials brought at site for incorporation into the work (except on perishable materials i.e. sand, PVC material, china sanitary wares and glass) shall be considered to the extent of 75% of cost of materials subject to reasonability of price. For purpose of advance, quantity brought at site shall be considered but limited to 90% of assessed quantity. The contractor shall be required to submit the bills for secured advance payment along with photo-copies of vouchers towards cost of materials and proof of bringing the materials at site (if applicable). Contractor shall also be required to submit indemnity bond on Non-judicial stamp paper of appropriate value & insurance cover. Recovery of the secured advance shall be affected from running account bill, on consumption basis of that material in works.

3.0 **Price**



The prices shall be firm during the entire contract period including all extensions granted on whatsoever ground may be.

4.0 **Predetermined agreed damages for delay**

For late completion of the works, the owner shall recover compensation for delay from contractor’s bills as per Article 34 of General Condition of Contract.

5.0 **Provision of Extra/Additional Items**

If the altered/additional work required to be executed as per Owner’s/ Consultant’s requirement for which there are no established rates in schedule of rates, the same shall be payable as per provision stated hereunder.

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a. As far as possible the rates for such items shall be derived from agreed schedule of rates on pro-rata basis.

b. If direct working out is not possible, the contractor shall be paid on the basis as under:

Reasonable cost of materials duly supported by vouchers etc. Submitted by the contractor and verified by Engineer plus reasonable cost of labour based on prevailing rates, plus 15% on cost of material and labour to cover contractor's profit, supervision, overheads, establishments, plants machinery etc.

Owner's decision regarding reasonable labour cost and reasonable material consumption/and cost shall be final and binding on contractor.

6.0 **Instruction for Invoicing and Payment Documentation**

6.1 **Invoicing**

Invoicing shall be in the prescribed format in compliance with the stipulations of the Work Order and the following instructions. Contractor is liable for all costs arising from non-compliance with the instructions.

As far as possible, description of Works in invoice shall match the description in Work Order.

The invoices shall be issued in the name of:

National Fertilizer Limited - Vijaipur

Energy Saving Project – II (ESP-II)

Vijaipur, Dist. Guna

M.P. (INDIA) - PIN 473111

The invoice shall contain the following information:



- i) Work Order No.
- ii) Item no., quantity and complete description
- iii) Item-wise net price (unit and total) of the works where applicable.
- iv) Net amount payable by deducting advance payment already invoiced, if any, and the guarantee retention amount, if any, from the total value of the Works being invoiced.

The signed invoices, original and copy shall be made on Contractor's letterhead and shall be duly signed.

Invoices for progress payment(s) shall state the information under (i), (ii), and (iii). Invoices for guarantee retention money shall state the information under (i) to (iv)

6.2 **Progress Payment**

1. Invoice for _____ in original and two (2) copies duly certified by Owner/ Consultant.

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2. Advance Bank guarantee of the amount 110% to the progress payment in one (1) copy of original bank guarantee valid up to Completion date + 90 days claim period issued or counter-guaranteed/ confirmed by any Nationalised / scheduled Indian bank (except Cooperative and Gramin Bank) or any branch of foreign bank in India. In case of Bank Guarantee issued by the foreign bank out side India, confirmation of the same by any nationalised bank in India is required.
3. Performance certificate in one (1) original plus two (2) copies from the beneficiary to the effect that progress achieved is equal to progress invoiced, duly certified by Owner/Consultant.

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SECTION-X

GENERAL SAFETY REQUIREMENTS TO BE OBSERVED DURING SITE CONSTRUCTION, FABRICATION AND ERECTION/INSTALLATION BY THE CONTRACTOR

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GENERAL SAFETY REQUIREMENTS, TO BE OBSERVED, DURING SITE CONSTRUCTION, FABRICATION AND ERECTION/INSTALLATION, BY THE CONTRACTOR

1. **Before starting the work, contractor should get safety work permit and should strictly follow instructions written by the concerned authority in work permit. Permit is required for all types of job i.e. Hot, Cold, Excavation, Chipping, Grinding etc.**
2. Smoking is strictly prohibited inside factory areas.
3. Safety appraisal and equipments shall be provided to workmen as per the nature of work. Welders shall use gloves, goggles, shields etc. during welding, gas cutting etc. All technicians shall use gloves, goggles during grinding, chipping etc. If any unsafe practice is observed Fire & Safety Sections or the authority issuing the work permit is authorized to stop the work without any prior notice.
4. Temporary fire extinguishers, water hose shall be available near work place. In case of fire; Fire and Safety section should be immediately informed from nearest available telephone over the Nos. given below, and also to Engineer-in charge.
 - Fire - 2222
 - Ambulance - 4444
 - Hospital - 4444
 - Plant Dispensary - 2044
 - Emergency Control Room - 1111/1131
5. Contractor shall secure necessary insurance of his workmen for the entire duration of works under the contract. NFL is not responsible for any accident/injury caused whatsoever, to any person employed by the contractor. However, contractor has to inform NFL Fire & Safety Section about accident, if any, immediately.
6. Temporary switch boards, cables, wires and electrical equipments should be installed in accordance with standard electrical practice with proper Earthing etc. and should have prior approval of NFL electrical engineer. Switch board shall be suitably protected against rainwater. The cable used for welding machine should have flexible tough rubber sheathing.
7. Temporary cables and wires including welding cables should be routed as not to cluster the work areas. Also any possibility of damage to live wires by falling objects should be avoided. Temporary electrical lines for power & lighting shall run overhead or underground so that they should not hinder the movement of men, materials, and vehicles.
8. Portable hand lamps being used by construction crew shall be preferably of 24 Volts supply bulb to be protected with safety shields.
9. Earthing for welding shall not be taken through existing structure or equipments due to the very explosive nature of the plant, raw materials, reaction during process and final product. There is every possibility of fire and explosion in the equipment due to electric spark caused by loose Earthing connection etc.

