

etc. as may be necessary well in time.

- 13.3 The risk that are to be covered under the insurance shall include, but not be limited to, the loss or damage in transit, storage at site, theft, pilferage, riot, civil commotion, weather conditions, accidents of all kinds, fire, etc. The scope of such insurance shall cover the entire value of the works from time to time.
- 13.4 All costs on account of insurance liabilities covered under the contract will be on contractor's account and will be included in contract price. However, the owner may from time to time, during the pendency of the contract, ask the contractor in writing to limit the insurance coverage risks and in such a case, the parties to the contract will agree for a mutual settlement for reduction in contract price to the extent of reduced premium amounts.
- 13.5 All insurance claims, payable by the insurers, shall be paid to the Owner which shall be released to the contractor in installments as may be certified by the Engineer-in-charge for the purpose of rebuilding or replacement or repair of the works and/or goods destroyed or damaged for which payment was received from the insurers.
- 13.6 The clause entitled insurance under the section erection terms and conditions of contract of this volume, covers the additional insurance requirements for the portion of the works to be performed at the site of work.

14.0 LIABILITY FOR ACCIDENTS AND DAMAGES

- 14.1 Under the contract, the contractor shall be responsible for loss or damage to the plant until the plant is taken over in accordance with clause entitled 'Taking Over' in section technical terms and conditions of contract of this volume.

15.0 LIQUIDATED DAMAGES FOR DELAY IN COMPLETION

- 15.1 If the contractor fails to maintain the required progress in terms of the agreed time and progress chart or to complete the work and clear the site on or before the date of completion of contract or extended date of completion, he shall without prejudice to any other right or remedy available under the law to the company on account of such breach, pay as compensation/ Liquidated Damages @ half percent (1/2%) of the contract price per week of delay. The aggregate of such compensation/ compensations shall not exceed 10 (ten) percent of the total value as shown in the contract.

This will also apply to items or group of items for which separate period of completion has been specified. The amount of compensation may be adjusted or set off against any sum payable to the contractor under this or any other contract with the company.

- 15.1.1 The company, if satisfied, that the works can be completed by the contractor within a reasonable time after the specified time of completion, may allow further extension of time at its discretion with or without the levy of L.D. In the event of extension granted being with L.D, the company will be entitled without prejudice to any other right or remedy available in that behalf, to recover from the contractor as agreed damages equivalent to half percent of the contract value of the works for each week or part of the week subject to a ceiling of 10% of the contract price.
- 15.1.2 The company, if not satisfied that the works can be completed by the contractor, and in the event of failure on the part of the contractor to complete work within further extension of time allowed as aforesaid, shall be entitled, without prejudice to any other right, or remedy available in that behalf, to rescind the contract.
- 15.1.3 The company, if not satisfied with the progress of the contract and in the event of failure of the contractor to recoup the delays in the mutually agreed time frame, shall be entitled to terminate the contract.
- 15.1.4 In the event of such termination of the contract as described in clauses 15.1.2 or 15.1.3 or both, the company, shall be entitled to recover L.D. up to ten percent (10%) of the contract value besides recovery of compensation for damage/loss for termination as provided in 20.6 of General terms and Conditions of Contract.
- 15.2 The company may waive the payment of compensation, depending upon merit of the case, on request received from the contractor if the entire work is completed within the date as specified in the contract or as validly extended without stipulating any penalty.

16.0 CONTRACTOR'S DEFAULT

- 16.1 If the contractor shall neglect to execute the works with the diligence and expedition or shall refuse or neglect to comply with any reasonable orders given to him, if writing by the engineer in connection with the works or shall contravene the provisions of the contract, the owner may give notice in writing to the contractor to make good the failure, neglect or contravention complained of. Should the contractor fail to comply with the notice within thirty (30) days from the date of service thereof, then and in such case the owner shall be at liberty to employ other workmen and forthwith execute such part of the works as the contractor may have neglected to do or if the owner shall think fit, it shall be lawful for him, without prejudice to any other right he may have under the contract, to take the works wholly or in part thereof and in that event the owner shall have free use of all contractor's equipment that may have been at the time on the site in connection with the works without being responsible to the contractor for fair wear and tear thereof and to the exclusion of any right of the contractor over the same,

