

In other words, in case of service contracts (like car hire etc.) where there is no question of damage or defect arising in future, the defect liability clause is not applicable.

- ® **Equipment or spare parts replaced under warranty/guarantees shall have further warranty for 12 months from the date of acceptance. However, in no case will the warranty exceed 24 months from the date of start of the original warranty. (Refer Annexure 22 – Govt. Guideline Sr. No. 14)**

#### **5.o. DAMAGE TO PROPERTY**

5.o.1. 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 willful acts or omission of the Contractor, his employees, agents, representatives or sub-contractors.

5.o.2. 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.

#### ® **5.p. LIMITATION OF LIABILITY**

**Notwithstanding anything contrary contained herein, the aggregate total liability of Seller, excluding his liability towards infringement of patent, trade mark or industrial design rights under the contract or otherwise shall be limited to 100% of value of Purchase order. However, neither party shall be liable to the other party for any indirect and consequential damages, loss of profits or loss of production. (Refer Annexure 22 – Govt. Guideline Sr. No. 13)**

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

#### **6.a. EMPLOYMENT LIABILITY TOWARDS WORKERS EMPLOYED BY THE CONTRACTOR**

6.a.1 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.

6.a.2. 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

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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.

- 6.a.3. 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.

#### **6.b. 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.

#### **6.c. FIRST AID AND INDUSTRIAL INJURIES**

- 6.c.1 Contractor shall maintain first aid facility for his employees and those of his sub-contractors.
- 6.c.2. 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 Owner prior to start of construction and their name board shall be prominently displayed in Contractor's field office.
- 6.c.3. All industrial injuries shall be reported promptly to owner and a copy of contractor's report covering each personal injury requiring the attention of a physician shall be furnished to the Owner.

#### **6.d. SAFETY CODE**

- 6.d.1. 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.
- 6.d.2. From the commencement to the completion of the works, the contractor shall take full responsibility for the care thereof and of all the temporary works (defined as meaning all temporary works of every kind required in or for the execution, completion or maintenance of the works). In case damage, loss or injury shall happen to the works or to any part thereof or to temporary works or to any cause whatsoever repair at his (Contractor's) own cost and make good the same so that at the time of completion, the works shall be in good order and condition and in conformity in every respect with the requirement of the contract and Engineer-in-Charge's instructions.

- 6.d.3. In respect of all labour, directly or indirectly employed in the work for the performance of the Contractor's part of this agreement, the contractor shall at his own expense arrange for all the safety provisions as per relevant Safety Codes of C.P.W.D Bureau of Indian Standards, the Electricity Act/I.E. Rules. The Mines Act and such other Acts as applicable.
- 6.d.4. The Contractor shall observe and abide by all fire and safety regulations of the Owner. Before starting construction work, the Contractor shall consult with Owner's Safety Engineer or Engineer-in-Charge/Site-in-Charge and must make good to the satisfaction of the Owner any loss or damage due to fire to any portion of the work done or to be done under this agreement or to any of the Owner's existing property.
- 6.d.5. The Contractor will be fully responsible for complying with all relevant provisions of the Contract Labour Act and shall pay rates of Wages and observe hours of work/conditions of employment according to the rules in force from time to time.
- 6.d.6. The Contractor will be fully responsible for complying with the provision including documentation and submission of reports on the above to the concerned authorities and shall indemnify the Corporation from any such lapse for which the Government will be taking action against them.
- 6.d.7. Owner shall on a report having been made by an inspecting Office as defined in the Contract Labour Regulations have the power to deduct from the money due to the Contractor any sum required or estimated to be required for making good the loss suffered by a worker(s) by reasons of non-fulfillment of conditions of contract for the benefit of workers no-payment of wages or of deductions made from his or their wages which are not justified by the terms of contract or non observance of the said contractor's labour Regulation.

**6.e. 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.

**6.e.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 emuneration 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 agreement 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 agreement 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.

