

**NTPC GREEN ENERGY LIMITED**  
(A wholly owned subsidiary of NTPC Ltd.)



**CORPORATE CENTER, GREATER NOIDA**

**Contracts Services**  
**4th Floor, RE Building, NETRA Complex**  
**E-3, Ecotech-II, Udyog Vihar, Greater Noida**  
**Gautam Buddha Nagar, Uttar Pradesh, India, Pin – 201306**

**NOTICE INVITING TENDER (NIT)**

**SECTION-I**

**FOR**

**Supervision of Plant O&M & Civil works at 225MW Bilhaur Solar  
Power Project**

**(Domestic Competitive Bidding)**

**NIT No: 9900270015**

**Date:08.01.2024**

**Bidding Document No: RE-CS- 9900270015**

1. NTPC Green Energy Limited (NGEL), Greater NOIDA, invites bids on **DCB (Domestic Competitive Bidding) basis through Single Stage Single Envelope Composite bidding** from eligible bidders for aforesaid package, as per the scope of work briefly mentioned hereinafter.
2. **Brief Scope of Work**

Brief scope of this proposal inter alia includes Forecasting & Scheduling and SCADA Monitoring, Plant PM & General O&M Works and Day to day Site/Project office works.

Detailed Specification, Scope of Work and Terms and Conditions are given in the bidding document, which are available for examination and sale at our e-Procurement Portal (<https://eprocurmentpc.nic.in/nicgep/app>) and as per the following schedule:

Source of IFB/NIT	NGEL, Greater NOIDA
Last date for receipt of queries from bidders (if any)	As mentioned in GePNIC site

Last Date and Time for Bid submission	As mentioned in GePNIC site
Price Bid Opening Date & Time	As mentioned in GePNIC site
Bid Security / EMD	Not Applicable
MSE Benefits	Applicable
Contract Period	12 months
Contract Classification	Service
Location of work	NGEL, Greater NOIDA

**“No Queries from Bidders, whatsoever, shall be entertained by the Employer beyond the last date of receipt of Queries/ Pre-Bid Conference (if applicable) as specified above.”**

Note: For any corrigendum and extension of date of bid submission, please visit the website <https://eprocurmentpc.nic.in>

3. ‘Class-I local suppliers’ only are eligible to participate in this tender, as defined in the bidding documents/ Public Procurement (Preference to Make in India), Order 2017 and its subsequent amendments/ revisions issued by DPIIT. The bidders may apprise themselves of the relevant provisions of bidding documents in this regard before submission of their bids.

**NOTE:**

**Bidders are requested to give acceptance of being Class-I Local Supplier by accepting the GTE & declaration in Bid Form.**

**By accepting the MLC provision of GTE it will be considered that: -**

**“Bidder is ‘Class-I local supplier’ and is meeting the MLC requirement stipulated in Annexure to SCC. Also, contractor/supplier has not been debarred / banned by any other procuring entity for violation of ‘Public Procurement (Preference to Make In India), Order 2017’ (PPP-MII Order) dated 15.06.2017 and its subsequent revisions / amendments issued by Department for Promotion of Industry and Internal trade (DPIIT)’.**

In case false declaration in respect of Local content, same shall be treated as false **declaration** and will be dealt in line with the Fraud Prevention Policy of NTPC.

The bidders may apprise themselves of the relevant provisions of bidding documents in this regard before submission of their bids.

4. Any ‘Bidder from a country which shares a land border with India’, as specified in the Bidding Documents, will be eligible to bid in this tender only if bidder is registered with the Competent Authority as mentioned in the Bidding Documents.

Further, any bidder (including bidder from India) having specified Transfer of Technology (ToT) arrangement with an entity from a country which shares a land border with India, will be eligible to bid only if the bidder is registered with the same competent authority. However, the said requirement of registration will not apply to bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects.

5. NTPC reserves the right to reject any or all bids or cancel/withdraw the NIT for the subject package without assigning any reason whatsoever and in such case no

bidder/intending bidder shall have any claim arising out of such action.

6. Issuance of bid documents to any bidder shall not construe that such bidder is considered to be qualified. Bids shall be submitted online and opened at the address given below in the presence of Bidder's representatives who choose to attend the bid opening.
7. Transfer of Bidding Documents purchased by one intending Bidder to another is not permissible.

#### 8. Address for Communication

##### ADDRESS FOR COMMUNICATION

AGM (RE-C&M)/ DGM (RE-C&M),  
NTPC GREEN ENERGY LIMITED,  
E-3, Main Market Rd, Ecotech-II, Udyog Vihar, Greater Noida, UP- 201306  
Contact Phone: Landline: 0120-2356517 / 2356601  
E-Mail: dhananjaymohapatra@ntpc.co.in/[abhishekkumar02@ntpc.co.in/](mailto:abhishekkumar02@ntpc.co.in)

##### Registered Office:

NTPC Limited  
NTPC Bhawan, SCOPE Complex,  
7, Institutional Area, Lodi Road,  
New Delhi – 110003  
Corporate Identification Number: L40101DL1975GOI007966.  
Website: [www.ntpc.co.in](http://www.ntpc.co.in)

**Websites:** <https://eprocurementntpc.nic.in>, [www.ntpctender.com](http://www.ntpctender.com) or [www.ntpc.co.in](http://www.ntpc.co.in)

##### Note:

<b>1</b>	<p><b>While submitting the ON-LINE BID</b></p> <p><b>Acceptance of Following conditions are specified in the GTE:</b></p> <p>1.0 Confirmation that you are a LOCAL SUPPLIER, and the LOCAL CONTENT included in the PACKAGE FOR COMPLETE SCOPE OF WORK meets the MINIMUM LOCAL CONTENT requirements of the tender.</p> <p>2.0 Acceptance of NTPC Safety Rules</p> <p>3.0 Acceptance of NTPC Fraud Prevention Policy</p> <p>4.0 Acceptance of NTPC Withholding and Banning of Business Dealing Policy</p> <p>5.0 Certification for Full compliance on clause as per tender documents on "Restrictions on procurement from a Bidder of a country which shares a land border with India".</p> <p>6.0 Compliance to All Provisions of Bidding Documents (NIL Deviation Certificate)</p> <p><b>Bidders may note that in case they do not accept the GTE conditions, their bids shall not be evaluated and shall be rejected.</b></p> <p>Any other condition, if mentioned in GTE, requiring any confirmation/information are to be ticked/filled up suitably.</p>
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**NTPC GREEN ENERGY LIMITED**  
**(A Wholly Owned Subsidiary of NTPC)**



**SECTION – II**  
**INSTRUCTION TO BIDDERS (ITB)**  
**FOR O&M WORKS**

**Rev 2.2**

**INSTRUCTIONS TO BIDDERS**  
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## **INSTRUCTIONS TO BIDDERS (ITB)**

### **PART A - GENERAL**

#### **1.0 INTRODUCTION**

- 1.1 NTPC Green Energy Limited (NGEL), (hereinafter called “NGEL” or “Employer”), wishes to receive bids for the Package named in NIT/IFB/Tender Enquiry.
- 1.2 Throughout these Bidding Documents, the term “Bid” and “Tender” and their derivatives (Bidder/Tenderer, Bidding/Tendering, Bidding Document/Tender Document, etc.); Bill of Quantity /Schedule of Quantity / Schedule of Quantities/ Bill of Quantities; Employer / NGEL; Bid Security / Earnest Money Deposit; Security Deposit / Performance Security/ Performance Guarantee; Engineer-in-Charge / Engineer; Amendment/Corrigendum; Schedule of Quantity/Bill of Quantity (BOQ), appearing anywhere in the Bidding Documents shall have the same meaning and are synonymous to each other.

#### **2.0 SOURCE OF FUNDS**

Expenditure under this package is intended to be funded from internal resources and/ or borrowings by the Employer.

#### **3.0 CONFLICT OF INTEREST**

- 3.1 Each Bidder shall submit only one bid either by himself, or as a partner in a joint venture or consortium, if so permitted in the Bidding Documents. A Bidder who submits or participates in more than one bid in this bidding will be disqualified from the bidding.
- 3.2 Bidders should not be associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates that has been engaged by the Employer to provide consultancy services for the preparation of the design, specifications, and other documents to be used for the execution of Works under this Invitation for Bids.

#### **4.0 BIDDER'S SITE VISIT**

The Bidders are advised to visit the Site to familiarize themselves with the nature and quantum of work and site condition and obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect his tender. No extra charges consequent on any misunderstanding or otherwise shall be allowed.

### **PART B - BIDDING DOCUMENTS**

#### **5.0 CONTENT OF BIDDING DOCUMENTS**

- 5.1 The set of Bidding Documents issued for the purpose of bidding includes one set of the following, which should be read in conjunction with amendments, if any, issued in accordance with ITB Clause 8.0 below.

## **Section**

### **I Invitation for Bids (IFB)/Tender Enquiry/Notice Inviting Tender (NIT)**

### **II Instructions to Bidders (ITB)**

### **III General Conditions of Contract (GCC)**

### **IV Special Conditions of Contract (SCC)**

### **V Technical Specifications and T&C**

### **VI Schedule of Quantities (SOQ) / Bill of Quantities (BOQ)**

### **VII Forms and Procedures**

5.2 The Bidder is expected to examine all instructions, forms, terms, conditions and specifications in the Bidding Documents, before submission of his bid. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of such bid.

5.3 **Qualifying Requirements-** Not Applicable

#### **5.4 Bid Drawings**

The Bidder is requested to refer the Technical Specifications for the provisions in this regard.

#### **6.0 CLARIFICATION OF BIDDING DOCUMENTS**

A prospective Bidder requiring any clarification of the Bidding Document shall put the query under Clarification tab of the on-line bid at least three days prior to the clarification end date. EMPLOYER will respond to any request for clarification or modification of the bidding documents that it receives within the time line specified.

EMPLOYER will post the Clarifications under Clarification/Corrigendum tab at e-tender website. Bidders can view these clarifications.

Bidders are advised to regularly check under Clarification/Corrigendum tab regarding posting of clarification, if any.

**Further, no queries from Bidders shall be entertained after last date of receipt of Queries/ Pre-Bid Conference (if applicable) as specified in IFB. Accordingly, any query(ies) received from Bidders after the cut-off date shall be returned.**

Bidders must check the Clarifications issued before submission of Bid. Should the Employer deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so and upload the amendments in the tender on the e-tender portal.

#### **7.0 PRE-BID CONFERENCE – NOT APPLICABLE**

#### **8.0 ADDENDA/ CORRIGENDA/ AMENDMENTS TO BIDDING DOCUMENTS**

At any time prior to the deadline for submission of bids, EMPLOYER may, for any reason,

whether at its own initiative, or in response to a clarification requested by a prospective Bidder, amend the bidding documents.

The corrigendum/amendment will be posted in the tender on the e-tender portal for viewing by the Bidder. The amendments will be binding on Bidders and it will be assumed that the information contained therein will have been taken into account by the Bidder in its bid. Bidders are advised to regularly check the tender regarding posting of Amendments, if any.

To give prospective Bidders reasonable time to take the amendment into account in preparing their bid, EMPLOYER may, at its discretion, extend the deadline for the submission of bids..

## **PART C - PREPARATION OF BID**

### **9.0 COST OF BIDDING**

9.1 The Bidder shall bear all costs associated with the preparation and submission of his bid and the Employer will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.

### **10.0 LANGUAGE OF BID AND UNITS OF MEASURE**

10.1 The bid and all correspondence and documents relating thereto exchanged by the Bidder and the Employer shall be written in English. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an appropriate translation of pertinent passages into English, in which case, for the purpose of interpretation of the bid such translations shall govern.

10.2 The units of measurement shall be metric system of measures, unless otherwise specified elsewhere.

### **11.0 DOCUMENTS COMPRISING THE BID**

11.1 The bid submitted by the Bidder shall interalia comprise of the following documents:

- (a) Bid Form duly completed and digitally signed by the Bidder using Class II/III digital signatures, together with all Attachments identified in ITB Sub-Clause 11.2 below.
- (b) Online Schedules of Quantities duly completed.

11.2 Bidding procedure shall be as specified in the NIT/SCC.

11.3 Each Bidder shall submit with his bid the following attachments:

#### **11.3.1 TECHNO-COMMERCIAL BID**

- (a) **Attachment 1: Earnest Money Deposit- Not Applicable**
- (b) **Attachment 2: Authority to Sign the bid** *(to be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

The Bidder shall furnish the following to check that the person(s) signing the bid has/have the authority to sign the bid and thus establish that the bid is binding upon the Bidder during the full period of its validity in accordance with ITB Clause No.13.

- i) In case of Sole Proprietorship Concern/Partnership Firm, Specimen signature of the Proprietor/all the partners duly attested by a scheduled Bank or First Class Magistrate.
- ii) In case of Private Limited Companies, Copy of Power of Attorney issued by Competent Officer under the common seal of the Company, authorising the person to sign the bid/ execute contracts/agreements etc duly notarised
- iii) In case of Public Limited Companies and Statutory Corporations, Board resolution authorising the Executive to sign the bid/ contracts/agreements and affix common seal thereon in accordance with the provisions of Article of Association of the Company OR Power of Attorney issued by Competent Officer under the common seal of the Company authorising the person to sign the bid/ execute contracts/agreements etc.
- iv) In case of Joint Venture/Consortium, Satisfactory evidence of authority of the person signing on behalf of the Bidder shall be furnished with the bid.

(c) **Attachment 3: Bidder's Qualifications- Not Applicable**

d) **Attachment 4: Subcontractors Proposed by the Bidder - Not Applicable**

e) **Attachment 5: Equipment/ Machinery deployment Schedule** *(As applicable) (To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

The Bidder shall indicate the quantum and schedule of the equipment/ machinery/ lab equipment etc. he proposes to deploy for the Work under this bid.

f) **Attachment 6: General Declaration of Bidder** *(To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

Declaration that the Bidder has carefully examined the Bidding Documents in totality and his authorised personnel have visited the site for assessment of all factors for the purposes of bidding.

g) **Attachment 7: Electronic Fund Transfer (EFT) Authorisation Form** *(To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

Authorisation Form for release of payments through Electronic Fund Transfer System.

h) **Attachment 8: Details of PF, ESI, PAN and GSTIN Regn..** *(To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

The details of registration for PF, ESI, PAN and GSTIN to be furnished.

In case GSTIN details are not provided, it shall be considered that the bidder is an unregistered dealer.

(i) **Attachment 9: Declaration Regarding GST** *(To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

The bidder shall necessarily quote the GST applicable in the Schedule of Quantities. Further, the services covered under RCM must be declared in Attachment 9 of Forms & Procedures (Section VII) and specify the GST applicable. However, levies, royalty, fees etc., if any, shall be included in the price.

(j) **Attachment 10: Technical Compliance** *(To be uploaded in Pre-Qual/Technical Cover/Envelope on the portal)*

The bidder shall essentially confirm compliance to the scope of work and other technical requirements specified in the Technical Specifications and Bid Drawings (Section V)

(k) **Attachment 11: Declaration of Local Content**

Declaration regarding local content as per the Employer's format, for granting of purchase preference.

In case a bidder does not submit the aforesaid declaration or no value is indicated by the bidder or statement/any declaration like 'later', 'to be furnished later', 'NA' etc. are indicated by the bidder against value/percentage of local content, then the bidder shall not be considered as a local supplier and "shall not be eligible for any purchase preference"/ **\*\*\*its bid shall be considered non-responsive and shall be outrightly rejected\*\***.

**Further, Bidder shall be required to submit a certificate from the statutory auditor or cost auditor (in the case the bidder is a company) or from a practicing cost accountant or practicing chartered accountant (in respect of bidders other than companies) giving the percentage of local content during execution prior to submission of last bill for payment.\*\***

In case aforesaid Certificate furnished by Contractor/Vendor is not in line with the declaration in respect of Local content in their bid, same shall be treated as false declaration and will be dealt in line with the Fraud Prevention Policy of NTPC.

**\*\*Applicable unless otherwise mentioned in SCC.**

(l) **'NIL' Deviations Certificate** *(To be accepted online under GTE)*

**No deviation, whatsoever, is permitted by the Employer to any provisions of Bidding Documents.**

The acceptance of above is an attribute of the on line Bid Invitation and the Bidders are required to confirm acceptance of the same by accepting the following condition:

"Do you certify full compliance to all provisions of Bid Documents?"

Acceptance of above condition shall be considered as bidder's confirmation to the following:

- (a) The provisions of Bidding Documents read in Conjunction with Amendment(s)/ Clarification(s)/ Addenda/ Errata (if any) are acceptable and no deviation has been taken in this regard.

(b) Any deviation to Bidding Documents and its subsequent Amendment(s)/ Clarifications(s)/ Addenda/ Errata/ Minutes of Clarification Meeting (if any) as mentioned at (a) above found anywhere in Price Bid Proposal, implicit or explicit, shall stand unconditionally withdrawn, without any cost implication whatsoever to Employer, failing which the Earnest Money Deposit shall be forfeited.

(m) **Declaration on Qualifying Requirements – Not Applicable**

(n) **Declaration on Banning Policy (To be accepted online under GTE)**

Declaration to the effect that the Bidder shall abide by Banning Policy of the Employer displayed on NTPC's website <http://www.ntpctender.com> indicating his compliance to the provisions of ITB Sub-Clause 32 to be furnished by accepting the following GTE condition:

“Do you accept Withholding and Banning of Business Dealing Policy of NTPC”

(o) **Declaration on Fraud Prevention Policy (To be accepted online under GTE)**

Declaration to the effect that the Bidder shall abide by Fraud Prevention Policy of the Employer displayed on NTPC's website <http://www.ntpctender.com> indicating his compliance to the provisions of ITB Sub-Clause 29 to be furnished by accepting the following GTE condition:

“Do you accept the Fraud Prevention Policy of NTPC”.

