

## **SECTION - IV**

# **GENERAL CONDITIONS OF CONTRACT (GCC)**

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## GENERAL CONDITIONS OF CONTRACT (GCC)

### **Preamble**

This Section (Section -IV) of the Bidding Documents [named as General Conditions of Contract (GCC)] provides all the rights and obligations of the parties under the Contract. This Section contains provisions that are to be used unchanged unless Section - V [named as Special Conditions of Contract (SCC)] states otherwise as any changes in GCC or any complementary information that may be needed has been shown in SCC. If there is a conflict between the provisions of Section - IV & Section - V, the provisions of Section - V shall prevail.

## **A. Definitions and Interpretation**

### **1. Definitions**

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) "Arbitrator" means the person or persons appointed by agreement between the Purchaser and the Supplier to make a decision on or to settle any dispute or difference between the Purchaser and the Supplier referred to him or her by the parties pursuant to GCC Sub-Clause 36.1 (Arbitration) hereof.
- (b) "Collaborator" or "Parent Company" means the firms/corporations who has provided technological support to the manufacturer for establishing production line for the specific equipment.
- (c) "Commissioning" means operation of the Goods by the Purchaser, as specified in the Technical Specifications on completion of all works as well as successful completion of Pre-commissioning of the Facilities where the Goods have been installed.
- (d) "Completion" means the delivery of Goods and fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract and Commissioning of the aforesaid Goods by the Purchaser through a Contractor.
- (e) "Contract" means the Contract Agreement entered into between the Purchaser and the Supplier together with the Contract Documents referred to therein.
- (f) "Contract Documents" means the documents listed in Clause 1.1 of Article 1 (Contract Documents) of the Form of Contract Agreement (including any amendments thereto).
- (g) "Contract Price" means the sum specified in Clause 2.1 of Article 2 (Contract Price) of the Contract Agreement, subject to such additions and deductions therefrom, as may be made pursuant to the Contract. For the purpose of Liquidated Damages and Contract Performance Guarantee, the "Contract Price" means the sum specified in Clause 2.1 of Article 2 (Contract Price) of the Contract Agreement.

- (h) "Contractor" means the firms appointed by the Purchaser for actual installation of the Goods to be supplied under the Contract.
- (i) "Day" means calendar day of the Gregorian Calendar.
- (j) "Defect Liability Period" means the period of validity of the warranties given by the Supplier during which the Supplier is responsible for defects with respect to the Goods as provided in GCC Clause 22 (Defect Liability) hereof.
- (k) "Delivery Schedule" means the time within which the delivery of Goods at final destination site is to be attained by the Supplier in accordance with the specifications, as a whole (or of a part of the Facilities where a separate Delivery Schedule of such part has been prescribed in the SCC).
- (l) "Effective Date" means the date of Notification of Award from which the Delivery Schedule shall be determined.
- (m) "Facilities" means the permanent plant to be established by the Purchaser/Contractor wherein the Goods to be supplied under the Contract are to be incorporated.
- (n) "GCC" means the General Conditions of Contract hereof.
- (o) "Goods" means all the commodities, raw material, machinery and equipment and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (p) "Licensee" means the party to whom the Licensor transfers (in whole or in part) the property rights including the entire know-how and know-why (as per terms and conditions mutually agreed to) to use that technology or produce product or system based on this technology for commercial purposes.  
  
"Licensee" has the rights to adopt and develop the technology and to spin off product for which he is having the ownership rights.
- (q) "Licensor" means the party who holds the licenses for a particular technology/product and also he is the owner of the property rights for the lifetime and location.
- (r) "Month" means calendar month of the Gregorian Calendar.

- (s) "Notification of Award" means the official notice issued by the Purchaser notifying the Supplier that his bid has been accepted.
- (t) "Owner" means the firm/corporation/government entity, named in the SCC, who has decided to set up the Facilities and shall include the legal successors or permitted assigns of the Owner.
- (u) "Project Manager" means the person appointed by the Purchaser in the manner provided in GCC Sub-Clause 13.1 hereof to perform the duties delegated by the Purchaser.
- (v) "Project Site" means the such land and other places as may be specified in the Contract as forming part of the Site, upon which the Goods are to be supplied.
- (w) "Purchaser" means the firm/corporation/ government entity, named in the SCC, who is purchasing the Goods and Related Services. The Purchaser may be Owner himself or an agency appointed by the Owner and shall include the legal successors or permitted assigns of the Purchaser.
- (x) "Related Services" means the services incidental to the supply of the goods, such as insurance, installation, training, supervision of installation and initial maintenance and other such obligation of the Supplier under the Contract.
- (y) "SCC" means the Special Conditions of Contract.
- (z) "Subcontractor"/"vendor"/"sub-vendor" means firms/corporations/government entities to whom of any part of the Goods to be supplied or execution of any part of the Related Services is sub-contracted directly or indirectly by the Supplier with the consent of the Purchaser in writing, and includes its legal successors or permitted assigns.
- (aa) "Supplier" means the firms whose bid to perform the Contract has been accepted by the Purchaser and is named in the Contract Agreement, and includes the legal successors or permitted assigns of the Supplier.
- (bb) "Supplier's Representative" means any person nominated by the Supplier and approved by the Purchaser in the manner provided in GCC Sub-Clause 13.2 (Supplier's Representative) hereof to perform the duties delegated by the Supplier.

- (cc) "Taking Over" means the Purchaser's written acceptance of the Goods and Related Services under the Contract, after Supplier's performance obligation, in accordance with the Contract, as provided in GCC Sub-Clause 20.4.

## 2. Interpretation

### 2.1 Contract

2.1.1 The Contracts to be entered into with the successful Bidder shall be as under:

- (i) First Contract: For Ex-Works supply of all Goods and Type Test to be conducted (whether in India or abroad) (*Supply of Goods Contract*)
- (ii) Second Contract: For providing all services i.e. inland transportation for delivery at site, In-transit insurance and loading and Supervision Charges, if applicable and any other services specified in the Contract Documents (*Supply of Services Contract*).

2.1.2 The Contract will be signed in two originals and the Supplier shall be provided with one signed original and the rest will be retained by the Purchaser.

2.1.3 The Supplier shall provide free of cost to the Purchaser all the engineering data, drawing and descriptive materials submitted with the bid, in at least two (2) copies to form a part of the Contract immediately after Notification of Award

### 2.2 Contract Documents

All documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory, subject to Article 1.2 (Order of Precedence) of the Contract Agreement. The Contract shall be read as a whole.

### 2.3 Language

The ruling language of the Contract and the language for communications shall be English.

## 2.4 Singular and Plural

The singular shall include the plural and the plural the singular, except where the context otherwise requires.

## 2.5 Headings

The headings and marginal notes in the General Conditions of Contract are included for ease of reference, and shall neither constitute a part of the Contract nor affect its interpretation.

## 2.6 Entire Agreement

Subject to GCC Sub-Clause 12.4 hereof, the Contract constitutes the entire agreement between the Purchaser and Supplier with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

## 2.7 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party hereto.

## 2.8 Independent Contractor

The Supplier shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.

Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract or in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Purchaser.

## 2.9 Joint Venture

If the Supplier is a joint venture of two or more firms, all such firms shall be jointly and severally bound to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one

of such firms to act as a leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior written consent of the Purchaser.

2.10 Non-Waiver

2.10.1 Subject to GCC Sub-Clause 2.10.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

2.10.2 Any waiver of a party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

2.11 Severability

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

2.12 Country of Origin

"Origin" means the place where the goods have been mined, grown, produced, manufactured or processed; or through manufacturing, processing or substantial assembling of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

2.13 Notices

2.13.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, special courier, telegraph, facsimile or Electronic Data Interchange (EDI) to the address of the relevant party set out in the Contract Agreement, with the following provisions:

(a) Any notice sent by telegraph, facsimile or EDI shall be confirmed within two (2) days after dispatch by notice sent by special courier, except as otherwise specified in the Contract.