- ii. The Contractor agrees to maintain all records as required under the Act in respect of employees and payments and the Contractor shall secure the agreement 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**

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 sub-contractor 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 an 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.

**6.e.2. ANY OTHER INSURANCE REQUIRED UNDER LAW OR REGULATION OR BY**

- 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.
- ® **v. Contractor shall at his own expense cover all the workmen engaged under him under “Pradhan Mantri Surksha Bima Yojana (PMSBY)” and submit proof of the same to HPCL.**

### **6.e.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.

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iv. The Contractor will comply with the provisions of the Employee's Provident Fund Act and the Family Pension Act as may be applicable and as amended from time to time.

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 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.

**6.f. DOCUMENTS CONCERNING WORKS**

6.f.1. All documents including drawings, blue prints, tracings, reproducible models, plans, specifications and copies, thereof furnished by the Owner as well as all drawings, tracings, reproducibles, plans, specifications design calculations etc. prepared by the contractor for the purpose of execution of works covered in or connected with this contract shall be the property of the Owner and shall not be used by the contractor for any other work but are to be delivered to the Owner at the completion or otherwise of the contract.

6.f.2. The Contractor shall keep and maintain secrecy of the documents, drawings etc. issued to him for the execution of this contract and restrict access to such documents, drawings etc. and further the Contractor shall execute a SECRECY agreement from each or any person employed by the Contractor having access to such documents, drawings etc. The Contractor shall not issue drawings and documents to any other agency or individual without the written approval by the Engineer-in-Charge/Site-in-Charge.

6.f.3. Contractor will not give any information or document etc. concerning details of the work to the press or a news disseminating agency without prior written approval from Engineer-in-charge/Site-in-Charge. Contractor shall not take any pictures on site without written approval of Engineer-in-Charge/Site-in-Charge.



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**7. PAYMENT OF CONTRACTOR'S BILLS**

**7.1. Payments will be made against Running Accounts bills certified by the Owner's Engineer-in-Charge/Site-in-Charge within 15 days from the date of receipt of the bill..**

7.2. Running Account Bills and the final bill shall be submitted by the Contractor together with the duly signed measurements sheet(s) to the Engineer-in-Charge/ Site-in-Charge of the Owner in quadruplicate for certification.

The Bills shall also be accompanied by quantity calculations in support of the quantities contained in the bill along with cement consumption statement, actual/theoretical, wherever applicable duly certified by the Engineer-in-Charge/ Site-in-Charge of the Owner.

7.3. All running account payments shall be regarded as on account payment(s) to be finally adjusted against the final bill payment. 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 quantities of material, measurements of work and adjustments of amounts etc. in the final bill.

7.4. The final bill shall be submitted by the Contractor within one month of the date of completion of the work fully and completely in all respects. If the Contractor fails to submit the final bill accordingly Engineer-in-Charge/Site-in-Charge may make the measurement and determine the total amount payable for the work carried out by the Contractor and such a certification shall be final and binding on the Contractor. The Owner/Engineer- in-Charge/Site-in-Charge may take the assistance of an outside party for taking the measurement, the expenses of which shall be payable by the Contractor.

7.5. Payment of final bill shall be made within 30 days from the date of receipt of the certified bill by the Disbursement Section of the owner.

**7.6 Wherever possible, payment shall be tendered to the contractor in electronic mode (e-payment) through any of the designated banks. The contractor will comply by furnishing full particulars of Bank account (mandate) to which the payments will be routed. Owner reserves the right to make payment in any alternate mode also.**

**7.a. MEASUREMENT OF WORKS**

7.a.1. All measurements shall be in metric system. All the works will be jointly measured by the representative of the Engineer-in-Charge/Site-in-Charge and the Contractor or their authorised agent progressively. Such measurement will be recorded in the Measurement Book/Measurement Sheet by the Contractor or his authorised representative and signed in token of acceptance by the Owner or their authorised representative.