**Note:**

**I) Techno-Commercial Bid should not contain any price content entry. In case, the Techno-Commercial Bid is found to contain any price content, such bid shall be liable for rejection.**

**11.3.2 PRICE BID**

In the Bill of Quantity (BOQ) provided, the bidder shall quote the prices, taxes etc. as asked for in the BOQ. The filled Bill of Quantity (BOQ) is to be uploaded in the Finance Cover/Envelope on the portal.

11.4 Filling the information in the attachments with answers like “shall be given later” “or” “shall be mutually discussed and finalised” or “information already submitted at the time of enlistment” etc. shall not be accepted. Even if the information required in the attachments has been given in response to any other recent invitation for bids of the Employer or in some other reference, it is mandatory for the Bidder to give the information along with his bid as asked for. Non compliance with the above or leaving the attachment(s) blank may lead to the rejection of the bid. The information furnished by the Bidder should be consistent, correct and true. The Employer reserves the right to verify the information given and if found incorrect, the bid may be rejected.

**11.5 A conditional Price Bid shall run the risk of rejection.**

11.6 Price Bid should not contain any matter in respect of Technical and / or Commercial aspects other than the details specifically sought in the Price Bid.

## 12.0 BID PRICES AND PRICE BASIS

- 12.1 Unless otherwise specified in the Technical Specifications, Bidders shall quote for the entire facilities on a “single responsibility” basis such that the total bid price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the bidding. Bidders shall give a breakdown of the prices in the manner and detail called for in the on-line Price Schedules.
- 12.2 The currency of the bid and currency of payment shall be in Indian Rupees unless specified otherwise in the SCC.
- 12.3 The Bidder shall fill in unit rates/prices for all items of ~~Works~~ described in the Bill of Quantity (BOQ). The rates/prices quoted in the Bill of Quantity shall also be deemed to include any incidentals not shown or specified but reasonably implied or necessary for the proper completion and functioning of the specified Works in accordance with the Bidding Documents. Items of the work described in the Bill of Quantity (BOQ) for which no rate or price has been entered therein by the Bidder, shall also be considered as an abnormally quoted item and shall be governed by the relevant provisions of ITB Sub-Clause 23.4.

Bidders are advised to price their bids in such a manner that the component for ‘Amount linked to Safety Aspects/ compliance to Safety Rules’ should not be less than minimum% of the total value for works portion of Contract specified in SCC.

The successful bidder if awarded the contract shall take sufficient care in moving the plants equipments and materials from one place to another so that they do not cause any damage to any person or the property of employer or 3rd party including overhead and under ground cables/pipelines. In the event of such damage including eventual loss of operation and operation of the plant or services in any plant or establishment as estimated by the employer or adjusted by third party shall be borne by the Contractor.

- 12.4 The rates/amount quoted in the Bill of Quantity (BOQ) shall be exclusive of all GST and all other taxes & duties as per GCC clause 22.0 However, levies, royalty, fees etc., if any, shall be included in the price as per GCC clause 22.0

In the Bill of Quantity (BOQ) provided, the bidder shall quote the prices, taxes etc. as asked for in the BOQ.

- 12.5 The Contractor shall be responsible for payment of any tax levied ~~on the Works Contract~~ in accordance with the applicable GST Law or Notification(s) by the State or Central Government or other authorities and rules made thereunder including amendments, if any.

The Contract Price shall be exclusive of GST and all other taxes, duties applicable as per the rates prevailing as on seven (7) days prior to the date of bid opening.

However, the Contract Price shall be inclusive of any Seigniorage Fee or Royalties or cess or other charges payable on the quarried or mined metal, minerals or minor minerals, as the case may be, at the rate(s) prevailing within seven (7) days prior to the date of bid opening.

**The rate of GST and all other taxes & duties applicable shall be quoted in the bid**

**in the Bill of Quantities and in case RCM is applicable on any service same shall be specified in Attachment 9 of Forms & Procedures (Section VII).**

- 12.6 The bidder shall necessarily declare, as part of his bid, the GST applicable in the Bill of Quantities.

The estimated value of Owner Issue Materials, if any, to be considered for working out GST liability, if applicable, as indicated in SCC.

Provisions of GST law in respect of Related Persons/Parties may appropriately be taken into consideration by Bidders while submitting the bid.

In case of any variation between the pre-determined value and actual value of Owner Issue Material during the execution of the contract, an equitable adjustment shall be made to the applicable GST amount.

In case GST is applicable on free issue material, the Bidder must indicate the same in Attachment 9 of Forms & Procedures (Section VII). In case the same has not been specified by the Bidder in Attachment 9 of Forms & Procedures (Section VII), GST paid by Employer shall be to Bidder's account.

GST component will be deposited with the concerned authorities by the Employer.

- 12.7 In case 'Amount linked to Safety Aspects / compliance to Safety Rules' is less than aforesaid minimum percentage specified of the total value for works portion of Contract (i.e. Amount of works/services other than the amount linked to safety Aspects/Compliance to safety rules), the amount by which it is lower shall be retained proportionately from the other components of the Contract price while releasing payments of each RA bill. No interest shall be payable on the amounts linked to Safety Aspects / Compliance to Safety Rules including aforesaid retained amount. The amounts linked to Safety Aspects / Compliance to Safety Rules including aforesaid retained amount shall be payable in part or full based on safety compliance duly certified by EIC and Safety-in-charge on quarterly basis.

**13.0 BID VALIDITY**

- 13.1 The Bidder shall keep his bid valid for a period of 120 days from the date of opening of the techno-commercial bid, unless otherwise specified in the SCC, during which period the Bidder agrees not to vary, alter or revoke his bid either in whole or in part.

- 13.2 In exceptional circumstances, prior to the expiry of the original bid validity period, the Employer may request the Bidders to extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing. A Bidder agreeing to the request will not be permitted to modify his bid, but will be required to extend the validity of his Earnest Money Deposit for the period of the extension.

**14.0 BID SECURITY / GUARANTEE / EARNEST MONEY**

- 14.1 The Bidder shall furnish, as part of its Bid, a Bid Security in a separate envelope in the amount and currency as stipulated in the SCC superscribed on the top as under:

***“ORIGINAL EARNEST MONEY DEPOSIT FOR ..... (NAME OF PACKAGE) SPECIFICATION NO. .... DUE ON ..... (DATE OF BID OPENING) FROM ..... (NAME OF THE BIDDER).”***

- 14.2 The Bid Security shall, at the Bidder's option, be in the form of a crossed Demand Draft/Pay Order/Banker's Cheque or a Bank Guarantee from any of the banks specified in the Bid Data Sheets.

The format of the Bank Guarantee shall be in accordance with the form of bid security included in the Bidding Documents. Bid Security shall remain valid for a period of forty five (45) days beyond the original Bid validity period and beyond any extension of bid validity subsequently requested under ITB Sub-Clause 13.2.

The Bidders at their option may also submit the Bid Security amount through E-Payment by Credit Card/Debit card/Net Banking on the NTPC e-tender portal. Upon successful e-payment on the portal, an e-receipt shall be generated by the system, a copy of which is to be submitted by the bidder along with the bid as a proof of e-payment of Bid Security.

- 14.3 Wherever Bids under Joint Venture route are permitted as per the Qualifying Requirements in the Bidding Documents, the Bid Security by the Joint Venture must be on behalf of all the partners of the Joint Venture.

- 14.4 In case of Single Stage Single Envelope and Single Stage Two Envelope bidding process, the Bid Security shall be furnished in a separate sealed envelope.

In case of Two Stage bidding process, the Bid Security (in case of Stage-I (Techno-Commercial Bid) and extension of bid security (in case of Stage-II (Price Bid) shall be furnished in a separate sealed envelope.

**Any bid not accompanied by an acceptable Bid Security in a separate sealed envelope shall be rejected by the Employer as being non-responsive and shall not be opened. Further Stage-II (Price Bid) (in case of Two Stage bidding) not accompanied by requisite bid security extension in a separate sealed envelope shall be rejected by the Employer as being non-responsive and shall not be opened.**

- 14.5 In case of Single Stage Single Envelope bidding process, the Bid Security of all the bidders except recommended/evaluated L-1 bidder shall be returned immediately after placement of award on the successful bidder.

In case of Single Stage Two Envelope and Two Stage bidding process, the Bid Security of the Bidders whose Technical Bids has not been found acceptable, shall be returned along with letter communicating rejection of Technical Bid. The Bid Security of all the Bidders except recommended /Evaluated L-1 bidder, whose price bids are opened, shall be returned immediately after placement of award on the successful bidder.

An intimation in this regard shall also be sent to all such bidders, after return of their Bid Security, through e-Tendering system / e-mail by the Package coordinator / concerned executive

- 14.6 (Applicable for Packages where signing of contract agreement is envisaged):

The Bid Security of the successful Bidder to whom the Contract is awarded will be returned when the said Bidder has signed the Contract Agreement pursuant to ITB

Clause 27 and has furnished the required Performance Securities pursuant to GCC Clause 19.0

OR

(Applicable for Packages where signing of contract agreement is not envisaged):

The Bid Security of the successful Bidder to whom the Contract is awarded will be returned when the said Bidder has furnished the CPG/Security Deposit, as applicable.

14.7 The Earnest Money Deposit shall be forfeited in any of the following circumstances without any notice or proof of damage to the Employer:

a) If the Bidder withdraws or varies its Bid during the period of Bid validity;

b) If the Bidder does not accept the correction of its Bid Price pursuant to ITB Sub-Clause 23.2;

c) (Applicable for Single Stage Single Envelope Bidding):

If the Bidder refuses to withdraw, without any cost to the Employer, any deviation not listed in Attachment-6 but found elsewhere in the Bid;

OR

(Applicable for Single Stage Two Envelope Bidding):

If the Bidder refuses to withdraw, without any cost to the Employer, any deviation, variation, additional condition or any other mention anywhere in the bid, contrary to the provisions of bidding documents;

OR

(Applicable for Two Stage Bidding):

If the Bidder refuses to withdraw, without any cost to the Employer, any deviation, variation, additional condition or any other mention anywhere in the Price bid, contrary to the provisions of bidding documents;

d) In the case of a successful Bidder, if the Bidder fails within the specified time limit

i) to sign the Contract Agreement, in accordance with ITB Clause 27.0, and/or

ii) to furnish the required Contract Performance Guarantee/Security Deposit in accordance with GCC Clause 19.0

(e) If the bidder/his representatives commits any fraud while competing for this contract pursuant to Fraud Prevention Policy of NTPC.

(f) In case the Bidder/Contractor is disqualified from bidding process in terms of Section 3 and 4 of Integrity Pact.

14.8 No interest will be payable by the Employer on the said amount covered under Earnest Money Deposit.

15.0 **WORK SCHEDULE**

The entire Work covered under the contract of this bid shall be completed within the time specified in the SCC and further elaborated in the Technical Specifications. The Work shall be performed in time and to achieve the targets, the Contractor shall have to plan adequate mobilisation of all resources.

**PART D - SUBMISSION OF BID**

16.0 **SEALING AND MARKING OF BID**

Bid shall be submitted through e-tender mode in the manner specified elsewhere in bidding document. No Manual/ Hard Copy of the Bid shall be acceptable.

16.1 Documents to be submitted in physical form (as brought out at ITB clause 11.3.1) shall be sealed and marked in the following manner:

- (i) The Earnest Money Deposit (in case paid in modes other than on-line payment) furnished in accordance with ITB Clause 14 shall be sealed in a separate envelope duly marking the envelope as "ATTACHMENT-1 : EARNEST MONEY DEPOSIT".
- (ii) The power of attorney furnished in accordance with ITB Clause 11.3.1(b) shall be sealed in a separate envelope duly marking the envelope as "ATTACHMENT-2 : POWER OF ATTORNEY".
- (iii) The deed of joint undertaking (if applicable) as per relevant attachment shall be sealed in a separate envelope duly marking the envelope as "DEED OF JOINT UNDERTAKING".
- (iv) The joint venture/consortium agreement (if applicable) as per relevant attachment shall be sealed in a separate envelope duly marking the envelope as "JOINT VENTURE/CONSORTIUM AGREEMENT".
- (v) The 'Integrity Pact' (if applicable) as per ATTACHMENT-12 duly signed by the signatory authorized to sign the bid, shall be sealed in a separate envelope entitled "ATTACHMENT-11 : INTEGRITY PACT".

The envelopes shall then be sealed in an outer envelope.

16.2 The inner and outer envelopes shall:

- (a) be addressed to the Employer at the address given in the NIT/Tender Enquiry/SCC, and
- (b) bear the Package name indicated in the NIT/Tender Enquiry, the Invitation for Bids number indicated in the NIT/Tender Enquiry, and the statement "DO NOT OPEN BEFORE [date]," to be completed with the time and date specified in the NIT/Tender

Enquiry, pursuant to ITB clause 16.

- 16.3 The inner envelopes shall also indicate the name and address of the Bidder.
- 16.4 If the outer envelope is not sealed and marked as required by ITB Sub-Clause 16.2 above, the Employer will assume no responsibility for its misplacement.

#### 17.0 BID SUBMISSION

Bidders are requested to submit offer / proposal as under:

(A) **TECHNO-COMMERCIAL BID**

(I) **OFF-LINE BID (PHYSICAL BID)**

**Envelope-1... marked as 'EMD/Bid Security'**

- a) Bid Form 1: EMD form
- b) Attachment 1 : Earnest Money Deposit, in case paid in modes other than on-line payment
- c) Attachment 2 : Authority to Sign the bid
- d) Attachment 7 : Electronic Fund Transfer (EFT)

Form Any other document asked for in the SCC.

(II) **ON-LINE BID**

(i) **Acceptance of conditions of GTE**

Following conditions specified in the GTE:

- a) Compliance to All Provisions of Bidding Documents (NIL Deviation Certificate)
- b) Compliance On Qualifying Requirement
- c) Acceptance of NTPC Safety Rules
- d) Acceptance of NTPC Fraud Prevention Policy
- e) Declaration On Banning Policy

**Bidders may note that in case they do not accept the GTE conditions, their bids shall be not evaluated and shall be rejected.**

Any other condition, if mentioned in GTE, requiring any confirmation/information are to be ticked/filled up suitably.

(ii) **Upload the following in FEE Cover/Envelope**

- a) Attachment 1: Earnest Money Deposit (scanned copy)
- b) Cost of Bidding/Tender Documents

(iii) **Upload the following in Pre-Qual/Technical Cover/Envelope**

- a) Attachment 2: Authority to sign the bid (scanned copy)
- b) Attachment 3: Bidders Qualification Documents
- c) Attachment 4: Sub-contractor proposed by Bidder

- d) Attachment 5: Equipment/Machinery Deployment Schedule
- e) Attachment 6: General Declaration
- f) Attachment 7: Electronic Fund Transfer (EFT) Form
- g) Attachment 8: Details along with Copy of PF and ESI registration, PAN and GSTIN. In case GSTIN is not specified, it shall be considered that the bidder is an unregistered dealer.
- h) Attachment 9: Declaration Regarding GST
- i) Attachment 10: Technical details & data sheets, drawings, compliance to scope of work etc.
- j) Attachment 11 : Declaration of Local Content ,if applicable

Any other document asked for in the SCC/Technical specifications also to be uploaded in Pre-Qual/Technical Cover/Envelope.

**(B) PRICE BID**

In the Bill of Quantity (BOQ) provided, the bidder shall quote the prices; taxes etc. as asked for. The filled Bill of Quantity (BOQ) is to be uploaded in the Finance Cover/Envelope on the portal.

The on-line bid is to be digitally signed using a valid Class II/III digital certificate as per Indian IT Act from the licensed Certifying Authorities (CA) operating under the Root Certifying Authority of India (RCAI) namely Controller of Certifying Authorities (CCA) of India, failing which the bid shall be rejected.

**18.0 DEADLINE FOR SUBMISSION OF BID**

- 18.1 Bid must be received by the Employer at the address referred in the NIT/Tender Enquiry/SCC, no later than the time and date stated in the NIT/Tender Enquiry.
- 18.2 The Employer may, in exceptional circumstances and at his discretion, extend the deadline for submission of bids by issuing an amendment in accordance with ITB Clause 8.0 above, in which case all rights and obligations of the Employer and the Bidders previously subject to the original deadline shall thereafter be subject to the deadline as extended.

**19.0 LATE EARNEST MONEY DEPOSIT AND INTEGRITY PACT**

Any Earnest Money Deposit (or extension thereof) and/or Integrity Pact bid received by the Employer after the bid submission deadline prescribed by the Employer, pursuant to ITB Clause 18, will be rejected and returned unopened to the Bidder.

**20.0 MODIFICATION, SUBSTITUTION AND WITHDRAWAL OF BID**

- 20.1 Bidders are requested to submit the bids on-line on NTPC e-tender Portal.
- 20.2 Bids shall be hosted / uploaded and submitted on the NTPC e-tender portal by the date & time specified in the NIT/Basic data of the Tender in the e-tender portal.
- 20.3 Bid Modification and withdrawal: The Bidder may modify or withdraw its bid after

submission prior to the deadline prescribed for bid submission. In case of withdrawal a letter giving the reason for withdrawal is to be uploaded. Once a bid is withdrawn, the bid cannot be re-submitted.