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10. Contractor should be careful while excavating so that no underground cable or pipe line is damaged. As soon as any brick cover or under ground cables are exposed he should stop the work and inform engineer in charge immediately for necessary action.
11. Contractor should not leave any welding machine etc. running after the work is stopped. Before leaving the work place, Contractor should ensure that welding sets are disconnected from welding socket outlet.
12. All work areas shall be kept reasonably clear and clean for easy movement of men & material. Also all approach roads shall be free from obstacles for easy movement of cranes, vehicles, fork-lifts; trolleys etc. and all debris shall be periodically removed.
13. All temporary structure and supports for erection purpose such as scaffolding, ladders, walkways, platform, shuttering etc. shall be sufficiently strong for safe use and to prevent collapse & accidental fall of workman. Same shall be removed immediately after the work is completed.
14. All workmen working at unsafe elevation during the construction activity such as concreting, plastering, welding, erection work, painting, insulation etc. shall be safe and sufficient passage and should be properly instructed to take necessary safety precautions and observe safe practice to prevent accidental fall. Safety belts and helmets shall be used wherever necessary.
15. All supervisors, welders, electricians, technicians, riggers, engaged in the work shall be adequately skilled, experienced and acquainted with standard rules, regulation, & practices of the work.
16. All open trenches, pits and other excavation carried shall be barricaded out by contractor, to avoid accident.
17. All lifting tools, tackles, & accessories shall be in good working condition and of suitable capacity for the purpose for which they are used. All certificates/permits/licences etc. required under any law or regulation for the same shall be available and valid during the entire period of the execution of the work under this WO/Contract.
18. Contractor shall not use any structure or equipments erected or under erection for fastening, lifting, or flying tackle guy-ropes etc. which may impose such loads for which structure or equipments are not designed to carry. However, contractor has to get prior approval from Engineering In charge before using beams, permanent structure for the above purpose.
19. When work is carried out at high elevations, it is the responsibility of the contractor to ensure that tools and materials are not left in a position where they can fall on peoples moving / working below. Where necessary, places below should be cordoned off and caution boards be provided by contractor. Also, contractor should not cut existing hand railing/structure.
20. Contractor's men must not tamper with any machines, switches, valve, or equipment not connected with their work. Welding holders should not be tested on running pipe lines.
21. Nylon rope should not be used for scaffolding where hot line is running near by, because there is every possibility of wire rope catching the fire. Also, no scaffolding is to be made on hot as well as insulated lines.
22. Necessary sign boards clearly indicating "RADIOGRAPHY HAZARDS" on all the four sides of the cordoned area surrounding radiography source will have to be displayed by contractor. Surrounding area will be cordoned with the help of manila rope and his personnel will be kept for watching/guard on all the four sides to prevent entry of

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personnel till the radiography work is completed. Contractor's personnel should be able to communicate clearly/properly to stop entry of unauthorized personnel within the area cordoned for the radiography work.

Refuse Disposal

23. Refuse must be removed daily to prevent accumulation. Materials liable to cause persons to slip or trip and fall should be cleared immediately.
24. Refuse removal teams working after work hour should be organized where normal cleaning can not cope with the build up of waste materials.
25. Projecting nails should be removed or bent over.

Personal Protective Equipments

26. Helmets should be provided for all who are exposed to the dangers of falling material or structures they might strike against.
27. Suitable eye protection should be provided for all who are exposed to flying particles, harmful glare, and dangerous substances.
28. In the handling of rough objects, gloves should be provided and used.
29. Safety footwear should be provided to all who are exposed to foot injury, should be good fitting and comfortable to wear.
30. Safety belts should be provided where other means are not practicable. Both the anchorage points and lifelines provided for attaching safety belts should be of adequate strength. The umbilical line should be fixed in such a way that user's freefall will not exceed 1 metre.
31. Catch net should be used where persons are liable to fall and these should be securely supported at a level as near as possible to the working level.
32. Noise defenders should be provided for work area where the noise level exceeds 85 dBA.
33. Respiratory protection should be provided by Contractor and used by workers where the dust level remains high and where control at source is not practicable.

Inspection & Record Keeping

34. Where defects render the scaffolds unsafe, they should be rectified immediately. Where this is not practicable, a sign should be put warning against using it.

Winches

35. Adequate **anchoring foundations** shall be provided for **winches**. The Contractor must get Test Certificate, which shall be issued by competent authority/agency before Winches is put to use.

Lifting Gear

36. All lifting gear and slinging should be tested before use and thereafter inspected regularly by competent engineers. Workers should also check the lifting gear visually before using them.

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37. Each piece of lifting gear should bear its safe working load, its identification number and its last inspection date. It could in addition be colour coded according to due date of inspection.
38. Wire ropes should be preserved against rusting, kinking, fraying, birdcaging and heat damage. Defective wires should be destroyed to prevent recycling.

Concrete Mixers

39. Moving parts which are liable to become nip points, such as gears, chains and rollers should be guarded.
40. Where concrete mixers are driven by internal combustion engines, exhaust points should be located away from the workers' work station so as to eliminate their exposure to obnoxious fumes.

Electrical Components

41. All components and conductors used must be in good condition.
42. Proper junction boxes and distribution boards from which electric power could be tapped should be provided at every floor level.

Demolition: General Provisions

43. Uncontrolled collapse of walls or other structures under demolition should be prevented.
44. The throwing of materials over the sides of the buildings should not be permitted.

Waste Handling

45. Where demolition is carried out near public areas:
 - a) Hoardings slopping inwards should be erected around the building.
 - b) Protective nettings should be hung around the building to prevent materials falling outside the periphery shelter.
 - c) Asbestos

Where asbestos materials are present, appropriate dust control and respiratory protection approved by the local authority must be used.