and the owner shall be entitled to retain and apply any balance which may otherwise be due on the contract by him to the contractor, or such part thereof as may be necessary, the payment of the cost of executing the said part of the works or of completing the works as the case may be. If the cost of completing the works or executing a part thereof as aforesaid shall exceed the balance due to the contractor, the contractor shall pay such excess. Such payment of excess amount shall be independent of the liquidated damages for delay which the contractor shall have to pay if the completion of works is delayed.

- 16.2 In addition, such action by the owner as aforesaid shall not relieve the contractor of his liability to pay liquidated damages for delay in completion of works as defined in clause 15.0 of this section.
- 16.3 The termination of the contract under this clause shall not entitle the contractor to reduce the value of the performance bank guarantee nor the time thereof. The performance guarantee shall be valid for the full value and for the full period of the contract including guarantee period.
- 16.4 The bidding documents will clearly state that, if the contractor fails to complete the work and the order is cancelled, the amount due to him on account of work executed by him, if payable, shall be paid to him only after due recoveries as per the provisions of the contract and that too after alternative arrangements to complete the work has been made.

17.0 FORCE MAJEURE

- 17.1 Force majeure is herein defined as any cause which is beyond the control of the contractor or the owner as the case may be which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affect the performance of the contract, such as:
- (a) Natural phenomena, including but not limited to floods, draughts, earthquakes and epidemics:
 - (b) Acts of any government, including but not limited to war, declared or undeclared, priorities, quarantines, embargoes,

Provided either party shall within fifteen (15) days from the occurrence of such a cause notify the other in writing of such causes.

- 17.2 (a) The successful bidder / contractor will advise, in the event of his having resort to this clause by a registered letter duly certified by the local chamber of commerce or statutory authorities, the beginning and end of the cause of delay, within fifteen days of the occurrence and cessation of such Force Majeure condition. In the event of delay lasting over two months, if arising out of Force Majeure, the contract may be terminated at the discretion of the company.
- (b) For delays arising out of Force Majeure, the bidder/ contractor

will not claim extension in completion date for a period exceeding the period of delay attributable to the causes of Force Majeure and neither company nor the bidder shall be liable to pay extra costs (like increase in rates, remobilization advance, idle charges for labour and machinery etc.) Provided it is mutually established that the Force Majeure conditions did actually exist.

- (c) If any of the Force Majeure conditions exists in the place of operation of the bidder even at the time of submission of bid he will categorically specify them in his bid and state whether they have been taken into consideration in their quotations.

17.3 The contractor or the owner shall not be liable for delays in performing his obligations resulting from any force majeure cause as referred to and/or defined above. The date of completion will, subject to hereinafter provided, be extended by a reasonable time even though such cause may occur after contractor's performance of his obligations has been delayed for other causes.

18.0 DELAYS BY OWNER OR HIS AUTHORISED AGENT

18.1 In case the contractor's performance is delayed due to any act of omission on the part of the owner or his authorized agents, then the contractor shall be given due extension of time for the completion of the works, to the extent such omission on the part of the owner has caused delay in the contractor's performance of his work. Regarding reasonableness or otherwise of the extension of time, the decision of the engineer shall be final.

19.0 EXTENSION OF DATE OF COMPLETION

19.1 On happening of any events causing delay as stated hereinafter, the contractor shall intimate immediately in writing the Engineer-in-charge :

- a. due to any reasons defined as Force Majeure
- b. non-availability of stores which are the responsibility of the owner to supply
- c. non -availability or breakdown of tools and plant to be made available or made available by the owner
- d. delay on the part of the contractors or tradesmen engaged by the owner not forming part of the contract, holding up further progress of the work
- e. non-availability of working drawings/work programme in time, which are to be made available by the company during progress of the work
- f. any other causes which, at the sole discretion of the company is beyond the control of the contractor

19.2 A "Hindrances Register" shall be maintained by both the Company and the Contractor at site to record the various hindrances, as mentioned above, encountered during the course of execution.