7.a.2. For the purpose of taking joint measurement, the Contractor/representative shall be bound to be present whenever required by the Engineer-in-Charge/Site-in-Charge.

If, however, they are absent for any reasons whatsoever, the measurement will be taken by the Engineer-in-Charge/Site-in-Charge or his representative and the same would be deemed to be correct and binding on the Contractor.

7.a.3. In case of any dispute as to the mode of measurement for any item of work, the latest Indian Standard Specifications shall be followed. In case of any further dispute on the same the same shall be as per the certification of an

outside qualified Engineer/ Consultant. Such a measurement shall be final and binding on the Owner and the Contractor.

#### **7.b. BILLING OF WORKS EXECUTED**

The Contractor will submit a bill in approved proforma in quadruplicate to the Engineer-in-Charge/Site-in-Charge of the work giving abstract and detailed measurement for the various items executed during a month, before the expiry of the first week of the succeeding month. The Engineer-in-Charge/Site-in-Charge shall take or cause to be taken the requisite measurements for the purpose of having the bill verified and/or checked before forwarding the same to the disbursement office of the Owner for further action in terms of the Contract and payment thereafter. The Engineer-in-Charge/Site-in-Charge shall verify the bills within 7 days of submission of the Bill by the Contractor.

#### **7.c. 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.

Thus, deduction towards retention money is applicable only in case of job/works contracts (civil, mechanical, electrical, maintenance etc.) where any damage or defect may arise in future (i.e. within 12 months from the date of completion of job) or lie undiscovered at the time of issue of completion certificate.

#### **7.d. STATUTORY LEVIES**

7.d.1 The Contractor accepts full and exclusive liability for the payment of any and all taxes, duties, cess, levies and statutory payments payable under all or any of the statutes etc.

Variations of taxes and duties arising out of the amendments to the Central / State enactments, in respect of sale of goods / services covered under this bid shall be to HPCL's account, so long as :

- They relate to the period after the opening of the price bid, but before the contracted completion period ( excluding permitted extensions due to delay on account of the contractors, if any) or the actual completion period, whichever is earlier; and
- The vendor furnishes documentary evidence of incurrence of such variations, in addition to the invoices/documents for claiming Cenvat /Input Tax credit, wherever applicable.



All contributions and taxes for unemployment compensation, insurance and old age pensions or annuities now or hereafter imposed by Central or State Governmental authorities which are imposed with respect to or covered by the wages, salaries or other compensations paid to the persons employed by the Contractor and the Contractor shall be responsible for the compliance with all obligations and restrictions imposed by the Labour Law or any other law affecting employer-employee relationship and the Contractor further agrees to comply and to secure the compliance of all sub-contractors with all applicable Central, State, Municipal and local laws, and regulations and requirements of any Central, State or Local Government agency or authority.

Contractor further agrees to defend, indemnify and hold harmless from any liability or penalty which may be imposed by the Central, State or Local authorities by reason of any violation by Contractor or sub-contractor of such laws, regulations or requirements and also from all claims, suits or proceedings that may be brought against the Owner arising under, growing out of, or by reasons of the work provided for by this contract by third parties, or by Central or State Government authority or any administrative sub-division thereof. The Contractor further agrees that in case any such demand is raised against the Owner, and Owner has no way but to pay and pays/makes payment of the same, the Owner shall have the right to deduct the same from the amounts due and payable to the Contractor. The Contractor shall not raise any demand or dispute in respect of the same but may have recourse to recover/receive from the concerned authorities on the basis of the Certificate of the Owner issued in that behalf.