Excavation: General Provisions

46. Test for toxic gases should be carried out where their presence is suspected.
47. Exposure of shorings to vibration such as that produced by engines or vehicular traffic should be kept to a minimum.

General – Ventilation, Fire Protection/Fighting

48. Where flammable gas concentration could reach explosive levels, it may be necessary to provide intrinsically safe electrical equipments.
49. Adequate lighting and emergency lighting should be provided.

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50. Adequate evacuation stairways should be provided for rapid evacuation in case of an emergency.

First Aid

51. Sufficient First Aid Boxes containing simple dressings and supplies should be provided on the site under the control of the foreman.

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PROPOSAL SHEET

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6.0	List of Enclosure	Form F
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8.0	Information about Bidder	Form H
9.0	Exception & Deviation	Form I

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VIJAIPUR
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FORM-A – TIME SCHEDULE

Name of WORK:
Name of BIDDER:

Sr. No.	ACTIVITY / ITEM	QTY.	UNIT	PERIOD IN WEEKS													
	Mobilization																
1.																	
2.																	
3.																	
4.																	
5.																	
6.																	
7.																	
8.																	
9.																	
10.																	
11.																	

Signature of BIDDER
Name & Address
of BIDDER

NATIONAL FERTILIZER LIMITED
VIJAIPUR
E.S.P.-II IN AMMONIA PROJECT
FORM-B-RESOURCE SCHEDULE (PROPOSED TO BE DEPLOYED FOR THIS
JOB)

Name of WORK :
 Name of BIDDER :

Sr. No.	CATEGORY	PERIOD IN WEEKS											
	Manpower												
	Tools & Tackles												
*													
*	Contractor to indicate category of manpower & type of tools & tackles proposed to be deployed for this job												

Signature of BIDDER _____
 Name & Address _____
 of BIDDER _____

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FORM-C - DETAILS OF SIMILAR WORKS EXECUTED

Name of WORK :

Name of BIDDER :

Sr. No	Description of work including project location	Name of Owner & Consultant	Contract value	Completion time as per		Date of work for	
				Work order	Actual	Starting	Completion
1.	2.	3.	4.	5.	6.	7.	8.

Signature of BIDDER
 Name & Address
 of BIDDER

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FORM-D - CURRENT COMMITMENTS OF THE BIDDER

Name of WORK :
 Name of BIDDER :

Sr. No.	Description of work	Name of Owner / Consultant	Contract Value	Date of			Percentage of completion as on _____
				Commencement	Expected completion	Sch. Completion	
1.	2.	3.	4	5	6	7	8

Signature of BIDDER
 Name & Address
 of BIDDER

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FORM – F – LIST OF ENCLOSURES

Bidder is required to enclose the following documents as part of his bid :

1. Power of Attorney of the signatory of Bidder.
2. *Income tax and sales tax clearance certificates in Performa prescribed by Government of India
3. Document showing annual turnover for similar work for the past three years such as annual report, profit and loss account etc
4. Solvency certificate from a schedule commercial bank
5. Cash flow as per the format below:

MONTHLY CASH FLOW IN PERCENTAGE OF CONTRACT VALUE
PERIOD IN MONTHS

Particulars	1	2	3	4	5	6	7	8	9	10	11	12
Expenses made												
Bill received												
Cash surplus / deficit												

6. Bank guarantee limit and how much has been consumed as on _____
7. Cash credit limit and how much has been consumed as on _____

SIGNATURE OF BIDDER

*In absence of Income tax clearance certificate, Bidder may not be awarded the work tendered for as per Central Government directives.

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FORM – G – PROPOSED SITE ORGANISATION OF BIDDER



1. Bidder shall indicate here the details of site organization proposed to be set up by him for execution of this work. It is understood that this will be augmented from time to time depending on the requirement for timely completion of work, as directed by Engineer-in-Charge.

2. Please indicate below the bio-data of key personnel proposed to be deployed by bidder for this site, such as :
 - Resident Engineer
 - Planning Engineer
 - Quality Assurance Engineer

Signature of BIDDER

Name & Address

of BIDDER

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FORM – H – INFORMATION ABOUT BIDDER

1.0	IN CASH OF INDIVIDUAL		
1.1	Name of Business	:	
1.2	Whether his business is registered	:	
1.3	Date of commencement of business	:	
1.4	Whether he pays Income Tax over Rs.10,000/- per year	:	
1.5			
2.0	IN CASH OF PARTNERSHIP		
2.1	Name of Partners	:	
2.2	Whether partnership is registered	:	
2.3	Date of establishment of firm	:	
2.4	If each of the partners of the firm pays income tax over Rs.10,000.00 a year and if not, which of them pays the same	:	
3.0	IN CASE OF LIMITED LIABILITY COMPANY OR COMPANY LIMITED BY GUARANTEES		
3.1	Amount of paid up capital	:	
3.2	Name of Directors	:	
3.3	Date of Registration of Company	:	
3.4	Copies of Balance sheet of the company for the last three years		

Signature of BIDDER

Name & Address

of BIDDER

	NATIONAL FERTILIZER LIMITED– VIJAIPUR E.S.P.IN AMMONIA PLANT CIVIL, STRUCTURAL AND ALLIED WORKS PROPOSAL SHEET	EM0265-E-CV101	0	
		DOCUMENT NO.	REV	
		SHEET 11 of 11		

NATIONAL FERTILIZER LIMITED
VIJAIPUR
E.S.P.-II IN AMMONIA PROJECT
FORM – I – EXCEPTIONS AND DEVIATIONS

As pointed out in the Enquiry, Bidder may stipulate exceptions and deviations to enquiry specifications/conditions if considered unavoidable in form-I only. Exceptions and Deviations indicated elsewhere in the offer shall be considered null & void :

S.No.	Page No. of Bid Document	Clause No. of Bid Document	Subject	Deviation

Signature of BIDDER
Name & Address
of BIDDER



NATIONAL FERTILIZER LIMITED

VIJAIPUR (MP)