No bid may be withdrawn / modified in the interval between the bid submission deadline and the expiration of the bid validity period. Withdrawal/Modification of a bid during this interval may result in the Bidder's forfeiture of its Earnest Money Deposit, pursuant to ITB Clause 14.7(a) above.

- 20.4 No bid may be withdrawn in the interval between the bid submission deadline and the expiration of the bid validity period specified in clause 13.0 of ITB.

Withdrawal of a bid during this interval may result in the Bidder's forfeiture of its Earnest Money Deposit, pursuant to ITB Sub-Clause 14.7(a) and shall be treated as ineligible for participation in the future tenders issued from NTPC for a period of **06 months** from the date of withdrawal of the bid.

## **PART E - BID OPENING AND EVALUATION**

### **21.0 BID OPENING**

The bids will be opened at the time, date and location notified in the NIT/IFB/Tender Enquiry in the presence of the Bidder's authorised representatives (not exceeding two per Bidder) who choose to attend. All important information's and any such other detail, as may be considered appropriate by the Employer will be read out during the bid opening.

### **22.0 CLARIFICATION OF BIDS**

Bidder's attention is drawn that during the period, the bids are under consideration, the Bidder is advised to refrain from contacting by any means, the Employer and/or his employees/representatives on matters related to the bids under consideration and that if necessary, the Employer will obtain clarifications from the Bidder in writing. Any effort by a Bidder to influence the Employer's processing of bids or award decisions will result in the rejection of the Bidder's bid.

During the bid evaluation the Employer may, at its discretion, ask the Bidder for a clarification of its bid including documentary evidence pertaining to only the Work Orders/Purchase Orders/Letter of Awards/Contract Agreements declared in the bid for the purpose of meeting Qualifying Requirement specified in NIT/Bidding Documents. The request for clarification and the response shall be in writing and no change in the price or substance of the bid including substitution of reference Work Orders/Purchase Orders/Letter of Awards/Contract Agreements in the bid by new/additional Work Orders/Purchase Orders/Letter of Awards/Contract Agreements for conforming to Qualifying Requirement shall be sought, offered or permitted.

### **23.0 EVALUATION AND COMPARISON OF BIDS**

#### **23.1 BID EVALUATION**

- 23.1.1 The Employer will initially determine whether each bid is of acceptable quality, is

generally complete and is substantially responsive to the Bidding Documents. For purposes of this determination, a substantially responsive bid is one that conforms to all the terms, conditions and specifications of the Bidding Documents without material deviations, objections, conditionalities or reservations. A material deviation, objection, conditionality or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; or (ii) that limits in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other Bidders who are presenting substantially responsive bids. The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence. If a bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by the Bidder by correction of the nonconformity.

**23.1.2 Further, for order preference, MSE guidelines mentioned in ITB Clause 31.0 read in conjunction with ITB Clause 32.0 "Preference to Make in India and granting of purchase preference to local suppliers" mentioned in Annexure-I to SCC, shall be applicable as mentioned in Special Conditions of Contracts (SCC)**

## **23.2 Arithmetical Correction**

Arithmetical errors in the bid will be rectified on the following basis:

If on check there are found to be differences between the rates/prices given by the Bidder in words and figures or in the amount worked out by him in the Schedule of Quantities and General Summary, the same shall be adjusted in accordance with the following rules:

- (a) In the event of a discrepancy between description in words and figures in respect of item rates quoted by a Bidder, the description in words shall prevail.
- (b) In the event of an error occurring in the amount column of Schedule of Quantities as a result of wrong extension of the quantity and the unit rate, the units shall be regarded as firm and extension shall be amended on the basis of the unit rate.
- (c) All errors in totalling in the amount column and in carrying forward totals shall be corrected.
- (d) The totals of various sections of Schedule of Quantities amended shall be carried over to the General Summary and the bid sum amended accordingly. The bid sum so altered shall, for the purpose of bid, be substituted for the sum originally bid and considered for evaluation and comparison of the bids and also for acceptance of the bid, instead of the original sum quoted by the Bidder.

23.3 The evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all commercial, contractual and technical obligations under this Bidding Document.

## **23.4 Abnormally High or Low Rated Items**

If the rates/prices quoted by the successful bidder for certain items of the schedule of Quantities are found to be having a variation of +/-25% or above in relation to Employer's estimate of the cost of work to be performed under the contract, then such items of works shall be identified as abnormally high rate (AHR) or abnormally low rate (ALR).

After evaluation of the rates/prices analysis which includes early cash flow analysis, Employer/NTPC may require that amount of Performance Security be increased at the expense of the recommended bidder by 25% of the value of variation in respect of ALR item, to protect Employer against financial loss in the event of default by the contractor under the contract, to carry out such low rated items of works if award is placed on recommended bidder. Further, the Employer/NTPC may require the contractor to provide a suitable undertaking to execute the items of works to complete the entire work under the contract.

The items for which performance security is enhanced shall be identified separately in the contract. Upon execution of such identified items, the enhanced value of Performance security will be reduced every three months on a pro-rata basis.

The additional Performance security shall be furnished by Contractor prior to release of 1st RA Bill/Mobilization advance.

### **23.5 Post-Qualification**

- 23.5.1 The Employer will determine to its satisfaction whether the Bidder is qualified to satisfactorily perform the contract, in terms of the Qualifying Requirements (QR) stipulated in NIT/IFB/Tender Enquiry and other criteria detailed elsewhere in the bidding documents.
- 23.5.2 The determination will take into account the Bidder's capabilities, based upon examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder in the Attachments – 3 and 4 as well as such other information as the Employer deems necessary and appropriate. The Employer reserves the right to assess the capabilities and capacity of the Bidder to perform the contract, should the circumstances warrant such assessment in the overall interest of the Employer.
- 23.5.3 An affirmative determination will be a prerequisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's bid.
- 23.5.4 The capabilities of the vendors and subcontractors, proposed in Attachment - 4, to be used by the lowest evaluated Bidder, will also be evaluated for acceptability. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a vendor or subcontractor be determined to be unacceptable, the bid will not be rejected, but the Bidder will be required to substitute an acceptable vendor or subcontractor without any change in the bid price, prior to award.

## **PART F - AWARD OF CONTRACT**

### **24.0 AWARD CRITERIA**

Subject to ITB Clause 26.0, the Employer will award the Contract to the Bidder whose bid has been determined to be substantially responsive to the Bidding Documents and whose bid has been adjudged as the lowest evaluated bid , provided that such Bidder has been determined to be qualified to perform the contract satisfactorily as per methodology read in conjunction with ITB Clause 32.0 “Preference to Make in India and granting of purchase preference to local suppliers” mentioned in Annexure-I to ITB,

#### **25.0 EMPLOYER’S RIGHT TO ACCEPT OR REJECT ANY OR ALL BIDS**

Notwithstanding ITB Clause 24.0, the Employer reserves the right to accept, (whole or in part) and the Bidder shall be bound to perform the same at his quoted rate, or reject any bid for any reasons including national defence and security consideration and to annul the bidding process and to reject all bids at any time prior to award of contract without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer’s action. Decision of Employer shall be final and binding in this regard.

#### **26.0 LETTER OF AWARD**

26.1 Prior to the expiration of the bid validity prescribed by the Employer, the Employer will issue a Letter of Award(LOA)/Service Purchase Order to the successful Bidder containing reference of the documents which form the Contract, Scope of Work, Contract Price, period of completion of the Works, terms of payment, price adjustment, and other important aspects in consideration of the execution and completion of the Works and the remedying of any defects therein by the Contractor as prescribed by the Contract.

26.2 This Letter of Award/Purchase Order will constitute the formation of the Contract.

26.3 Prior to the expiration of the bid validity prescribed by the Employer, the Employer can issue a Brief Letter of Award (LOA) to the successful Bidder containing reference of the tender, offer and Contract Price. This brief letter of award shall constitute the formation of the Contract.

#### **27.0 SIGNING OF CONTRACT AGREEMENT**

27.1 The Successful Bidder/ Contractor shall enter into a Contract Agreement with the Employer within thirty (30) days from the date of Letter of Award or within such other time, as may be desired by the Employer. The Contract Agreement shall be executed on a non-judicial Stamp Paper of appropriate value.

#### **27.2 Manner of Execution of Contract Agreement**

- i) Unless and until a formal contract is prepared and executed, the Letter of Award/Purchase Order read in conjunction with the Bidding Documents will constitute a binding contract.
- ii) The Contract Agreement shall be prepared by the Employer and signed at the office of the Employer. The Contract Agreement will be signed in three originals and the Contractor shall be provided with one signed original and the other two

originals will be retained by the Employer.

- iii) The Contractor shall provide free of cost to the Employer all the engineering data, drawings and descriptive materials submitted as a part of his bid in at least three (3) copies to form an integral part of the Contract Agreement NTPC twenty-eight (28) days after issuing of Letter of Award/Purchase Order. The Contractor shall further provide for signing of the Contract Agreement as per prescribed proforma enclosed in the Bidding Documents, appropriate Power of Attorney and the requisite stamp papers. All the other documents required for the preparation of the Contract Agreement shall be provided by the Employer.
- iv) Unless and until the Contract Agreement is signed as above, no payments under the Contract as per GCC Clauses entitled 'Payment On Account/Progressive Interim Payments' and 'Time Limit for Submission & Payment of Final Bill' shall be released to the Contractor by the Employer nor any materials shall be issued to the Contractor as stipulated in the Special Conditions of Contract or otherwise agreed to be issued by the Employer.
- v) Subsequent to signing of the Contract Agreement, the Contractor at his own cost shall provide to the Employer with at least three (3) true copies of Contract Agreement within twenty-eight (28) days of its signing. The Contractor will also provide one (1) electronic version of the Contract Agreement to the Employer within thirty (30) days of its signing.

## 28.0 INELIGIBILITY FOR FUTURE TENDERS

Notwithstanding the provisions regarding forfeiture of Earnest Money Deposit specified in ITB Sub-Clause 14.7, if a Bidder after having been issued the Letter of Award/Purchase Order, either does not accept the same or does not sign the Contract Agreement or does not submit an acceptable Initial Security Deposit/Entire Security in line with the provisions of the Contract and which results in tender being annulled then such bidder shall be treated ineligible for participation in re-tendering of this particular package.

28.1.1 If a bidder after opening of tenders where EMD is 'NIL/Not applicable' or exempted for bidders as per policy guidelines, withdraws its offer within the validity period of the offer, then such bidder shall be treated as ineligible for participation in the future tenders issued from NTPC REL for a period of 6 months from the date of withdrawal of the bid.

28.1.2 If a bidder after having been issued the Notification of Award/Purchase Order of a package where EMD is 'NIL/Not applicable' or exempted for bidder as per policy guidelines, either does not accept the Notification of Award/Purchase Order or does not sign the Contract Agreement pursuant to ITB Clause titled 'Signing the Contract Agreement' or does not submit an acceptable Performance Security pursuant to ITB Clause titled 'Performance Security', and which result in tender being annulled then such bidder shall be treated ineligible for participation in re-tendering of this particular package. Further, such vendor shall also be dealt as per the provisions of the policy for Withholding and Banning of Business Dealings.

## 29.0 ADHERENCE TO FRAUD PREVENTION POLICY

The Bidder/Contractor along with its associate / collaborators / sub-contractors / sub-vendors / consultants / service providers shall strictly adhere to the Fraud Prevention Policy of Employer displayed on its website <http://www.ntpctender.com> The Bidder/Contractor shall immediately apprise the Employer about any fraud or suspected fraud as soon as it comes to their notice.

A certificate to this effect shall be furnished by the bidder along with his bid by accepting the GTE condition "Acceptance of Fraud Prevention Policy of NTPC".

If in terms of above policy it is established that the bidder/his representatives have committed any fraud while competing for this contract then the Employer shall be entitled to disqualify the Bidder(s)/ Contractor(s) from the bidding process and forfeit the Earnest Money Deposit. In addition to the above, if the Bidder has committed a fraud such as to put his reliability or credibility into question, the Employer shall be entitled to exclude including blacklist and put the Bidder on holiday for any future tenders/contracts award process.

## 30.0 DECLARATION ON BANNING POLICY

The employer has in place a policy for withholding and banning of business Dealings as displayed on its website <http://www.ntpctender.com>. Business dealings may be withheld or banned with the Bidder/Contractor on account of any default by the contractor under GCC clause 47.3.1 or any of the grounds detailed in the said Banning Policy.

Declaration on Policy for withholding and banning of Business dealings is to be given by accepting the GTE condition "Do you accept Withholding & Banning of Business Dealing Policy".

## 31.0 BENEFITS TO MSEs

Micro and Small Enterprises (MSEs) registered with District Industries Centres or Khadi and Village Industries Commission or Khadi and Village Industries Board or Coir Board or National Small Industries Corporation or Directorate of Handicrafts and Handloom or any other body specified by Ministry of Micro, Small and Medium Enterprises as per MSMED Act 2006, for goods produced and services rendered, shall be issued the bid documents free of cost and shall be exempted from paying Earnest Money Deposit.

Further, in case of tenders where splitting of quantity is possible, participating MSEs quoting price within price band of L1 + 15 percent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise and such Micro and Small Enterprise shall be allowed to supply up to 25 percent of total tendered value. In case of more than one such MSE, the supply will be shared proportionately (to tendered quantity).

However, in case of tenders where splitting of quantity is not possible, participating MSEs quoting price within price band of L1 + 15 percent shall be allowed to execute the package by bringing down their price to L1 price in a situation where L1 price is from someone other than a Micro and Small Enterprise. The award shall be made as follows:

- a) Award shall be given to L1 bidder if L1 bidder is a MSE.
- b) In case L1 bidder is not a MSE, then all the MSE vendor(s) who have quoted within the range of L1 + 15%, shall be given the opportunity in order of their ranking (starting with the lowest quoted MSE bidder and so on) to bring down its price to match with L1 bidder. Award shall be placed on the MSE vendor who matches the price quoted by L1 bidder.
- c) If no MSE vendor who has quoted within range of L1 + 15% accepts the price of L1

bidder then the award shall be made to the L1 bidder.

The benefit as above to MSEs shall be available only for Goods/Services produced & provided by MSEs.

MSEs seeking exemption and benefits should enclose a attested/self-certified copy of registration certificate as a part of his bid, giving details such as stores/services, validity (if applicable) etc. failing which they run the risk of their bid being passed over as ineligible for the benefits applicable to MSEs.

**Note:** Generally, in tenders having Item wise evaluation, splitting is allowed unless otherwise specified in the Special Conditions of Contract (SCC). Further, in tenders having Package wise evaluation generally splitting is not allowed. **Please refer Special Conditions of Contract for specific tender provisions.**

### 32.0 Preference to Make in India and granting of purchase preference to local suppliers

Purchase preference shall be given to local suppliers as per general methodology specified in Annexure-I to SCC)

For order preference, MSE guidelines mentioned above in 31.0 read in conjunction with "Preference to Make in India and granting of purchase preference to local suppliers" mentioned in Annexure-I to SCC, shall be applicable.

*The bidders may apprise themselves of the relevant provisions of bidding documents in this regard before submission of their bids.*

**Bids which do not meet the Minimum Local Content as mentioned in SCC for the offered Item(s)/Service(s)/Work(s) shall be considered non-responsive and shall be outrightly rejected.\***

**\* Applicable unless otherwise mentioned in SCC.**

Note : Please refer Special Conditions of Contract of the bidding document for tender specific provisions as applicable and defined for Preference to Make In India and granting of purchase preference to local suppliers.

**NTPC GREE ENERGY LIMITED**  
*(A Wholly Owned Subsidiary of NTPC)*



**SECTION – III**

**GENERAL CONDITIONS OF CONTRACT  
(GCC)  
FOR O&M WORKS**

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## GENERAL CONDITIONS OF CONTRACT

### A. Contract and Interpretation

#### 1. Definitions

- (a) “Employer” / “Owner” / “Corporation” means the **NTPC Green Energy Limited (NGEL)**, New Delhi, having its registered office at NTPC Bhawan, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi and shall include their legal representatives, successors and permitted assigns.
- (b) “Contract” means the Contract Agreement entered into between the Employer and Contractor, together with contract documents referred therein. The term “Contract” shall in all such documents be construed accordingly and includes special conditions, specifications, designs, drawings, “Schedule of Quantities/Bill of Quantities” with rates and amount. These documents taken together shall be deemed to form the Contract and shall be complimentary to one another.
- (c) “Contract Documents” mean the following documents that constitute the Contract between the Employer and the Contractor:
  - (i) The Contract Agreement alongwith its appendices
  - (ii) Letter of Award/Service Purchase Order alongwith its appendices including agreed variations annexed.
  - (iii) Amendment to Tender/Bidding Documents
  - (iv) Special Conditions of Contract
  - (v) Technical Specifications & Bid drawings & Field Quality Assurance plan
  - (vi) General Conditions of Contract
  - (vii) The Bid and Bill of Quantities submitted by the Contractor
  - (viii) Instructions to Bidders
- (d) “GCC” means the General Conditions of Contract
- (e) “SCC” means the Special Conditions of Contract.
- (f) “Day” means calendar day of the Gregorian Calendar.
- (g) “Week” means a continuous period of seven (7) calendar days.
- (h) “Month” means calendar month of the Gregorian Calendar.
- (i) The “Contractor” means the individual or firm or company whether incorporated or not, undertaking the Works and shall include its legal representatives, successors, and permitted assigns.
- (j) “Sub-Contractor” shall mean a person or a Corporate body approved by Engineer-in-Charge who has entered into a contract with the Contractor to complete a part of the Works.

