

- b) has failed to commence the works, or has without any lawful excuse under these conditions suspended the work for 15 consecutive days.
- c) has failed to remove materials from the site or to pull down and replace the work within 15 days after receiving from the Engineer written notice that the said materials or work were condemned and/or rejected by the Engineer under specified conditions.
- d) has neglected or failed to observe and perform all or any of the terms acts, matters or things under this Contract to be observed and performed by the Contractor.
- e) has to the detriment of good workmanship or in defiance of the Engineer's instructions to the contrary sub-let any part of the Contract.
- f) has acted in any manner to the detrimental interest, reputation, dignity, name or prestige of the Owner.
- g) has stopped attending to work without any prior notice and prior permission for a period of 15 days.
- h) has become untraceable.
- i) has without authority acted in violation of the terms and conditions of this contract and has committed breach of terms of the contract in best judgement of the owner.
- j) has been declared insolvent/bankrupt.
- k) in the event of sudden death of the Contractor.

12.3 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.

12.4 In case of Termination of the contract, Owner shall have the right to carry out the unexecuted portion of the work either by themselves or through any other contractor(s) at the risk and cost of the Contractor. In view of paucity of time, Owner shall have the right to place such unexecuted portion of the work on any nominated contractor(s). However, the overall liability of the Contractor shall be restricted to 100 % of the total contract value.

® 12.5 The contractor within or at the time fixed by the Owner shall depute his authorised 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 be final and binding on the Parties and shall not be questioned by the Contractor and no dispute can be raised by the Contractor on the same.

® REVISION: PROC-043/16.03.2020

28 | Page

HPCL, Mumbai

12.6 The Owner may enter upon and take possession of the works and all plant, tools, scaffoldings, sheds, machinery, power operated tools and steel, cement and other materials of the Contract at the site or around the site and use or employ the same for completion of the work or employ any other contractor or other person or persons to complete the works. The Contractor shall not in any way object or interrupt or do any act, matter or thing to prevent or hinder such actions, other Contractor or other persons employed for completing and finishing or using the materials and plant for the works. When the works shall be completed or as soon thereafter the Engineer shall give a notice in writing to the Contractor to remove surplus materials and plant, if any, and belonging to the Contractor except as provided elsewhere in the Contract and should the Contractor fail to do so within a period of 15 days after receipt thereof the Owner may sell the same by public auction and shall give credit to the contractor for the amount realised. The Owner shall thereafter ascertain and certify in writing under his hand what (if anything) shall be due or payable to or by the Owner for the value of the plant and materials so taken possession and the expense or loss which the Owner shall have been put to in procuring the works, to be so completed, and the amount if any, owing to the Contractor and the amount which shall be so certified shall thereupon be paid by the Owner to the Contractor or by the Contractor to the Owner, as the case may, and the Certificate of the Owner shall be final and conclusive between the parties.

12.7 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.

® 13. FORCE MAJEURE

Circumstances leading to force majeure

- (a) act of terrorism;
- (b) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection of military or usurped power;
- (c) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
- (d) epidemics, earthquakes, flood, fire, hurricanes, typhoons or other physical natural disaster, but excluding weather conditions regardless of severity; and
- (e) freight embargoes, strikes at national or state-wide level or industrial disputes at a national or state-wide level in any country where Works are performed, and which affect an essential portion of the Works but excluding any industrial dispute which is specific to the performance of the Works or the Contract.

For the avoidance of doubt, inclement weather, third party breach, delay in supply of materials shall not constitute a Force Majeure event.

#### Notification of Force Majeure

Contractor shall notify within [10(ten)] days of becoming aware of or the date it ought to have become aware of the occurrence of an event of Force Majeure giving full particulars of the event of Force Majeure and the reasons for the event of Force Majeure preventing the Affected Party from, or delaying the Affected Party in performing its obligations under the Contract.

#### Right of either party to terminate

If an event of Force Majeure occurs and its effect continues for a period of 180 (one hundred eighty days) or more in a continuous period of 365 (three hundred sixty-five) days after notice has been given under this clause, either Party may terminate the Contract by issuing a written notice of 30 (thirty) days to the other Party.

#### Payment in case of termination due to Force Majeure

The Contract Price attributable to the Works performed as at the date of the commencement of the relevant event of Force Majeure. The Contractor has no entitlement and Owner has no liability for:

- a) any costs, losses, expenses, damages or the payment of any part of the

Contract Price during an event of Force Majeure; and

- b) any delay costs in any way incurred by the Contractor due to an event of Force Majeure. Time extension for such cases will be worked out appropriately.