ESP-II

EM0265-E-CV101

DRAFT FOR PERFORMANCE GUARANTEE

DRAFT FOR PERFORMANCE GUARANTEE

(To be issued or confirmed through NFL's Bankers in India	
This guarantee made this -----day of -----2019-----between -----(Bank Limited), A company incorporated in-----and having its branch office at -----(hereinafter called the "Bank") which expression shall unless repugnant to the context or contrary to the meaning thereof include its successors and assignees of the one part and National Fertilizer Limited (NFL), A company incorporated in India and having its registered office at scope complex, core-III, 7 Institutional Area, Lodhi Road, New Delhi 110003 (India), (hereinafter called the "OWNER/CONSULTANT")which expression shall include the successors and assignees of the other part.	
Whereas the OWNER/CONSULTANT has placed a contract with----- (hereinafter called the "CONTRACTOR") for supply cum-erection-----hereinafter called the "WORK" at the total cost.	
And whereas it is one of the terms of the said contract that the contractor shall furnish to the OWNER/CONSULTANT from the bank a Guarantee which shall be for 10% of the value of the contract and which shall be valid for the duration of supply of the work covered by the said contract and the period of defects/liability in respect of the said work.	
AND WHEREAS the Bank has at the request of the contractor, agreed to give in favour of the OWNER/CONSULTANT, guarantee in manner hereinafter appearing, which the OWNER/CONSULTANT has agreed to accept.	
NOW THIS DEED WITNESSTH AS FOLLOWS:	
1.	<p>The applicants (contractors/suppliers/service provider), required to furnish original bank guarantee to National Fertilizers Limited in paper format as per the terms of NIT, shall approach their bank (s) for issuance of bank guarantee in favour of National Fertilizers Limited alongwith a request to confirm the same to State Bank of India, Corporate Accounts Group Branch, 4th & 5th Floor, Red Fort Capital, Parsvnath Towers, Bhai Veer Singh Marg, Gole Market, New Delhi-110001 (Branch Code -17313) SBIN0017313 through swift about issuance of such BG. (Refer National Fertilizers Limited, Account No. 10297944831)</p> <p>The issuing bank shall send the Bank Guarantee directly to National Fertilizers Limited. However, in case the bank guarantee is submitted directly by the contractor, the issuing branch should be requested to immediately send by post (AD) an unstamped duplicate copy of the BG directly to National Fertilizers Limited with a covering letter to compare with the original BG and confirm that the same is in order.</p> <p>The tenderer shall furnish a Bank Guarantee from any of the Scheduled Bank excluding Gramin/Cooperative Bank as per prescribed format. The Bank Guarantee should be valid for a period of _____ months plus _____ months claim period. The Bank Guarantee should be submitted by Bankers directly to National Fertilizers Limited in a sealed cover and not through supplier. The party shall also arrange confirmation of Bank Guarantee (including all amendments) by their issuing bank through SFMS (Structured Financial Messaging System) mode directly to State Bank of India, Corporate Accounts Group Branch, 4th & 5th Floor, Red Fort Capital, Parsvnath Towers, Bhai Veer Singh Marg, Gole Market, New Delhi-110001 (Branch Code -17313) SBIN0017313. (Refer National Fertilizers Limited, Account No. 10297944831).</p>

2.	This guarantee is continuing guarantee and not revocable except with the previous written consent of the OWNER/CONSULTANT, and save as aforesaid, it will continue in force until the contractor has maintained the schedule of delivery of the said work under the said contract and observed and fulfilled the said performance warranty and all other terms and conditions of the said contract.
3.	The OWNER/CONSULTANT may, without affecting Bank's liabilities and obligations hereunder, grant time or other indulgence to or compound with the contractor or enter into any agreement or agree to forbear to enforce. Any of the terms and conditions of the said contract against the contractor or agree to vary any of the terms and conditions of the said contract.
4.	This guarantee shall not be affected by any change in the constitution of the OWNER/CONSULTANT by absorption with any other body or corporation or otherwise and this guarantee will be available to or enforceable by such body or corporation.
5.	All compositions and payments received by the OWNER/CONSULTANT from Or on the behalf of the contractor shall be regard as payments in gross, and in the Contractor being wound-up, the OWNER/CONSULTANT will be entitled to prove against the properties of the contractor in respect of the whole of the contractor's indebtedness of the OWNER/CONSULTANT , without any right on the part of the Bank to stand in the Owner's place in respect of or to claim the benefits of such composition and payment or any security held by the OWNER/CONSULTANT until the OWNER/CONSULTANT shall have received the full amounts of the claims against the contractor.
6.	In order to give effect to this guarantee the OWNER/CONSULTANT will be entitled to act as if the Bank were principal debtor and the Bank hereby waives all and any of its rights of surety ship.
7.	This guarantee shall continue to be in force notwithstanding the discharge of the contractor by operation of law and shall cease only on payment of the full amount by the Bank to the OWNER/CONSULTANT of the amount hereby secured and on the claim of the OWNER/CONSULTANT against the contractor in respect of the said contract being satisfied.
8.	This guarantee shall be addition to and not in substitution for any other guarantee or security for the contractor given or to be given to the OWNER / CONSULTANT in respect of the said contract by the bank (whether alone or jointly with others).
9.	Subject to Clause 2 hereof this guarantee shall remain in force for 12 months after Commissioning of the work or maximum 48 months after delivery whichever is earlier.

