

## GENERAL CONDITIONS OF CONTRACT (GCC)- SITE SERVICES

### 1. DEFINITIONS

In this contract unless otherwise specifically provided or defined and unless a contrary intention appears from the contract the following words and expressions are used in the following meanings;

- 1.1 The term "**Agreement**" wherever appearing in this document shall be read as "Contract".
- 1.2 "**Applicable Laws**" means all applicable laws, directives, codes, statutes, rules, ordinances, approvals, licences, decrees, authorisations, bye-laws, regulations, notifications, standards and any other requirement of any government body, department, authority or agency whether international, national, state, municipal, local or other government subdivision having the force of law in any place where the Works or any part of the Works are being carried out.
- 1.3 The "**Change Order**" means an order given in writing by the Engineer-in-Charge or by Owner to effect additions to or deletion from or alterations into the Work.
- 1.4 The "**Construction Equipment**" means all appliances and equipment of whatsoever nature for the use in or for the execution, completion, operation or maintenance of the work except those intended to form part of the Permanent Work.
- 1.5 The "**Contract**" between the Owner and the Contractor shall mean and include all documents like enquiry, tender submitted by the contractor and the purchase order/work order issued by the owner and other documents connected with the issue of the purchase order, agreement and orders, instruction, drawings, change orders, directions issued by the Owner/Engineer-in-Charge/Site-in-Charge for the execution, completion and commissioning of the works and the period of contract mentioned in the Contract including such periods of time extensions as may be granted by the owner at the request of the contractor and such period of time for which the work is continued by the contractor for purposes of completion of the work.
- 1.6 "**The Contractor**" means the person or the persons, firm or Company whose tender has been accepted by the Owner and includes the Contractor's legal heirs, representative, successor(s) and permitted assignees.
- 1.7 The "**Drawings**" shall include maps, plans and tracings or prints thereof with any modifications approved in writing by the Engineer-in-Charge and such other drawings as may, from time to time, be furnished or approved in writing by the Engineer-in-Charge.
- 1.8 The "**Engineer-in-Charge**" or "**Site-in-Charge**" shall mean the person appointed or designated as such by the Owner and shall include those persons or company who are expressly authorised by the owner to act for and on its behalf.
- 1.9 "**Force Majeure**" shall have the meaning ascribed at Article 19
- 1.10 "**The Owner**" means the **HPCL-Mittal Energy Limited a company** incorporated in India having its Registered office at Village Phulokhari, Taluka Talwandi Saboo, District Bathinda (Punjab) – 151 301 or their successors or assignees.
- 1.11 The "**Permanent Work**" means and includes works which form a part of the work to be handed over to the Owner by the Contractor on completion of the contract.
- 1.12 The "**Project Manager**" shall mean HMEL's nominated or designated by Owner.
- 1.13 The "**Site**" means the land on which the work is to be executed or carried out and such other place(s) for purpose of performing the Contract.
- 1.14 The "**Specifications**" shall mean the various technical and other specifications attached and referred to in the tender documents and/or work order / agreement. It shall also include the latest editions, including all addenda/corrigenda or relevant Indian Standard Specifications and Bureau of Indian Standards.
- 1.15 The "**Sub-Contractor**" means any person or firm or Company (other than the Contractor) to whom any part of the work has been entrusted by the Contractor with prior written consent of the Owner/Engineer-in-Charge/Site-in-Charge and their legal heirs, representatives, successors and permitted assignees of such person, firm or Company.

- 1.16 The "**Temporary Work**" means and includes all such works which are a part of the contract for execution of the permanent work but does not form part of the permanent work confirming to practices, procedures applicable rules and regulations relevant in that behalf.
- 1.17 The "**Tender**" means the document submitted by a person or authority for carrying out the work and the "Tenderer" means a person or authority who submits the tender offering to carry out the work as per the terms and conditions.
- 1.18 The "**Work**" shall mean the works to be executed in accordance with the Contract or part thereof as the case may be and shall include extra, additional, altered or substituted works as maybe required for the purposes of completion of the work contemplated under the Contract.
- 1.19 The Tender submitted by a Tenderer if found to be incomplete in any or all manners is liable to be rejected. The decision of the Owner in this regard is final and binding. In case of any error/discrepancy in the amount written in words and figures, the lower amount between the two shall prevail.

## **2. EXECUTION OF WORK**

All the works shall be executed in strict conformity with the provisions of the Contract documents and with such explanatory details, drawings, specifications and instructions as may be furnished from time to time to the Contractor by the Engineer-in-Charge / Site-in-Charge, whether mentioned in the Contract or not.

## **3. SETTING OUT OF WORKS AND SITE INSTRUCTIONS**

- 3.1 The Engineer-in-Charge/Site-in-Charge shall furnish the Contractor with only the four corners of the work site and a level bench mark and the Contractor shall set out the works and shall provide an efficient staff for the purpose and shall be solely responsible for the accuracy of such setting out.
- 3.2 The Engineer-in-Charge/Site-in-Charge shall communicate or confirm his instructions to the contractor in respect of the executions of work in a "work site order book" maintained in the office having duplicate sheet and the authorised representative of the contractor shall confirm receipt of such instructions by signing the relevant entries in the book.
- 3.3 If the Contractor after receipt of written instruction from the Engineer-in-Charge/ Site-in-Charge requiring compliance within seven days fails to comply with such drawings or 'instructions' or both as the Engineer-in-Charge/Site-in-Charge may issue, owner may employ and pay other persons to execute any such work whatsoever that may be necessary to give effect to such drawings or 'instructions' and all cost and expenses incurred in connection therewith as certified by the Engineer-in-Charge/ Site-in-Charge shall be borne by the contractor or may be deducted from amounts due or that may become due to the contractor under the contract or may be recovered as a debt.
- 3.4 "Contractor will be entirely and exclusively responsible to provide and maintain at his expenses all lights, guards, fencing, etc. when and where even necessary or/as required by the Engineer-in-Charge/Site-in-Charge for the protection of works or safety and convenience to all the members employed at the site or general public."