- (k) The “Contract Sum” / “Contract Price” means:
- (i) In the case of Lump Sum Contracts the sum for which the bid is accepted.
  - (ii) In the case of item Rate Contracts the cost of the Works arrived at after extension of the quantities shown in Bill of Quantity (BOQ) by the item rates for the various items and summing them to arrive at the total price.
  - (iii) In case of percentage rate contracts, the estimated value of the contracts as mentioned in the tender adjusted by the contractor’s percentage.
- (l) “Engineer-in-Charge/Officer-in-Charge” shall mean the person nominated by the Employer or his duly authorized representative who shall direct, supervise and be in charge of the Works for purposes of the Contract.
- (m) “Market rate” means the rate for an item of Work, determined on the basis of the cost of labour and material brought to Site by Contractor and incorporated in the Works and for use of plant and equipment for the Work executed.
- (n) “Bill Of Quantity” shall mean the priced and completed Bill of Quantity (BOQ) forming the part of the bid or such Bill of Quantity (BOQ) forming the part of the Contract, as the case may be, with amendments, if any, thereto.
- (o) The “Site” means the working Project/Station/Region or any other place where the Works is to be executed under the Contract.
- (p) “Temporary/ Enabling Works” means all temporary works of every kind required in or about the execution, completion or maintenance of the Works.
- (q) “Urgent Works” shall mean any urgent measures which, in the opinion of the Engineer-in-Charge, become necessary during the progress of the Works to obviate any risk of accident or failure or which become necessary for reasons of security and safety.
- (r) “The Works” shall mean the Works to be executed in accordance with the Contract or part(s) thereof as the case may be and shall include all extra or additional, altered or substituted works or temporary/ enabling Works and urgent works as required for performance of the Contract.
- (s) “Cost” shall mean all expenditure reasonably incurred or to be incurred by the Contractor or Employer, as the case may be, whether on or off the Site, including overhead and other charges, but excluding profit.
- (t) Throughout these Bidding Documents, the term “Bid” and “Tender” and their derivatives (Bidder/Tenderer, Bidding/Tendering, Bidding Document/Tender Document, etc.); Bill of Quantity / Schedule of Quantity / Schedule of Quantities/ Bill of Quantities; Employer / NTPC/ NGEL; Bid Security / Earnest Money Deposit; Security Deposit / Performance Security/ Performance Guarantee; Engineer-in-Charge / Engineer, appearing any where in the Bidding Documents shall have the same meaning and are synonymous to each other.

## **2. Heading and Marginal Notes to Conditions**

Heading and marginal notes to these General Conditions of Contract shall not be deemed to form part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

### **3. Singular & Plural**

Where the context so requires, words importing the singular only will also include the plural and vice versa.

### **4. Order of the precedence of the Documents**

4.1 Subject to order of precedence listed below, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

4.2 The order of precedence of documents shall be as under:

- I. The Contract Agreement alongwith its appendices
- II. Letter of Award alongwith its appendices
- III. Special Conditions of Contract
- IV. Technical Specifications & Bid drawings & Field Quality Assurance plan
- V. General Conditions of Contract
- VI. The Bid and Schedule of Quantities/ Bill of Quantities submitted by the Contractor
- VII. Instructions to bidders

An amendment issued after execution of contract agreement shall take precedent over the formal contract and all other contract documents.

4.2 Any error in description, quantity or rate in Bill of Quantity (BOQ) or any omission therefrom shall not vitiate the Contract or release the Contractor from the execution of the whole or any part of the Works comprised therein according to drawings and specifications or from any of his obligations under the Contract.

### **5. Instructions and Notices under the Contract:**

5.1 Subject as otherwise provided in the Contract, all notices to be given on behalf of the Employer and all other actions to be taken on its behalf may be given or taken by the Engineer-in-Charge or any officer for the time being entrusted with the functions, duties and powers of the Engineer-in-Charge by the Employer. All instructions, notices and communications, etc., under the Contract shall be given in writing.

5.2 The Contractor or his authorised representative shall be in attendance at the Site(s) during all working hours and shall superintend the execution of the Works with such additional assistance in each trade as the Engineer-in-Charge may consider necessary. Orders given to the Contractor's representative shall be considered to have the same force as if they had been given to the Contractor himself.

5.3 The Engineer-in-Charge shall communicate or confirm the instructions to the Contractor in respect of the execution of Work in a 'Works Site Order Book' maintained in the office of the Engineer-in-Charge and the Contractor or his authorised representative shall confirm receipt of such instructions by signing the relevant entries in this Book. If required by the Contractor he shall be furnished a certified true copy of such instruction(s).

### **6. Contractors Representative**

(i) Within seven(7) days of the issuance of Service Purchase Order/Letter of Award the Contractor shall nominate the Contractor's Representative and shall request the Employer in writing to approve the person so nominated. If the

Employer makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment giving the reason therefor, then the Contractor shall appoint a replacement within seven (7) days of such objection.

- (ii) The Contractor's Representative shall represent and act for the Contractor at all times during the currency of the Contract and shall give to the Engineer-in-charge all the Contractor's notices, instructions, information and all other communications under the Contract.
- (iii) All notices, instructions, information and all other communications given by the Employer or the Engineer-on-charge to the Contractor under the Contract shall be given to the Contractor's Representative or, in his absence, its deputy, except as herein otherwise provided.
- (iv) The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Sub-Clause 6 (i).
- (v) The Contractor's Representative may, subject to the approval of the Employer (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Engineer-in-Charge.
- (vi) Any act or exercise by any person of powers, functions and authorities so delegated to him or her shall be deemed to be an act or exercise by the Contractor's Representative.

## **7. Laws governing the Contract**

This Contract shall be governed by the Indian laws for the time being in force. The Courts at Delhi shall have jurisdiction, in all matters unless otherwise stated in the SCC.

## **8. Settlement of Disputes**

### **8.1 Settlement of Disputes**

#### **8.1 Mutual Consultation**

If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, then the dispute may be settled through Expert Settlement Council / Arbitration / other remedies available under the applicable laws.

#### **8.2 Resolution of Dispute through Expert Settlement Council**

If the parties fail to resolve such a dispute or difference by mutual consultation, the dispute if the parties agree, may be referred to Conciliation in cases involving

disputed amount up to Rs 250 crores, which is to be arrived at considering the claim and counter claim of the parties to the dispute.

#### 8.2.1 Invitation for Conciliation:

8.2.1.1 A party shall notify the other party in writing about such a dispute it wishes to refer for Conciliation within a period of 30 days from the date of raising of the dispute in case of failure to resolve the same through mutual consultation. Such Invitation for Conciliation shall contain sufficient information as to the dispute to enable the other party to be fully informed as to the nature of the dispute, amount of the monetary claim, if any, and apparent cause of action.

8.2.1.2 Upon acceptance of the invitation to conciliate, the other party shall submit its counter claim, if any, within a period of 30 days from the date of the invitation to conciliate. If the other party rejects the invitation or disputed amount exceeds Rs 250 crores, there will be no Conciliation proceedings. There shall be no Conciliation where claim amount is only up to Rs 5 lakhs.

8.2.1.3 If the party initiating Conciliation does not receive a reply within thirty days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it shall treat this as a rejection of the invitation to conciliate from the other party.

#### 8.2.2 Conciliation:

8.2.2.1 Where Invitation for Conciliation has been furnished under GCC sub clause 8.2.1, the parties shall attempt to settle such dispute through Expert Settlement Council (ESC) which shall be constituted by CMD, NTPC.

8.2.2.2 ESC will be formed from experts comprising of three members from the panel of conciliators maintained by NTPC. However, there will be single member ESC for disputes involving claim and counter claim (if any) up to Rs. 1 crore. CMD will have authority to reconstitute an ESC to fill any vacancy.

8.2.2.3 The eligible persons for consideration for empanelment in the panel of conciliators shall be amongst Retired Civil Servants of Govt. of India not below the rank of Joint Secretary, Retired Judges, Retired Executive directors/Directors/ Chairman of any Maharatna / Navratna company in India other than NTPC Ltd, Retired Independent Directors who have served on the Board of any Maharatna / Navratna company in India other than NTPC Ltd and Independent experts in their respective fields preferably registered with the Indian Council of Arbitration or Delhi International Arbitration Centre or Federation of Indian Chambers of Commerce and Industry or SCOPE Arbitration Forum.

#### 8.2.3 Proceedings before ESC:

8.2.3.1 The claimant shall submit its statement of claims along with relevant documents to ESC members, and to the party(s) indicated in the appointment letter within 30 days of the issue of the appointment letter. The respondent shall file its reply and counter claim (if any) within 30 days of the receipt of the statement of claims. Parties may file their rejoinder/additional documents, if any in support of their claim/counterclaim within next 15 days. No documents shall be allowed thereafter, except with the permission of ESC.

8.2.3.2 The parties shall file their claim and counterclaim in the following format

- a. Chronology of the dispute
- b. Brief of the contract

- c. Brief history of the dispute
- d. Issues

Sl. No.	Description of Claims/ Counter claims	Amount (in foreign currency/INR)	Relevant Contract Clause

- e. Details of Claim(s)/Counter Claim(s)
- f. Basis/Ground of claim(s)/counter claim(s) (along with relevant clause of contract)

Note: Statement of claims shall be restricted to maximum limit of 20 pages.

- 8.2.3.3 In case of 3 members ESC, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. However, ESC recommendations will be signed by all the members.
- 8.2.3.4 The parties shall be represented by their in house employees. No party shall be allowed to bring any advocate or outside consultant/advisor/agent to contest on their behalf. Ex-officers of NTPC who have handled the subject matter in any capacity shall not be allowed to attend and present the case before ESC on behalf of contractor. However, ex-employees of parties may represent their respective organizations. Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till execution of settlement agreement, if so arrived. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking Conciliation till the date of ESC recommendations and 30 days thereafter in any further proceeding.
- 8.2.3.5 ESC will conclude its proceedings in maximum 10 meetings, and give its recommendations within 90 days of its first meeting. ESC will give its recommendations to both the parties recommending possible terms of settlement. CMD, NTPC may extend the time/number of meetings, in exceptional cases, if ESC requests for the same with sufficient reasons.
- 8.2.3.6 Depending upon the location of ESC members and the parties, the venue of the ESC meeting shall be either Delhi/Mumbai/Kolkata/Chennai or any other city whichever is most economical from the point of view of travel and stay etc. All the expenditure incurred in ESC proceedings shall be shared by the parties in equal proportion.
- 8.2.4 Fees & Facilities to the Members of the ESC

The cost of Conciliation proceedings including but not limited to fees for Conciliator, Airfare, Local transport, Accommodation, cost towards conference facility etc shall be as provided herein below:

S. No.	Fees/ Facility	Entitlement
1	Fees	As paid to NTPC Independent Directors [Presently Rs. 20,000 per meeting]. In addition each conciliator to be paid Rs. 10,000 for attending meeting to authenticate the settlement agreement - max. of Rs. 2,10,000 per case per Conciliator.

S. No.	Fees/ Facility	Entitlement
2	Secretarial expenses	Rs. 10,000 lump sum (to 1 member only).
3	Transportation in the city of the meeting	Car as per entitlement or Rs. 2,000 per day
4	Venue for meeting	NTPC conference rooms
Facilities to be provided to the out-stationed member		
5	Travel from the city of residence to the city of meeting	As per entitlement of Independent Directors. Executive class air tickets / first class AC train tickets/ Luxury car/ reimbursement of actual fare. However, entitlement of air travel by Business class shall be subject to austerity measures, if any, ordered by Govt of India.
6	Transport to and fro airport/ railway station in the city of residence	Car as per entitlement or Rs. 3,000
7	Stay for out stationed members	As per entitlement of Independent Directors.
8	Transport in the city of meeting	Car as per entitlement or Rs. 2000 per day

Aforesaid fees is subject to revision by NTPC from time to time and subject to government guidelines on austerity measures, if any. All the expenditure incurred in the ESC proceedings shall be shared by the parties in equal proportions. The Parties shall maintain the account of expenditure and present to the other for the purpose of sharing on conclusion of the ESC proceedings.

8.2.5 If decision of NTPC is acceptable to the contractor, a Settlement Agreement under section 73 of the Arbitration and Conciliation Act 1996 will be signed within 15 days of contractor's acceptance and same shall be authenticated by all the ESC members. Parties are free to terminate Conciliation proceedings at any stage as provided under the Arbitration and Conciliation Act 1996.

8.2.6 The parties shall keep confidential all matters relating to the Conciliation proceedings. Parties shall not rely upon them as evidence in arbitration proceedings or court proceedings.

### 8.3 Arbitration

8.3.1 If the process of mutual consultation and/or ESC fails to arrive at a settlement between the parties as mentioned at GCC Sub-Clauses 8.1 & 8.2 above, Employer or the Contractor may, within Thirty (30) days of such failure, give notice to the other party, with a copy for information to the ESC (as applicable), of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. The mechanism of settling the disputes through arbitration shall be applicable only in cases where the disputed amount (i.e. total amount of Claims excluding claims of interest) does not exceed Rs. 25 crores. In case the disputed amount exceeds Rs. 25 Crores, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party. There shall be no arbitration where the claim amount is only up to Rs. 5 lakhs.

The parties at the time of invocation of arbitration shall submit all the details of the claims and the counter-claims including the Heads/Sub-heads of the Claims/Counter-Claims and the documents relied upon by the parties for their respective claims and counter-claims. The parties shall not file any documents/details of the claims and counter-claims thereafter.

The claims and the counter claims raised by the parties at the time of invocation of the arbitration shall be final and binding on the parties and no further change shall be allowed in the same at any stage during arbitration under any circumstances whatsoever.

The parties to the contract shall invoke arbitration within Six months from the date of completion of the Facilities under the contract or the termination of the contract as the case may be and the parties shall not invoke arbitration later on after expiry of the said period of six months. The parties shall not invoke arbitration other than in the case of completion of the Facilities or the termination of the contract as mentioned above.

Notwithstanding the above, in case of disputes with Indian Contractor who is a Central Government Department /Enterprise /organisation or a State Level Public Enterprise (SLPE), the aforesaid limit of Rs 25 crores shall not be applicable and arbitration proceeding may be commenced irrespective of the amount involved in dispute if the dispute could not be resolved through Conciliation as brought out at GCC Sub Clause 8.2 above.

8.3.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Sub Clause 8.3.1, shall be finally settled by arbitration.

8.3.3 Any dispute raised by a party to arbitration shall be adjudicated by a Sole Arbitrator appointed by CMD, NTPC from the List of empanelled Arbitrators of NTPC in the following manner :-

- a) A party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days notice to the other party.
- b) If the Arbitrator so appointed dies, resigns, becomes incapacitated or withdraws for any reason from the proceedings, it shall be lawful for CMD, NTPC to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left.
- c) It is agreed between the parties that the Arbitration proceedings shall be conducted as per the provisions of Fast Track Procedure as provided under section 29B of the Arbitration and Conciliation Act, 1996 as amended.
- d) Arbitrator shall be paid fees at the following rates:

<b>Amount of Claims and Counter Claims (excluding interest)</b>	<b>Lump sum fees (including fees for study of pleadings, case material, writing of the award, secretarial charges etc.) to be shared equally by the parties.</b>
Upto Rs 50 lakhs	Rs. 10,000 per meeting subject to a ceiling of Rs. 1,00,000/-.
Above Rs 50 lakhs to Rs 1 crore	Rs. 1,35,000/- plus Rs. 1,800/- per lakh or a part there of subject to a ceiling of

<b>Amount of Claims and Counter Claims (excluding interest)</b>	<b>Lump sum fees (including fees for study of pleadings, case material, writing of the award, secretarial charges etc.) to be shared equally by the parties.</b>
	Rs. 2,25,000/-.
Above Rs. 1 crore and upto Rs. 5 Crores	Rs. 2,25,000/- plus Rs. 33,750 per crore or a part there of subject to a ceiling of Rs. 3,60,000/-.
Above Rs. 5 crores and upto Rs. 10 crores.	Rs. 3,60,000/- plus Rs. 22,500/- per crore or a part there of subject to a ceiling of Rs. 4,72,500/-.
Above Rs. 10 crores	Rs. 4,72,500 plus Rs. 18,000/- per crore or part thereof subject to a ceiling of Rs. 10,00,000/-.

If the claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee which may be used for determining the arbitration fee as brought out above.

- e) If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to Conciliation, the arbitrator shall put the proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrator shall be determined as under:
- (i) 40% of the fees if the Pleadings are complete.
  - (ii) 60% of the fees if the Hearing has commenced.
  - (iii) 80% of the fees if the Hearing is concluded but the Award is yet to be passed.
- f) Each party shall pay its share of arbitrator's fees in stages as under:
- (i) 40 % of the fees on Completion of Pleadings.
  - (ii) 40% of the fees on Conclusion of the Final Hearing.
  - (iii) 20% at the time when arbitrator notifies the date of final award.
- g) The Claimant shall be responsible for making all necessary arrangements for the travel/ stay of the Arbitrator including venue of arbitration, hearings. The parties shall share the expenses for the same equally.
- h) The Arbitration shall be held at Delhi only unless specified otherwise in the SCC.
- i) The Arbitrator shall give reasoned and speaking award and it shall be final and binding on the parties.
- j) Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof shall apply to the arbitration proceedings under this clause.
- 8.3.4 In case the Indian Contractor is a Central Government Department/ Enterprise/organisation or a State Level Public Enterprise (SLPE), the dispute arising between the Employer and the Contractor shall be referred for resolution to the

Permanent Machinery of Arbitrators (PMA) of the Department of Public Enterprises, Government of India as per Office Memorandum No. 4(1) 2011-DPE(PMA)-GL dated 12.06.2013 issued by Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises and its further modifications and amendments.