10.	Unless demand or claim under this guarantee is made within six months from the Date of expiry of this guarantee. All the rights of the OWNER / CONSULTANT hereunder shall be forfeited and the Bank shall be relieved and discharged of all liabilities hereunder.
11	Any notice by way of request, demand or otherwise hereunder may be sent by post to the Bank, addressed as aforesaid, and if sent by post, it shall be deemed to have been given at the time when it would be delivered in due course of post, and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate, signed by an officer of the OWNER/CONSULTANT, to the effect that the envelope was so posted, shall be conclusive.
12.	These present shall be governed by and construed in accordance with Indian law.
13.	The Bank hereby declares that it has the power to issue this guarantee and the undersigned has full power to do so.
IN WITNESS WHEREOF THE BANK HAS EXECUTED THESE PRESENT THE DAY AND YEAR FIRST ABOVE WRITTEN.	
SIGNED AND DELIVERED FOR AND ON BEHALF OF THE ABOVE NAMED.	



NATIONAL FERTILIZERS LIMITED

VIJAIPUR (MP)

ESP-II

EM0265-E-CV101

**FORM OF BANK GUARATEE IN LIEU OF SECURITY
DEPOSIT**

APPENDIX- 2

FORM OF BANK GUARATEE IN LIEU OF SECURITY DEPOSIT IN INDIVIDUAL CONTRACT

Ref.- General Condition Of Contract Sr,No.10.

<p>1.</p>	<p>In consideration of the _____ @ _____ / _____ @ _____ of _____ (hereinafter called "on owner" which expression shall unless repugnant to the subject or context include his successors and assigns) having agreed under the terms and conditions of Contract No. _____ dated _____ made between _____ and the Owner in connection with _____ (hereinafter called the said Contract) to accept a Deed of _____ Guarantee as herein provided for Rs. _____ . from a Scheduled Bank in lieu of the security deposit to be made by the contractor or in lieu of the deduction to be made from the contractor's bills, for the due fulfillment by the said contractor of the terms and conditions contained in the said Contract. We the _____ Bank Ltd (hereinafter referred to as "the said Bank") a Body/ Company registered under the Companies Act. 1956 and having our registered office at _____ do hereby undertake and agree to indemnify and keep indemnified the OWNER from time to time to the extent of Rs. _____ (Rupees _____) against any loss or damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by the OWNER reason of any breach or breaches by the said Contractor of any other terms and conditions contained in the said contract and to unconditionally pay the amount claimed by the owner or more demand and without demur to the extent of aforesaid.</p>
<p>2.</p>	<p>We _____ bank Ltd.. further agree that the owner shall be the sole judge of as to whether the said Contractor has committed any breach or breaches of any of the terms and conditions of the said Contract and the extent of loss, damage, costs, charges and expenses caused to or suffered ----- that would be caused to or suffered by the owner or account there and decision of the Owner that the contractor has committed such breach or breaches and as to the amount or amounts of loss, damage, costs, charges and any expenses caused to or suffered by or that may be caused to or suffered by the owner from time to time shall be final and binding on us.</p>

APPENDIX- 2

3.	<p>We the said Bank, further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and till all the dues of the Owner under the said Contract or by virtue of any of the terms and conditions governing the said Contract have been fully paid and its claims satisfied or discharged and till _____ certified that the terms and conditions of the said contract have been fully and properly carried out by the said contractor and accordingly discharges this Guarantee subject, however, that the Owner shall have no claim under this Guarantee after _____ years from the date of expiry of the Defects Liability Period as provided in the said Contract, or from the date of cancellation of the said Contract, as the case may be, unless a notice of the claim under this Guarantee has been served on the Bank before the expiry of the said period of _____ years in which case the same shall be enforceable against the Bank notwithstanding the fact, that the same is enforced after the expiry of the said period of _____ years.</p>
4.	<p>The Owner shall have the fullest liberty without affecting in any way the liability of the Bank under this guaranteed or Indemnity, from time to time to vary any of the terms and conditions of the said Contract or to extend time of performance by the said contractor or to postpone for any time and from time to time any of the powers exercisable by it against the said Contractor and either to enforce or forbear from enforcing any of the terms and conditions governing the said Contract or securities available to the Owner and the said Bank shall not be released from its liability under these presents by any exercise by the Owner of the liberty with reference, to the matters aforesaid or by reason of time being given to the said contractor or any other forbearance, act or omission of the part of the Owner or any indulgence by the Owner to the said Contractor or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Bank from its such liability.</p>
5.	<p>It shall not be necessary for the Owner to proceed against the Contractor before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank. Notwithstanding any security which the Owner may have obtained or obtain from the Contractor shall at the time when proceedings are taken against the Bank hereunder be outstanding or unrealized.</p>
6.	<p>We, the said Bank, lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Owner in writing and agree that any change in the constitution of the said contractor or of the said Bank shall not discharge our liability hereunder.</p>
	<p>The above Guarantee is accepted by the _____</p> <p style="text-align: center;">For and on behalf of the _____ @ _____ of _____</p> <p style="text-align: right;">Sd _____ Dated _____</p>

	<p style="text-align: center;">Dated this _____ day of _____ 200</p> <p style="text-align: center;">Name and Designation) for and behalf of the Bank.</p>
<p style="text-align: center;">Notes :</p> <p style="text-align: center;">*For proprietary concerns.</p>	
	<p style="text-align: center;">Shri _____ son of _____ resident of _____</p> <p>_____</p> <p>carrying on business under the name and style of _____ at _____ (hereinafter called "the said Contractor" which expression shall unless the context requires otherwise include his heirs, executors, administrators and legal representatives)</p>
<p style="text-align: center;">For partnership concerns:</p>	
	<p>1) Shri _____ son of _____</p> <p>Residence of _____</p>
	<p>2) Shri _____ son of _____</p> <p>residence of _____</p> <p>business in co—partnership under the name and style of _____ at _____</p> <p>(hereinafter collectively called "the said Contractor" which expression shall unless the context requires otherwise include each of them and their respective heirs; executors, administration and legal representatives).</p>
<p style="text-align: center;">For Companies:</p>	
	<p>Shri _____ a company</p> <p>registered under the Companies Act, 1956 and having its registered office at _____</p> <p>_____ in the state of _____ (hereinafter called "the said Contractor" which expression shall unless the context requires otherwise include its successors and assigns.)</p> <p>_____</p>
	<p style="text-align: center;">@ Here, insert the name of the Undertaking.</p> <p style="text-align: center;">@@ Here, insert the name of the unit/project.</p>