## **4. COMMENCEMENT OF WORK**

The contractor shall after paying/submitting the requisite security deposit/Bank Guarantee(s), commence work within 7 days from the date of receipt of the Work Order/ Work Order Contractor should prepare detailed fortnightly construction programme for approval by the Engineer-in-Charge within 7 days of receipt of Letter of Work Order/ Work Order. The work shall be executed strictly as per such time schedule. The period of Contract includes the time required for testing, rectifications, if any, re-testing and completion of work in all respects to the entire satisfaction of the Engineer-in-Charge.

## **5. SUBLETTING OF WORK**

No part of the contract nor any share or interest thereof shall in any manner or degree be transferred, assigned, awarded or sublet, by the Contractor, directly or indirectly to any firm or corporation whatsoever, without prior consent in writing from the Owner.

## **6. EXTENSION OF TIME**

If the contractor does not complete the work within the contractual period, he may apply in writing to the owner before 15 days of the period of expiry of the contract stating therein in detail, the reasons on which he desires to have extension and the period of extension, the contractor so desires. The owner on his part shall consider the request of the contractor for such extension of time and shall take a decision after discussion with the contractor and communicate the same to the contractor before 7 days of expiry of the contract. The decision of the owner in this regard shall be final and binding.

## **7. TESTS FOR QUALITY OF WORK**

All the tests that will be necessary in connection with the execution of the work as decided by the Engineer-in-charge/Site-in-Charge shall be carried out at the contractors cost and expenses.

## **8. ALTERATIONS AND ADDITIONS TO SPECIFICATIONS, DESIGNS AND WORKS**

8.1 The Engineer-in-Charge/Site-in-Charge shall have powers to make any alterations, additions and/or substitutions to the schedule of quantities, the original specifications, drawings, designs and instructions that may become necessary or advisable or during the progress of the work and the Contractor shall be bound to carry-out such altered/extra/new items of work in accordance with instructions. Such alterations, omissions, additions or substitutions shall not invalidate the contract. The altered, additional or substituted work which the Contractor may be directed to carry on in the manner as part of the work shall be carried out by the Contractor on the same conditions in all respects on which he has agreed to do the work. The time for completion of such altered added and/or substituted work may be extended for that part of the particular job.

8.2 The quantities indicated in the Tender are approximate and can vary upto any extent. The approved schedule of rates of the contract will be applicable for variations of upto plus or minus 25% of the estimated contract value. No revision of schedule of rates will be permitted for such variations in the contract value, even for variations of individual quantities, addition of new items, alterations, additions/deletions or substitutions of items, as mentioned above.

## **9. COMPLETION OF WORK AND COMPLETION CERTIFICATE**

As soon as the work is completed in all respects, the contractor shall give notice of such completion to the Engineer-in-charge / Site-in-charge and within 15 (fifteen) days of receipt of such notice the Engineer-in-charge / Site-in-charge shall inspect the work and shall furnish the contractor with a certificate of completion indicating:

- Defects, if any, to be rectified by the contractor
- Items, if any, for which payment shall be made in reduced rates
- The date of completion.

## **10. DEFECT LIABILITY PERIOD**

The contractor shall guarantee the work executed for a period of 12 months from the date of completion of the job. Any damage or defect that may arise or lie undiscovered at the time of issue of completion certificate connected in any way with the equipment or materials supplied by contractor or in workmanship shall be rectified or replaced by the contractor at his own expense failing which the Owner shall be entitled to rectify the said damage/defect from the PBG submitted by the contractor. Any excess of expenditure incurred by the Owner on account of damage or defect shall be payable by the Contractor. The decision of the Engineer-in-charge / Site-in-charge/Owner shall be the final in deciding whether the defect has to be rectified or replaced. The decision of the Owner in this behalf shall not be liable to be questioned but shall be final and binding on the Contractor. In this regard pl. Refer point no (13.3) of this Attachment.

## **11. DAMAGE TO PROPERTY**

Contractor shall be responsible for making good to the satisfaction of the Owner any loss of and any damage to all structures and properties belonging to the Owner or being executed or procured by the Owner or of other agencies within the premises of the work of the Owner, if such

loss or damage is due to fault and/or the negligence or wilful acts or omission of the Contractor, his employees, agents, representatives or sub-contractors.

The Contractors shall indemnify and keep the Owner harmless of all claims for damage to Owner's property arising under or by reason of this contract.

## **12. DUTIES AND RESPONSIBILITIES OF CONTRACTOR**

### **12.1 EMPLOYMENT LIABILITY TOWARDS WORKERS EMPLOYED BY THE CONTRACTOR**

The Contractor shall be solely and exclusively responsible for engaging or employing persons for the execution of work. All persons engaged by the Contractor shall be on Contractor's payroll and paid by Contractor. All disputes or differences between the Contractor and his/their employees shall be settled by Contractor.

Owner has absolutely no liability whatsoever concerning the employees of the Contractor. The Contractor shall indemnify Owner against any loss or damage or liability arising out of or in the course of his/their employing persons or relation with his/their employees. The Contractor shall make regular and full payment of wages and on any complaint by any employee of the Contractor or his sub contractor regarding non-payment of wages, salaries or other dues, Owner reserves the right to make payments directly to such employees or sub- contractor of the Contractor and recover the amount in full from the bills of the Contractor and the contractor shall not claim any compensation or reimbursement thereof. The Contractor shall comply with the Minimum Wages Act applicable to the area of work site with regard to payment of wages to his employees and also to employees of his sub contractor.

The Contractor shall advise in writing or in such appropriate way to all of his employees and employees of sub-contractors and any other person engaged by him that their appointment/employment is not by the Owner but by the Contractor and that their present appointment is only in connection with the construction contract with Owner and that therefore, such an employment/appointment would not enable or make them eligible for any employment/appointment with the Owner either temporarily or/and permanent basis.

### **12.2 NOTICE TO LOCAL BODIES**

The contractor shall comply with and give all notices required under any Government authority, instruction, rule or order made under any act of parliament, state laws or any regulations or by-laws of any local authority relating to the works.

### **12.3 FIRST AID AND INDUSTRIAL INJURIES**

☐ Contractor shall maintain first aid facility for his employees and those of his sub-contractors.