8.4 Notwithstanding any reference to the Conciliation or Arbitration herein,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree.
- (b) the Employer shall pay the Contractor any monies due to the Contractor.

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

### **9. Scope of Contract**

The Work to be carried out under the Contract shall be as delineated in Bidding Documents and shall, except as otherwise provided in these conditions, include all labour, materials, tools, plant, equipment, and transport which may be required in preparation of and for and in the full and entire execution and completion of the Works.

### **10. Notices to Local Bodies**

- 10.1 The Contractor shall comply with and give all notices required under any Governmental authority, instrument, rule or order made under any Act of Parliament, State Laws or any regulation or bye-laws of any local authority relating to the Works. He shall before making any variation from the Contract necessitated by such compliance give to the Engineer-in-Charge a written notice giving reasons for the proposed variation and obtain the Engineer-in-Charge's instructions thereon, in writing.
- 10.2 The Contractor shall pay and indemnify the Employer against any liability in respect of any fees or charges payable under any Act of Parliament, State laws or any Government instrument, rule or order and any regulations or bye-laws of any local authority in respect of the Works.

### **11. Human Resources**

- 11.1 The Contractor for the purpose of the Contract shall engage / employ adequate number of key personnel in all areas such as operation, maintenance, repair, testing, inspection, design / engineering (wherever applicable), planning, scheduling and construction and carrying out of all maintenance of his plant and equipment (as detailed in the SCC) and competent and skilled work force as directed by the Engineer-in-Charge. The Engineer-in-Charge will approve any proposed replacement of such key personnel including work force only if their qualifications, experience, competence and capabilities are substantially equal to or better than those personnel originally identified and approved by the Engineer-in-Charge.
- 11.2 The Engineer-in-Charge may require the Contractor to remove from Site of Works or from any other area of Work related to the Contract, any member of the Contractor personnel or work force who
  - (i) Persists in any misconduct or lack of care
  - (ii) Performs his duties incompetently or negligently or otherwise carelessly
  - (iii) Fails to conform with any provisions of the Contract or
  - (iv) Persists in any conduct which is prejudicial to the safety, health or protection of the Work and environment.

If appropriate, the Contractor shall appoint a suitable replacement within fourteen (14) days or within such period as may be agreed between the Engineer-in-Charge and Contractor.

11.3 The Contractor shall unless otherwise provided in the Contract, make his own arrangement for engagement of all staff and labour, local or otherwise and for their payment, housing, transport, lodging and welfare as may be required by law and or by industry practice. The Contractor shall provide the Engineer-in-Charge a return in detail in such form and at such intervals as he may reasonably prescribe showing the staff and number of the several classes of labour and other staff from time to time employed by the Contractor at Site or in connection with the Work along with such information as the Engineer-in-Charge may reasonably require.

#### 11.4 **Labour laws and Regulations and compliance thereof**

11.4.1 During the entire period of Contract, the Contractor and his Sub-Contractors shall, at all times abide by all existing labour enactments, rules made therein, regulations, notifications and bye-laws by the appropriate government, local authority or any other labour laws or notification that may be issued under any labour law prevailing as on the date seven (7) days prior to the date set for opening of the bids, published by the State or Central Government or Local Authorities.

During the entire period of Contract, the Contractor and his Sub-Contractors shall, at all times abide by the following Acts/Statutes related to Human Resources:

1. Factories Act, 1948;
2. Contract Labour (Regulation & Abolition) Act, 1970;
3. EPF & MP Act, 1952;
4. Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996;
5. ESI Act, 1948;
6. Minimum Wages Act, 1948;
7. Payment of Wages Act, 1936;
8. Payment of Bonus Act, 1965;
9. Payment of Gratuity Act, 1972;
10. Workmen's Compensation Act, 1923;
11. ID Act, 1947;
12. Maternity Benefit Act, 1961;
13. Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979;
14. Fatal Accidents Act, 1855
15. Model Welfare Code
16. The Building And Other Construction Workers' Welfare Cess Act, 1996
17. The Carriage by Road Act, 2007.

The above will deem to include all relevant/applicable rules made thereunder, regulations, notifications and bye laws of the State or Central Govt. or the local authority and any other labour law (including rules) regulations, bye laws as well as those that may be passed or notification that may be issued under any labour law present and in future either by State or Central Govt. or by local authority.

This list is not in any way exhaustive and shall not absolve the Contractor from any of his liabilities or responsibilities in compliance with any other laws, regulations, notifications that may be in force during the tenure of Contract.

11.4.2 The Contractor and his Sub-Contractors shall indemnify the Employer, from any action taken against the Employer by any competent authority in connection with the

enforcement of the applicable laws, regulations, notifications, on account of contravention of any of the provisions therein, including amendments thereto. If the Employer is caused to pay or otherwise made liable, such amounts as may be necessary for non-observance of the provisions stipulated in the laws, rules, notifications including amendments, if any on the part of the Contractor and/or his Sub-Contractors, the Engineer-in-Charge / Employer shall have the right to deduct any such money from any amount due to the Contractor including his performance security, under the Contract. The Employer shall also have the right to recover from the Contractor any sum required or estimated as required for making good any loss or damage suffered / likely to be suffered by the Employer, on this account.

- 11.4.3 If due to an enactment of any new Act or Statute and rules made thereunder or any modification to the Acts/Statute or rules made thereunder, all after seven (7) days prior to the date set for opening of bids and as a consequence thereof, the Contractor has to incur additional cost or expenditure, the same will be reimbursed by the Employer to the Contractor, excepting those due to reasons attributable to the Contractor and those being already compensated by other provisions of the Contract, like Price Adjustment, Taxes and Duties etc.
- 11.4.4 It is specifically agreed that the Contractor and his Sub-Contractors shall obtain all the necessary registration, licenses, permits, authorisations etc. required under various enactments / Regulations enforced from time to time, specifically registration as employer under Provident Fund Act and Contract Labour Regulation & Abolition Act, and the Employer shall not be liable for any violation by the Contractor in this regard.
- 11.4.5 The employees of the Contractor or his Sub-Contractor(s) shall in no case be treated as the employees of the Employer at any point of time.
- 11.4.6 The Contractor and his Sub-Contractors shall be liable to make all due payments to all their employees and ensure compliance with labour laws. If the Employer, is held liable as 'PRINCIPAL EMPLOYER' or otherwise to incur any expenditure or to make any contributions under any legislation of the Government or Court decision, in respect of the employees of the Contractor or his Sub-Contractors, then the Contractor would reimburse the amounts of such expenditure/contribution so made by the Employer.
- 11.4.7 The Contractor shall employ labour in sufficient numbers to maintain the required rate of progress and of quality to ensure workmanship of the degree specified in the contract and to the satisfaction of the Engineer-in-charge.
- 11.4.8 The contractor shall be liable to pay his contribution and the employees contribution to the State Insurance Scheme in respect of all labour employed by him for the execution of the contract, in accordance with the provision of "The Employees State Insurance Act, 1948" as amended from time to time. In case the contractor fails to submit full details of his account of labour employed and the contribution payable, the Engineer-in-charge shall recover from the running bills of Contractor an amount of contribution as assessed by him. The amount so recovered shall be adjusted against the actual contribution payable to Employees State Insurance.

However, in case the ESI act is not applicable to the area where the Work is executed, as evidenced by the Certificate/Letter submitted to this effect from the local authorities, the Contractor shall be liable to arrange and pay for the expenses towards the medical treatment in respect of all labour employed by him for the execution of the Contract.

- 11.4.9 Staff quarters & labour hutments at Site if available, may be provided to the Contractor on chargeable basis at the discretion of the Engineer-in-Charge on mutually agreed terms and conditions.

#### 11.4.10 **Safety**

The Contractor, including his sub-contractors, while executing the Works, will strictly comply with the statutory requirements (including amendments thereof), as applicable, in respect of safety of his employees, equipment and materials as well as employees, equipment and materials of employer / other contractor / agencies. The contractor will also comply with the provisions of NTPC Safety Rules as issued from time to time and displayed on NTPC's tender website <http://www.ntpctender.com>.. The detailed requirements to be complied by the Contractor with regard to the safety of his personnel, equipment and materials are enumerated in the Technical Specifications.

#### **12. Shift Work**

- 12.1 To achieve the required rate of progress in order to complete the Works within the Time for Completion, the Contractor may carry on the work, round the clock, in multiple shifts per day, as may be necessary. The Contractor shall however be responsible for complying with all applicable laws in this regard.
- 12.2 No additional payment will be made on account of round the clock working in multiple shifts.
- 12.3 Wherever the work is carried out at night adequate lighting of working areas and access routes for pedestrians or vehicles shall be provided by the Contractor at his cost. Sufficient notice should be given by the Contractor to the Engineer-in-Charge regarding the details of works in shifts so that necessary supervision could be provided.

#### **13. Cooperation with other Contractors/ Agencies**

- 13.1 The Contractor shall extend all reasonable cooperation to other Contractors, agencies etc. of the Employer engaged in connection with the Work or any other Work not in the scope of this Work as may be required by the Engineer-in-Charge.
- 13.2 The Contractor shall attend at his cost, all the meetings with the Engineer-in-Charge, other contractors and the Consultants of the Employer for the purposes of the Contract. The Contractor shall attend such meetings as and when required by the Engineer-in-Charge.

#### **14. Security Watch and Lighting**

The Contractor shall provide and maintain at his own expense all lights, guards, fencing and watching when and where necessary or required by the Engineer-in-Charge for the protection of the Works or for the safety and convenience of those employed on the Works or the public.

#### **15. Prevention of Pollution**

The Contractor shall make necessary arrangement to prevent pollution. of the water in any adjacent water bodies including stream, springs, nallah, river and lakes etc. The Contractor shall be solely responsible and liable for all damage caused by any pollution that may take place during the execution of the Work.

#### **16. Training of Apprentices**

The Contractor shall during the currency of the Contract when called upon by the Engineer-in-Charge engage and also ensure engagement by Sub-Contractors

employed by the Contractor in connection with the Works, such number of Apprentices in the categories and for such periods as may be reasonably required by the Engineer-in-Charge. The Contractor shall train them as required under the Apprentices Act, 1961 and shall be responsible for all obligations of the Employer under the Act including the liability to make payment to apprentices as required under the Act.

## **17. Handing over of Site**

- 17.1 The Employer shall make available the Site to the Contractor as soon as possible after the award of the Contract free of encumbrance. The Contractor shall not be permitted to enter on (other than for inspection purposes) or take possession of the Site until instructed to do so by the Engineer-in-Charge in writing.
- 17.2 The Employer reserves the right to hand over the Site in parts progressively to the Contractor. The Contractor will be required to take possession of the Site without any undue delay and do Work on the released fronts in parts without any reservation whatsoever.
- 17.3 However, in case of any delay in handing over of the Site to the Contractor, which delays the performance of the Work, commensurate to the resources mobilised by the Contractor, then the Contractor will be eligible for suitable extension in time for completion of the Works or any other compensation as per the provisions of GCC Sub-Clause 25.6.
- 17.4 The portion of the Site to be occupied by the Contractor shall be indicated by the Engineer-in-Charge at Site and the Contractor shall on no account be allowed to extend his operations beyond these areas. Further, the Contractor shall not hinder in any way the working of other contractors on the Site.
- 17.5 The Contractor shall plan his work as per space available. The Contractor shall make his own arrangement for movement of men, machinery, other equipment etc. required for carrying out the Works included under this Contract
- 17.6 The Contractor shall provide, if necessary, all temporary access to the Work Site and shall alter, adapt and maintain the same as required from time to time and shall take up and clear them away as and when no longer required and, as and when ordered by the Engineer-in-Charge and make good all damage done to the Site.
- 17.7 The Contractor shall be permitted the usage of facilities like stair case, lifts etc. of the Employer for the purposes of the Contract. If any damage is done to the facilities by the Contractor, the same shall be made good by the Contractor at his own cost, but as may be directed by the Engineer-in-Charge.

## **18. Duties and Powers of Engineer-in-Charge and his representatives**

- 18.1 The Engineer-in-Charge shall have the full powers in respect of all the matters in connection with or arising out of this Contract, excepting those specifically reserved for the Employer. However, the Engineer-in-Charge shall not have any power to relieve the Contractor of any of his obligations and responsibilities under the Contract.
- 18.2 The duties of the representative of the Engineer-in-Charge are to watch and supervise the Works and to test and examine any materials to be used or workmanship employed in connection with the Works. He shall have no authority to order any work involving any extra payment by the Employer nor to make any variation in the Works, creating a financial liability to the Employer.

- 18.3 The Engineer-in-Charge may from time to time in writing delegate to his representative any of the powers and authorities vested in the Engineer-in-Charge and shall furnish to the Contractor a copy of all such written delegation of powers and authorities. Any written instruction or written approval given by the representative of the Engineer-in-Charge to the Contractor within the terms of such delegation shall bind the Contractor and the Engineer-in-Charge as though it has been given by the Engineer-in-Charge.
- 18.4 Failure of the Representative of the Engineer-in Charge to disapprove any work or materials shall not prejudice the power of the Engineer-in-Charge thereafter to disapprove such Work or materials and to order the pulling down, removal or breaking up thereof.
- 18.5 If the Contractor shall be dissatisfied with any decision of the representative of the Engineer-in-Charge he shall be entitled to refer the matter to the Engineer-in-Charge who shall there-upon confirm, reverse or vary such decision.

## **C. Payment**

### **19. Security Deposit**

- 19.1.1 The Contractor shall provide a Security Deposit in the amount equivalent to 10% (ten percent) of the contract value. The Security Deposit shall be held by the Employer as security for the due performance of the Contractor's obligations under the Contract.
- 19.1.2 The Bid security/Earnest money deposit furnished by the Contractor will be treated as part of the security deposit. However, if the earnest money deposit is in the form of a bank guarantee, the Contractor will be required to replace it with initial security deposit of equivalent value in one of the forms given here-in-after, within 30 days of issue of Letter of Award/Service Purchase Order. This shall be subject to adjustment while deducting security deposit from the first on account payment.

Further, the Employer at the time of making payment deduct security deposit at the rate of 10 per cent of gross amount of each on account payment until the security deposit so deducted reaches the values mentioned above.. The deductions for the retention of money(ies) will be stopped after the security deposit limit of 10% (ten percent) of the Total Contract Value is reached, unless otherwise required in terms of clause 19.1.3.

The earnest money furnished by the Contractor shall be returned / refunded to him after receipt of the aforesaid bank guarantee and after verification of aforesaid bank guarantee from the issuing bank.

- 19.1.3 The Contractor may, at any time and from time to time, during the course of or after completion of the work, with the permission of the Employer, substitute his cash security deposit, including retention money(ies) deducted from his bills and lying with the Employer, by Bank Guarantee(s) in the prescribed proforma from a Bank acceptable to the Employer and withdraw the equivalent cash amount(s), provided the amount covered by any such Bank Guarantee is not less than Rs.1 lakh (Rupees One lakh only).

If at any time during the course of the work, the gross value of the work, as reflected by the Running Bills submitted by the Contractor has in the opinion of the Employer (which shall be final and binding on the Contractor), exceeded or is likely to exceed the Total Contract Value indicated in the acceptance of Tender, the Contractor shall be bound to pay further Security Deposit as will make up the total Security Deposit to 10%(ten percent) of the then anticipated Contract Value in any of the forms mentioned above failing which the Employer shall be at liberty to make

such deductions towards Security Deposit from the Contractor's Running Bills, and will, at all times, ensure that the Security Deposit does not fall below 10% (ten percent) of the gross value of the work, as reflected by the gross payments made to the Contractor, without taking into account any deductions. If the shortfall in Security Deposit is discovered after completion of the work, the shortfall shall be made good by the Contractor on demand from the Employer, failing which, it will be recovered from any money(ies) due to the Contractor from the Employer under this contract or any other contract with the Corporation.

19.1.4 The Contractor, if he so desires, can also furnish a full Security Deposit of 10% (ten percent) of the Total Contract Value towards faithful performance of the Contract, in one or more of the following modes:

- a) by Demand draft/Pay Order/Bankers Cheque drawn in favour of "NTPC Ltd." payable at place mentioned in SCC (Cheques shall not be accepted) or any other mode specified in SCC.
- b) If the Earnest Money Deposit has been made by Demand Draft, the Contractor may be permitted to adjust the same towards part of the Initial Security Deposit and pay the balance in the manner stipulated at (a) above.
- c) By Bank Guarantee(s) in the prescribed form as included in the Tender Documents, from a Bank in India acceptable to the Employer, provided the amount covered by such Bank Guarantee is not less than Rs.1,00,000/- (Rupees One Lakh only). The format of the said bank guarantee shall be in accordance with the format included in the Section VII (Forms and Procedures). This bank guarantee shall have an initial validity upto ninety (90) days beyond the completion of Defect Liability Period of the Contract. However, in case the date of completion of defects liability period gets extended, the validity of the Security Deposit shall be extended by the period of extension of completion of defects liability.
- d) Any other mode specified in the SCC/ITB.