NATIONAL FERTILIZER LIMITED

VIJAIPUR (MP)

ESP-II

ENQUIRY NO -EM0265-E-CV101

**FORM OF BANK GUARANTEE TO SECURE A LUMP SUM
ADVANCE**

APPENDIX -3

FORM OF BANK GUARANTEE TO SECURE A LUMP SUM ADVANCE (Condition No.24 of special Conditions of Contract)	
	TO _____ @/ _____ @@
1.	<p>In consideration of _____ @ _____ (hereinafter called "the owner" which expression shall unless repugnant to the subject or context include his successors and assigns having agreed under the terms and conditions of Contact No _____ dated _____ made between _____ and the Owner in connection with _____ (hereinafter called "the said Contract") to make at the request of the contractor of lump—sum advance of Rs. _____ for utilizing it for the purpose of the Contract on his furnishing a guarantee acceptable to the Owner, we _____ the _____ Bank Ltd., (hereinafter referred to as "the said Bank") a body/company registered under the Companies Act.1956 and having our registered office at _____ do hereby guarantee the due recovery by the Owner of the said advanced with interest thereon as provided according to the terms and condition of the Contract. If the said Contractor fails to utilize the said advance for the purpose of the Contract and/or the said advance together with interest thereon as aforesaid is not fully recovered by the Owner, We _____ Bank Ltd., hereby unconditionally and irrevocably under take to pay to the Owner on mere demand and without demur to the extent of the said sum of Rs. _____. Any claim made by the Owner on us for the loss or damage caused to or suffered by the Owner by reason of the Owner not being able to recover in full the said sum of _____ with interest, as aforesaid.</p>
2.	<p>We _____ Bank Ltd., further accrue that the Owner shall be the sole judge of and as to whether the said Contractor has not utilized the said advance or any part thereof for the purpose of the Contract and the extent of loss or damage caused to or suffered by the Owner on account of the said advance together with interest not being recovered in full and the decision of the Owner that the said Contractor has not utilized the said advance or any part thereof for the purpose of the Contract and as to the amount or amounts of loss or damage caused to or suffered by the Owner shall be final and binding On us.</p>
3.	<p>We, the said Bank further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performances of the said contract and till the said advance with interest has been fully recovered and its claims satisfied or discharged and till _____ certifies that the said advance with interest has</p>

	been fully recovered from the said Contractor, and accordingly discharges this Guarantee subject, however, that the Owner shall have no claim under this Guarantee after _____ years from the date of completion of the said contract as the case may be, unless a notice of the claim under this Guarantee has been served on the Bank before the expiry of the said period of _____ years in which case the same shall be enforceable against the Bank notwithstanding the fact, that the same is enforced after the expiry of the said period of _____ years.
4.	The Owner shall have the fullest liberty without effecting in any way the liability of the Bank under this Guarantee or Indemnity, from time to time to vary any of the terms and conditions of the said Contract of the advance or to extend time of performance by the said Contractor or to postpone for any time and from time to time any of the powers exercisable by it against the said Contractor and either to enforce or for bear from enforcing any of the terms and conditions governing the said Contract or the advance or securities available to the Owner and the said Bank shall not be released from its liability under these presents by any exercise by the Owner of the liberty with reference to the matters aforesaid or by reason of time being given to the said Contractor or any other forbearance, act or omission on the part of the Owner or any indulgence by the Owner to the said Contractor or of any other matter or thing whatsoever which under the law relating to sureties would be for this provision have the effect of so releasing the Bank from its such liability.
5.	It shall not be necessary for the Owner to proceed against the Contractor before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank notwithstanding any security which the Owner may have obtained or obtain from the Contractor shall at the time when proceedings are taken against the Bank here under be outstanding or unrealized.
6.	We, the said Banks lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Owner in writing and agree that any change in the Constitution of the said Contractor or of the said Bank shall not discharge our liability hereunder.
Dated this _____ day of _____ 200_____	
	For and on behalf of the Bank.
	The above Guarantee is accepted by the _____ @ _____ @ @ _____ For and on behalf of the _____ @ _____ Dated _____ (Name and Designation) for and behalf of the Bank
Notes, *For proprietary concerns.	
	Shri _____ son of _____ resident of _____ carrying on business under the name and style of _____ at _____

	(hereinafter called “the said Contractor” which expression shall unless the context requires otherwise include his heirs, executors, administrators and legal representatives)
For partnership concerns.	
	<p>1) Shri _____ son of _____ Residence Of _____</p> <p>2) Shri _____ son of _____ residence Of _____ business in co—partnership under the name and style of _____ at _____ (hereinafter collectively called “the said Contractor” which expression shall unless the context requires otherwise include each of them and their respective heirs; executors, administration and legal representatives).</p>
For Companies:	
	Shri/M/s _____ a company registered under the Companies Act. 1956 and having its registered office at _____ in the State of _____ (hereinafter called “the said Contractor” which expression shall unless the context requires otherwise include its successors and assigns.)