☐ Contractor shall make arrangements for ambulance service and for the treatment of all types of injuries. Names and telephone numbers of those providing such services shall be furnished to Engineer-in-charge / Site-in-charge prior to start of construction and their name board shall be prominently displayed in Contractor's field office.

☐ All industrial injuries shall be reported promptly to Engineer-in-charge / Site-in-charge and a copy of contractor's report covering each personal injury requiring the attention of a physician shall be furnished to the Engineer-in-charge / Site-in-charge.

### **12.4 SAFETY CODE**

The Contractor shall at his own expenses arrange for the Safety provisions as may be necessary for the execution of the work or as required by the Engineer-in-Charge in respect of all labours directly or indirectly employed for performance of the works and shall provide all facilities in connections therewith. In case the contractor fails to make arrangements and provide necessary facilities as aforesaid, the Owner shall be entitled to do so and recover the cost thereof from the Contractor.

In respect of all labour, directly or indirectly employed in the work for the performance of the Contractor's part of this Contract, the contractor shall at his own expense arrange for all the safety

provisions as per relevant Safety Codes as applicable.

#### □ **Safety Regulations**

Regarding Work Permit: The work shall be carried out inside the plant as per safety practices enforced by HMEI safety section and instructions of Engineer-in-Charge issued from time to time. Many times it may happen that the working hours shall be drastically reduced or increased to meet certain safety requirements and the contractor shall meet these requirements without any argument for time and financial implications. To obtain work permit and to satisfy all conditions laid down therein, shall be the responsibility of the Contractor. No claim for idling of machinery, plant, manpower etc. for safety reasons or non-issuance of work permit by in-charge, Safety Section shall be considered.

The Contractor shall abide by all safety regulations of the plant and ensure that safety equipment for specific job kit as stipulated in the factory act/safety handbook is issued to the employee during the execution of work, failing which all the works at site will be suspended.

Regarding use of Vehicle:

- i) Vehicle must not play on any road within the plant at a speed exceeding 20KM/hr.
- ii) Mobile crane/loaded trucks/trailers must not exceed speed limit of 15 KM/hr inside the plant.
- iii) No crane is allowed to move inside the plant with load.
- iv) No vehicle is allowed to park inside the plant.

## **12.5 INSURANCE AND LABOUR**

Contractor shall at his own expense obtain and maintain an insurance policy with a Nationalised Insurance Company to the satisfaction of the Owner as provided hereunder.

### **12.5.1 EMPLOYEES STATE INSURANCE ACT**

- i. The Contractor agrees to and does hereby accept full and exclusive liability for the compliance with all obligations imposed by Employees State Insurance Act, 1948, and the Contractor further agrees to defend indemnify and hold Owner harmless from any liability or penalty which may be imposed by the Central, State or local authority by reason of any asserted violation by Contractor, or sub-contractor of the Employees' State Insurance Act, 1948 and also from all claims, suits or proceedings that may be brought against the Owner arising under, growing out of or by reason of the work provided for by this contract whether brought by employees of the Contractor, by third parties or by Central or State Government authority or any political sub-division thereof.
- ii. The Contractor agrees to file with the Employees State Insurance Corporation, the Declaration forms and all forms which may be required in respect of the Contractor's or sub-contractor's employee whose aggregate remuneration is within the specified limit and who are employed in the work provided or those covered by ESI Act under any amendment to the Act from time to time. The Contractor shall deduct and secure the Contract of the sub-contractor to deduct the employee's contribution as per the first schedule of the Employee's State Insurance Act from wages and affix the employee's contribution cards at wages payment intervals. The Contractor shall remit and secure the Contract of the sub contractor to remit to the State Bank of India, Employee's State Insurance Corporation Account, the Employee's contribution as required by the Act.
- iii. The Contractor agrees to maintain all records as required under the Act in respect of employees and payments and the Contractor shall secure the Contract of the sub contractor to maintain such records. Any expenses incurred for the contributions, making contribution or maintaining records shall be to the Contractor's or sub-contractor's account.
- iv. The Owner shall retain such sum as may be necessary from the total contract value until the Contractor shall furnish satisfactory proof that all contributions as required by the Employees State Insurance Act, 1948, have been paid.

### **v. WORKMAN'S COMPENSATION AND EMPLOYEE'S LIABILITY INSURANCE**

Contractor shall provide Insurance for all the Contractor's employees engaged in the performance of this contract. If any of the work is sublet, the Contractor shall ensure that the subcontractor provides workmen's compensation and Employer's Liability Insurance for the latter's employees who are not covered under the Contractor's insurance.

### **vi. AUTOMOBILE LIABILITY INSURANCE**

Contractor shall take out Insurance to cover all risks to Owner for each of his vehicles plying on works of this contract and these insurances shall be valid for the total contract period. No extra payment will be made for this insurance. Owner shall not be liable for any damage or loss not made good by the Insurance Company, should such damage or loss result from unauthorised use of the vehicle. The provisions of the Motor Vehicle Act would apply.

vii. **FIRE INSURANCE**

Contractor shall within two weeks after award of contract insure the Works, Plant and Equipment and keep them insured until the final completion of the Contract against loss or damage by accident, fire or any other cause with an insurance company to be approved by the Employer/Consultant in the joint names of the Employer and the Contractor (name of the former being placed first in the Policy). Such Policy shall cover the property of the Employer only.

**12.5.2 ANY OTHER INSURANCE REQUIRED UNDER LAW OR REGULATION OR BY OWNER**

- i. Contractor shall also provide and maintain any and all other insurance which may be required under any law or regulations from time to time. He shall also carry and maintain any other insurance which may be required by the Owner.
- ii. The aforesaid insurance policy/policies shall provide that they shall not be cancelled till the Engineer-in-Charge has agreed to their cancellation.
- iii. The Contractor shall satisfy to the Engineer-in-Charge/Site-in-Charge from time to time that he has taken out all insurance policies referred to above and has paid the necessary premium for keeping the policies alive till the expiry of the defects liability period.
- iv. The contractor shall ensure that similar insurance policies are taken out by his sub-contractor (if any) and shall be responsible for any claims or losses to the Owner resulting from their failure to obtain adequate insurance protections in connection thereof. The contractor shall produce or cause to be produced by his sub-contractor (if any) as the case may be, the relevant policy or policies and premium receipts as and when required by the Engineer-in-Charge/Site-in-Charge.