- (b) Any notice sent by special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by special courier. Provided further that whenever the postal authorities or courier service provide a proof of delivery, the same shall also be applicable for presenting the fact of dispatch.
- (c) Any notice delivered personally or sent by telegraph, facsimile or EDI shall be deemed to have been delivered on date of its dispatch.
- (d) Either party may change its postal, facsimile or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.

2.13.2 Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

#### 2.14 Governing Law & its Jurisdiction

The Contract shall be governed by and interpreted in accordance with laws of Union of India and the Courts of New Delhi shall have exclusive jurisdiction in all matters arising under this Contract.

### **B. Subject Matter of Contract**

#### **3. Scope of Supply**

3.1 Unless otherwise expressly limited in the Technical Specifications, the Supplier's obligation shall include the provision of all Goods and the performance of all Related Services required for the design, the manufacture (including procurement, quality assurance and delivery) of the Goods and the supervision of installation, commissioning and performance testing of the Goods in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts (as specified in GCC Sub-Clause 3.3 below) and accessories; Supplier's Equipment; temporary materials, structures and facilities; transportation (including without limitation, unloading and hauling to, from and at the Site); and storage.

- 3.2 The Supplier shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Goods and Related Services as if such work and/or items and materials were expressly mentioned in the Contract.
- 3.3 The supply of Mandatory Spare Parts, if any, shall be included in the Contract. Beside the aforesaid Mandatory Spares parts, the Supplier shall ensure the availability of spare parts required for the operation and maintenance of the Goods to the Purchaser for a minimum period of 15 years from Completion of the Facilities. The Supplier shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Goods. If so desired by the Purchaser, the Supplier shall submit the specifications, price and the terms and conditions relating to the supply thereof for such spares identified by the Purchaser with validity period of 6 months within 30 days of receipt of request from Purchaser for its consideration and placement of order.
- 3.4 The Supplier shall guarantee that in the event of termination of production of spare parts by the Supplier or his Sub-Contractor:
- (i) The Supplier shall send advance notification to the Purchaser of the pending termination, with 2 (two) years time to permit the Purchaser to procure needed requirements, and
  - (ii) Following such termination, the Supplier shall furnish at no cost to the Purchaser the blueprints, drawings and specification of the spare parts, if requested.
- 3.5 In case the Supplier fails to supply the spares parts in accordance with the terms stipulated above, the Purchaser shall sanction the Supplier declaring them ineligible for a stated period of time for future projects.

#### **4. Delivery Schedule**

- 4.1 The Supplier shall commence the delivery of Goods to final destination site and shall attain completion of the delivery of Goods to final destination site in accordance with the time schedule specified in the corresponding Appendix - 4 (Delivery Schedule) to the Contract Agreement or within such extended time to which the Supplier shall be entitled under GCC Clause 32 hereof.

## **5. Supplier's Responsibilities**

- 5.1 The Supplier shall design, manufacture (including associated purchases and/or subcontracting) and supply the Goods with due care and diligence in accordance with the Contract.
- 5.2 The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Goods provided by the Purchaser, and on the basis of information that the Supplier could have obtained from a visual inspection of the Site (if access thereto was available) and of other data readily available to it relating to the Goods as of the date twenty-eight (28) days prior to bid submission. The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.
- 5.3 The Supplier shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located that are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Purchaser under GCC Sub-Clause 6.1 hereof and that are necessary for the performance of the Contract.
- 5.4 The Supplier shall comply with all laws in force in India. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Supplier. The Supplier shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including the Subcontractors and their personnel.
- 5.5 All the Goods and Related Services to be supplied under the Contract shall have their origin as specified under GCC Sub-Clause 2.12 (Country of Origin).
- 5.6 The Supplier shall permit the Purchaser to inspect the Supplier's accounts and records relating to the performance of the Supplier.

## **6. Purchaser's Responsibilities**

- 6.1 The Purchaser shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Purchaser to obtain in the Purchaser's name, are necessary for the execution of the Contract (they include those required for the performance by both the Supplier and the Purchaser of their respective obligations under the Contract).
- 6.2 If requested by the Supplier, the Purchaser shall use its best endeavors to assist the Supplier in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Supplier or Subcontractors or the personnel of the Supplier or Subcontractors, as the case may be, to obtain.
- 6.3 All costs and expenses involved in the performance of the obligations under this GCC Clause 6 shall be the responsibility of the Purchaser.

## **C. Payment**

### **7. Contract Price**

- 7.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Form of Contract Agreement.
- 7.2 The Contract Price shall be subject to adjustment in accordance with the provisions of Appendix 2 (Price Adjustment) to the Contract Agreement. The Contract Price shall be increased or reduced on account of variation in quantity in accordance with Clause 31 of GCC.
- 7.3 Subject to GCC Sub-Clause 5.2 hereof, the Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

### **8. Terms of Payment**

- 8.1 The Contract Price shall be paid as specified in the corresponding Appendix - 1 (Terms and Procedures of Payment) to the Contract Agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix.

8.2 All payments under the Contract shall be made in Indian Rupees.

## 9. Securities

### 9.1 Issuance of Securities

The Supplier shall provide the securities specified below in favor of the Purchaser at the times, and in the amount, manner and form specified below.

### 9.2 Advance Payment Security

9.2.1 The Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to 110% (one hundred ten percent) of the amount of Advance for Supply of Goods.

The above shall be calculated in accordance with the corresponding Appendix - 1 (Terms and Procedures of Payment) to the Contract Agreement, and in the same currency(ies) with initial validity of up to ninety (90) days beyond the completion of delivery of the Goods at the final destination sites under the Contract. The same shall be extended by the Supplier time to time till ninety (90) days beyond the actual date of completion of delivery of the Goods, as may be required under the Contract.

9.2.2 The security shall be in the Form of unconditional Bank Guarantee attached hereto in Section VI - Sample Forms and Procedures. The security shall be discharged after completion of delivery of the Goods under the contract and issuance of the Material Acceptance Certificate by the Purchaser's representative corresponding to which advance has been drawn.

- Procedure for effective reduction in the Advance Payment Security

The Advance Payment Security shall be allowed to be reduced every six (06) months after First Running Account Bill/Stage payment under the Contract if the validity of the Bank Guarantee is more than one year. The cumulative amount of reduction at any point of time shall not exceed seventy five percent (75%) of the advance corresponding to cumulative value of the supplies completed as per a certificate to be issued by the Project Manager. It should be clearly understood that reduction in the value of advance Bank Guarantee shall not in any way dilute the Supplier's responsibility and liabilities

under the Contract including in respect of the supplies for which reduction in the value of security is allowed.

### 9.3 Performance Security

9.3.1 The Supplier shall, within twenty-eight (28) days of the notification of award, provide a performance security for the due performance of the Contract in the amount equivalent to Ten percent (10%) of the Contract Price, with a validity upto ninety (90) days beyond the Defect Liability Period. The same shall be extended by the Supplier time to time till ninety (90) days beyond the actual Defect Liability Period, as may be required under the Contract.

Apart from the Supplier's performance security, the Supplier shall be required to arrange additional performance securities, as specified in SCC, within twenty-eight (28) days of the notification of award in favour of the Purchaser in the form acceptable to the Purchaser.

9.3.1.1 Notwithstanding above, in case of the performance security (ies) for which the validity as per GCC Clause 9.3.1 is required to be more than 5 years, the Supplier may choose to submit the performance security with initial validity of 5 years. In such cases, the Supplier shall, however be required to extend the validity till ninety (90) days beyond the actual Defect Liability Period, as may be required under the Contract at any time, but no later than 6 months, prior to expiry of the performance security failing which the said performance security shall be forfeited by the Purchaser.