19.1.5 If after completion of the work, the Total Contract Value falls below the Total Contract Value as indicated in the Letter of Award/Service Purchase Order/Acceptance of tender, such that the total Security Deposit in the hands of the Employer is in excess of the Total Security Deposit calculated at 10% (ten percent) of the reduced contract value, such excess amount, as is in the form of cash in the hands of the Employer, shall be refunded to the Contractor along with the Final Bill.

If the Security Deposit furnished by the Contractor to the Employer in the form of Bank Guarantees, the Contractor shall be permitted to replace the Bank Guarantee(s) already submitted, by Bank Guarantee(s) to cover the reduced value of Security Deposit, at the time of final bill.

19.1.6 The Contractor shall from time to time at the request of the Employer suitably extend the validity of any Bank Guarantee (whether furnished by way of Initial Security Deposit or Security Deposit) for such period(s) as may from time to time be required by the Employer failing which, without prejudice to any other right or remedy available to the Employer, the Employer shall be entitled to encash the Bank Guarantee.

19.2 The Engineer-in-Charge shall release/refund one half (50%) of the Security deposit refundable to the Contractor on completion of work. The Contractor shall alongwith his request submit the following:

- (i) Work completion certificate in terms of GCC clause 43
- (ii) Reconciliation of free issue material, if any.
- (iii) Reconciliation of Statutory requirements of PF, ESI etc. as applicable,

- (iv) Submission of "Certificate Regarding Labour Payments and Statutory Requirements"

The Contractor shall have to provide any other declaration forms required to be submitted.

The Engineer-in-Charge shall on demand from the Contractor release the balance security deposit on expiry of the Defects Liability Period or on payment of the amount of the Final Bill payable, whichever is later, provided the Engineer-in-Charge is satisfied that there is no demand outstanding against the Contractor, arising out of the Contract. The Contractor shall have to provide necessary declaration forms.

- 19.3 No interest shall be payable to the Contractor against the Security Deposit furnished/recovered by way of deductions from running account payments from the Contractor, by the Employer.

## **20. Payment on Account/Progressive Interim Payments**

Unless otherwise specified in the SCC, payment to the Contractor shall be released as per the provisions made herein below.

- 20.1 Bills for progressive payments shall be submitted by the Contractor on monthly basis on or before the date fixed by the Engineer-in-Charge for the Work executed during the preceding period. The Engineer-in-Charge shall then arrange to have the bill verified for payment. The Contractor is to submit all related documents with the bill to EIC as applicable like PF deposit receipt, ESI deposit receipt, Labour payment receipts, Insurance Cover (as per provisions given else where in the GCC). However, for the first RA bill PF and ESI deposit receipt copy shall not be insisted upon.
- 20.2 The progressive payment shall be released after certification by Employer's Field Quality Assurance Department (as applicable), that the Works have been performed in accordance with the Technical Specifications and also upon authorisation for the payment by the Engineer-in-Charge. However, the release of first progressive interim payment shall also be subject to submission of documentary evidence by the Contractor towards having taken the insurance policy(ies) in terms of relevant provisions of GCC Clause entitled 'Contractor's Liability and Insurance' and acceptance of the same by Engineer-in-Charge.
- 20.3 (i) In case of part acceptance of the Work, the Engineer-in-Charge shall have the right to release payment for that part of the Work.
- (ii) Acceptance of the Work without fulfilling all the obligations mentioned under rates and measurement in Technical Specifications shall be considered as part acceptance of Work.
- 20.4 The Contractor shall submit his bill, by the date stipulated by the Engineer-in-Charge, in the prescribed proforma, supported with measurements, jointly acknowledged and accepted in the measurement books. Payments of the Contractor's bill shall be paid by the Employer within twenty-one (21) days from the date of submission of complete bill subject to the authorisation of the Engineer-in-Charge.

Alternatively, if so desired by the Contractor, after preliminary scrutiny and certification by the Engineer-in-Charge, 75% of the certified net payable amount shall be made by the Employer within seven (7) days. The amount certified shall account for all deductions, including statutory deductions as for GST, income tax, etc., recoveries for advances and any other amounts due from the Contractor. The balance 25% shall be paid within twenty-one (21) days, from the date of submission

of the said bill. Such payments made by the Employer shall not constitute any acceptance of the measurements of items of the Works by the Employer and the Engineer-in-Charge shall have the right to alter, modify, reduce or diminish the quantities or classification entered in the Measurement Books or Bills. The Employer shall have right to recover any amount paid in an earlier bill from any subsequent bill and should the amount to be recovered be more than the amount of the subsequent bill, the Contractor shall on demand from the Engineer-in-Charge or Employer immediately refund the extra amount to the Employer within seven(7) days. Wherever technically feasible, the payments shall be released electronically only as per details of bank account indicated in the Contract.

20.5 Any interim certificate given relating to Work done or materials delivered, may be modified or corrected by any subsequent interim certificate or by the final certificate. No certificate of the Engineer-in-Charge supporting an interim payment shall itself be conclusive evidence that any Work or materials to which it relates is/are in accordance with the Contract.

20.6 In case of the delayed Work beyond the scheduled completion period, pending consideration of extension of time of completion if it had been requested by the Contractor, interim payments shall continue to be made as herein above provided.

## **21. Contract Price**

The Contract price shall remain **FIRM** through out the contract period and will be NOT be subject to adjustment for price escalation during the performance of the Contract until unless specified otherwise in the SCC.

## **22. GST, Taxes, Duties, Levies etc.**

22.1 "Goods and Services Tax" or "GST" means taxes or cess levied under the Central Goods and Services Tax Act, Integrated Goods and Services Tax Act, Goods and Services Tax (Compensation to States) Act and various State/Union Territory Goods and Services Tax Laws and applicable cesses, if any under the laws in force (hereinafter referred to as relevant GST Laws), which shall be fully complied with by the Supplier of Services ie Contractor.

22.2 Except as otherwise specifically provided in the Contract, the Contractor shall be liable and responsible for the payment of all GST and any other taxes, duties, levies and charges imposed on the Contractor, its Sub-Contractors and those imposed on the Contractor's equipment, materials, supplies and services to be used in the performance of the Contract or furnished under the Contract.

22.3 The Contractor shall be responsible for payment of any tax levied on the 'Works Contract' in accordance with the applicable GST Law or Notification(s) by the State or Central Government or other authorities and rules made thereunder including amendments, if any.

The Contract Price shall be exclusive of GST and all other taxes, duties applicable as per the rates prevailing as on seven (7) days prior to the date of bid opening.

However, the Contract Price shall be inclusive of any Seigniorage Fee or Royalties or cess or other charges payable on the quarried or mined metal, minerals or minor minerals, as the case may be, at the rate(s) prevailing within seven (7) days prior to the date of bid opening.

The rate of GST and all other taxes & duties applicable shall be quoted under relevant heading in the MS Excel Bill of Quantity and in case RCM is applicable on any supplies same shall be specified in Attachment 9 of Forms & Procedures (Section VII).

- 22.4 Where Employer as a service receiver is liable to pay GST under Reverse Charge Mechanism (RCM), GST applicable shall be paid by Employer.
- In case of services covered under Reverse Charge Mechanism, for evaluation the bid of contractor shall be cost compensated as per the GST rate applicable as per GST Law.
- Bidder must indicate the value of supplies covered under RCM in his bid in Attachment 9 of Forms & Procedures (Section VII).
- In case RCM is applicable on any Supply and the Supply with value has not been specified by the Bidder in Attachment 9 of Forms & Procedures (Section VII), RCM paid by Employer shall be to Bidders account.
- In case GST is applicable on free issue material, the Bidder must indicate the same in Attachment 9 of Forms & Procedures (Section VII). In case the same has not been specified by the Bidder in Attachment 9 of Forms & Procedures (Section VII), GST paid by Employer shall be to Bidder's account.
- GST component will be deposited with the concerned authorities by the Employer.
- 22.5 In case of bids received from unregistered dealers, for evaluation their bid shall be cost compensated as per the GST rate applicable in view of Reverse Charge Mechanism (RCM) as per GST Law.
- Bidder who does not indicate their GST number in the bid in Attachment 8 shall be considered as unregistered dealer.
- GST component will be deposited with the concerned authorities by the Employer.
- 22.6 Contractor shall obtain a registration certificate as a dealer under the GST Law, if applicable, and other law(s) relating to levy of tax, duty, cess etc. and necessary evidence to this effect shall be furnished by the Contractor to the Employer prior to raising of invoice/bill of supply under GST.
- The Contractor shall be required to submit the GSTIN, if applicable and PAN details to the Engineer-in-Charge before the submission of the first bill/ invoice under the Contract.
- 22.7 Notwithstanding anything to contrary contained in the Contract, the Contractor's right to payment under the Contract is subject to issuance of valid tax invoice/bill of supply as the case may be, payment of applicable GST to the credit of appropriate Government and submission of valid particulars of tax invoice under GST returns in accordance with GST Law.
- 22.8 Employer shall deduct GST at source at the applicable rates in case transactions under the Contract are liable to GST deduction at source.
- 22.9 Unless expressly stated otherwise, a common mechanism for reconciliation of input credit mismatch, to be followed by both NTPC and Supplier, shall be mutually agreed so that both parties follow the same procedure for disclosing the transactions in their respective returns. Notwithstanding anything in the Contract, penalty / damages shall be recovered in case the Contractor makes a default in following the agreed procedure.
- 22.10 The Contractor shall issue tax invoices/bill of supply as applicable, file appropriate returns, and deposit the applicable GST to the account of appropriate government within the time limit prescribed under the GST Law. In the event of any default, Supplier shall be liable to pay the amount which may be imposed on NTPC due to such default.
- 22.11 Provisions of GST law in respect of Related Persons/Parties may appropriately be taken into

consideration by Bidders while submitting the bid.

- 22.12 If a new tax, duty or levy is imposed under statute or law in India after the date seven (7) days prior to date of bid opening and the Contractor becomes liable there under to pay and actually pays the said new tax, duty or levy for bonafide use on the Works contracted, the same shall be reimbursed to the Contractor against documentary evidence of proof of payment, provided that the amount thus claimed is not paid/payable under price variation provision of the Contract.

In case of any variation in the rate of existing taxes & duties, an equitable amount shall be payable to/recoverable from the Contractor to fully take into account any such change on production of satisfactory documentary evidence.

In case of variation in the rate of Seigniorage Fee or royalties during the period of contract, an equitable amount shall be payable to/recoverable from the Contractor, upon the submission of satisfactory documentary evidence.

- 22.13 The payment/reimbursement of statutory variations in the rates of tax and/or of new tax, duty or levy imposed under statute or law in India as above, would be restricted only to direct transactions between the Employer and the Contractor.

- 22.14 The Employer shall make necessary tax deductions under Income Tax Act or any other laws, if applicable.

- 22.15 The Contractor shall himself be informed of all the applicable laws, notifications, rules, circulars and other communications of the State or Central or other authorities with regard to levy of any tax, duty, cess, levy or fee etc, which in any manner may impinge upon him in performance of any obligations/responsibilities under or arising out of the Contract.

- 22.16 Contractor should comply with the provisions of e-way bill notified by appropriate authorities from time to time. The existing provisions regarding road permit will continue till such time if applicable.

### 23. **Overpayments and Underpayments**

- 23.1 Wherever any claim for the payment of a sum of money to the Employer arises out of or under this Contract against the Contractor, the Contractor upon demand by the Employer or by the Engineer-in-Charge on behalf of the Employer, with explanation of the reasons for such a sum/ claim becoming due, shall forthwith pay the same to the Employer. If the Contractor fails to do so within twenty-one(21) days of such a claim, then the same may be deducted by the Employer from any sum then due or which at any time thereafter may become due to the Contractor under this Contract or from any other sum due to the Contractor from the Employer which may be available with the Employer or from his security deposit.

- 23.2 The Employer reserves the right to carry out post payment audit and technical examination of the final bill including all supporting vouchers, abstracts, etc. The Employer further reserves the right to enforce and recover any overpayment when detected, notwithstanding the fact that the amount of the final bill may include any item which is under dispute between the parties and referred to for settlement under GCC Clause entitled 'Settlement of Disputes' and notwithstanding the fact that the amount of the final bill figures in the arbitration decision/award.

- 23.3 If as a result of such audit and technical examination, any overpayment is discovered in respect of any Work done by the Contractor or alleged to have been done by him under the Contract, it shall be recovered by the Employer from the Contractor by any or all of the methods prescribed above. Similarly if any underpayment is discovered by the Employer, the amount shall be duly paid to the Contractor by the Employer forthwith.

- 23.4 Provided that the aforesaid right of the Employer to adjust overpayments against

amounts due to the Contractor under any other Contract with the Employer shall not extend beyond the period of two years from the date of payment of the final bill or in case the final bill is a minus bill, from the date the amount payable by the Contractor under the minus final bill is communicated to the Contractor.

23.5 Any amount due to the Contractor under this Contract for underpayment may also be adjusted against any amount then due or which may at any time thereafter become due from the Employer to the Contractor under any other Contract or account whatsoever.

**24. Time Limit for submission & payment of Final Bill and waiver of rights of all claims**

24.1 The final bill shall be submitted by the Contractor within one (1) month of physical completion of the Works unless otherwise a longer period is agreed to between the Engineer-in-Charge and the Contractor. No further claims shall be made by the Contractor after submission of the final bill and these shall be deemed to have been waived and extinguished. Payment of the final bill will be made within two (2) months of receipt of the same.

**24.2 MODE OF PAYMENT**

24.2.1 Wherever technically feasible, the payments shall be released electronically only as per details of bank account indicated in the EFT Form by the Contractor duly certified by the Bank alongwith cancelled cheque. The Contractor shall hold the Employer harmless and Employer shall not be liable for direct, indirect or consequential loss or damage sustained by the Contractor on account of any error in the information or change in bank details provided to the Employer in the prescribed form without intimation to Employer duly acknowledged.

24.2.2 If the payment due to the Contractor is made by the Employer by crossed account payee cheque, the same shall be forwarded to the address given in the Service Purchase Order/Contract Agreement.

**D. Execution of Facilities**

**25. Work Commencement, Execution & Delays, Time extension, Liquidated Damage(LD)**

**25.1 Commencement of Works**

The execution of the Works shall commence from the date of award unless specified otherwise in the Contract.

**25.2 Time for Completion**

The entire scope of Work covered under this Contract shall be completed within the time stated in SCC or within such extended time granted to the Contractor by the Employer under the provisions of GCC Sub-Clause 25.4. The time allowed for execution of the Works as specified in the SCC or the extended time in accordance with these Conditions shall be the essence of the Contract.

**25.3 Work Progress**

25.3.1 Unless already incorporated in the Letter of Award/Service Purchase Order, as soon as possible after the Contract is awarded, the Engineer-in-Charge and the Contractor shall agree upon a Work Schedule which will become the Contract Work Schedule. The Work Schedule shall be prepared in direct relation to the time stated in the Contract documents for the completion of the Works. The Work Schedule shall

indicate the forecast of the dates of commencement and completion of various trades or sections of work.

25.3.2 All the Contractor's activities shall be performed and completed strictly in accordance with the agreed Work Schedule and to achieve the targets, the Contractor shall have to plan adequate mobilisation of all resources. The Engineer-in-Charge, shall however, have the right to review the progress and modify the sequence of carrying out the Work suiting the Site conditions and the Contractor shall be required to comply with such modifications and complete his activities in accordance thereof without any extra cost to the Employer.

### 25.3.3 **Progress Review Meetings**

The Contractor shall attend all periodic progress review meetings organized by the Engineer-in-Charge or his authorized representative. The deliberations in the meetings shall interalia include the scheduled program, progress of work achieved (including details of manpower, tools and plants deployed by the Contractor vis-a-vis agreed Work Schedule), inputs to be provided by Employer, delays, if any and recovery programme, specific hindrances to the Work and work instructions by Engineer-in-Charge. The minutes of such meetings shall be recorded in a register. These recordings shall be jointly signed by the Engineer-in-Charge or his authorized representatives and the Contractor and a copy of the signed records shall be handed over to the Contractor.

### 25.4 **Extension of Time for Completion**

25.4.1 The Time for Completion specified shall be extended if the Contractor is delayed or impeded in the performance of any of the obligations under the Contract by reason of any of the following:

- a) any occurrence of Force majeure as provided in GCC Clause entitled 'Force Majeure', or
- b) Work Schedules for beyond deviation limits & Extra Items as provided in GCC Sub-Clause 45.5, or
- c) any default or breach of the Contract by the Employer, or delay on the part of other contractors engaged by the Employer in executing work not forming part of this Contract, or
- d) any suspension order given by the Employer under GCC Sub-Clauses 46.1 (ii) and 46.1 (iii), or
- e) Any other sufficient cause which, in the opinion of the Engineer-in-Charge, is beyond the Contractor's reasonable control;

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

25.4.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Employer a notice in writing of a claim for an extension of the Time for Completion, together with particulars of the event(s) or circumstance(s) justifying such extension as soon as reasonably practicable, but no later than fourteen (14) days after the commencement of such event or circumstance. As soon as reasonably practicable, after the receipt of such notice and supporting particulars of the claim, the Employer shall give a fair and reasonable extension of time for completion of Work. Such extension shall be communicated to the Contractor by the Engineer-in-Charge in writing, within thirty (30) days of the date of receipt of such request by the Engineer-in-Charge.