**12.5.3 LABOUR AND LABOUR LAWS**

- i. The contractor shall at his own cost employ persons during the period of contract and the persons so appointed shall not be construed under any circumstances to be in the employment of the Owner.
- ii. All payments shall be made by the contractor to the labour employed by him in accordance with the various rules and regulations stated above. The contractor shall keep the Owner indemnified from any claims whatsoever inclusive of damages/costs or otherwise arising from injuries or alleged injuries to or death of a person employed by the contractor or damages or alleged damages to the property.
- iii. No labour below the age of eighteen years shall be employed on the work. The Contractor shall not pay less than what is provided under the provisions of the contract labour (Regulations and Abolition) Act, 1970 and the rules made thereunder and as may be amended from time to time. He shall pay the required deposit under the Act appropriate to the number of workman to be employed by him or through sub contractor and get himself registered under the Act. He shall produce the required Certificates to the Owner before commencement of the work. The Owner recognises only the Contractor and not his sub contractor under the provisions of the Act. The Contractor will have to submit daily a list of his workforce. He will also keep the wage register at the work site or/and produce the same to the Owner, whenever desired. A deposit may be taken by the Owner from the Contractor to be refunded only after the Owner is satisfied that all workmen employed by the Contractor have been fully paid for the period of work in Owner's premises at rates equal to or better than wages provided for under the Minimum Wages Act. The contractor shall be responsible and liable for any complaints that may arise in this regard and the consequences thereto.
- iv. The Contractor shall strictly comply with the provisions of Employees Provident Fund Act and register the establishment with the concerned Regional Provident Fund Commissioner before commencing the work. The Contractor shall deposit "Employees" and "Employers" contributions in the designated account with the designated Authority every month. The Contractor shall furnish along with each running bill, the challan/ receipt for the payment of provident fund made to the RPFC for the preceding month(s), if asked by the HMEL.

In case the Provident Fund Authority's receipted challan referred to above is not furnished, HMEL shall deduct 5% (five percent) of the payable amount from the Contractor's running bill and retain

the same as a security for the payment of the Provident Fund. Such retained amounts shall be refunded to the Contractor only on production of challan/ receipt of the Provident Fund Authority for the period covered by the related deduction.

- v. The Contractor will comply with the provisions of the payment of Gratuity Act, 1972, as may be applicable and as amended from time to time.

vi. **IMPLEMENTATION OF APPRENTICES ACT, 1961**

The Contractor shall comply with the provisions of the Apprentices Act, 1961 and the Rules and Orders issued thereunder from time to time. If he fails to do so, his failure will be a breach of the contract and the Engineer-in-Charge / Owner may, at his discretion, cancel the contract. The Contractor shall also be liable for any pecuniary liability arising on account of any violation by him of the provision of the Act.

vii. **MODEL RULES FOR LABOUR WELFARE**

The Contractor shall at his own expenses comply with or cause be complied with Model rules for Labour Welfare as appended to those conditions or rules framed by the Government from time to time for the protection of health and for making sanitary arrangements for worker employed directly or indirectly on the works. In case the contractor fails to make arrangements as aforesaid the Engineer-in-Charge/Site-in-Charge shall be entitled to do so and recover the cost thereof from the contractor.

**13. Measurement and Payments:**

- 13.1 Payment shall be made to the contractor against monthly Running Account bills/Invoices duly certified by Engineer in Charge/ Site-in-Charge. Payment will be released within 30 days of the receipt of Bill/Invoice for the work done duly certified by Engineer in charge.

- 13.2 RA bills and the final bill shall be submitted by the Contractor together with the duly signed measurement sheet(s) to the Engineer-in-Charge in quadruplicate for certification. All running account payments shall be regarded as on account payment(s) to be finally adjusted against the final bill payment and payment of Running Account bill(s) shall not determine or affect in any way the rights of the owner under this contract to make the final adjustments of the material, measurements of work and adjustment of amounts etc. in the final bill.

- 13.3 Final Bill: The final bill shall be submitted by the Contractor within 15 days of the date of completion of the work fully and completely in all respects failing which the EIC/ Owner reserves their right to make the measurements and determine the total amount payable for the works carried out by the Contractor and such a certification shall be final and binding on the Contractor. Payment of the final bill shall be made within 45 days from the date of receipt of the certified bill from EIC. However the contractor along with the final bill will submit the Performance Bank Guarantee (PBG) of 10% of the total order value (excluding taxes/duties) valid up to the defect liability period of 12 months plus 60 (sixty) days claim period .

Retention money can be taken back by contractor after submission of Performance Bank Guarantee (PBG) as mentioned above in clause no 13.3.

**14. RETENTION MONEY**

10% of the total value of the Running Account and Final Bill will be deducted and retained by the Owner as retention money on account of any damage/defect liability that may arise for the period covered under the defect liability period clause of the Contract free of interest. Any damage or defect that may arise or lie undiscovered at the time of issue of completion certificate connected in any way with the equipment or materials supplied by contractor or in workmanship shall be rectified or replaced by the contractor at his own expense failing which the Owner shall be entitled to rectify the said damage/defect from the retention money. Any excess of expenditure incurred by the Owner on account of damage or defect shall be payable by the Contractor. The decision of the Owner in this behalf shall not be liable to be questioned but shall be final and binding on the Contractor.

Retention money can be taken back by contractor after submission of Performance Bank Guarantee (PBG) as mentioned above in clause no 13.3.

**15. TAXES AND DUTIES**

**15.1 Goods and Services Tax:**

The quoted price shall be deemed to be inclusive of all taxes and duties except "Goods and

Services Tax” (hereinafter called GST) (i.e. IGST or CGST and SGST/UTGST applicable in case of interstate supply or intra state supply respectively and GST compensation Cess if applicable).

Contractor/vendor shall be required to issue tax invoice in accordance with GST Act and/or Rules so that input credit can be availed by HMEL. In the event that the contractor / vendor fails to provide the invoice in the form and manner prescribed under the GST Act read with GST Invoicing Rules thereunder, HMEL shall not be liable to make any payment on account of GST against such invoice.