9.3.1.2 If the Supplier delays submission of the performance security(ies) vis-à-vis the period specified in Clause GCC 9.3.1, then without prejudice to any other rights or remedies available with the Purchaser, following shall also be applicable:

- a) The Defect Liability Period pursuant to Clause GCC 22 for the Facilities or any relevant part thereof covered under the said performance security shall stand extended and the Supplier shall accordingly extend the validity of the Contract Performance Security to be furnished as per Clause GCC 9.3.1 by the period of delay as per Clause GCC 9.3.1.2 (c), over and above the period required as per the Contract.
- b) Alternatively, if the Supplier fails to extend the validity of the performance security pursuant to Clause GCC 9.3.1.1, an amount @preailing SBI Card Rate applicable for Inland Bank Guarantee +2% per annum on the performance security amount corresponding to the Facilities or any relevant part thereof

covered under the said performance security, for the period of delay as per Clause GCC 9.3.1.2 (c) shall be paid by the Supplier to the Purchaser. The Purchaser may, without prejudice to any other method of recovery, deduct the amount worked out as above from any monies due or to become due to the Supplier under the Contract.

c) The period of delay for the above purpose shall be the time elapsed between the due date for submission of performance security as per the Contract and the date of performance security.

d) In case the Supplier fails to submit the performance security within 90 days of the Notification of Award, the Purchaser, without prejudice to any other rights or remedies it may possess under the Contract, may forfeit the bid security and/or may terminate the Contract forthwith pursuant to GCC Clause 33.

9.3.1.3 The above extension of Defect Liability Period or deduction shall not relieve the Supplier from any of his obligations and liabilities under the Contract.

9.3.1.4 The Purchaser shall be sole judge in above regard.

9.3.1.5 Apart from the performance security(ies) to be furnished as per Clause GCC 9.3.1 above, additional performance securities, as specified in the Bidding Documents, shall be arranged and furnished by the Supplier at any time after the Notification of Award. The submission of these performance securities to the Purchaser shall, however, be one of the conditions precedent for release of payment (other than Initial/Mobilisation advance) due against such equipment/ works for which the said performance security is required to be submitted.

9.3.2 The performance security shall be in the Form of unconditional Bank Guarantee attached hereto in the Section VI - Sample Forms and Procedures.

9.3.3 Reduction in the security pro rata to the Contract Price of any part of the Goods and Related Services is not admissible.

9.3.4 In case of award of the contract to a Joint Venture, the Bank Guarantees for performance security and the Bank Guarantee for advance payment shall be submitted in the name of all the partner(s) of the Joint Venture

## 9.4 Issuing Banks

The Bank Guarantee for Advance Payment Security and Performance Security are to be provided by the Supplier, which should be issued either:

- (a) by a Public Sector Bank located in India, or
- (b) a scheduled Indian Bank having paid up capital (net of any accumulated losses) of Rs. 1,000 Million or above (the latest annual report of the Bank should support compliance of capital adequacy ratio requirement) *as per attached list only* [**List is placed at Annexure-I to Special Conditions of Contract (SCC)**], or
- (c) by a foreign bank or a subsidiary of a foreign bank, acceptable to the Purchaser, with overall international corporate rating or rating of long term debt not less than A- (A minus) or equivalent by a reputed rating agency. Further, the Bank Guarantee should be confirmed by either (i) its corresponding bank located in India; or (ii) a Public Sector Bank located in India; or (iii) a scheduled commercial private bank located in India *as per the attached list only* [**List is placed at Annexure-I to Special Conditions of Contract (SCC)**].

## 10. Taxes and Duties

10.1 The Supplier shall be entirely responsible for payment of all taxes, duties, licence fees and other such levies legally payable/incurred until delivery of the contracted supplies to the Purchaser.

If it is statutory requirement to make deductions towards such taxes and duties or any other applicable taxes and duties, the same shall be made by the Purchaser and a certificate for the same shall be issued to the Supplier.

10.2 The Supplier shall be solely responsible for the taxes that may be levied on the Supplier's persons or on earnings of any of his employees and shall hold the Purchaser indemnified and harmless against any claims that may be made against the Purchaser. The Purchaser does not take any responsibility whatsoever regarding taxes under Indian Income Tax Act, for the Supplier or his personnel. If it is obligatory under the provisions of the Indian Income Tax Act, deduction of Income Tax at source shall be made by the Purchaser.

10.3 In respect of Supply of Goods to the Purchaser by the Supplier, the EXW price is inclusive of all cost as well as duties and tax (viz., custom duties & levies, duties, GST etc.) paid or payable on components, raw materials and any other items used for their consumption incorporated or to be incorporated in the Goods.

Further, the EXW price of (i) imported goods offered as 'Off the Shelf' or dispatched directly from the Indian Port of disembarkation are inclusive of cost as well as any duties paid/payable in relation to import of such goods (viz., Customs duties, GST & levies etc.) and no separate claim on this behalf will be entertained by the Purchaser.

The Input Tax Credit (ITC) available, if any, under GST as per the relevant Government laws wherever applicable has been taken into account by the Supplier.

10.4 Ex-works price for supply of Goods by the Supplier is excluding GST, if any, payable. The GST will be reimbursable (along with subsequent variation if any), by the Purchaser on the supplies made by the Supplier but limited to the tax liability on the transaction between the Purchaser and the Supplier.

Type test charges, if applicable, are excluding GST, if any, payable. Type test shall be considered an incidental expense incurred prior to the supply of Goods and would be added to the value of Goods for GST purposes and GST shall for Type Test be reimbursed at the rate applicable for such Goods.

Further the price for supply of services viz. Supervision Charges is excluding GST, if any, payable. The GST will be reimbursable (along with subsequent variation if any), by the Purchaser on the supplies made by the Supplier but limited to the tax liability on the transaction between the Purchaser and the Supplier.

It is the Purchaser's understanding that as per extant provisions, on the charges for supply of services related to Inland transportation, In-transit Insurance and loading, by the Supplier to the Purchaser, GST is not payable. The Supplier is, however, advised to check the position from their own sources. If payable, the same shall be to the Supplier's account and Purchaser shall not reimburse any GST on this account.

10.5 Purchaser would not bear any liability on account of any other taxes duties, levies applicable locally.

- 10.6 Purchaser shall, deduct taxes at source as per the applicable laws/rules, if any, and issue Tax Deduction at Source (TDS) Certificate to the Supplier.
- 10.7 Reimbursement of GST by the Purchaser shall be at the rate applicable on the HSN/SAC of the goods/ services supplied by the Supplier to the Purchaser. The reimbursement of GST shall be against Invoice/Debit Note containing particulars specified under the GST Act and related Rules, Notifications, etc as notified by the Government in this regard. In the event that the Supplier fails to provide the invoice in the form and manner prescribed under the GST Act and Rules, the Purchaser shall not be liable to make any payment against such invoice. Further, the Supplier shall, within 7 days from the date of receipt of Advance, furnish an Advance Receipt Voucher to the Purchaser, as prescribed under the GST Law.
- If there is difference in HSN/SAC classification and corresponding rate of GST of an item as confirmed/deemed confirmed by the Supplier in its bid and HSN/SAC and corresponding rate of GST as interpreted under any interpretation/ judgment/ Notification/ Circular/ amendment issued under the GST law before or after the award of contract, GST reimbursable to the bidder/Supplier shall be lower of the GST applicable at the rate as confirmed/deemed confirmed in the bid or actual GST paid/payable by the Supplier for that item.
- 10.8 The Supplier shall comply with all tax laws in force in India. The Supplier shall indemnify and hold harmless the Purchaser from and against any and all liabilities, interest, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such tax laws by the Supplier or its personnel, including the Subcontractors and their personnel.
- 10.9 Owner's GSTIN number in each state/UT is published on the Owner's company website <https://www.powergridindia.com>. While raising invoice for Supply of Goods, Supplier shall bill to and ship to the address of the Owner in the State/UT where the Goods or part thereof is to be Supplied and mention GSTIN of Owner in of the same state/UT. In case of Supply of Services, the Supplier shall invoice the Owner using the GSTIN of Owner in the state/UT in which the service or part thereof is to be rendered.
- 10.10 Notwithstanding anything above or elsewhere in the Contract, in the event that the input tax credit of the GST charged by the Supplier is denied by the tax authorities to the Purchaser for reasons associated with non-compliance/ incorrect compliance by the Supplier, the

Purchaser shall be entitled to recover such amount from the Supplier by way of adjustment from any of the subsequent invoices submitted by the Supplier to the Purchaser. In addition to the amount of GST, the Purchaser shall also be entitled to recover interest and penalty, in case any interest and/or penalty are imposed by the tax authorities on the Purchaser for incorrect/wrong availment of Input Tax Credit. The Purchaser shall determine whether the denial of credit is linked to the non-compliance/ incorrect compliance of the Supplier and the said determination shall be binding on the Supplier.