- 7.d.2. **The rates quoted should be inclusive of all taxes. However, wherever a tax to be deducted at source the same will be deducted from the bills of the Contractor and paid to the concerned authorities. The proof of such payments of tax on works contract will be furnished to the contractor.**

**The vendor shall comply with all the provisions of the GST Act/Rules/requirements like providing of tax invoices, payment of taxes to the authorities within the due dates, filing of returns within the due dates etc. to enable HPCL to take Input Tax Credit. In case of imports, vendor shall provide import documents and invoice fulfilling the requirement of Customs Act and Rules. Vendor will be fully responsible for complying with the Customs provisions to enable HPCL to take Input Tax Credit.**

**In case, HPCL is not able to take Input Tax Credit due to any noncompliance/default/negligence of the seller of goods/service provider, the same shall be recovered from the pending bills/dues (including security deposit, BG etc.)**

**Vendor shall be responsible to indemnify the Corporation for any loss, direct or implied accrued to the Corporation on account of supplier/service provider failure to discharge his statutory liabilities like paying taxes on time, filing appropriate returns within the prescribed time etc.**

- 7.d.3. **Income tax will be deducted at source as per rules at prevailing rates, unless certificate, if any, for deduction at lesser rate or nil deduction is submitted by the Contractor from appropriate authority.**

- 7.d.4 The contractor shall provide accurate particulars of PAN number as required, under Section 206AA of Income Tax Act 1961.
- 7.d.5 The contractors having their 'tax residency status' outside India shall provide Tax Residency Certificate (TRC), issued by Government of the Country or the specified territory where the Contractor is a Resident. Rule 21AB of the Income Tax Rules, 1962 has prescribed the contents of a TRC. This would enable the Corporation to deduct tax at source by duly considering the 'treaty relief', if any, under Double Taxation Avoidance Agreement (DTAA) entered into between GOI and the respective country/specified territory in which the Contractors' 'tax residency status' is currently in force.
- 7.d.6 Anti-Profiteering Clause – GST Act anti-profiteering provisions mandates that any reduction in tax rates or benefits of input tax credits be passed on to the consumer by way of commensurate reduction in prices. Vendors to take note of the same and pass such benefits while quoting their price.

**7.e. MATERIALS TO BE SUPPLIED BY CONTRACTOR**

- 7.e.1. 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 except the materials viz. steel and cement which may be agreed to be supplied as provided elsewhere in the contract. The contractor shall make arrangement for procuring such materials and for the transport thereof at their own cost and expenses.
- 7.e.2. The Owner may give necessary recommendation to the respective authority if so desired by the Contractor but assumes no responsibility of any nature. The Contractor shall procure materials of ISI stamp/certification and supplied by reputed suppliers borne on DGS&D list.
- 7.e.3. All materials procured should meet the specifications given in the tender document. The Engineer-in-charge may, at his discretion, ask for samples and test certificates for any batch of any materials procured. Before procuring, the Contractor should get the approval of Engineer-in-Charge/Site-in-Charge for any materials to be used for the works.
- 7.e.4. Manufacturer's certificate shall be submitted for all materials supplied by the Contractor. If, however, in the opinion of the Engineer-in-Charge/Site-in-Charge any tests are required to be conducted on the material supplied by the Contractor, these will be arranged by the Contractor promptly at his own cost.

**7.f. MATERIALS TO BE SUPPLIED BY THE OWNER**

- 7.f.1. Steel and Cement maybe supplied by the Owner to the contractor against payment by Contractor from either godown or from the site or within work premises itself and the contractor shall arrange for all transport to actual work site at no extra cost.
- 7.f.2. The contractor shall bear all the costs including loading and unloading, carting from issue points to work spot storage, unloading, custody and handling and stacking the same and return the surplus steel and cement to the Owner's storage point after completion of job.