GST shall be paid against receipt of tax invoice, completion of compliance requirement required at end of supplier and other fulfilment of all other obligations envisaged at end of supplier under the GST Act and Rules enabling ITC at end of HMEL including proof of payment of GST to government. In absence to fulfilment of such requirement any payment, HMEL shall withhold the payment of GST.

GST share payable under reverse charge for specified services or goods under GST act or rules, if any, shall not be paid to the contractor/vendor but will be directly deposited to the government by HMEL. However contractor/ vendor to raise supply invoice and file required returns, enabling ITC at end of HMEL. In absence HMEL will be entitled to withheld the GST share paid by HMEL under reverse charge

Notwithstanding anything contained anywhere in the Agreement, in the event that the input tax credit of the GST charged by the Contractor / Vendor is denied by the tax authorities to HMEL for reasons attributable to Contractor / Vendor, HMEL shall be entitled to either recover such amount from the Contractor / Vendor by way of adjustment from the next invoice or If there is no dues pending from contractor/ vendor, such amount to be paid by vendor/ contractor along with interest to HMEL. In addition to the amount of GST, HMEL shall also be entitled to recover interest at the rate prescribed under GST Act and penalty, in case any penalty is imposed by the tax authorities on HMEL.

TDS under GST, if applicable, shall be deducted from contractor's/vendor's bill at applicable rate and a certificate as per rules for tax so deducted shall be provided to the contractor/vendor.

The Contractor will be under obligation for charging correct rate of tax as prescribed under the respective tax laws. Further the Contractor shall avail and pass on benefits of all exemptions/concessions available under tax laws.

No variation on account of taxes and duties, statutory or otherwise, shall be payable by HMEL to contractor/vendor except for GST. Any statutory variation for GST shall be payable up to contractual date of completion against documentary evidence. In case, input tax credit of GST is available to HMEL beyond Contractual completion date, the same may be reimbursed by HMEL. Any reduction in taxes and duties included in the price shall be passed on to HMEL.

Any new taxes, duties, cess, levies notified or imposed after the submission of last /final price bid but before the contractual date of completion of work shall be to HMEL Account.

## **16. MATERIALS TO BE SUPPLIED BY CONTRACTOR**

The Contractor shall procure and provide the whole of the materials required for construction including tools, tackles, construction plant and equipment for the completion and maintenance of the works. The contractor shall make arrangement for procuring such materials and for the transport thereof at their own cost and expenses. Before procuring, the Contractor should get the approval of Engineer-in-Charge/Site-in-Charge for any materials to be used for the works.

## **17. CONTRACTOR TO INDEMNIFY THE OWNER**

The Contractor shall indemnify the Owner and every member, officer and employee of the Owner, also the Engineer-in-Charge/Site-in-Charge and his staff against all the actions, proceedings, claims, demands, costs, expenses, whatsoever arising out of or in connection with the works and all actions, proceedings, claims, demands, costs, expenses which may be made against the Owner for or in respect of or arising out of any failure by the Contractor in the performance of his obligations under the contract. The Contractor shall be liable for or in respect of or in consequence of any accident or injury to any workmen or other person in the employment of the Contractor or his sub contractor and Contractor shall indemnify and keep indemnified the Owner

against all such damages, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

## **18. TERMINATION OF CONTRACT**

18.1 Without prejudice to the Owner's rights, powers and remedies under this Contract and at law, the Owner may terminate this Contract if one of the following defaults occurs:

- (a) The Contractor materially fails to conform to the requirements of this Contract; or
- (b) The Contractor fails to commence the Works or make progress so as to materially endanger completion of any of the Works or Commissioning in accordance with the Time Schedule; or
- (c) The Contractor abandons the Works or plainly demonstrates an intention not to continue performance of its obligations under this Contract; or
- (d) The Contractor is in material breach of any of the terms of this Contract; or
- (e) The Contractor subcontracts the whole or part of the Works to a third party without prior written consent of the Owner; or
- (f) The Contractor does not submit any of the bank guarantees required in accordance with this Contract; or
- (g) The Contractor suffers or incurs an insolvency event including but not limited to a general assignment for the benefit of its creditors, the appointment of a trustee or a receiver for any of the Contractor's property and the filing of a petition by the Contractor to take advantage of any debtor's act, or to reorganise under bankruptcy or similar laws; or
- (h) The Contractor suspends the Works for more than a period of 7 days without any lawful excuse under this Contract; or
- (k) Has failed to pay its Subcontractors; or
- (l) has become untraceable; or

18.2 Upon termination for default, the Contractor shall:

- (a) Immediately discontinue the execution of the Works on the date and to the extent specified in the notice and place no further sub-contracts to the extent that they relate to the performance of the terminated Works;
- (b) Promptly obtain cancellation upon terms satisfactory to the Owner of all sub-contracts, rentals, or any other Contracts existing for performance of the terminated Works or assign those Contracts as directed by the Owner;
- (c) Handover all relevant documents to the Engineer-in-Charge, whether complete or in progress;
- (d) Immediately leave the Site.

18.3 The Owner on termination of such contract shall have the right to appropriate the Security Deposit, Retention Money and invoke the Bank Guarantee furnished by the contractor and to appropriate the same towards the amounts due and payable by the contractor as per the conditions of Contract and return to the contractor excess money, if any, left over.

18.4 The Owner shall have the right to carry out the unexecuted portion of work either by themselves or by contractor through other agencies at the cost of the Contractor.

- 18.5 The Contractor within or at the time fixed by the Owner shall depute his authorized representative for taking joint final measurements of the works executed thus far and submit the final bill for the work as per joint final measurement within 15 days of the date of joint final measurement. If the contractor fails to depute their representative for joint measurement, the owner shall take the measurement with their Engineer-in-Charge/Site-in-Charge or any other outside representatives. Such a measurement shall not be questioned by the Contractor and no dispute can be raised by the Contractor for purpose of Arbitration.
- 18.6 The Owner may enter upon and take possession of the works and all plant, tools, scaffoldings, sheds, machinery, power operated tools and materials of the Contract at the site or around the site and use or employ the same for completion of the work.
- 18.7 When the contract is terminated by the Owner for all or any of the reasons mentioned above the Contractor shall not have any right to claim compensation on account of such termination.