25.4.3 The Contractor shall at all times use his reasonable efforts to minimise any delay in

the performance of his obligations under the Contract.

- 25.4.4 The compensations, if any, payable to the Contractor on account of any one or more of the above reasons of delay have been separately dealt with under relevant provisions of the Contract.

## 25.5 **Liquidated Damages for Delay**

- 25.5.1 If the Contractor fails to complete the Work on or before the scheduled or extended date of completion as per GCC Sub-Clauses 25.2 and 25.4, he shall, without prejudice to any other right or remedy of the Employer, arising out of the Contract on account of such delay, be liable for payment of liquidated damages@ ½ percent per week, not as penalty, on the Contract Value of the Work for every week that the progress remains below the required progress or that the Work remains incomplete subject to a maximum of 5% of the Contract Value.

In case of amendment in the contract value, the limiting value of the Liquidated damages shall be 5% of the amended Contract Value.

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 Corporation.

- 25.5.2 The following documents shall form the principal basis for consideration of Extension of Time for Completion pursuant to GCC Sub-Clause 25.4 with or without Liquidated Damages and determining the compensation amount pursuant to GCC Sub-Clause 25.5.

1. The joint recordings in the periodic meeting register,
2. Written notices issued by the Employer and/or the Engineer-in-Charge or his authorized representative to the Contractor in the relevant period.
3. Written requests/ notices by the Contractor to Employer/ Engineer-in-Charge in the relevant period.

## 25.6 **Delays by Employer or his Authorised Representative**

- 25.6.1 In case the Contractor's performance is delayed due to any act of omission on the part of the Employer or his authorised representative, then the Contractor shall be given appropriate extension of time for the completion of the Works, to the extent such omission on the part of the Employer 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-in-Charge shall be final.

- 25.6.2 If such delays by the Employer have resulted in any increase in the cost to the Contractor, the Contractor shall be eligible to claim demonstrable and reasonable costs supported by full details of such increased costs incurred by him with all documentary evidence. The Employer shall examine the justification for such a request for claim and if satisfied, the extent of compensation shall be mutually agreed depending upon the circumstances at the time of such an occurrence.

## 26. **Sub Contracts**

- 26.1 After the award of the Contract, the Contractor shall not subcontract the Works/ any part of the Works without the prior written consent of the Engineer-in-Charge. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Sub-

Contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor.

Provided that the Contractor shall not be required to obtain such consent for:

- a) the provision of labour,
- b) the purchase of materials which are in accordance with the standards specified in the Contract, or
- c) the subcontracting of any part of the Works for which the sub-contractor is named in the Contract.

In the event of the Contractor proposing a sub-contractor for any part of the Works after the award of the Contract, he shall be required to take approval from the Engineer-in-Charge. The Contractor will then submit the requisite credentials of the agency(ies) he proposes to engage. The details so furnished by the Contractor shall be reviewed by the Employer. In case the agency(ies) proposed by the Contractor for the subcontracting are not considered acceptable, the Contractor will be required to furnish credentials of alternate agency(ies) for approval of Engineer-in-Charge. Based on the review and assessment, the agency(ies) shall be approved by the Engineer-in-Charge within fifteen (15) days of furnishing of credentials by the Contractor.

- 26.2 Where a list of approved agencies for a sub-contracting work is provided in the Contract, the Contractor shall inform the name of the sub-contractor selected by him within a period as agreed with the Engineer-in-Charge, however not later than fourteen (14) days of the date of such selection.

## **27. Setting out the Works**

The Engineer-in-Charge shall supply Scope of work, technical requirements, dimensional drawings, levels and other information necessary to enable the Contractor to set out the Works and the Contractor shall set out the Works and be responsible for the accuracy of the same. He shall amend at his own cost and to the satisfaction of the Engineer-in-Charge any error found at any stage which may arise through inaccurate setting out. The Contractor shall protect and preserve all bench marks used in setting out the Works till date of submission of final bill under the Contract, unless the Engineer-in-Charge directs otherwise.

## **28. Methodology of Execution & Equipment Mobilisation**

- 28.1 Methodology of execution and the work plan adopted by Contractor shall match the methodology/requirements specified in Technical Specifications.
- 28.2 The suggested minimum plant & equipment and machinery to be deployed by the Contractor for the execution of Work shall be as given in Technical Specifications.
- 28.3 The Contractor shall arrange at his own expense all tools, plant and equipment (hereinafter referred to as T & P) and crane required for execution of the Work, except as otherwise specified in SCC at rates and on terms specified therein.
- 28.4. The Contractor shall arrange at his own expense all tools, plant and equipment including Crane(s) (hereinafter referred to as T&P) required for execution of the work.
- 28.4.1 If the Contractor requires any item of T&P on hire from the Corporation, the corporation will, if such item is available, hire it to the Contractor at an hourly rate to be fixed by the Engineer-in-Charge.

- 28.4.2 The T&P shall be given to the Contractor on hire by the Corporation for a period of one hour or its multiple thereof. In case the T&P is hired by the Contractor for a period of four hours or less, the hire charges applicable for a minimum period of four hours shall be recovered from the Contractor's bills. In case the T&P is hired by the Contractor for a period exceeding four hours, the hire charges shall be calculated based on the charges applicable as per hourly rate. The hire charges in respect of T&P given on hire to the Contractor by the Corporation shall be recovered from the Contractor's bills.
- 28.4.3 For accounting purpose, total working hours shall be considered to be the period between time of placement of T&P to the Contractor at the requested location and time of release of the same. This shall be logged in Record Book on daily basis and shall be signed between Contractor/ Subcontractor and the Engineer-in-charge or his authorised representative. In case the T&P issued to the Contractor is not owned by the Corporation but hired from another agency, the authorised representative of the agency providing the T&P will also sign the said Record Book. In case the Contractor contests correctness of any entry and/or fails to sign the Record Book the decision of the Engineer-in-Charge shall be final and binding on him. Hire charges shall be calculated in accordance with the entries in the Record Book.
- 28.4.4 The Contractor will be exempted from levy of any charges for the number of days he is called upon in writing by the Engineer-in-Charge to suspend execution of the work, provided Corporation's T&P/T&P hired by the Corporation in question has, in fact, remained idle with the Contractor because of the suspension, provided the Contractor, in case the period of suspension exceeds 11 days, returns Corporation's T&P/T&P hired by the Corporation to the place from where it was issued.
- 28.5.1 **T&P owned by Corporation**
- The hire charges shall be as per NTPC guidelines and are to be borne by the Contractor. The Contractor shall permit the Engineer-in-Charge to carry out periodical maintenance of Corporation's T&P in accordance with the provision there for in the aforesaid Schedule, and there will be no deduction in hire charges for the period spent on such maintenance.
- However, the Contractor shall be allowed to return the tools and plants (issued by the Corporation) for purposes of repairs and for the duration of such repairs no hire charges shall, be levied.
- The Contractor shall be responsible for care and custody of Corporation's T&P (including employment of chowkidars) during the period Corporation's T&P remain with him and any damage (fair wear and tear excepted) to any of the equipment (except for Excepted Risks provided always the Contractor has taken precautions necessary to protect it from such risks) shall be made good at the Contractor's expense to the satisfaction of the Engineer-in-Charge unless such damage is caused because of negligence of crew provided by the Corporation.
- 28.5.2 **T&P hired by the Corporation**
- The hourly hiring rate for T&P hired by the Corporation from another agency and issued to Contractor shall be all inclusive rate including the cost of hiring, operation & maintenance charges, fuel charges and other charges.
- 28.6 The Corporation gives no guarantee in respect of output of T&P hired to the Contractor and no reduction in rates or any compensation shall be allowed on the ground that out turn or performance of Corporation's T&P/T&P hired by the Corporation was not to the Contractor's expectation.
- 28.7 The T&P hired to the Contractor shall be returned at the place of issue by the Contractor to the Engineer-in-Charge (unless otherwise directed) on execution of the work or section of the work at the end of the day. In case the T&P is used by the Contractor in continuation of previous requisition and the crane has not moved out of

his work area, then the movement of crane for fresh requisition(s) by the Contractor within his work area shall be to the Contractor's account.

- 28.8 The Corporation shall be entitled to terminate the hire without assigning any reason whatsoever and the Contractor shall have no claim to any payment of compensation or otherwise whatsoever on account of termination of hire of T&P issued by the Corporation. On termination of the hire by the Corporation, the Contractor shall return the T&P at the place of issue unless otherwise directed by the Engineer-in-Charge

## **29. Patent Indemnity**

- 29.1 The Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract in the performance of the Contract.

- 29.2 In the event of any claim being made or action being brought against the Employer or its representatives or its employees, in respect of any such matters as aforesaid, the Contractor shall immediately be notified thereof. However, such indemnity shall not apply when such infringement has taken place in complying with the specific directions issued by the Employer; but the Contractor shall pay any royalties or other charges payable in respect of any such use, the amount so paid being reimbursed to the Contractor only if the use was as a result of any drawings and/or specifications issued after the award of Contract by the Employer, provided further that the Contractor has brought to the notice of the Engineer-in-Charge, of such infringement immediately upon the instructions of the Engineer-in-Charge or upon the Contractor becoming aware of such infringement.

## **30. Materials for the performance of the Contract**

### *(a) Materials to be provided by the Contractor*

1. The Contractor shall at his own expense, provide all materials required for the Works other than those which are to be issued by the Employer.
2. All materials to be provided by the Contractor shall be in conformity with the specifications laid down in the Contract and the Contractor shall, if requested by the Engineer-in-Charge, furnish proof to the satisfaction of Engineer-in-Charge that the materials so comply.
3. Wherever required by the Engineer-in-Charge, the Contractor shall, at his own expense and without delay, provide samples of materials proposed to be used in the Works. The Engineer-in-Charge shall within seven(7) days thereafter or within such further period as he may require, intimate to the Contractor in writing, whether samples are approved by him or not. If samples are not approved, the Contractor shall forthwith arrange for fresh samples complying with the Technical specifications laid down in the Contract, for approval.
4. The Engineer-in-Charge shall have full powers to require removal of any or all of the materials brought to site by the Contractor which are not in accordance with the Contract specifications or do not conform in character or quality to samples approved by him. In case of default on the part of the Contractor in removing rejected materials, the Engineer-in-Charge shall be at liberty to have them removed by other means. The Engineer-in-Charge shall have full powers to order the Contractor to provide other proper materials to be substituted for

rejected materials and in the event of the Contractor refusing to comply, he may cause the same to be supplied by other means. All costs, which may attend upon such removal and/or substitution, shall be borne by the Contractor.

5. The Engineer-in-Charge shall be entitled to have tests carried out as specified in the Contract for any materials supplied by the Contractor other than those for which, as stated above, satisfactory proof has already been furnished, at the cost of the Contractor and the Contractor shall provide at his expense all facilities which the Engineer-in-Charge may reasonably require for the purpose. If no tests are specified in the Contract, and such tests are required by the Engineer-in-Charge, the Contractor shall provide all facilities required for the purpose and the charges for these tests including the cost of materials consumed/used in such tests shall be to the account of Employer, except if the tests disclose that the said materials are not in accordance with the provision of the Contract, then the same shall be to the account of the Contractor.
6. All charges on account of GST, other taxes and levies on materials obtained for the Works from any source (excluding materials issued by the Employer) shall be borne by the Employer except Seigniorage Fee or Royalties or cess or other charges payable on the quarried or mined metal, minerals or minor minerals.

(b) *Materials to be issued by the Employer:*

(i) **Materials to be issued by the Employer free of cost**

The Employer, if so stipulated in SCC, may issue material to the Contractor free of cost for incorporation in the Works as per the terms and conditions specified in the SCC/Technical Specifications.

(ii) **Materials to be issued by the Employer on chargeable basis**

If after the award of the Contract, the Contractor desires the Employer to issue/supply any other materials, for the purposes of the Contract such materials may be issued by the Employer, if available, at rates and terms and conditions to be fixed by the Engineer-in-Charge. The Employer reserves the right not to issue any such materials. The non-issue of such materials will not entitle the Contractor for any compensation whatsoever either in time or in cost.

(c) *General:*

1. Materials required for the Works, whether brought by the Contractor or issued by the Employer, shall be stored by the Contractor only at places approved by the Engineer-in-Charge. Storage and safe custody of material shall be the responsibility of the Contractor.
2. Engineer-in-Charge shall be entitled at any time to inspect and examine any materials intended to be used in or on the Works, either on the Site or at factory or workshop or other place(s) where such materials are assembled, fabricated, manufactured or at any place(s) where these are lying or from which these are being obtained and the Contractor shall give such facilities as may be reasonably required for such inspection and examination.
3. All materials brought to the Site shall not be removed off the Site without the prior written approval of the Engineer-in-Charge. But whenever the Works are finally completed and advance, if any, in respect of any such material is fully recovered, the Contractor shall at his own expense forthwith remove from the Site all surplus material originally supplied by him.

4. The Employer may issue all the materials agreed to be issued to the Contractor under the Contract, at its site stores. All other costs such as loading, unloading, transportation to Contractor's godown, storage etc. till the materials are incorporated in the Works or returned to the Employer shall be to the account of the Contractor.
5. All materials issued to the Contractor, by the Employer for incorporation or fixing in the Works (including preparatory work) shall, on completion or on termination of the Contract, be returned by the Contractor at his expense, at the Employer's store, after making due allowance for actual consumption, reasonable wear and tear and/or waste. If the Contractor is required to deliver such materials at a place other than the Employer's store, he shall do so and the transportation charges from the Site to such place, less the transportation charges which would have been incurred by the Contractor, had such materials been delivered at the Employer's store, shall be borne by the Employer.

### **31. Quality Assurance Programme**

- 31.1 Sampling, testing and quality assurance requirements shall be as given in Technical Specifications & Scope of Work.
- 31.2 All costs associated with testing of materials required as per Technical Specifications & Scope of Work shall be deemed to be included in Contract rates/prices in the Bill of Quantity (BOQ).

### **32. Inspection and Approval**

- 32.1 All Works shall be subject to examination and approval at each stage thereof and the Contractor shall give due notice to the Engineer-in-Charge or his authorised representative when each stage is ready. In default of such notice, the Engineer-in-Charge shall be entitled to appraise the quality and extent thereof.
- 32.2 No work shall be covered up or put out of view without the approval of the Engineer-in-Charge or his authorised representative and the Contractor shall provide full opportunity for examination and measurement of any work which is about to be covered up or put out of view . The Contractor shall give due notice to the Engineer-in-Charge or his authorised representative whenever any such work is ready for examination and the Engineer-in-Charge or his representative shall without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly' attend for the purpose of examining and measuring such work. In the event of the failure of the Contractor to give such notice he shall, if required by the Engineer-in-Charge, uncover such work at his own expense.
- 32.3 The Engineer-in-Charge or his authorised representative shall have powers at any time to inspect and examine any part of the Works and the Contractor shall give such facilities as may be reasonably required for such inspection and examination.
- 32.4 The Contractor shall uncover any part of the Works and/or make openings in or through the same as the Engineer-in-Charge may from time to time direct for his verification and shall reinstate and make good such part to the satisfaction of the Engineer-in-Charge.
- 32.5 The additional & specific inspection and approval requirements in respect of the Works are detailed further in the Technical Specifications.

### **33. Records and Measurement**

- 33.1 The Engineer-in-Charge shall, except as otherwise stated, ascertain and determine by measurement the value of the Work done in accordance with the Contract.
- 33.2 All items having a financial value shall be entered in Measurement Book, level book, etc. prescribed by the Engineer-in-Charge so that a complete record is obtained of all Work performed under the Contract.
- 33.3 Measurements shall be taken jointly by the Engineer-in-Charge or his authorised representative and the Contractor or his authorised representative.
- 33.4 Before taking measurements of any Work the Engineer-in-Charge or his authorised representative for the purpose shall give a reasonable notice to the Contractor. If the Contractor fails to attend or send his authorised representative for taking the measurements after such a notice or fails to countersign or to record the objection, if any, within a week from the date of measurement, then in any such event measurements taken by the Engineer-in-Charge or his authorised representative shall be taken to be correct measurements of the Work.
- 33.5 The Contractor shall, without extra charge, provide assistance with every appliance, labour etc. necessary for taking measurements.
- 33.6 Measurements shall be signed and dated by both parties each day on the Site on completion of measurement. If the Contractor objects to any of the measurements recorded, a note to that effect shall be made in the Measurement Book against the item objected to and such note shall be signed and dated by both parties engaged in taking the measurement. The decision of the Engineer-in-Charge on any such dispute or difference or interpretation shall be final and binding on both the parties and shall be beyond the scope of the provisions of settlement of disputes under the Contract.
- 33.7 Based on the above measurements, NTPC shall enter the same in SAP. A print out of the SAP records shall be taken for Running bill(s) and Final Bill and jointly signed by Engineer-in-Charge or his authorised representative and the Contractor or his authorised representative for the purpose of performance, payment and records.

#### **34. Methods of Measurement**

- 34.1 Measurement of Contract items of Work shall be taken in accordance with method of Measurement stipulated in the Technical Specifications/Bill of Quantities (BOQ). In case of extra items, the Engineer-in-Charge shall also specify the method of measurement for such items at the time of his order for execution of such extra items.
- 34.2 In case no method of measurement is stipulated in Technical Specifications/ Bill of Quantity (BOQ)/ Order of the Engineer-in-Charge, then the Method of Measurement of such items shall be as per the relevant Standard Method of Measurement issued by Indian Standards Institution or general industry practice/ local custom.