## 14. ARBITRATION

14.1 All disputes and differences of whatsoever nature, whether existing or which shall at any time arise between the parties hereto touching or concerning the agreement, meaning, operation or effect thereof or to the rights and liabilities of the parties or arising out of or in relation thereto whether during or after completion of the contract or whether before after determination, foreclosure, termination or breach of the agreement (other than those in respect of which the decision of any person is, by the contract, expressed to be final and binding) shall, after written notice by either party to the agreement to the other of them and to the Appointing Authority hereinafter mentioned, be referred for adjudication to the Sole Arbitrator to be appointed as hereinafter provided.

14.2 The appointing authority shall either himself act as the Sole Arbitrator or nominate some officer/retired officer of Hindustan Petroleum Corporation Limited (referred to as owner or HPCL) or a retired officer of any other Government Company in the Oil Sector of the rank of Ch. Manager & above or any retired officer of the Central Government not below the rank of a Director, to act as the Sole Arbitrator to adjudicate the disputes and differences between the parties. The contractor/vendor shall not be entitled to raise any objection to the appointment of such person as the Sole Arbitrator on the ground that the said person is/was an officer and/or shareholder of the owner, another Govt. Company or the Central Government or that he/she has to deal or had dealt with the matter to which the contract

® REVISION: PROC-021/01.07.2017

relates or that in the course of his/her duties, he/she has/had expressed views on all or any of the matters in dispute or difference.

14.3 In the event of the Arbitrator to whom the matter is referred to, does not accept the appointment, or is unable or unwilling to act or resigns or vacates his office for any reasons whatsoever, the Appointing Authority aforesaid, shall nominate another person as aforesaid, to act as the Sole Arbitrator.

14.4 Such another person nominated as the Sole Arbitrator shall be entitled to proceed with the arbitration from the stage at which it was left by his predecessor. It is expressly agreed between the parties that no person other than the Appointing Authority or a person nominated by the Appointing Authority as aforesaid, shall act as an Arbitrator. The failure on the part of the Appointing Authority to make an appointment on time shall only give rise to a right to a Contractor to get such an appointment made and not to have any other person appointed as the Sole Arbitrator.

14.5 The Award of the Sole Arbitrator shall be final and binding on the parties to the Agreement.

14.6 The work under the Contract shall, however, continue during the Arbitration proceedings and no payment due or payable to the concerned party shall be withheld (except to the extent disputed) on account of initiation, commencement or pendency of such proceedings.

14.7 The Arbitrator may give a composite or separate Award(s) in respect of each dispute or difference referred to him and may also make interim award(s) if necessary.

14.8 The fees of the Arbitrator and expenses of arbitration, if any, shall be borne equally by the parties unless the Sole Arbitrator otherwise directs in his award with reasons. The lumpsum fees of the Arbitrator shall be R 40,000/- per case for transportation contracts and R 60,000/- for engineering contracts and if the sole Arbitrator completes the arbitration including his award within 5 months of accepting his appointment, he shall be paid R 10,000/- additionally as bonus. Reasonable actual expenses for stenographer, etc. will be reimbursed. Fees shall be paid stage wise i.e. 25% on acceptance, 25% on completion of pleadings/documentation, 25% on completion of arguments and balance on receipt of award by the parties

14.9 Subject to the aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder, shall apply to the Arbitration proceedings under this Clause.

14.10 The Contract shall be governed by and constructed according to the laws in force in India. The parties hereby submit to the exclusive jurisdiction of the Courts situated at location given in tender header (say Mumbai\*) for all purposes. The Arbitration shall be held at location mentioned for such purpose in Tender header (say Mumbai\*) and conducted in English language.

14.11 The Appointing Authority is the Functional Director of Hindustan Petroleum Corporation Limited.

(Note:- \* = While printing the GTCs, each Procurement Authorities at various location, may mention the correct place before printing the GTC and not leave Clause 14.10 blank or as stated above. Bracketed portion is to be removed.

## 14A CONCILIATION

The Parties to the contract may seek to resolve all their disputes and differences amicably by Conciliation in accordance with the Conciliation Rules of HPCL (as in force and may be amended from time to time), provided however that the disputes/ differences amount to a claim in excess of Rs. One Crore. If however the disputes or differences are not resolved by conciliation, the Parties shall be free to approach a Court of competent jurisdiction. (The HPCL Conciliation Rules are attached).