**18.8 Termination by the Owner for convenience (“Optional Termination”)**

The Owner may, at its option, terminate for convenience this Contract, at any time by giving prior written notice to the Contractor. Such notice shall specify the effective date of such termination, being not less than seven (7) days from the date of such notice.

**19 FORCE MAJEURE**

**19.1 Events of Force Majeure**

In this Agreement, “Event of Force Majeure” means:

- (a) War (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting India;
- (b) Expropriation or confiscation of facilities by Government authority
- (c) Revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case within India;
- (d) Nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Works, unless the source or cause of the explosion, contamination, radiation or hazardous thing is brought to or near the Works by any Party or by any Sub-Contractor or any of their respective employees, servants or agents;
- (e) Widespread, nationwide or political strikes, and/or lockouts which are in each case within India and other than those occurring only at Site and/or solely affecting the Party claiming the same as a Force Majeure event ;
- (f) Lightning, fire, earthquake, flood, storm, landslide, typhoon or tornado or other similar acts of God within India;
- (g) Explosion (other than a nuclear explosion or an explosion resulting from an act of war) within India; or
- (h) Epidemic or plague within India.

***Provided always that the above-mentioned events satisfy all the following conditions:***

- (a) It materially and adversely affects the performance of a right or obligation under this Agreement; and
- (b) It is beyond the reasonable control of the affected Party; and
- (c) Such Party could not have prevented or reasonably overcome the event with the exercise of good industry practice or reasonable skill, care, diligence and prudence; and

- (d) It does not result from the negligence or misconduct of such Party or the failure of such Party to perform its obligations hereunder.

19.2 Events of Force Majeure do not include:

- (a) Weather conditions to be reasonably expected for the climate in the geographic area of the Project including the monsoon season;
- (b) Any condition or event on Site arising from 19.2 (a) above; and
- (c) Any manpower, material, power or equipment shortage.

19.3 The affected Party shall give notice to the other Party of the Event of Force Majeure as soon as it is reasonably practicable, but not later than three (3) days after the date on which the affected Party knew or should reasonably have known of the commencement of the Event of Force Majeure giving brief details of the event, its effect and an indicative estimate of its likely duration, specifying:

- (a) The nature of the Event of Force Majeure;
- (b) The date and time when the affected Party was affected by the Event of Force Majeure event;
- (c) Details of the adverse effect that such Event of Force Majeure is having on the affected Party in the performance of its obligations under this Agreement;
- (d) The measures which the affected Party has taken, or proposes to take, to alleviate and mitigate the impact of such Event of Force Majeure in accordance with good industry practice; and
- (e) An estimate of the likely period of time the affected Party shall be unable to perform its obligations under this Agreement by reason of the Event of Force Majeure.

19.4 The notice provided for in this Article 19 above shall be accompanied by, to the extent such information is available, full and detailed schedules of the nature of such delay and its likely effect on the Time Schedule, and to the extent that such information is not available, the affected Party shall deliver such full and detailed particulars as soon as practicable. No Party shall be able to suspend or excuse the non performance of its obligations hereunder unless such Party has given the notice specified in this Article 19 above.

19.5 Upon the occurrence of an Event of Force Majeure, the Owner and the Contractor endeavour to continue to perform their rights and/or obligations under this Agreement so far as is reasonably practicable and the Contractor shall during such period of the occurrence of the Event Force Majeure protect and secure the Works and any work in progress forming part of the Works in accordance with good industry practice and otherwise in such manner as the Owner shall reasonably require. The Contractor shall notify the Engineer-in-Charge of the steps it proposes to take including any reasonable alternative means for performance of the Works which are not prevented by the Event of Force Majeure and the Owner and the Contractor shall:

- (a) make all reasonable efforts to prevent and reduce to a minimum and mitigate the material adverse effect of the Event of Force Majeure in accordance with good industry practice; and
- (b) use their best efforts to ensure resumption of normal performance of this Agreement after the occurrence of any Event of Force Majeure and shall perform their obligations to the maximum extent practicable as agreed between the Parties.

Upon cessation of any Event of Force Majeure, the affected Party shall promptly notify the other Party of the date of the cessation.

- 19.6 If the Party receiving the notice under Force Majeure wishes to dispute the claim, such Party shall give a written notice of dispute to the Party making the Force Majeure claim within fifteen (15) days of receiving the notice of the claim. If the notice of claim for Force Majeure is not contested within fifteen (15) days, the Parties to this Agreement shall be deemed to have accepted the validity of the claim. If the Parties dispute a claim, the Parties shall follow the Arbitration procedure at Article 20 to this Agreement.
- 19.7 For so long as the affected Party continues to claim to be affected by the Event of Force Majeure, it shall provide the other Party with regular (and not less than monthly) written reports on the effect of the Event of the Force Majeure on the Time Schedule, the Lump Sum Price and the overall progress of the Works.
- 19.8 If the affected Party is the Contractor, it shall also provide to the Owner and Engineer-in-Charge reasonable facilities including inspection of the Site for obtaining further information about the Event of Force Majeure or circumstance alleged to constitute an Event of Force Majeure and any document produced by the Contractor in connection therewith.
- 19.9 Notwithstanding that an Event of Force Majeure otherwise exists, the provisions of this Article 19 shall not excuse:
- (a) late performance of the Works by the Contractor caused by inefficiencies on the part of the Contractor;
  - (b) late performance by the Contractor caused by the Contractor's failure to hire an adequate number of personnel or by inefficiencies on the part of the Contractor;
  - (c) submission of Drawings for review/approval at such a time which does not leave sufficient time to permit an orderly review thereof ; or
  - (d) delays resulting from unfavourable weather or unsuitable ground conditions or from any similar cause; unless the Contractor establishes to the reasonable satisfaction of the Engineer-in-Charge and the Owner that the delay or late performance arises out of an occurrence other than that described in (a) to (d) above and which is beyond the reasonable control of the Contractor and that a reasonable alternative for the execution of the Works is demonstrably available.
- 19.10 The Contractor shall not be entitled to any Change in the Price on account of any event of Force Majeure.
- 19.11 If the affected Party claims relief for an Event of Force Majeure, then the affected Party shall not be in breach of its obligations under this Agreement during the period of occurrence of the event of Force Majeure to the extent that the performance of the affected Party's obligations under this Agreement is materially and adversely affected by such event of Force Majeure during such period of occurrence.
- 19.12 The Owner shall not make any payment during the period when the execution of the Works is affected due to the Event of Force Majeure. However, during such period the Owner shall be required to pay to the Contractor any part of the Contract Price that is due for that part of the Works that has have been completed prior to occurrence of Force Majeure except when the means and source of payment of Owner have been affected on account of occurrence of an event of Force Majeure. Upon cessation of the event of Force Majeure affecting the Owner's means and sources of payment, the Owner shall resume payments of such amounts of any outstanding payments due with the invoice dates therein adjusted to reflect the period during which scheduled payments were not made. No interest shall be payable by the Owner in respect to such payments.
- 19.13 The Owner may terminate this Agreement if any Event or Events of Force Majeure exceed one hundred (100) consecutive days or one hundred and eighty (180) cumulative days in any one calendar year upon giving thirty (30) days' prior written notice to the Contractor.