- 10.11 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2(Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date seven (07) days prior to the last date of bid submission (hereinafter called "Tax" in this GCC Sub-clause 10.11). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation except for classification related purpose, or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Supplier in connection with performance of the Contract, an equitable adjustment of the Contract price shall be made to fully take into account any such change by addition to the Contract price or deduction therefrom, as the case may be, in accordance with GCC Clause 29 (Changes in Laws and Regulations) hereof. These adjustments shall be applicable for all transactions between the Supplier and the Purchaser for supply of goods and services under the Contract but shall not be applicable on procurement of raw materials, intermediary components etc. and on account of variation in taxes, duties & levies applicable locally.

In respect of raw materials, intermediary components etc and the taxes, duties & levies applicable locally, neither the Purchaser nor the Supplier shall be entitled to any claim arising due to increase or decrease in the rate of Tax, introduction of a new Tax or abolition of an existing Tax in the course of the performance of the Contract.

#### **D. Intellectual Property**

##### **11. Copy Right**

- 11.1 The copyright in all drawings, documents and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including supplies of materials, the copyright in such materials shall remain vested in such third party.

The Purchaser shall however be free to reproduce all drawings, documents and other material furnished to the Purchaser for the purpose of the Contract including, if required, for operation and maintenance.

- 11.2 The copyright in all drawings, documents and other materials containing data and information furnished to the Supplier by the Purchaser herein shall remain vested in the Purchaser.

## **12. Confidential Information**

- 12.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor(s) such documents, data and other information it receives from the Purchaser to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Supplier under this GCC Clause 12.

- 12.2 The Purchaser shall not use such documents, data and other information received from the Supplier for any purpose unrelated to the contract. Similarly, the Supplier shall not use such documents, data and other information received from the Purchaser for any purpose other than the performance of the Contract.

- 12.3 The obligation of a party under GCC Sub-Clauses 12.1 and 12.2 above, however, shall not apply to that information which

- (a) now or hereafter enters the public domain through no fault of that party
- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto
- (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

- 12.4 The above provisions of this GCC Clause 12 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.

12.5 The provisions of this GCC Clause 12 shall survive termination, for whatever reason, of the Contract.

**E. Execution of the Contract**

**13. Representatives**

13.1 If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Purchaser shall appoint and notify the Supplier in writing of the name of the Project Manager. The Purchaser may from time to time appoint some other person as the project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Supplier without delay. The Purchaser shall take all reasonable care to see that no such appointment is made at such a time or in such a manner as to impede the progress of work on the Facilities. The Project Manager shall represent and act for the Purchaser at all times during the currency of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Supplier to the Purchaser under the Contract shall be given to the Project Manager, except as herein otherwise provided.

13.2 Supplier's Representative

13.2.1 If the Supplier's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Supplier shall appoint the Supplier's Representative and shall request the Purchaser in writing to approve the person so appointed. If the Purchaser makes no objection to the appointment within fourteen (14) days, the Supplier's Representative shall be deemed to have been approved. If the Purchaser objects to the appointment within fourteen (14) days giving the reason therefor, then the Supplier shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 13.2.1 shall apply thereto.

13.2.2 The Supplier's Representative shall represent and act for the Supplier at all times during the currency of the Contract and shall give to the Project Manager all the Supplier's notices, instructions, information and all other communications under the Contract. All notices, instructions, information and all other communications given by the

Purchaser or the Project Manager to the Supplier under the Contract shall be given to the Supplier's Representative or, in its absence, its deputy, except as herein otherwise provided. The Supplier shall not revoke the appointment of the Supplier's Representative without the Purchaser's prior written consent, which shall not be unreasonably withheld. If the Purchaser consents thereto, the Supplier shall appoint some other person as the Supplier's Representative, pursuant to the procedure set out in GCC Sub-Clause 13.2.1.

13.2.3 The Supplier's Representative may, subject to the approval of the Purchaser (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Supplier's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Purchaser and the Project Manager. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 13.2.3 shall be deemed to be an act or exercise by the Supplier's Representative.

13.2.3.1 Notwithstanding anything stated in GCC Sub-Clause 13.1 and 13.2.1 above, for the purpose of execution of Contract, the Purchaser and the Supplier shall finalize and agree to a Contract Co-ordination Procedure and all the communication under the Contract shall be in accordance with such Contract Coordination Procedure.

13.2.4 From the commencement of installation of the Goods at the Site until Commissioning, the Supplier's Representative shall appoint all technical personnel for supervision of installation and operation of the Goods. The supervisory personnel shall supervise all work done at the Site by the Supplier and shall be present at the Site through-out normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever a supervisory personnel is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

13.2.5 The Purchaser may by notice to the Supplier object to any representative or person employed by the Supplier in the execution of the Contract who, in the reasonable opinion of the Purchaser, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 18.3. The Purchaser shall provide evidence of the same, whereupon the Supplier shall remove such person from the Facilities.

13.2.6 If any representative or person employed by the Supplier is removed in accordance with GCC Sub-Clause 13.2.5, the Supplier shall, where required, promptly appoint a replacement.

## **14. Work Program**

### **14.1 Supplier's Organization**

The Supplier shall supply to the Purchaser and the Project Manager a chart showing the proposed organization to be established by the Supplier for carrying out supervision work. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed within twenty-one (21) days of the Effective Date. The Supplier shall promptly inform the Purchaser and the Project Manager in writing of any revision or alteration of such an organization chart.

### **14.2 Program of Performance**

Within twenty-eight (28) days after the date of Notification of Award, the Supplier shall prepare and submit to the Project Manager a detailed program of performance of the Contract (L2 Network) in the form of the Critical Path Method (CPM), the PERT network, or other internationally used programs and showing the sequence in which it proposes to design, engineering, procurement, manufacture, shop inspection, testing, transport of the Goods, as well as the date by which the Supplier reasonably requires that the Purchaser shall have fulfilled its obligations under the Contract so as to enable the Supplier to execute the Contract in accordance with the program and to achieve Completion of the Goods and Related Services in accordance with the Contract. The program so submitted by the Supplier shall accord with the Delivery Schedule included in Appendix-4 (Delivery Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Supplier shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Delivery Schedule under GCC Clause 4 and any extension granted in accordance with GCC Clause 32, and shall submit all such revisions to the Project Manager.

### **14.3 Progress Report**

The Supplier shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 14.2 above, and supply a progress report to the Project Manager every month.

The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

#### 14.4 Progress of Performance

If at any time the Supplier's actual progress falls behind the program referred to in GCC Sub-Clause 14.2, or it becomes apparent that it will so fall behind, the Supplier shall, at the request of the Purchaser or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain completion of delivery of Goods within the Delivery Schedule under GCC Sub-Clause 4, any extension thereof entitled under GCC Sub-Clause 32.1, or any extended period as may otherwise be agreed upon between the Purchaser and the Supplier.

#### 14.5 Work Procedures

The Contract shall be executed in accordance with the Contract Documents and the procedures given in the section on Sample Forms and Procedures of the Contract Documents.

The Supplier may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

### 15. **Subcontracting**

15.1 The corresponding Appendix (List of Approved Subcontractors) to the Contract Agreement specifies major items of supply or services and a list of approved Subcontractors against each item, including vendors. Insofar as no Subcontractors are listed against any such item, the Supplier shall prepare a list of Subcontractors for such item for inclusion in such list. The Supplier may from time to time propose any addition to or deletion from any such list. The Supplier shall submit any such list or any modification thereto to the Purchaser for its approval in sufficient time so as not to impede the progress of work on the Goods. Such approval by the Purchaser for any of the Subcontractors shall not relieve the Supplier from any of its obligations, duties or responsibilities under the Contract.