19.3 The contractor may request the company in writing for extension of time

- within 14 days of happening of such event causing delay stating also, if practicable, the period for which extension is desired. The company may, considering the eligibility of the request, give a fair and reasonable extension of time for completion of the work. Such extension shall be communicated to the contractor in writing by the company through the Engineer-in-charge within 1 month of the date of receipt of such request. The contractor shall however use his best efforts to prevent or make good the delay by putting his endeavors constantly as may be reasonably required of him to the satisfaction of the Engineer-in-charge.
- 19.4 Provisional extension of time may also be granted by the Engineer-In-charge during the course of execution, on written request for extension of time within 15 (fifteen) days of happening of such events as stated above, reserving the company's right to impose/ waive liquidated damages at the time of granting final extension of time as per contract agreement.
- 19.5 When the period fixed for the completion of the contract is about to expire, the question of extension of the contract may be considered at the instance of the Contractor or the Company or the both. The extension will have to be by party's agreement, expressed or implied.
- 19.6 In case the Contractor does not apply for grant of extension of time within 15 (fifteen) days of hindrance occurring in execution of the work and the Company wants to continue with the work beyond the stipulated date of completion for reason of the work having been hindered, the Engineer-in-charge at his sole discretion can grant provisional extension of time even in the absence of application from the Contractor. Such extension of time granted by the Engineer-in-charge is valid provided the Contractor accepts the same either expressly or implied by his actions before and subsequent to the date of completion. Such extension of time shall be without prejudice to Company's right to levy compensation under the relevant clause of contract.
- 20.0 TERMINATION, SUSPENSION, CANCELLATION & FORECLOSURE OF CONTRACT**
- 20.1 The owner shall, in addition to other remedial steps to be taken as provided in the conditions of contract, be entitled to cancel the contract in full or in part, if the contractor
- a. makes default in proceeding with the works with due diligence and continues to do so even after a notice in writing from the Engineer-in-charge, then on the expiry of the period as specified in the notice
or
 - b. commits default/breach in complying with any of the terms and conditions of the contract and does not remedy it or fails to take effective steps for the remedy to the satisfaction of the Engineer-in-

charge, then on the expiry of the period as may be specified by the Engineer-in-charge in a notice in writing or

c. fails to complete the work or items of work with individual dates of completion, on or before the date/dates of completion or as extended by the company, then on the expiry of the period as may be specified by the Engineer-in-charge in a notice in writing

or

d. shall offer or give or agree to give any person in the service of the company or to any other person on his behalf any gift or consideration of any kind as an inducement or reward for act/acts of favour in relation to the obtaining or execution of this or any other contract for the company.

or

e. Shall try to obtain a contract with the company by way of ring tendering or other non-bonafide method of competitive tendering.

or

f. transfers, sublets, assigns the entire work or any portion thereof without the prior approval in writing from the Engineer-in-charge. The Engineer-in-charge may by giving a written notice, cancel the whole contract or portion of it in default.

20.2 The owner shall in such an event give fifteen (15) days notice in writing to the contractor of his decision to do so.

20.3 The contractor upon receipt of such notice shall discontinue the work on the date and to the extent specified in the notice, make all reasonable efforts to obtain cancellation of all orders and contracts to the extent they are related to the work terminated and terms satisfactory to the owner, stop all further sub-contracting or purchasing activity related to the work terminated, and assist the owner in maintenance, protection, and disposition of the works acquired under the contract by the owner.

20.4 The contract shall stand terminated under the following circumstances unless the owner is satisfied that the legal representatives of the individual contractor or of the proprietor of the proprietary concern and in the case of partnership the surviving partners, are capable of carrying out and completing the contract and the owner shall in any way not be liable to payment of any compensation to the estate of deceased contractor and/or to the surviving partners of the contractor's firm on account of the termination of the contract.:

a. If the contractor being an individual in the case of proprietary concern or in the case of a partnership firm any of its partners is declared insolvent under the provisions of insolvency act for the time being in force, or makes any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors amounting to proceedings for liquidation or composition under any insolvency act.