## **20 Settlement of Disputes / Arbitration**

- 20.1 In the event of any disputes or difference between the Owner and the Contractor arising out of

- or in connection or relation to this contract other than reserved matters for which decision of Owner/ Engineer-in-Charge shall be final and binding upon the Parties, a Party prior to initiation of any proceedings under this contract shall promptly give a written notice to the other Party setting out in clear and concise language the relevant facts, nature and circumstances of the disputes, relief sought including any amount claimed ('Notice of Disputes').
- 20.2 Upon receipt of a Notice of Disputes, representatives of the Owner and the Contractor shall forthwith use their best efforts in good faith to reach a reasonable and equitable resolution of the disputes and produce written terms of settlement thereof.
- 20.3 If the representatives of Owner and the Contractor are unable to produce written terms of settlement and resolve the disputes within forty-five (45) days of receipt by either Party of a Notice of Disputes, then such unresolved disputes shall be finally settled in arbitration. If the representatives of Owner and the Contractor are unable to produce written terms of settlement and resolve the disputes within forty-five (45) days of receipt by either Party of a Notice of Disputes, then such unresolved disputes shall be finally settled in arbitration.
- 20.4 In case of any such unresolved disputes, any Party wishing to commence arbitration shall issue a Notice Invoking Arbitration ('Notice Invoking Arbitration') to the other Party for the appointment of the arbitrator. A Notice Invoking Arbitration shall be different and distinct from Notice of Disputes as mentioned in clause 20.1 above. Notwithstanding the Notice Invoking Arbitration issued by a Party, the other Party shall in addition to its right of pleading or set off, set up, by way of counter claim, including but not limited to a counter claim in the matter of a claim for damages or not against the claim of a Party issuing the Notice Invoking Arbitration and the other Party shall have no objections in this regard.
- 20.5 Upon receiving such a Notice Invoking Arbitration, the other Party shall give its consent or suggest a new/alternate name for appointment of Sole Arbitrator within thirty (30) days from the date of receipt of such Notice Invoking Arbitration. In the event both Parties fail to agree to appoint Sole Arbitrator, the Sole Arbitrator shall be appointed in accordance with provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof ("said Act").
- 20.6 The seat of arbitration shall be at New Delhi and the proceedings shall be carried-out in English language only.
- 20.7 The provisions of the said Act, shall apply to the arbitration proceedings under this Clause. Indian law, without reference to its conflict of law principles, shall be governing substantive and procedural law of such arbitration.
- 20.8 The award of the arbitral tribunal shall be a reasoned and written award and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding, any claims, counterclaims, issues or accounting presented or pleaded to the arbitrator.
- 20.9 The Parties shall continue to comply with, observe and perform all of their obligations hereunder regardless of the nature of the disputes and notwithstanding the referral of the disputes to arbitration. In particular Contractor acknowledges and agrees that the balance of convenience is in favor of the Owner as regards timely completion of the Works on account of time being of the essence in this contract, and it shall not be entitled to obtain any injunctive relief in this regard. The Contractor shall observe and perform its obligations under the contract regardless of the nature of the disputes and notwithstanding the referral of the disputes to arbitration.
- 20.10 Subject to the foregoing provisions relating to arbitration, the courts at New Delhi shall have sole and exclusive jurisdiction in relation to or in connection with this contract, including (but not limited to) for the purposes of interim measures under Section 9 of the Arbitration and Conciliation Act, 1996.

**21. Time Schedule**

The Complete scope of the works shall be executed strictly within Specific Time Period from the date of Order Confirmation/Work Order whichever is earlier. Time Period mentioned above Months is for completing all the works in all respects as per specifications, codes, drawings and instructions of Engineer-in-charge. The period of the Contract includes all the required procurement, mobilisation at site, de mobilization, inspection, testing, rectifications, if any, retesting etc. complete in all respects to the entire satisfaction of Engineer-in- Charge.

**22. Mobilization**

Contractor shall mobilize adequate resources at site immediately from the date of Work Order.

**24. Price Escalation**

The Contract Price shall be deemed to be firm and valid for the entire duration of the Contract till the completion of Work in all respects and shall not be subject to any adjustment due to increase in price of raw materials, consumables, labour or any other input for performance of Work.

**25. Land for residential accommodation**

Contractor will have to make his own arrangement at his cost for land for the purpose of

residential accommodation for his staff and labour.

Construction Contractors to ensure the following, but not limited to the same, for the labour camps to be established, operated & maintained by them in connection with the contract.

a) Dwelling Height of roof – Minimum 10 Feet

Type of roof & supporting – Truss supported

Brick work in cement mortar or with mud mortar & cement pointing

Minimum area of room 5.0” X 4.5 m (16 Rooms in a block)

4 Blocks with common facilities in 1 acre

b) Electric power – through PSEB or DG Set.

c) Drinking water & service water

d) Separate toilet blocks for male & female with septic tank & soak pit.

e) Kitchen – proper drainage of the area.

f) Camp to have enclosure – boundary wall/fencing.

g) Separate enclosure for bachelor status.

h) Crutch – Shelter & open play ground

i) Medical facility – Periodic health check up & as required.

j) Contractor to organize regular inspection of sanitation in the camp.