- 7.f.3. The contractor will be fully accountable for the steel and cement received from the Owner and contractor will give acknowledgement/receipt for quantity of steel and cement received by him each time he uplifts cement from Owner's custody.
- 7.f.4. For all computation purposes, the theoretical cement consumption shall be considered as per CPWD standards.
- 7.f.5. Steel and Cement as received from the manufacturer/stockists will be issued to the contractor. Theoretical weight of cement in a bag will be considered as 50 Kg. Bags weighing upto 4% less shall be accepted by the contractor and considered as 50 Kg. per bag. Any shortage in the weight of any cement bag by more than 4% will be to the Owner's account only when pointed out by the Contractor and verified by Engineer-in-Charge/Site in Charge at the time of Contract or taking delivery.
- 7.f.6. The contractor will be required to maintain a stock register for receipt, issuance and consumption of steel and cement at site. Cement will be stored in a warehouse at site. Requirement of cement on any day will be taken out of the warehouse. Cement issued shall be regulated on the basis of FIRST RECEIPT to go as FIRST ISSUE.
- 7.f.7. Empty cement bag shall be the property of the Contractor. Contractor shall be penalised for any excess/under consumption of cement. The penal rate will be twice the rate of issue of cement for this work.
- 7.f.8. All the running bills as well as the final bills will be accompanied by cement consumption statements giving the detailed working of the cement used, cement received and stock-on-hand.
- 7.f.9. The Contractor will be fully responsible for safe custody of cement once it is received by him and during transport. Owner will not entertain any claims of the contractor for theft, loss or damage to cement while in their custody.
- 7.f.10. The contractor shall not remove from the site any cement bags at any time.
- 7.f.11. The Contractor shall advise Engineer-in-charge/Site-in-charge in writing atleast 21 days before exhausting the Cement stocks already held by Contractor to ensure that such delays do not lead to interruptions in the progress of work.
- 7.f.12. Cement shall not be supplied by the Owner for manufacturing of mosaic tiles, precast cement jali and any other bought out items which consume cement and for temporary works.
- 7.f.13. Cement in bags and in good usable condition left over after the completion of work shall be returned by the contractor to the Owner. The Owner shall make payment to the Contractor at the supply rate for such stocks of cement they accept and receive. Any refused stock of cement shall be removed by the Contractor from the site at his cost and expenses within 15 days of completion of the work.

## **8. PAYMENT OF CLAIMS AND DAMAGES**

- 8.1. Should the Owner have to pay money in respect of claims or demands as aforesaid the amount so paid and the costs incurred by the Owner shall be charged to and paid by the Contractor and the Contractor shall not be entitled to dispute or question the right of

the Owner to make such payments notwithstanding the same may have been without his consent or authority or in law or otherwise to the contrary.

- 8.2. In every case in which by virtue of the provisions of Workmen's Compensation Act, 1923, or other Acts, the Owner is obliged to pay Compensation to a Workman employed by the Contractor in execution of the works, the Owner will recover from the Contractor the amount of compensation so paid and without prejudice to the rights of Owner under the said Act. Owner shall be at liberty to recover such amount or any part thereof by deducting it from the security deposit or from any sum due to the Contractor whether under this contract or otherwise. The Owner shall not be bound to contest any claim made under Section 12 sub section (1) of the said Act, except on the written request of the Contractor and upon his giving to the Owner full security for all costs for which the owner might become liable in consequence of contesting such claim.

**8.a. ACTION AND COMPENSATION IN CASE OF BAD WORK**

If it shall appear to the Engineer-in-Charge/Site-in-Charge that any work has been executed with bad, imperfect or unskilled workmanship, or with materials, or that any materials or articles provided by the Contractor for execution of the work are not of standards specified/inferior quality to that contracted for, or otherwise not in accordance with the contract, the CONTRACTOR shall on demand in writing from the Engineer-in-Charge/Site-in-Charge or his authorised representative specifying the work, materials or articles complained of, notwithstanding that the same may have been inadvertently passed, certified and paid for, forthwith rectify or remove and reconstruct the work so specified and at his own charge and cost and expenses and in the event of failure to do so within a period of 15 days of such intimation/ information/knowledge, the Contractor shall be liable to pay compensation equivalent to the cost of reconstruction by the Owner. On expiry of 15 days period mentioned above, the Owner may by themselves or otherwise rectify or remove and re-execute the work or remove and replace with others, the materials or articles complained of as the case may be at the risk and expenses in all respects of the Contractor. The decision of the Engineer-in-Charge/ Site-in-Charge as to any question arising under this clause shall be final and conclusive and shall not be raised as a dispute or shall be arbitrable.