- b. In the case of the contractor being a company, its affairs are under liquidation either by a resolution passed by the company or by an order of court, not being a voluntary liquidation proceedings for the purpose of amalgamation or reorganization, or a receiver or manager is appointed by the court on the application by the debenture holders of the company, if any.
- c. If the contractor shall suffer an execution being levied on his/their goods, estates and allow it to be continued for a period of 21 days.
- d. On the death of the contractor being a proprietary concern or of any of the partners in the case of a partnership concern and the company is not satisfied that the legal representative of the deceased proprietor or the other surviving partners of the partnership concern are capable of carrying out and completing the contract. The decision of the company in this respect shall be final and binding which is to be intimated in writing to the legal representative or to the partnership concern.

20.5 If the contractor is an individual or a proprietary concern and the individual or the proprietor dies and if the contractor is a partnership concern and one of the partners dies, then unless the owner is satisfied that the legal representatives of the individual contractor or of the proprietor of the proprietary concern and in the case of partnership the surviving partners, are capable of carrying out and completing the contract the owner shall be entitled to cancel the contract as to its in complete part without being in any way liable to payment of any compensation to the estate of deceased contractor and/or to the surviving partners of the contractor's firm on account of the cancellation of the contract.

The decision of the owner that the legal representatives of the deceased contractor or surviving partners of the contractor's firm cannot carry out and complete the contract shall be final and binding on the parties. In the event of such cancellation the owner shall not hold the estate of the deceased contractor and / or the surviving partners of the estate of the deceased contractor and / or the surviving partners of the contractor's firm liable to damages for not completing the contract.

- 20.6 On cancellation of the contract or on termination of the contract, the Engineer -in-charge shall have powers
- a. To take possession of the site and any materials, constructional plant, implements, stores, etc. thereon.
 - b. In such an event, the contractor shall be liable for loss/damage suffered by the employer because of action under this clause and to compensate for this loss or damage, the employer shall be entitled to recover higher

of the following:

- i. Forfeiture of security deposit comprising of Performance Guarantee and Retention Money, at the disposal of the employer.
- or
- ii. 20% of value of incomplete work (Contract Value minus already executed value of the work).

The amount to be recovered from the contractor as determined above, shall, without prejudice to any other right or remedy available to the employer as per law or as per agreement, will be recovered from any money due to the contractor on any account or under any other contract and in the event of any shortfall, the contractor shall be liable to pay the same within 30 days. In case of failure to pay the same the amount shall be debt payable.

In the event of above course being adopted by the Engineer-in-charge, the contractor shall have no claim to compensation for any loss sustained by him by reasons of his having purchased materials, equipment or entered into agreement or made advances on any account or with a view to the execution of work or performance of the contract. And in case action is taken under any of provision aforesaid, the contractor shall not be entitled to recover or to be paid any sum for any work thereof or actually performed under this contract unless and until the engineer-in-charge has certified in writing the performance of such work and value payable in respect thereof and he shall only be entitled to be paid the value so certified.

The need for determination of the amount of recovery of any extra cost/expenditure or of any loss/damage suffered by the company shall not however arise in the case of termination of the contract for death/demise of the contractor.

- 20.7 **Suspension of work** - The company shall have power to suspend the progress of the work or any part thereof and the Engineer-in-charge may direct the contractor in writing to suspend the work, for such period and in such manner as may be specified therein, on account of any default on the part of the contractor, or for proper execution of the work for reasons other than any default on the part of the contractor, or on ground of safety of the work or part thereof. In the event of suspension for reason other than any default on the part of the contractor, extension of time shall be allowed by the company equal to the period of such suspension. Any necessary and demonstrable costs incurred by the contractor as a result of such suspension of the works will be paid by the owner, provided such costs are substantiated to the satisfaction of the engineer. The owner shall not be responsible for any liabilities if suspension or delay is due to some default on the part of the contractor or his sub-contractor.