## **26. Land for Contractors field office, Go-down and workshop**

HMEL shall provide (if available) , at his own discretion and convenience and for the duration of the Contract, the land near the site for construction of Contractor's field office and assembly yard required for execution of the contract. The Contractors shall at his own cost construct all temporary buildings and provide suitable water supply and sanitary arrangement approved by the Engineer-in-Charge (EIC).

## **27. Entry Passes, Gate Passes, Work Permits & Safety Regulations**

The works under this contract are to be carried out in areas within the plant limits adjacent/adjoining to the other units which are under construction. As such, contractor is required to abide by safety and security regulations of the Owner enforced from time to time.

### **Entry Passes**

The contractor has to apply for photo entry passes for his workers & staff in a prescribed proforma available with HMEL. The photo entry passes shall be issued by the HMEL for a maximum period of 3 months and if extension is required by the contractor, he has to apply separately for extension. As a special case temporary passes for a maximum period of 7 days may be issued.

**Gate Passes** to bring materials/equipments/tools/tackles etc. inside the plant for construction work, the contractor has to produce challans /proper documents to the HMEL's personnel at gate. The materials shall be checked thoroughly by the HMEL's personnel at Gate and recorded in their register before allowing any material to bring inside the plant by contractor. It is contractor's responsibility to see that the recorded entry no., date, signature of owner's authorized representative with stamp are there on the challan/supporting documents before taking any materials inside the plant. In addition to above, entry of the material will be permitted only during the stipulated working hour, and more so, if consignee is available to receive the said material.

To take contractor's materials out of the plant, the contractor has to apply with specific purpose/reasons to the Engineer-in-Charge, attaching challans/supporting documents signed by company's personnel at gate during entry.

### **Vehicle Permit**

Permits are to be obtained separately for entry/use of vehicles/trailers etc. inside the plant. The following requirements are to be met to obtain vehicle permit:

- 1) Vehicle/Equipment etc. should be brought to site in good condition.
- 2) Valid Road tax certificate, fitness certificate and insurance policy from Competent authority.
- 3) Valid operating/driving licence of driver/operator.

**Validity of the Permit**

- 1) No permit is valid if it is not renewed by the shift in-charge/ his representative in shifts (morning & evening).
- 2) The permit shall be issued for a maximum period of one month and if extension is required, the contractor has to apply for fresh permit.
- 3) No permit is valid on holidays unless special permission is obtained from the competent authority.

**28. Statutory Approvals:**

It will be the Contractor's responsibility to obtain the approval from any authority required as per statutory rules and regulations of Central/ State Government/Local Authority to execute the job as mentioned in the Contract. The Contractor within the quoted price shall carry out any change/ addition required to meet the requirements of the statutory authorities. The inspection and acceptance of the work by statutory authorities shall however, not absolve the Contractor from any of his responsibilities under this contract.

**29. Labour License:**

Before starting of work, the Contractor shall obtain a license from concerned authorities under the Contract Labour (Abolition and Regulation) Act 1970, and furnish copy of the same to the HMEL.

**30. Price Reduction Schedule ('PRS')**

For any delay in completion period beyond the Contractual delivery date, price reduction shall be applied @ 1/2% per week of delay or part thereof subject to a maximum of 5% of the Contract Value.

For any delay in completion of work provision of PRS as above will be applicable and no Liquidated Damage on account of delay will be applicable.

**31. Water, Power & Other Facilities:**

Construction power (440V, 3 phase) shall be provided to the CONTRACTOR on chargeable basis. All the works related to laying of cable etc. for construction power shall be arranged by CONTRACTOR at his own cost. The cost of power supply shall be recovered by the OWNER every month at the rate of INR 11 as base cost further subjected to revision as per variation in PSEB Tariff by deduction from the CONTRACTOR's bills (without prejudice to any other mode of recovery available to the OWNER). The energy meter to be installed by the CONTRACTOR shall be tested and certified by State Electricity Board or any other agency approved by the OWNER. The construction power shall be made available to the CONTRACTOR subject to grid disturbance, and no extension of time or compensation shall be payable on this account. Therefore, the CONTRACTOR shall within the Contract Price make alternate arrangement to cope with such eventuality.

No Construction Power shall be provided by OWNER for work outside the battery limit of the Plant. CONTRACTOR shall make his own arrangement for Construction Power at his own cost for fabrication outside battery limit of Plant.

Construction Water shall be provided to the CONTRACTOR, free of cost, at one point near the battery limit of the Plant. CONTRACTOR shall arrange for further distribution of the same at his own cost.

HMEL shall endeavour to provide land out of available land to the CONTRACTOR, for the sole purpose of field office and fabrication yard. CONTRACTOR shall have to use CONTRACTOR's own container (porta cabin). No land shall be provided for accommodation purpose.

The CONTRACTOR shall remove all temporary buildings / facilities etc. before leaving the site after completion of works in all respect.

**32. Procurement of TMT Bars, Cement and Structural Steel by Contractor**

- Contract Clause for acceptance of Structural Steel & TMT Bars

Steel manufactures having valid BIS certificate and listed in the BIS website as on date of procurement of steel shall be allowed for supply of steel (Structural steel and TMT bars) and contractor shall procure from them with prior intimation to Site-in-charge

- Contract Clause for acceptance of Cement manufacturer

Cement manufacturers having valid BIS certificate and listed in the BIS website as on the date of procurement of cement shall be allowed for supply of cement and contractor shall procure cement from them with prior intimation to Site-in-charge.

**33. Site Cleaning**

The CONTRACTOR shall clean and keep clean the work site from time to time to the satisfaction of the Engineer-in-Charge (EIC) for easy access to work site and to ensure safe passage, movement and working.

**34. Dress Code**

Contractor will provide proper identifiable uniform, personal protective equipment's to all its supervisors/ workers/labour.

**35. Validity of offer**

Your offer shall be valid till 90 days from the date of offer.