- 15.2 The Supplier shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Sub-Clause 15.1.
- 15.3 For items or parts of the Goods not specified in the corresponding Appendix (List of Approved Subcontractors) to the Contract Agreement, the Supplier may employ such Subcontractors as it may select, at its discretion.
- 15.4 The Supplier shall furnish the details of items, components, raw materials, services etc. procured from MSEs and consumed for completion of scope of works under the contract. The details shall be furnished as per the format enclosed at Section VI, Forms & Procedures, Volume-I of the bidding documents at the time of raising bills for payment against the supplies made/works done.

## **16. Design and Engineering**

### **16.1 Specifications and Drawings**

- 16.1.1 The Supplier shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Supplier shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Supplier by or on behalf of the Purchaser.

- 16.1.2 The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Project Manager.

### **16.2 Codes and Standards**

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes

in such codes and standards shall be applied after approval by the Purchaser and shall be treated in accordance with GCC Clause 31.

16.3 Approval/Review of Technical Documents by Project Manager

16.3.1 The Supplier shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in Appendix-6 (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified and as in accordance with the requirements of GCC Sub-Clause 14.2 (Program of Performance).

Any part of the Goods covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Sub-Clauses 16.3.2 through 16.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

16.3.2 Within twenty one (21) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 16.3.1, the Project Manager shall either return one copy thereof to the Supplier with its approval endorsed thereon or shall notify the Supplier in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.

16.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.

16.3.4 If the Project Manager disapproves the document, the Supplier shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 16.3.2. If the Project Manager approves the document subject to modification(s), the Supplier shall make the required modification(s), and upon resubmission with the required modifications the document shall be deemed to have been approved.

The procedure for submission of the documents by the Supplier and their approval by the Project Manager shall be discussed and finalized with the Supplier.

- 16.3.5 If any dispute or difference occurs between the Purchaser and the Supplier in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to an Arbitrator for determination in accordance with GCC Sub-Clause 36 hereof. If such dispute or difference is referred to an Arbitrator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Supplier shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Arbitrator upholds the Supplier's view on the dispute and if the Purchaser has not given notice under GCC Sub-Clause 36 hereof, then the Supplier shall be reimbursed by the Purchaser for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Arbitrator shall decide, and the Delivery Schedule shall be extended accordingly.
- 16.3.6 The Project Manager's approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.
- 16.3.7 The Supplier shall not depart from any approved document unless the Supplier has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Sub-Clause 16.3. If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 31 shall apply to such request.

## **17. Goods & Related Services**

- 17.1 Subject to GCC Sub-Clause 10.2, the Supplier shall manufacture or procure and transport all the Goods in an expeditious and orderly manner to the Site.
- 17.2 Transportation
- 17.2.1 The Supplier shall at its own risk and expense transport all the Goods to the Site by the mode of transport that the Supplier judges most suitable under all the circumstances.

- 17.2.2 Unless otherwise provided in the Contract, the Supplier shall be entitled to select any safe mode of transport operated by any person to carry the Goods. In case of transportation by road, the Supplier shall transport all the goods only through registered common carriers in line with “The Carriage by Road Act,2007” including amendment thereof.
- 17.2.3 Upon dispatch of each shipment, the Supplier shall notify the Purchaser by telex, facsimile or Electronic Data Interchange (EDI) of the description of the Goods, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Supplier shall furnish the Purchaser with relevant shipping documents to be agreed upon between the parties.
- 17.2.4 The Supplier shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Goods to the Site. The Purchaser shall use its best endeavors in a timely and expeditious manner to assist the Supplier in obtaining such approvals, if requested by the Supplier. The Supplier shall indemnify and hold harmless the Purchaser from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Goods to the Site.

### 17.3 Delivery and Documents

#### 17.3.1 Delivery Documents

Upon shipment, the Supplier shall notify the Purchaser with full details of the dispatch and shall furnish the documents as specified in the corresponding Appendix - 1 (Terms and Procedures of Payment) to the Contract Agreement

#### 17.3.2 Packing

- 17.3.2.1 The Supplier shall provide such packing of the Goods as it is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods final destination and the absence of heavy handling facilities at all points in transit.

17.3.2.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract and, subject to any subsequent instruction ordered by the Purchaser consistent with the requirements of the Contract.

## **18. Supervision of Installation**

18.1 The Supplier shall give or provide all necessary superintendence during the installation of the Goods, and the supervisory personnel or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Supplier shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

## **19. Test and Inspection**

19.1 The Supplier shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Goods and Related Services as are specified in the Contract.

19.2 The Purchaser and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Purchaser shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

19.3 Whenever the Supplier is ready to carry out any such test and/or inspection, the Supplier shall give four weeks advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser and the Project Manager (or their designated representatives) to attend the test and/or inspection. Subject to GCC Sub-Clause 19.3, if test and/or inspection are conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

19.4 The Supplier shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Purchaser or Project Manager (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the

Supplier may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

- 19.5 The Project Manager may require the Supplier to carry out any test and/or inspection not required by the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Goods and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Schedule and the other obligations so affected.
- 19.6 The Purchaser may reject any Goods or any part thereof that fails to pass any test and/or inspection or do not conform to the Specifications. The Supplier shall either rectify or replace such rejected Goods or part thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 19.3.
- 19.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Goods or part thereof that cannot be settled between the parties within a reasonable period of time, it may be referred to an Arbitrator for determination in accordance with GCC Sub-Clause 36.
- 19.8 The Supplier shall afford the Purchaser and the Project Manager, at the Purchaser's expense, access at any reasonable time to any place where the Goods are being manufactured, in order to inspect the progress and the manner of manufacture, provided that the Project Manager shall give the Supplier a reasonable prior notice.
- 19.9 The Supplier agrees that neither the execution of a test and/or inspection of Goods or any part thereof, nor the attendance by the Purchaser or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 19.4, shall release the Supplier from any other responsibilities under the Contract.

## **20. Completion**

- 20.1 As soon as the delivery of Goods & performance of Related Services, in the opinion of the Supplier, has been completed as specified in the Technical Specifications, the Supplier shall so notify the Purchaser in writing alongwith the Undertaking for quality and performance of such Goods. The Purchaser after inspection/physical verification shall notify the Supplier of defects and/or deficiencies, if any. The

Supplier shall repair, replacement or making good of any defect or of any damage or deficiencies and shall so notify the Purchaser in writing. The Purchaser after inspection/physical verification shall issue to the Supplier an Material Acceptance Certificate in the form of Materials Receipt Certificate (MRC) verifying the date on which the supply of Goods have been completed and accepted. Such certificate shall not relieve the Supplier of any of his obligations which otherwise survive, by the terms and conditions of Contract after issue of such certificate.

20.2 As soon as reasonably practicable, within the expected period indicated in GCC Clause 20.3 below, the Purchaser through a Contractor shall use the Goods so supplied for Installation, Precommissioning & Commissioning of the Facilities. In case of Contracts where the supervision is stipulated, the Installation, Precommissioning & Commissioning of the Goods shall be carried out in presence of the Supplier's representatives. The Supplier's representatives shall be responsible for carrying out start-up, initial operation, trial operation and the performance test, as admissible, for which necessary labour and facilities shall be provided by the Purchaser. However, all temporary instrumentation, measuring devices, special tools and tackles etc., if any, required for performing activities under the Contract will be provided by the Supplier.

20.2.1 During these stages, if the Project Manager notifies the Supplier of any defects and/or deficiencies, the Supplier shall then correct such defects and/or deficiencies failing which the Purchaser will undertake such completion and deduct the costs thereof from any monies owing to the Supplier.

20.3 The expected Precommissioning/ Commissioning schedule of the Facilities wherein the Goods under the Contract are to be installed is indicated in SCC. In the event the Purchaser/Contractor is unable to proceed with the Precommissioning/ Commissioning of the Facilities, within the expected Precommissioning/ Commissioning schedule, for reasons not attributable to the Supplier, the following provisions shall apply:

- a) The performance securities and any other securities relevant to the circumstances shall be extended by the Supplier from time to time as may be required by the Purchaser, as per the following:
  - (i) upto six months beyond the initial period for which performance securities are to be otherwise kept valid as per GCC Clause 9.3.1.