The work shall, throughout the stipulated period of contract, be carried out

with all due diligence on the part of the contractor. In the event of termination or suspension of the contract, on account of default on the part of the contractor, as narrated hereinbefore, the security deposit and other dues of this work or any other work done under this company shall be forfeited and brought under the absolute disposal of the company provided, that the amount so forfeited shall not exceed 10% of the contract value.

20.8 Foreclosure of contract in full or in part - If at any time after acceptance of the tender, the company decides to abandon or reduce the scope of the work for any reason whatsoever the company, through its Engineer-in-charge, shall give notice in writing to that effect to the contractor. In the event of abandonment/reduction in the scope of work, the company shall be liable

- a. to pay the contractor at the contract rates full amount for works executed and measured at site upto the date of such abandonment/reduction in the work.
- b. to pay reasonable amount assessed and certified by the Engineer-in-charge of the expenditure incurred, if any, by the contractor on preliminary works at site. e.g. temporary access roads, temporary construction for labour and staff quarters, office accommodation, storage of materials, water storage tanks and supply for the work including supply to labour/staff quarters, office, etc.
- c. to pay for the materials brought to site or to be delivered at site, which the contractor is legally liable to pay, for the purpose of consumption in works carried out or were to be carried out but for the foreclosure, including the cost of purchase and transportation and cost of delivery of such materials. The materials to be taken over by the company should be in good condition and the company may allow at its discretion the contractor to retain the materials in full or part if so desired by him and to be transported by the contractor from site to his place.
- d. to take back the materials issued by the company but remaining unused, if any, in the work on the date of abandonment/reduction in the work, at the original issued price less allowance for any deterioration or damage caused while in custody of the contractor
- e. to pay for the transportation of tools and plants of the contractor from site to contractor's place or to any other destination, whichever is less.

The contractor shall, if required by the Engineer -in-charge, furnish to him books of accounts, papers, relevant documents as may be necessary to enable the Engineer-in-charge to assess the amount payable in terms of para 20.8 (b), (c) and (e) above, the contractor shall not have any claim for compensation whatsoever either for abandonment or for reduction in the scope of work, other than those as specified above.

21.0 NO WAIVER OF RIGHTS

Neither the inspection by the owner or the engineer or any of their officials, employees or agents nor any order by the owner or the engineer for payment of money or any payment for or acceptance of, the whole or any part of the works by the owner or the engineer, nor any extension of time, nor any possession taken by the engineer shall operate as a waiver of any provision of the contract, or of any power herein reserved to the owner, or any right to damages herein provided, nor shall any waiver of any breach in the contract be held to be a waiver of any other or subsequent breach.

22.0 CERTIFICATE NOT TO AFFECT RIGHT OF OWNER AND LIABILITY OF CONTRACTOR

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

23.0 GRAFTS AND COMMISSIONS ETC.

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

24.0 LANGUAGE AND MEASURES

All documents pertaining to the contract including specifications, schedules notices, correspondence, operating and maintenance instructions, drawings or any other writing shall be written in English language. The metric system of measurement shall be used exclusively in the contract.

25.0 RELEASE OF INFORMATION

The contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium photographs or other reproduction of the works under this contract, or descriptions of the site, dimensions, quantity, quality or other information, concerning the works unless prior written permission has been obtained from the owner.

26.0 CONSTRUCTION OF THE CONTRACT

- 26.1 In case owner hands over his equipment to the contractor for executing, then the contractor shall at the time of taking delivery of the equipment/ despatch documents be required to execute an indemnity bond in favour of the owner in the form acceptable to the owner for keeping the equipment in safe custody and to utilize the same exclusively for the purposes of the said contract.
- 26.2 The contract shall in all respects be construed and governed accordingly to Indian Laws.
- 26.3 It is clearly understood that the total consideration for the contract (s) has been broken up into various components only for the convenience of payment of advance under the contract (s) and for the measurement of deviations or modifications under the contract (s).

27.0 COMPLETION OF CONTRACT

Unless otherwise terminated under the provisions of any other relevant clause, this contract shall be deemed to have been completed at the expiration of the guarantee period as provided for under the clause entitled 'Guarantee' in this section.