**8.b. INSPECTION AND AUDIT OF CONTRACT AND WORKS**

This project is subject to inspection by various Government agencies of Government of India. The contractor shall extend full cooperation to all the Government and other agencies in the inspection of the works, audit of the Contract and the documents of Contract Bills, measurements sheets etc. and examination of the records of works and make enquiries interrogation as they may deem fit, proper and necessary. Upon inspection etc. by such agencies if it is pointed out that the contract work has not been carried out according to the prescribed terms and conditions as laid down in the tender documents and if any recoveries are recommended, the same shall be recovered from the contractors running bills/final bill/from ordered/suggested Security Deposit/retention money. The Contractor shall not rise any dispute on any such account and the same shall not be arbitrable.

**9. 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.

#### 10. Price reduction

- i) In case of any delay in completion of the work beyond the CDD, the Owner shall be entitled to be paid Price Reduction by the Contractor. The price reduction shall be initially at the rate of 0.5% (half percent) of the total contract value for every week of the delay subject to a maximum of 5% of the total contract value. The price reduction shall be recovered by the Owner out of the amounts payable to the Contractor or from any Bank Guarantees or Deposits furnished by the Contractor or the Retention Money retained from the Bills of the Contractor, either under this contract or any other contract.
- ii) The Contractor shall be entitled to give an acceptable unconditional Bank Guarantee in lieu of such a deduction if Contractor desires any decision on a request for time extension.
- iii) Once a final decision is taken on the request of the Contractor or otherwise, the price reduction shall be applicable only on the basic cost of the contract and on each full completed week(s) of delay (and for part of the week, a pro-rata price reduction amount shall be applicable).
- iv) This final calculation of price reduction shall be only on the value of the unexecuted portion/quantity of work as on the CDD.
- v) Contractor agrees with the Owner, that the above represents a genuine pre-estimate of the damages which the Owner will suffer on account of delay in the performance of the work by Contractor. The Contractor further agrees that the price reduction amount is over and above any right which owner has to risk purchase under Clause 12.4 and any right to get the defects in the work rectified at the cost of the contractor.

#### 11. DEFECTS AFTER TAKING OVER OR TERMINATION OF WORK CONTRACT BY OWNER

The Contractor shall remain responsible and liable to make good all losses or damages that may occur/appear to the work carried out under this Contract within a period of 12 months from date of issue of the Completion Certificate and/or the date of Owner taking over the work, whichever is earlier. The Contractor shall issue a Bank Guarantee to the Owner in the sum of 10% of the work entrusted in the Contract, **from any Scheduled Bank (other than a Co-Operative Bank)** acceptable to the Owner and if however, the Contractor fails to furnish such a Bank Guarantee the Owner shall have right to retain the Security Deposit and Retention Money to cover the 10% of the Guarantee amount under this clause and to return/refund the same after the expiry of the period of 12 months without any interest thereon. **(Please refer to clause 4. Deposits)**



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## 12. TERMINATION OF CONTRACT

- 12.1 The owner may terminate the contract at any stage of the construction for reasons to be recorded in the letter of termination.
- 12.2 The Owner inter alia may terminate the Contract for any or all of the following reasons that the contractor
- a) has abandoned the work/Contract.
  - 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 not be questioned by the Contractor and no dispute can be raised by the Contractor for purpose of Arbitration.



- 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 (other than due to a nationwide transporters' strike) or commercial hardship 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

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 ₹ 40,000/- per case for transportation contracts and ₹ 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 ₹ 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.