## 15. GENERAL

15.1. Materials required for the works whether brought by the or supplied by the Owner shall be stored by the contractor only at places approved by Engineer-in- Charge/Site-in-Charge. Storage and safe custody of the material shall be the responsibility of the Contractor.

15.2. Owner and/or Engineer-in-Charge/Site-in-Charge connected with the contract, shall be entitled at any time to inspect and examine any materials intended to be used in or on the works, either on the site or at factory or workshop or at other place(s) manufactured or at any places where these are laying or from which these are being obtained and the contractor shall give facilities as may be required for such inspection and examination.

15.3. In case of any class of work for which there is no such specification supplied by the owner as is mentioned in the tender documents, such work shall be carried out in accordance with Indian Standard Specifications and if the Indian Standard Specifications do not cover the same the work should be carried out as per standard Engineering practice subject to the approval of the Engineer-in-Charge/Site-in- Charge.

15.4. Should the work be suspended by reason of rain, strike, lockouts or other cause the contractor shall take all precautions necessary for the protection of the work and at his own expense shall make good any damages arising from any of these causes.

15.5. The contractor shall cover up and protect from injury from any cause all new work also for supplying all temporary doors, protection to windows and any other requisite protection for the whole of the works executed whether by himself or special tradesmen or sub- contractors and any damage caused must be made good by the contractors at his own expense.

15.6. If the contractor has quoted the items under the deemed exports, then it will be the responsibility of the contractor to get all the benefits under deemed exports from the Government. The Owner's responsibility shall only be limited to the issuance of required certificates. The

quotation will be unconditional and phrases like “subject to availability of deemed exports benefit” etc. will not find place in it.

16. Integrity Pact : Effective 1st September, 2007, all tenders and contracts shall comply with the requirements of the Integrity Pact (IP) if the value of such tenders or contracts is r 1 crore & above. Failure to sign the Integrity Pact shall lead to outright rejection of bid.

17. Grievances of parties participating or intend to participate in the tender shall be addressed in writing to the officer designate of the Grievance Redressal Cell where the tenders have to be submitted within the stipulated period. Detailed mechanism of Grievance Redressal is available on the HPCL website

18. The guidelines for Holiday Listing as adopted and available on HPCL website shall be applicable to all tenders floated and all Purchase Orders/Contracts placed by HPCL.

**AGREED TERMS AND CONDITIONS**

Sl.No.	Description	Attached File	Set Value	Supporting Doc. Req'd
1	Please confirm that you have not been banned or delisted by any Government or Quasi Government agencies or PSUs. Please upload the declaration as per the specimen given in the tender (Annexure II)		-	Allowed
2	Confirm acceptance of scope of supply as per tender enquiry.		-	Allowed
3	VALIDITY: Confirm your offer is valid for 90 days from due date/extended due dates for placement of order.		-	Allowed
4	PAYMENT TERMS: Confirm acceptance of payment terms as specified in the attached Terms & Conditions.		-	Allowed
5	DELIVERY PERIOD: Confirm Acceptance of Delivery Period as per terms of tender		-	Allowed
6	Confirm that GST has been entered under taxes and extra of the price bid as 18.00 percent . In evaluation the GST entered under taxes and extras only shall be considered		-	Allowed
7	MSME Registration Details . If Registered , please upload the certificate		-	Allowed
8	Incase of Micro and Small enterprises, if you belong to SC/ST category ( please attach copy of your certificate )		-	Allowed
9	Confirm that only profit margin in terms of money value per unit per month only has been offered against line items in price bid		-	Allowed
10	Confirm your acceptance of Security Deposit Clause		-	Allowed
11	Confirm acceptance of ARBITRATION clause.		-	Allowed
12	Offers deviating from our Commercial Terms, and Offers not accompanied by this Agreed Terms & Conditions are liable for rejection without recourse to the Bidder.		-	Allowed
13	Pls. upload GST Registration Certificate.		-	Allowed
14	Pls. upload Organisation Data as per Annexure III		-	Allowed
15	Contact Details: NAME OF CONTACT PERSON		-	Allowed
16	Contact Details: MOBILE NUMBER No		-	Allowed
17	Contact Details: FAX NUMBER No		-	Allowed