28.0 ENFORCEMENT OF TERMS

The failure of either party to enforce at any time of the provisions of this contract or any rights in respect thereto or to exercise any option herein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the contract. The exercise by either party of any of its rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have hereunder.

29.0 ENGINEER'S DECISION

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

- 29.2 If in the opinion of the contractor, a decision made by the engineer is not in accordance with the meaning and intent of the contract, the contractor may file with the engineer within fifteen (15) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as acceptance of the engineer's decision and the decision shall become final and binding.
- 29.3 The engineer's decision and the filing of the written objection thereto shall be a condition precedent to the right to any legal proceedings. It is the intent of the agreement that there shall be no delay in the execution of the works and the decision of the engineer as rendered shall be promptly observed.

30.0 CO-OPERATION WITH OTHER CONTRACTORS AND CONSULTING ENGINEERS

The contractor shall agree to co-operate with the owner's other contractors and consulting engineers and freely exchange with them such technical information as is necessary to obtain the most efficient and economical design and to avoid unnecessary duplication of efforts. The engineer shall be provided with three copies of all correspondence addressed by the contractor to other sub-contractors and consulting engineers in respect of such exchange of technical information.

31.0 TRAINING OF OWNER'S PERSONNEL

- 31.1 The contractor shall undertake to train free of cost, engineering personnel selected and sent by the owner at the works of the contractor unless otherwise specified in the technical specifications. The period and the nature of training for the individual personnel (Executive as well as Staff / Technicians) shall be agreed upon mutually between the contractor and the owner or as specified in the NIT. These engineering personnel shall be given special training in the shops, where the equipment will be manufactured and/or their collaborator's works and where possible, in any other plant where equipment manufactured by the contractor or his collaborator is under installation or test, to enable those personnel to become familiar with the equipment being furnished by the contractor.
- 31.2 All traveling and living expenses for the engineering personnel to be trained during the total period of training will be borne by the owner. These engineering personnel while undergoing training shall be responsible to the contractor for discipline.
- 31.3 In the event of the owner, for any reason, failing to avail of the training facilities, he shall not be entitled for any rebate whatsoever on this account.

32.0 POWER TO VARY OR OMIT WORK

- 32.1 No alterations, amendments, omissions, suspensions or variations of the works (hereinafter referred to as 'Variation') under the contract as detailed in the contract documents, shall be made by the contractor except as

directed in writing by the engineer, but the engineer shall have full power subject to the provision hereinafter contained from time to time during the execution of the contract, by notice in writing, to instruct the contractor to make such variation without prejudice to the contract. The contractor shall carry out such variation and be bound by the same conditions as far as applicable as though the said variation occurred in the contract documents. If any suggested variation would, in the opinion of the contractor, if carried out, prevent him from fulfilling any of his obligations or guarantees under the contract, he shall notify the engineer there of in writing and the engineer shall decide forthwith, whether or not the same shall be carried out and if the engineer confirm his instructions, contractor's obligations and guarantees shall be modified to such an extent as may be mutually agreed. Any agreed difference in cost occasioned by any such variation shall be added to or deducted from the contract price as the case may be.

- 32.2 In the event of the engineer requiring any variation, such reasonable and proper notice shall be given to the contractor to enable him to work his arrangements accordingly, and in cases where goods or materials are already prepared or any design, drawings or pattern made or work done requires to be altered, a reasonable and agreed sum in respect thereof shall be paid to the contractor.
- 32.3 In any case in which the contractor has received instructions from the engineer as to the requirement of carrying out the altered or additional substituted work which either then or later on, will in the opinion of the contractor, involve a claim for additional payments, the contractor shall immediately and in no case later than thirty (30) days, after receipt of the instructions aforesaid and before carrying out the instructions, advise the engineer to that effect. But the engineer shall not become liable for the payment of any charges in respect of any such variations, unless the instructions for the performance of the same shall be confirmed in writing by the engineer.
- 32.4 If any variation in the works, results in reduction of contract price, the parties shall, agree, in writing, so to the extent of any change in the price, before the contractor proceeds with the change.
- 32.5 In all the above cases, in the event of a disagreement as to the reasonableness of the said sum, the decision of the engineer shall prevail.
- 32.6 Notwithstanding anything stated above in this clause, the engineer shall have the full power to instruct the contractor, in writing, during the execution of the contract, to vary the quantities of the items or groups of items. The contractor shall carry out such variations and be bound by the same conditions, as though the said variations occurred in the contract documents. However, the contract price shall be adjusted at the rates and the prices provided for the original quantities in the contract.