- (ii) upto twelve months beyond the period mentioned in para (i) above for which the expenses, if any, payable by the Supplier to the Bankers toward the same shall be reimbursed to the Supplier by the Purchaser against documentary evidence.
- (iii) upto a mutually agreed period between the Purchaser and the Supplier, beyond the period mentioned in para (ii) above, failing which the Goods shall be deemed to be Taken Over by the Purchaser upon expiry of the period mentioned in para (ii) above and the mutually agreed period, if any, as per this para and the Defect Liability Period as per GCC Clause 22 shall be governed from the date of deemed Taking Over. The expenses towards extension, if any, under this para, payable by the Supplier to the Bankers toward the same shall be reimbursed to the Supplier by the Purchaser against documentary evidence.

Notwithstanding the extension of securities as per the aforesaid provisions, in the event of Precommissioning/ Commissioning of the Facilities within the extended period as aforesaid, the validity period of the securities shall be regulated as per the provisions of GCC Clause 9.3.1.

- b) In case of Supply cum Supervision Contracts, payments due to the Supplier in accordance with the provisions specified in Appendix I (Terms and Procedures of Payment) to the Contract Agreement, which would have not been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Supplier against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Purchaser, and which shall become null and void when the Facilities are commissioned. The expenses toward the above security shall be reimbursed to the Supplier by the Purchaser.

## 20.4 Taking Over

- 20.4.1 Upon successful Commissioning of the Facilities, the Project Manager shall within twenty-one (21) days issue an Taking Over Certificate as a proof of the final acceptance of the Goods. Such certificate shall not relieve the Supplier of any of his obligations which otherwise survive, by the terms and conditions of Contract after issue of such certificate.

- 20.4.2 If within twenty one (21) days after Commissioning of the Facilities, the Project Manager fails to issue the Taking Over Certificate or fails to inform the Supplier in writing of the justifiable reasons why the Project Manager has not issued the Taking Over Certificate, the Goods or the relevant part thereof shall be deemed to have been accepted as at the date of the Commissioning of the Facilities.

**F. Guarantees and Liabilities**

**21. Completion Time Guarantee**

21.1 The Supplier guarantees that it shall attain delivery of Goods (or a part for which a separate time schedule is specified in the SCC) at final destination site with the time specified in the SCC pursuant to GCC Clause 4, or within such extended time to which the Supplier shall be entitled under GCC Clause 31 hereof.

21.2 If the Supplier fails to comply with the Delivery Schedule in accordance with Clause GCC 21 for the whole of the goods, (or a part for which a separate time schedule is agreed) then the Supplier shall pay to the Purchaser a sum equivalent to half percent (0.5%) plus GST payable thereon of the Contract Price of undelivered Goods or the Services as liquidated damages for such default and not as a penalty, without prejudice to the Purchaser's other remedies under the Contract, for each week or part thereof of delay until actual delivery or performance subject to the limit of ten percent (10%) thereon of Contract Price. The Purchaser may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Supplier. The payment or deduction of such damages shall not relieve the Supplier from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

Although, the Delivery Schedule has been specified on monthly basis, for the purpose of levying liquidated damages, the delay in delivery shall be considered on a quarterly basis, the quarter being reckoned from the first month of dispatch.

21.3 No bonus will be given for earlier completion of the delivery of Goods.

**22. Defect Liability**

22.1 Unless otherwise specified in SCC, the Defect Liability Period shall remain valid for a period of twelve (12) months from the date of

Commissioning of the Facilities wherein the Goods under the Contract are installed.

- 22.2 The Supplier warrants that all the Goods supplied under the Contract shall comply strictly with the Contract, shall be first class in every particular and shall be free from defects. The Supplier further warrants that all equipments, materials and supplies furnished by the Supplier or its sub-contractors for the purpose of the Goods are new, merchantable of the most suitable grade, and fit for their intended purposes. The Supplier further warrants that the services to be carried out under this contract will conform with generally accepted professional standards and engineering principles.
- 22.3 Subject to GCC Sub-Clause 22.2, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 22.4 The Purchaser shall give Notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 22.5 Upon receipt of such notice, the Supplier shall, within 30 days, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser. The Supplier shall take over the replaced parts/goods at the time of their replacement. No claim whatsoever shall lie on the Purchaser for the replaced parts/goods thereafter.
- In the event of any correction of defects or replacement of defective goods during the Defect Liability Period, the Defect Liability Period for the corrected/replaced goods shall be extended to a further period of 12 months.
- 22.6 If having been notified, the Supplier fails to remedy the defect within 30 days, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.
- 22.7 At the end of the Defect Liability Period, the Supplier's Liability ceases except for latent defects. The Supplier's liability for latent defects warranty shall be limited to period of ten (10) years from the end of Defect Liability Period. For the purpose of this clause, the latent defects shall be the defects inherently lying within the material

or arising out of design deficiency, which do not manifest themselves during the Defect Liability Period defined in this GCC Clause 22, but later.

## **23. Equipment Performance Guarantees**

23.1 The Supplier guarantees that the Goods, named in the SCC, shall attain the rating and performance requirements specified in Appendix - 7 (Guarantees, Liquidated Damages for Non - Performance) to the Contract Agreement, subject to and upon the conditions therein specified.

23.2 If the guarantees specified in Appendix - 7 (Guarantees, Liquidated Damages for Non - Performance) to the Contract Agreement are not established, then the Purchaser shall, at the Purchaser's discretion either

(a) reject the goods, or

(b) accept the goods after assessing liquidated damages in accordance with the provision in the SCC against the Supplier and such amounts shall be deducted from the Contract Price or otherwise recovered from the Supplier.

23.3 In case the Purchaser exercises its option to reject the goods, the Supplier shall at its cost and expense make such changes, modifications and/or additions to the goods or any part thereof as may be necessary to meet the specified guarantees. The Supplier shall notify the Purchaser upon completion of the necessary changes, modifications and/or additions, and shall request the Purchaser to repeat the Test until the level of the specified guarantee has been met.

23.4 Whenever the Purchaser exercises its option to accept the goods after levy of liquidated damages, the payment of liquidated damages under GCC Sub-Clause 23.2, upto the limitation of liability specified in the SCC, shall completely satisfy the Supplier's guarantees under GCC Sub-Clause 23.2, and the Supplier shall have no further liability whatsoever to the Purchaser in respect thereof.

## **24. Patent Indemnity**

24.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 24.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any

infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and (b) the sale of the products produced by the Goods in any country.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Supplier, pursuant to the Contract Agreement.

- 24.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 24.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Purchaser within the twenty-eight (28) day period, the Purchaser shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

- 24.3 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

**25. Limitation of Liability**

25.1 Except in cases of gross negligence or willful misconduct,

- (a) The Supplier and the Purchaser shall not be liable to each other for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and
- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective goods, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

**G. Risk Distribution**

**26. Transfer of Ownership**

26.1 Ownership of the Goods to be imported into India shall be transferred to the Purchaser upon loading on to the mode of transport to be used to convey the Goods from the country of origin to that country and upon endorsement of the dispatch documents in favour of the Purchaser.

26.2 Ownership of the Goods procured in India, shall be transferred to the Purchaser upon loading on to the mode of transport to be used to carry the Goods from the works/warehouse/ any other place where the Supplier wishes to supply the goods to the site and upon endorsement of the despatch documents in favour of the Purchaser.

26.3 Ownership of the Supplier's Equipment used by the Supplier and its Subcontractors in connection with the Contract shall remain with the Supplier or its Subcontractors.

26.4 Notwithstanding the transfer of ownership of the Goods, the Supplier shall continue to be responsible for the quality and performance of such Goods and for their compliance with the specifications until 'Taking Over' and the fulfillment of warranty obligations under the Contract. The transfer of ownership shall not relieve the Supplier from the responsibility for all risks of loss or damage to the Goods as specified under GCC 28 (Insurance).