@ Here, insert the name of the Undertaken.
@@ Here, insert the name of the Unit/Project



NATIONAL FERTILIZER LIMITED
VIJAIPUR (MP)

ESP-II

ENQUIRY NO.- EM0265-E-CV101

FORM OF HYPOTHECATION DEED

FORM OF HYPOTHECATION DEED

<p>THIS INDENTURE made this _____ day of _____ between _____ of the one part and the _____ @ _____ @@ _____ hereinafter called "the Owner" which expression shall unless the context requires otherwise include his successors and assigns of the other part:</p> <p>WHEREAS under Condition 50 (b) of the General Conditions of Contract relating to the Contract No. _____ entered into between Owner and the Contractor, the Contractor has applied to the Owner for a loan of Rs. _____ (Rupees _____) for Plant and equipment described in the Schedule hereto specifically acquired by the Contractor for the works and brought to site.</p> <p>AND WHEREAS one of the conditions on which the said loan of Rs. _____ is to be granted by the Owner to the Contractor is that the Contractor shall hypothecate the plant and equipments described in the Schedule hereto in favour of the owner as security for the due repayment of the said loan:</p> <p>And whereas contractor has represented that he is the Owner of the plant and equipment described in the schedule hereto.</p> <p>NOW THIS INDENTURE WITNESSETH THAT In pursuance of the said agreement and in consideration of the premises the Contractor do hereby hypothecate, assign and transfer to the Owner the Plant and equipment described in the Schedule here to the intent that the same shall remain and form security for repayment to the Owner of the said loan of Rs. _____ together with the interest thereon at _____% per _____ annum.</p>	
1.	<p>The contractor hereby agrees declares and covenants with the Owner as follows:</p> <p>a) The Contractor shall repay to the Owner the said loan of Rs. _____ (Rupees _____) together with interest thereon as aforesaid by _____ and agrees that the said loan be recovered by the Owner, by making deductions in the manner provided in condition of 50.2.2 of Special Conditions of the contract and other conditions of the contract from the claims made by the Contractor , against the Owner for on account payment.</p> <p>b) The contractor has paid in full the purchase price of plant and equipment described in the, Schedule hereto and everyone Of them and that the same are the absolute property of the Contractor and that the same have not been sold, pledged: mortgaged or transferred or in any way dealt by the contractor.</p> <p>c) So long as any amount remain payable to the Owner by the Contractor in respect of the said loan of Rs. _____ the contractor shall not sell,</p>

pledge, hypothecate, transfer, part with or any way deal with the plant and equipment described in the Schedule hereto.

- d) If the said loan of Rs._____ shall not be repaid by the Contractor or recovered in the manner described above by the said_____ day of_____ due to any reason whatsoever or the said Contract has been determined earlier or cancelled or if the Contractor shall sell, pledge, mortgage, transfer, part with or in any way deal with the said plant and equipment or any part thereof or the Contractor or any of the partners is adjudged insolvent or the contract is to be wound up or makes any composition or arrangement with its creditors or the Contractor shall commit breach of any of the terms and conditions or conveys as herein contained or if any of the said plant and equipments or if any other property whatsoever belonging to the Contractor has been sold or attached for a period of not less than 21 days in execution of the decree of any court for payment of money, the whole of the said loan of Rs._____ or such part thereof as may have remained unpaid or unrecovered together with interest thereon shall forthwith become due and payable.
- e) The Owner may on the happening of any of the events mentioned in the preceding clause (d) or in the event of the said loan or any part thereof becoming due and payable and has not been paid or recovered or cannot be recovered as provided in the said conditions, cease and take possession of the said plant and equipment (and either remain in possession thereof without removing the same or else may remove the same) and sell the said plant and equipment or any of them either by public auction or private contract and may out of the sale proceeds retain the balance of the said loan and interest then remaining unpaid and unrecovered and all costs, charges and expenses and payments incurred or made in maintaining, defending or protecting the rights of the Owner hereunder and shall pay over the surplus, if any, to the Contractor.
- f) The Contractor shall at all times during the continuance of the security and at the expense of the contractor insure and keep insured the plant and equipment described in the Schedule hereto for the full value thereof in the joint names of the Contractor and the Owner with an insurance company to be approved by the Engineer—in—charge against the risk of loss or damage from whatever cause arisen other than the expected risks. During the continuance of the security the Contractor shall pay all premia and sums of money necessary for keeping such insurance policy and receipts in original for premia said shall be deposited with the Engineer—in—Charge. The Contractor shall assign all his right, title and interest in policy to the Owner.
- g) The Contractor shall not permit or suffer the said plant and equipment or any part thereof to be destroyed or damaged or used or to be used or to deteriorate in a greater degree than it would deteriorate by reasonable wear and tear thereof in the performance of the Contract.
- h) In the event of any damage or loss happening to the said plant and

	equipment or any part thereof from whatever cause other than the expected risks the Contractor shall forthwith have the same repaired or replaced as the case may be or arrange for payment of the entire amount recovered or to be recovered from the insurance company to the Owner towards the payment of the said loan of Rs. _____
2.	Upon repayment of recovery in full of the amount secured on account of this hypothecation deed the said plant and equipment secured hereunder shall stand released from hypothecation, but this without prejudice to the right of the Owner under any other Conditions of the Contract:

SCHEDULE ABOVE REFERRED TO

Sl.No.	Particulars of Plant and equipment	NOS.	Purchase Price/ Price Considered Reasonable by Engineer-in charge	Total price Advance(7.5% of col.5
1	2	3	4	

IN WITNESS WHEREOF the parties hereto have executed these present on the and year first above written

Signed by Shri _____ (Name & Designation)
for and on behalf of the _____ @ _____ @@

IN WITNESS WHEREOF the parties hereto have executed these presents, the day and year first herein above written.

Signed and delivered by the
Within _____ (Contract
named _____
or)

in the presence of
(1)

(2)

Signed and delivered by the _____
within named _____ Bank in the presence of

(1)
(2)

Signed by Shri _____ (Name & Designation)
for and on behalf of the _____ @ _____ @@
in the presence of

(1)

(2)
Notes.

***For proprietary concerns.**

Shri _____ son of _____
resident of _____
carrying on business under the name and style of _____
_____ at _____
(hereinafter called "the said Contractor" which expression shall unless the context
requires otherwise
include his heirs, executors, administrators and legal representatives)

For partnership concerns:

1) Shri _____ son of _____
Residence of _____
2) Shri _____ son of _____
residence of _____
business in co-partnership under the name and style of _____
_____ at _____
(hereinafter collectively called "the said Contractor" which expression shall unless the
context requires otherwise include each of them and their respective heirs: executors,
administration and legal representatives).