33.0 GUARANTEE/DEFECT LIABILITY

33.1 As per Special Conditions of Contract provided in the Tender Document

34.0 REPLACEMENT OF DEFECTIVE PARTS AND MATERIALS

34.1 As per Special Conditions of Contract provided in the Tender Document

35.0 DEFENCE OF SUITS

If any action in court is brought against the owner or engineer or an officer or agent of the owner. for the failure or neglect on the part of the contractor to perform any acts, matters, covenants or things under the contract, or for damage or injury caused by the alleged omission or negligence on the part of the contractor, his agents, representatives or his sub-contractors, workmen, suppliers or employees, the contractor shall in all such cases indemnify and keep the owner, and the engineer and/or his representative, harmless from all losses, damages, expenses or decrees arising of such action.

36.0 LIMITATIONS OF LIABILITIES

Except in case of Criminal Negligence or Willful Misconduct,

(i) Notwithstanding anything herein to the contrary, no party shall be liable for any indirect, special, punitive, consequential or exemplary damages, whether foreseeable or not, arising out of or in relation to this contract, loss of goodwill or profits, lost business however characterized, any/or from any other remote cause whatsoever.

(ii) The Contractor shall not be liable to the owner for any losses, claims, damages, costs or expenses whatsoever arising out of or in connection with this contract in excess of the contract value of the work which caused such losses, claims, damages, costs or expenses.

(iii) However, the limitation of liability of the contractor indicated above shall not apply to liquidated damages.

37.0 MARGINAL NOTES

The marginal notes to any clause of the contract shall not affect or control the construction of such clause.

38.0 TAXES, PERMITS & LICENCES

38.1 The contractor shall be liable and pay all- Indian taxes, (other than Goods

and Services tax and GST Compensation Cess, if applicable) duties, levies, royalties, whether local, municipal, provincial or central lawfully assessed against the owner or the contractor in pursuance of the contract. In addition, the contractor shall be responsible for payment of all Indian duties, levies and taxes lawfully assessed against the contractor for his personal income and property only. This clause shall be read in conjunction with clause 17 of e-tender notice.

The contractor, along with his bills, shall submit proper documents in the name of the Company to enable the Company to claim Input Tax Credit under the applicable laws. The invoice shall be in compliance with the relevant rules.

MCL is entitled to avail Input Tax Credit on account of: CGST, SGST/UTGST, IGST and GST Compensation Cess, as applicable for indigenous product/imported products. Hence set off allowed against CGST, SGST/UTGST, IGST and GST Compensation Cess as per relevant rules/act. Contractor shall submit relevant document as desired by MCL at the time of supply, along with the bills/invoice as per relevant rules for enabling MCL to claim Input tax credit benefit.

- 38.2 The Company shall deduct Income Tax as per prevalent rate from time to time from the gross amount(excluding GST) of the bill payable to the contractor; at present the rate of deduction is 1% for individual/proprietorship firm and 2% for others. However, if the contractor produces a certificate from the Income Tax authorities for no deduction of tax / deduction of tax at reduced rate, the same shall be complied with by the Company.

39.0 PROGRESS REPORTS AND PHOTOGRAPHS

During the various stages of the works in the pursuance of the contract, the contractor shall at his own cost submit periodic progress reports as may be reasonably required by the engineer with such materials as charts, networks, photographs, test certificates, etc. such progress report shall be in the form and size as may be required by the engineer and shall be submitted in at least three (3) copies.