**27. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification**

27.1 The Supplier shall indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply of the Goods and by reason of the negligence of the Supplier or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Purchaser, its contractors, employees, officers or agents.

27.2 If any proceedings are brought or any claim is made against the Purchaser that might subject the Supplier to liability under GCC Sub-Clause 27.1, the Purchaser shall promptly give the Supplier a notice thereof and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Purchaser within the twenty-eight (28) day period, the Purchaser shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

27.3 Notwithstanding anything in this Contract to the contrary, it is agreed that neither the Supplier nor the Purchaser shall be liable to the other party for loss of production, loss of profit, loss of use or any other indirect or consequential damages.

**28. Insurance**

28.1 To the extent specified in the corresponding Appendix-3 (Insurance Requirements) to the Contract Agreement, the Supplier shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the

insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Purchaser, who should not unreasonably withhold such approval.

(a) Marine Cargo Policy/Transit Insurance Policy:

(I)(i) Marine Cargo policy for imported equipment

The Supplier shall take the Marine Cargo Policy for Goods to be supplied from abroad wherein export/import including inland transit is involved for the movement of the Goods. The policy shall cover movement of Goods from the manufacturer's works to the project's warehouse at final destination site. The policy shall cover all risk for loss or damage that may occur during transit of Goods from the Supplier's/Sub-supplier's works or stores until arrival at project's warehouse/ store at final destination. The perils required to be covered under the insurance shall include, but not be limited to, fire and allied risks, miscellaneous accidents, workman compensation risks, loss or damage in transit, theft, pilferage, riots and strikes and malicious damages, civil commotion, weather conditions, accidents of all kinds, war risks (as far as insurable) etc. Institute Cargo Clause (ICC) 'A' along with war & Strike Riots & Civil Commotion (SRCC) cover shall be taken.

(I)(ii) Transit Insurance Policy for indigenous equipment

Similarly, Transit Insurance Policy shall be taken wherein only inland transit is involved for the movement of Goods supplied from within India. The policy shall cover movement of Goods from the manufacturer's works to the project's warehouse at final destination site. The perils required to be covered under the insurance shall include, but not be limited to, fire and allied risks, miscellaneous accidents, workman compensation risks, loss or damage in transit, theft, pilferage, riots and strikes and malicious damages, civil commotion, weather conditions, accidents of all kinds, war risks (as far as insurable) etc. Inland Transit Clause (ITC) 'A' alongwith Strike Riots & Civil Commotion (SRCC) extension cover shall be taken.

- (II) If during the execution of Contract, the Purchaser requests the Supplier to take any other add-on cover(s)/ supplementary cover(s) in aforesaid insurance, in such a case, the Supplier shall promptly take such add-on cover(s)/ supplementary cover(s) and the charges towards such premium for such add-on cover(s)/ supplementary cover(s) shall be reimbursed to the Supplier on submission documentary evidence of payment to the Insurance company. Therefore, charges towards premium for such add-on cover(s)/ supplementary cover(s) are not included in the Contract Price.
- (III) The Supplier shall take the policy in the joint names of Purchaser and the Supplier. The policy shall indicate the Purchaser as the beneficiary. However, if the Supplier is having an open policy for its line of business, it should obtain an endorsement of the open cover policy from the insurance company indicating that the dispatches against this Contract are duly covered under its open policy and include the name of the Purchaser as jointly Insured in the endorsements to the open policy.
- (IV) The scope of such insurance shall be adequate to cover the replacement/reinstatement cost or 120% of CIF/Ex-Works cost whichever is higher, of the Goods for all risks upto and including delivery of Goods on final destination site basis and shall also cover customs duty on merit rate, inland transportation and other costs till the Goods are delivered at site. The insurance policies to be taken should be on replacement value basis and/or incorporating escalation clause. The Purchaser shall recover the payments made except advance and the balance amount shall be released to the Supplier. Notwithstanding the extent of the insurance cover and the amount of claim available from the underwriters, the Supplier shall be liable to make good the full replacement/rectification of all Goods/Materials and to ensure their availability as per project requirements. The Supplier shall be authorized to deal directly with the insurance company.

28.2 The Purchaser shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Sub-Clause 28.1. All insurer's rights of subrogation against such co-insureds for losses

or claims arising out of the performance of the Contract shall be waived under such policies.

- 28.3 It will be the responsibility of the Supplier to lodge, pursue and settle all claims with the insurance company in case of any damage, loss, theft, pilferage or fire during execution of Contract and Purchaser shall be kept informed about it. The Supplier shall replace the lost/damaged materials promptly irrespective of the settlement of the claims by the underwriters and ensure that the work progress is as per agreed schedules. The losses, if any, in such replacement will have to be borne by the Supplier.

## **29. Change in Laws and Regulations**

- 29.1 If, after the date seven (07) days prior to the date of Bid Opening, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed in India (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Supplier and/or the Delivery Schedule, the Contract Price shall be correspondingly increased or decreased, and/or the Delivery Schedule shall be reasonably adjusted to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. These adjustments shall be applicable for all transactions between the Purchaser and the Supplier for supply of goods and services under the Contract but shall not be applicable on procurement of raw materials, intermediary components etc. by the Supplier for which the Purchaser shall be the sole judge.

Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the Appendix-2 to the Contract Agreement.

## **30. Force Majeure**

- 30.1 "Force Majeure" shall mean any event beyond the reasonable control of the Purchaser or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:
- (a) war, hostilities or warlike operations (whether war be declared or not), invasion, act of foreign enemy and civil war,

- (b) rebellion, revolution, insurrection, mutiny, usurpation of government, conspiracy, riot and civil commotion,
- (c) earthquake, landslide, volcanic activity, flood or cyclone, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster,

30.2 Neither party shall be considered to be in default or in breach of his obligations under the Contract to the extent that performance of such obligation is prevented by any circumstances of Force Majeure, which arises after date of Notification of Award.

30.3 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

30.4 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Delivery Schedule shall be extended in accordance with GCC Clause 32.

## **H. Change in Contract Elements**

### **31. Change in the Facilities**

31.1 The Purchaser shall have the right to propose, and subsequently require, that the Project Manager order the Supplier from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Contract (hereinafter called "Change"), provided that such Change falls within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

31.2 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such

rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

- 31.2.1 The Contract Price for (i) the items for which quantities have been indicated as lumpsum or lot or set and/or (ii) where the quantities are to be estimated by the Supplier shall remain constant unless there is change made in the Scope of Work by Purchaser. The quantities and unit prices (i) subsequently arrived while approving the Bill of Quantities (BOQ)/Billing breakup of lumpsum quantities/lot/Set and/or (ii) estimated by the Supplier shall be for on account payment purpose only. In case additional quantities, over and above the quantities in BOQ/billing breakup and /or estimated by the Supplier, are required for successful completion of the scope of work as per Technical Specification, the Supplier shall execute additional quantities of these items for which no additional payment shall be made over and above the lumpsum Contract Price. In case quantities of these items supplied at site are in excess of that required for successful completion of scope of work, such additional quantities shall be the property of the Supplier and they shall be allowed to take back the same from the site for which no deduction from the lumpsum Contract Price shall be made. Further, in case actual requirement of quantities for successful completion of scope of work is less than the quantities identified in the approved BOQ /billing breakup and/or estimated by the Supplier, the lumpsum contract price shall remain unchanged and no deduction shall be made from the lumpsum price due to such reduction of quantities.

It shall be the responsibility of the Supplier to pay all statutory taxes, duties and levies to the concerned authorities for such surplus material which would otherwise have been, lawfully payable in case of non-deemed export contracts. The Supplier shall submit an indemnity bond to keep Purchaser harmless from any liability, before release of such material to the Supplier by Purchaser.

Set/Lot/Lumpsum shall be governed as per the requirement of the corresponding item description read in conjunction with relevant provisions of Technical Specifications and the Billing breakup referred to above shall be issued by the Purchaser based on Supplier's request, if and as may be required during the currency of the Contract.