For Companies:

Shri _____ a company registered under the
companies Act. 1956 and having its registered office
at _____ in the State of
_____ (hereinafter called "the said contractor" which expression shall
unless the context requires otherwise include its
successors and assigns.)

-

@ Here, insert the name of the Undertaking.
@@ Here, insert the name of the Unit/Project.



NATIONAL FERTILIZERS LIMITED
VIJAIPUR (MP)

ESP-II

ENQUIRY NO- EM0265-E-CV101

**DRAFT OF BANK GUARANTEE FOR EARNEST MONEY
DEPOSIT**

DRAFT OF BANK GUARANTEE FOR EARNEST MONEY DEPOSIT

1. IN CONSIDERATION OF NATIONAL FERTILIZERS LTD. HAVING ITS REGISTERED OFFICE AT SCOPE COMPLEX CORE III, 7, INSTITUTIONAL AREA LODHI ROAD, NEW DELHI 110003 (HEREINAFTER CALLED "THE COMPANY" WHICH EXPRESSION SHALL UNLESS REPUGNANT TO THE SUBJECT OR CONTEXT INCLUDES ITS SUCCESSORS AND ASSIGNS) HAVING AGREED TO EXEMPT _____ (HEREINAFTER CALLED "THE SAID TENDERER(S)" WHICH EXPRESSION SHALL UNLESS REPUGNANT TO THE SUBJECT,OR CONTEXT INCLUDES HIS SUCCESSORS AND ASSIGNS) FROM THE DEMAND UNDER THE TERMS AND CONDITIONS OF TENDER NO _____ FOR _____ HEREINAFTER CALLED "THE SAID TENDER" OF SUCH BID SECURITY DEROSIT FOR THE DUE FULFILMENT BY THE SAID TENDERER(S) OF THE TERMS AND CONDITIONS CONTAINED IN THE SAID TENDER FOR _____ ON PRODUCTION OF BANK GUARANTEE FOR RS. _____ (RUPEES _____ ONLY).

2. WE _____ BANK HEREINAFTER REFERRED TO AS "THE BANK" DO HEREBY UNDERTAKE TO PAY TO THE COMPANY AN AMOUNT NOT EXCEEDING RS. _____ (RUPEES _____ ONLY) AGAINST ANY LOSS OR DAMAGE CAUSED TO OR SUFFERED BY THE SAID COMPANY BY REASON OF ANY BREACH BY THE SAID TENDERER(S) OF ANY OF THE TERMS AND CONDITIONS CONTAINED IN THE SAID TENDER (THE DECISION OF THE COMPANY AS TO ANY SUCH BREACH HAVING BEEN COMMITTED AND LOSS SUFFERED SHALL BE BINDING ON US.

3. WE _____ BANK DO HEREBY UNDERTAKE TO PAY THE AMOUNTS DUE AND PAYABLE UNDER THIS GUARANTEE WITHOUT ANY DEMUR MERELY OR A DEMAND FROM THE COMPANY STATING THAT THE AMOUNT CLAIMED IS DUE BY WAY OF LOSS OR DAMAGE CAUSED TO OR WOULD CAUSE TO OR SUFFERED BY THE COMPANY BY REASON OF ANY BREACH BY THE SAID TENDERER (S) OF ANY OF THE TERMS OR CONDITIONS CONTAINED IN THE SAID TENDER OR BY REASON OF THE SAID TENDERER'S FAILURE TO KEEP THE TENDER OPEN, ANY SUCH DEMAND MADE ON THE BANK SHALL BE CONCLUSIVE AS REGARDS THE AMOUNT DUE AND PAYABLE BY THE BANK UNDER THIS GUARANTEE, HOWEVER, OUR LIABILITY UNDER THIS GUARANTEE SHALL BE RESTRICTED TO AN AMOUNT NOT EXCEEDING _____ (RS _____ ONLY).

4. WE _____ BANK FURTHER AGREE THAT THE GUARANTEE HEREIN CONTAINED SHALL REMAIN IN FULL FORCE AND EFFECT DURING THE PERIOD THAT WOULD BE TAKEN FOR THE FINALISATION OF THE SAID TENDER AND THAT IT SHALL CONTINUE TO BE ENFORCEABLE TILL THE SAID TENDER IS FINALLY DECIDED AND ORDER PLACED ON THE SUCCESSFUL TENDERER AND/OR TILL ALL THE DUES OF THE COMPANY UNDER/OR BY VIRTUE OF THE SAID TENDER HAVE BEEN FULLY PAID AND ITS CLAIMS SATISFIED OR DISCHARGED OR TILL A DULY AUTHORISED OFFICER, OF THE COMPANY CERTIFIED THAT THE TERMS AND CONDITIONS OF THE SAID TENDER HAVE BEEN FULLY AND PROPERLY CARRIED OUT BY THE SAID TENDERER(S) AND ACCORDINGLY DISCHARGES THE GUARANTEE , UNLESS A DEMAND OR CLAIM UNDER THIS GUARANTEE IS MADE ON US IN WRITING ON OR BEFORE THE _____ TO INCLUDE 6 MONTHS CLAIM OVER AND ABOVE THE PERIOD MENTIONED IN THE PARAGRAPH FOR THE VALIDITY OF THE BANK GUARANTEE IN THE TENDER WE SHALL BE DISCHARGED FROM ALL LIABILITY UNDER THIS GUARANTEE THEREAFTER.

5. WE _____ BANK, LASTLY UNDERTAKE NOT TO REVOKE THIS GUARANTEE DURING ITS CURRENCY EXCEPT WITH THE PREVIOUS CONSENT OF THE COMPANY IN WRITING.

Dated
of _____ 2019 _____

this _____ day

CORPORATE SEAL FOR BANK