40.0 LONG TERM AVAILABILITY OF SPARES

- 40.1 The contractor shall guarantee the long term availability of spares to the owner for the tenure of the Contract.
- 40.2 The contractor will indicate in advance the delivery period of the items of spares, which the owner may procure at its own discretion. In case of emergency requirements of spares, the contractor would make every effort to expedite the manufacture and delivery of such spares on the basis of mutually agreed time schedule.
- 40.3 The above procedure shall apply for future procurement of items included in

standby spare list, mandatory spares lists, optional spares list and special tools, plants and equipment list, if any, specified in the bid documents.

40.4 The Contractor shall indemnify the owner for the availability of long time spares as per the terms and conditions laid down above in clause 40.1 to clause 40.3.

40.5 The Clauses 40.1 to 40.4 shall be read in conjunction with the section on Mandatory Spares as provided in the Technical Specifications.

41.0 PAYMENT

41.1 The payment to the contractor for the performance of the works under the contract will be made by the owner as per the guidelines and conditions specified herein and in the relevant clauses in Section-6 Special Conditions of Contract of this tender. All payment made during the contract shall be on account payments only. The final payment will be made on completion of all the works and on fulfillment by the contractor of all his liabilities under the contract. The paying authority will be GM (Finance), MCL or his authorized representatives.

The payment to the contractor will be made through Electronics Mode.

41.2 CURRENCY OF PAYMENT

All payments under the contract shall be in Indian Rupees only.

41.3 DUE DATES FOR PAYMENT

Owner will make progressive payment as and when the payment is due as per the terms of payment set forth in the accompanying technical specifications. Payment will become due and payable by the owner within thirty (30) days from the date of receipt of contractor's bill/invoice/debit note by the owner, provided the documents submitted are complete in all respects.

41.4 PAYMENT SCHEDULE

The contractor shall prepare and submit to the engineer for approval, a break-up of the contract price. This contract price break-up shall be interlinked with the agreed detailed PERT network of the contractor setting forth his starting and completion dates for the various key phases of works prepared as per condition of this section. While preparing the PERT network, the supply of P&M Equipment shall be linked to construction of respective Civil and Structural Works. Any payment under the contract shall be made only after the contractor's price break-up is approved by the engineer. The aggregate sum of the contractor's price break-up shall be equal to the lump sum contract price. The detailed payment schedule is provided in relevant clauses in Section-6 Special Conditions of Contract of this tender.

41.5 INTERIM PAYMENT

41.5.1 The contractor shall submit running bill for the payment in the prescribed proforma of the owner to be supplied in due course at the time of Payment.

41.5.2 Each such running bill shall state the amount claimed and shall set forth in detail, in the order of the payment schedule, particulars of the works including the works executed at site and of the equipment brought on to the site pursuant to the contract up to the date mentioned in the bill and for the period covered since the last preceding certificate, if any.

41.5.3 Every interim payment claim shall indicate the contract value of the works executed up to the date mentioned in the running bill, provided that no sum shall be included in any running bill in respect of the works that, according to the decision of the engineer, does not comply with the contract, or has been performed, at the date of certificate prematurely.

41.6 TERMS OF PAYMENTS

41.6.1 Payment Schedule shall be as per Special Conditions of Contract. Since the total job is on turn-key basis, any payment to the Contractor before the final payment shall be treated as provisional payment towards the total contract value.

The Contractor may at intervals of not less than one month submit claims/bills for payment on account of work done after proper scrutiny and certification of the same by the Employer.

All such payments shall be made by the Employer online within a month from the date of the submission of claims/bills. Payment will also be governed by the General Terms & Conditions of Contract. Any sum due from the Contractor shall be deducted from the first or next subsequent on account of payments as the case may be.

42.0 SETTLEMENT OF DISPUTES

It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes at the company level.

The contractor should make request in writing to the Engineer-in-charge for settlement of such disputes/claims within 30 (thirty) days of arising of the cause of dispute/ claim failing which no disputes/ claims of the contractor shall be entertained by the company.

Effort shall be made to resolve the dispute in two stages.

In first stage dispute shall be referred to Dealing Department of CIL. If