HSN/SAC has not been indicated in the Contract for lumpsum quantities/lot/Set as each of these consists of many items for which billing break up shall be furnished during contract execution. GST shall be reimbursed on these items based on HSN /SAC for these items furnished along with billing breakup. However, the

reimbursement shall be limited to the amount derived based on the rate indicated in the contract or actual, whichever is less.

- 31.3 The Purchaser, in addition to situation described in Clause 31.1 above, reserves the right to increase or decrease the quantity of Goods & Related Services specified to the extent of fifteen (15) percent of the Contract Price as originally set forth in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement, without any change in unit price or other terms and conditions during the execution of the Contract. However, the quantities of individual items and services may vary upto any extent.
- 31.4 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery Schedule, and the Contract shall accordingly be amended.
- 31.5 If the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Supplier under this GCC Clause 31 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement by more than fifteen (15) percent, the Supplier may give a written notice of objection thereto within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order. If the Purchaser accepts the Supplier's objection, the Purchaser and the Supplier shall agree on specific rates for valuation of the Change.
- 31.6 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

## **32. Extension of Time**

- 32.1 If at any time during performance of the Contract, the Supplier or its Subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 4, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

32.2 Except in case of Force Majeure, as provided under GCC Clause 30, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 21.2, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 32.1.

### **33. Termination**

#### **33.1 Termination for Default**

33.1.1 The Purchaser, without prejudice to any other remedy for breach of Contract, by Notice of default sent to the Supplier, may terminate the Contract in whole or in part:

- (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 32; or
- (ii) if the Supplier fails to perform any other obligation under the Contract.

33.1.2 In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 33.1.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

33.1.3 If the Supplier, in the judgment of the Purchaser has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this Sub-Clause:

“Corrupt Practice” means offering, giving, receiving, or soliciting anything of value to influence the action of Purchaser official(s) in the procurement process.

“Fraudulent Practice” means any act including suppression/ misrepresentation of facts, submissions of forged/ false documents, making false declarations etc. that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial gain or benefit, or

to avoid an obligation, or to influence procurement process to the detriment of interest of the Purchaser, including collusive practices among bidders (prior to or after bid submission) to establish bid prices at artificial, non-competitive levels and to deprive Purchaser of the benefits of competitive prices.

“collusive practice” shall also include an arrangement between two or more parties designed to achieve an illegitimate purpose to the detriment of interest of Purchaser.

“coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

“Obstructive practice” means

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/ or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation,

or

(bb) acts intended to materially impede the exercise of the contractual rights or audit or access to information.

In persuasions of its policy, the Purchaser will sanction a firm or individual, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a contract.

33.1.4 Any breach by the contractor of the provisions in respect of child labor or any legally mandated provisions relating to labor (particularly on “equal pay for men and women”) shall be a ground for termination of the contract.

33.2 Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving Notice to the Supplier if the Supplier becomes bankrupt or otherwise

insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

### 33.3 Termination for Convenience

33.3.1 The Purchaser, by Notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The Notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

33.3.2 The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of the Notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

- (i) to have any portion completed and delivered at the Contract terms and prices; and/or
- (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

## 34. Assignment

34.1 Neither the Purchaser nor the Supplier shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder.

## I. Resolution of Disputes

### 35. Settlement of Disputes

35.1 If any dispute of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the

parties shall seek to resolve any such dispute or difference, to the extent possible, amicably by mutual consultation.

- 35.2 If the parties fail to resolve such a dispute or difference by mutual consultation at the execution site level, then the dispute shall be referred by the Supplier to the Project Manager, who, within a period of thirty (30) days after being requested by Supplier to do so, shall give written notice of his decision.
- 35.2.1 The decision/instruction of the Project Manager shall be deemed to have been accepted by the Supplier unless notified by the Supplier of his intention to refer the matter for Arbitration within thirty (30) days of such decision/instruction.
- 35.2.2 In the event the Project Manager fails to notify his decision as aforesaid within thirty (30) days, the Supplier, if he intends to go for Arbitration, shall notify his intention to the Project Manager within 30 days of expiry of the first mentioned period of thirty days failing which it shall be deemed that there are no dispute or difference between the Purchaser and the Supplier.
- 35.3 In case of dispute or difference between the Purchaser and the Supplier, if the Purchaser intends to go for Arbitration, he shall notify such intention to the Supplier.

## **36. Arbitration**

- 36.1 All disputes or differences in respect of which the decision, if any, of the Project Manager and/or the Head of the Implementing Authority has not become final or binding as aforesaid shall be settled by arbitration in the manner provided herein below:
- 36.2 The arbitration shall be conducted by a sole arbitrator in case the amount of claim is less than Rs. 25 Crore and by three member arbitral tribunal in case the amount of claim is greater than Rs. 25 Crore.

### Sole Arbitration

The sole Arbitrator shall be chosen from a panel of empanelled Arbitrators maintained by POWERGRID. The same shall comprise of retired Judges and retired Senior executives of PSUs other than POWERGRID. Further, the choice of sole Arbitrator shall be governed by the amount of claim in the following manner:

Sl. no.	Claim amount	Work Experience/ Qualifications
1	< Rs. 10 Crore	Sole arbitrator-Retired Senior Executives of PSUs other than POWERGRID/Retired Distt Judges/High Court Judges.
2	Rs.10 Crore- Rs.25 Crore	Sole arbitrator- Retired High Court/Supreme Court Judges

- (a) In case of invocation of arbitration by POWERGRID, POWERGRID shall, within 30 days, send a list of names of 3 arbitrators from its list/database of Arbitrators and the contractor shall within the period of further 30 days select any one person to act as "Sole Arbitrator", which will be confirmed by POWERGRID and matter will be referred to such appointed Arbitrator for further arbitration proceedings.
- (b) In case of invocation of arbitration by the Contractor, the Contractor shall request POWERGRID for its database of Arbitrators/ chose from the list of Arbitrators available on POWERGRID's website, and the contractor shall, within 30 days, select any one Arbitrator from the above to act as "Sole Arbitrator", which will be confirmed by POWERGRID within 30 days and matter will be referred to such appointed Arbitrator for further arbitration proceedings.

If the parties fail to appoint sole arbitrator within sixty (60) days after receipt of a notice from the other party invoking Arbitration, the appointment of sole arbitrator shall be done by Courts as per the provisions of Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

#### Three member arbitral tribunal

The arbitration shall be conducted by three arbitrators, who are retired High Court/Supreme Court Judges, one each to be nominated by the Contractor and the Employer and the third to be appointed by both the arbitrators in accordance with the Indian Arbitration & conciliation Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus regarding appointment of presiding Arbitrator, within a period of 30 days from the appointment of the arbitrator appointed subsequently,

the presiding arbitrator shall be appointed by Courts as per the provisions of Arbitration & conciliation Act.

- 36.3 The cost of arbitral proceedings inter-alia including the Arbitrators' fee, logistics and any other charges shall be equally shared by both parties.

In case of Sole Arbitrator, the fees to be paid to the sole Arbitrator shall be as per the terms of empanelment in POWERGRID whereas in case of the three member tribunal, the Arbitrator's fees shall be as agreed upon by the Arbitrators in line with the Arbitration & Conciliation Act. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings shall be borne by each party itself

- 36.4 The language of the arbitration proceedings and that of the documents and communications between the parties shall be English. The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any statutory modification thereof. The venue of arbitration shall be New Delhi.

- 36.5 The decision of the sole arbitrator/ the majority of the arbitrators, as the case may be, shall be final and binding upon the parties. In the event of any of the sole arbitrator/ any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the parties to nominate another sole arbitrator/ another arbitrator in place of the outgoing arbitrator.

- 36.6 Notwithstanding the above, in case the contractor is a Central Public Sector Enterprise (CPSE)/Government Organization or Department then the dispute or difference between the Employer and the Contractor shall be settled through Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22.05.2018. The decision through AMRCD will be final and binding on all the concerned.

- 36.7 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the contract.

*----- End of Section-IV (GCC) -----*