#### **35. Temporary / Enabling Works**

- 35.1 Temporary / Enabling Works as specified in the Technical Specifications or as directed by the Engineer-in-charge for the proper execution of the Works shall be carried out by the Contractor. These Works shall be executed by the Contractor at his own cost.
- 35.2 All equipment, labour, materials including cement, reinforcement and the structural steel required for the Enabling Works associated with the entire Contract shall have to be arranged by the Contractor only. Nothing extra shall be paid to the Contractor on this account and the unit rates quoted by the Contractor on this account and the unit rates quoted by the Contractor for various items in the Bill of Quantities (BOQ)

shall be deemed to include the cost of Enabling Works.

35.3 The Contractor shall make his own arrangement for movement of men, machinery, other requirement etc. required for carrying out the Work included under this Contract.

**36. Urgent Works**

If any Urgent Work becomes necessary and the Contractor is unable or unwilling at once to carry it out, the Engineer-in-Charge may by his own or other means, carry it out as he may consider necessary. If the Urgent Work shall be such as the Contractor is liable under the Contract to carry out at his expenses all expenses, incurred on it by the Employer shall be recoverable from the Contractor and be adjusted or set off against any sum payable to him.

**37. Power & Water Supply and boarding and lodging of employees/ labour / staff**

37.1.1 The Contractor shall advise the Engineer-in-Charge, within seven (7) days from the date of acceptance of the Letter of Award/Service Purchase Order, about his exact requirement of space for his office, storage area, preassembly and fabrication areas etc. The above requirement shall be reviewed by the Engineer-in-Charge and space as decided by him will be allotted for his use as well as his Sub-Contractor's use. The Employer does not guarantee uninterrupted power supply.

37.1.2 The Contractor shall have to make arrangements for boarding and lodging of his employees/labour/staff at his own cost. NTPC shall NOT be providing any facility for the stay of employees/labour/staff. He shall not be entitled to any payment on account of the expenditure incurred for boarding and lodging of employees/labour/staff. However, NTPC may provide any facility if available on fully chargeable basis.

**37.2 Supply of Unfiltered Water for construction/maintenance/repair work only**

37.2.1 Unless otherwise stated in SCC, the Contractor shall draw water from the water supply mains provided in the project at suitable points to be indicated by the Engineer-in-Charge. All pipe lines, pumps and other accessories required for taking the water from the mains to the site of Work shall be provided by the Contractor at his own cost. He shall not be entitled to any payment on account of the expenditure incurred in providing the pipe lines, pumps, etc. No charges will be levied on the Contractor for the water drawn by him for the purpose of the construction/maintenance/repair work.

37.2.2 The Employer does not guarantee the maintenance of uninterrupted supply of water and in case of any interruptions of such supply of water; the Contractor shall be responsible for making at his own cost alternative arrangements for water. The Engineer-in-Charge also reserves the right to limit the quantity of water to be allowed to be drawn by the Contractor.

37.2.3 No claim for damages will be entertained by the Employer on account of interruption of water supply or limitation of quantity of water as aforesaid or on account of the water so supplied being not fit for construction purposes or on any other account in connection with such water supply.

37.2.4 It will be the responsibility of the Contractor to adequately treat the water at his cost before use for the intended purpose.

37.2.5 Where the Contractor makes his own arrangements for water required for the Work, nothing extra shall be paid for the same. He should make arrangements for storage of sufficient quantity of water required for at least a day's work.

### **38. Site testing equipments and facilities**

- 38.1 As part of the Contract, the Contractor shall provide and maintain testing equipments and facilities for testing of materials and work executed under the direction and general supervision of the Engineer-in-Charge. The testing equipments should establish meeting of requirements detailed in the Technical specifications and scope of work and should have valid calibration certificate.
- 38.2 All equipments shall be provided by the Contractor so as to be compatible with the testing requirements specified. The Contractor shall maintain the equipment in good working condition for the duration of the Contract.
- 38.3 The Contractor shall provide approved qualified personnel to operate and maintain the testing equipments and facilities for testing of materials and work executed for the duration of the Contract. The number of staff and equipment available must at all times be sufficient to keep pace with the sampling and testing programme as required by the Engineer-in-Charge.
- 38.4 The Contractor shall re-calibrate all measuring devices whenever so required by the Engineer-in-Charge and shall submit the results of such measurements without delay.

### **39. Completion Certificate**

- 39.1 As soon as the Work is completed, the Contractor shall give notice of such completion to the Engineer-in-Charge and within fourteen (14) days of receipt of such notice the Engineer-in-Charge shall inspect the Work and shall furnish the Contractor with a certificate of completion indicating (a) date of completion, (b) defects, if any, in the Work to be rectified by the Contractor and/or (c) items, if any, for which payment shall be made at reduced rates. When separate periods of completion have been specified for items or groups of items, the Engineer-in-Charge shall issue separate completion certificates for such item or groups of items. No certificate of completion shall be issued nor shall the Work be considered to be complete till the Contractor shall have removed from the premises on which the Work has been executed all scaffolding, sheds and surplus materials (except such as are required for rectification of defects), and the like to the satisfaction of Engineer-in-Charge. If the Contractor fails to comply with any of the requirement of the conditions as aforesaid, on or before the date of completion of the Works, the Engineer-in-Charge may, at the expense of the Contractor fulfil such requirements and dispose of the scaffoldings, surplus materials and rubbish etc. as he thinks fit and recover the cost after giving due credit for the realised amount. The term 'completion' used herein means the physical completion of the Work and in no way means to connote the quality or time of performance of the Work.

In case of Period Contracts/Maintenance Contract(s), the Contractor shall give notice of such completion to the Engineer-in-Charge seven (7) days prior to the day of completion. On receipt of such notice the Engineer-in-Charge shall inspect the Work and shall furnish the Contractor with a certificate of completion indicating (a) date of completion, (b) defects, if any, in the Work to be rectified by the Contractor and/or (c) items/ services, if any, for which payment shall be made at reduced rates before the expiry of contract period.

- 39.2 If at any time before completion of the entire Work, items or groups of items for which separate periods of completion have been specified, have been completed, the Engineer-in-Charge can take possession of any part or parts of the same (any such part(s) being hereinafter in this Condition referred to as 'the relevant part') notwithstanding anything expressed or implied elsewhere in this Contract.

- 39.3 In case of such taking over of possession by Engineer-in Charge of the said item or group of items, the following shall govern:
- 39.3.1 Within twenty-eight (28) days of request by the Contractor, the Engineer-in-Charge shall issue completion certificate for the relevant part as in GCC Sub-Clause 39.1 above provided the Contractor fulfils his obligations under that Condition for the relevant part.
- 39.3.2 The Defects Liability Period in respect of such items and the relevant part shall be deemed to have commenced from the certified date of completion of such items or the relevant part as the case may be.
- 39.3.3 The Contractor may reduce the value insured under GCC Clause entitled 'Contractor's Liability and Insurance' to the extent of the value of the completed items or relevant part as estimated by the Engineer-in-Charge and notified for this purpose. This estimate shall be applicable for this purpose only and for no other.
- 39.3.4 For the purposes of ascertaining liquidated damages for delay under GCC Sub-Clause 25.5 in respect of any period during which the Works are not complete the relevant part will be deemed to form a separate item or group, with date of completion as given in the Contract or as extended under GCC Sub-Clause 25.2 and actual date of completion as certified by the Engineer-in-Charge under this Clause.

**E. Defects Liability**

**40. Liability for Damage, Defects or Imperfections and Rectification thereof**

If the Contractor or his workmen or employees shall damage or destroy any part of the building/structure in which they may be working or any building, road, fence etc. contiguous to the premises on which the Work or any part of it is being executed, or if any damage shall happen to the Work while in progress, the Contractor shall upon receipt of a notice in writing in that behalf make the same good at his own expense. If it shall appear to the Engineer-in-Charge or his representative at any time during construction or re-construction or prior to the expiration of the Defects Liability Period, that any work has been executed with unsound, imperfect or unskilled workmanship or that any materials or articles provided by the Contractor for execution of the Work are unsound or of a quality inferior to that contracted for, or otherwise not in accordance with the Contract, or that any defect, shrinkage or other faults have appeared in the Work arising out of defective or improper materials or workmanship, the Contractor shall, upon receipt of a notice in writing in that behalf from the Engineer-in-Charge, forthwith rectify or remove and re-construct the work so specified in whole or in part, as the case may require or as the case may be, and/or remove the materials or articles so specified and provide other proper and suitable materials or articles at his own expense, notwithstanding that the same may have been inadvertently passed, certified and paid for and in the event of his failing to do so within the period to be specified by the Engineer-in-Charge in his notice aforesaid, the Engineer-in-Charge may rectify or remove and re-execute the work and/or remove and replace with others, the materials or articles complained of, as the case may be, by other means at the risk and expense of the Contractor.

**41. Defects Liability Period**

Unless otherwise specified in the Technical Specifications and Scope of Work/SCC, the Contractor shall be responsible to make good and remedy at his own expense within such period as may be stipulated by the Engineer-in-Charge, any defect which may develop or may be noticed before the expiry of twelve (12) months from the certified date of completion.

## **F. Risk Distribution**

### **42. Employer's and Contractor's Risks and Insurance**

42.1 The Employer carries the risks which this Contract states as Employer's risks, and the Contractor carries risks which this Contract states as Contractor's risks, under this clause.

42.2 Irrespective of the Employer's Risks or Contractor's Risks the Contractor shall execute the Works as per Contract and as directed by Engineer-in-Charge.

#### **42.3 Employer's Risks**

42.3.1 The 'Excepted Risks' are

(1) In so far as they occur in the Union of India and directly affect the execution of the Works:

(a) war and hostilities (whether war be declared or not), invasion, act of foreign enemies.

(b) rebellion, revolution, insurrection or military or usurped power or civil war.

(c) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his sub-contractors and arising from the conduct of the Works;

(d) ionizing radiations, or contamination by 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, nuclear assembly or nuclear component;

(e) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speed;

(f) any operation of the forces of nature, which is unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate precautions or

(2) a cause due to the design of the Works, other than the Contractor's design.

42.3.2 In the event of any loss or damage to the Works or any part thereof and/or to any materials or articles at the Site from out of any occurrence of Excepted Risks, the following provisions shall have effect:

(a) The Contractor shall, as may be directed in writing by the Engineer-in-Charge, remove from the Site any debris and so much of the Works as shall have been damaged, take the same to the place identified by the Employer, at the Employer's cost.

(b) The Contractor shall, as may be directed in writing by the Engineer-in-Charge, proceed to rectify, repair, reconstruct or replace the damaged articles, materials and the Works under and in accordance with the Conditions of the Contract, at the Employer's cost.

42.3.3 The Contractor shall not be entitled to payment under the above provisions in respect of so much loss or damage as has been occasioned by any failure on his part to perform his obligations under the Contract or not taking precautions to prevent loss or damage or minimize the amount of such loss or damage.

#### 42.4 **Contractor's Risks**

- 42.4.1 All risks of loss of or damage to the physical property and of personal injury and death, which arise during and in consequence of the performance of the Contract, other than those covered under the Excepted Risks at sub-clause 42.3.1, will be the liability of the Contractor, except as otherwise provided in the Contract.
- 42.4.2 From commencement to completion of the Works, the Contractor shall take full responsibility for the care thereof and for taking precautions to prevent loss or damage and to minimize loss or damage to the greatest extent possible and shall be liable for any damage or loss that may happen to the Works or any part thereof from any cause whatsoever (save and except due to Excepted Risks) and shall at his own cost repair and make good the same so that at completion, the Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and instructions of the Engineer-in-Charge.
- 42.4.3 The Contractor shall indemnify and keep indemnified the Employer against all losses and claims for injuries or damage to any person or any property whatsoever which may arise out of or in consequence of the construction and maintenance of the Works and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto; Provided always that nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Employer against any Compensation or damage caused by any occurrence of the Excepted Risks.

#### 42.5 **Insurance**

- 42.5.1 Before commencing the execution of the Works, the Contractor shall, without in any way limiting his obligations and responsibilities under this clause, indemnify the Employer against any damage/ loss or injury which may occur to his property and personnel, to any third party property and third person by or arising out of carrying out of the Contract, except due to reasons of 'Excepted Risks'.
- 42.5.2 Towards this end, the Contractor shall arrange adequate insurance coverages, in the joint names of the Employer and the Contractor and/or Sub-contractor, from the date of commencement of the Work to the end of the Defects Liability Period, to the nature and content, amounts and deductibles as further elaborated and detailed in the SCC for the following events which inter alia will include the following:
- (i) loss of or damage to the Contractor's T&P;
  - (ii) loss of or damage to the property other than Works including those of third parties; and
  - (iii) injury or death of personnel belonging to the Contractor or any other party.
- 42.5.3 Contractor shall ensure that the insurance coverage of the above policies include any loss or damage to his Staff, Supervisors, Engineers and others who are not covered by Workmen Compensation Act. Alternatively, the Contractor will take suitable additional or separate insurance policies to cover the same.
- 42.5.4 The Contractor shall necessarily take Workmen Compensation Policy and Third Party Liability Policy. The third party liability policy shall be for value specified in the Technical Specifications & Scope of Work/SCC.
- 42.5.5 The Policies and certificate for insurance shall be delivered by the Contractor to the Engineer-in-Charge for the Engineer-in-Charge's approval before the date of commencement of the Works.
- 42.5.6 The aforesaid insurance policy/policies shall provide that they shall not be materially modified/ cancelled till the Engineer-in-Charge has agreed to such modification or

cancellation in writing.

- 42.5.7 Upon grant of the time extension by the Engineer-in-Charge, it is understood that the Contractor's liability of indemnity will be extended suitably without any further action by the Employer and the Contractor shall promptly furnish documentary evidence to Engineer-in-Charge towards extension of insurance policies for the period of time extension.
- 42.5.8 The Contractor shall ensure that wherever applicable, his Sub-Contractor(s) shall take out and maintain in effect adequate insurance policies for their personnel, vehicles, T&P and property other than Works including those of third parties for the part of the Works executed by them under the Contract, unless such Sub-Contractors are covered by the policies taken out by the Contractor.
- 42.5.9 It shall be the responsibility of the Contractor to take the insurance cover for all his liabilities. However, if the circumstances warrant, Employer may, without being bound to, effect and keep in force any such insurance coverage and pay such premium or premiums, as may be necessary for that purpose from time to time and deduct the amount so paid by the Employer from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

The Contractor shall extend support to NTPC for lodging of claims for its own material with the insurers for claim against Policies taken by NTPC.

### **43. Force Majeure**

#### **43.1 Definition of Force Majeure**

- 43.1.1 "Force Majeure" shall mean any event beyond the control of the Employer or of the Contractor, as the case may be, (but excluding 'Excepted Risks', which shall be dealt in accordance with GCC Clause entitled "Employer's Risks") and 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.
- 43.1.2 Notwithstanding the generality of the above, the following events shall be termed as Force Majeure events in respect of the Contract
- (i) terrorist acts,
  - (ii) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act of failure to act of any local state or national government authority,
  - (iii) national/sectoral/illegal strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, epidemics, quarantine and plague.

#### **43.2 Notice of Force Majeure**

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

43.2.2 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 25.4 (Extension of Time for Completion).

43.2.3 Notwithstanding any other provision of the Clause, Force Majeure shall not apply to any obligations of the Employer to make payments to the Contractor herein.

### 43.3 **Duty to Minimize Delay**

43.3.1 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to right to terminate the Contract.

### 43.4 **Consequence of Force Majeure**

43.4.1 If the Contractor is prevented from performing its obligations under the Contract by reason of Force Majeure of which notice has been given under Sub-Clause 43.2.1, and suffers delay by reason of such Force Majeure, the Contractor shall be entitled to an extension of time for any such delay, if the Completion is or will be delayed, in accordance with GCC Sub-Clause entitled "Extension of Time for Completion".

43.4.2 No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall

- a. constitute a default or breach of the Contract,
- b. give rise to any claim for damages or additional cost or expense occasioned thereby

if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

### 43.5 Termination for reasons due to extended Force Majeure

43.5.1 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than seventy (70) days or an aggregate period of more than one hundred and forty (140) days or any such extended period as may be agreed to between the parties on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other.

43.5.2 In the event of termination pursuant to GCC Sub-Clause 43.5.1, the rights and obligations of the Employer and the Contractor shall be as specified hereunder:

- (a) the Contractor shall be paid at contract rates for the work already executed by him
- (b) The Employer shall have an option to take over the Contractor's facilities/materials or any part thereof brought to site, at such rates as are determined reasonable by the Engineer-in-Charge.

43.5.3 In the event of any disagreement of the parties relating to matters at GCC Clause 42.5.2, the dispute shall be settled in accordance with GCC Clause titled "Settlement of Disputes".

## **G. Changes in Contract Element**

#### **44. Changes in Constitution:**

Where the Contractor is a partnership firm, prior approval in writing of the Employer shall be obtained before any change is made in the constitution of the firm. Where the Contractor is an individual or a Hindu Undivided Family business concern such approval as aforesaid shall likewise be obtained before the Contractor enters into any partnership firm which would have the right to carry out the Work hereby undertaken by the Contractor. If prior approval as aforesaid is not obtained, the Contract shall be deemed to have been assigned in contravention of GCC Sub-Clause 47.3 hereof and the same action may be taken and the same consequences shall ensue as provided for in the said GCC Sub-Clause 47.3.

#### **45. Powers of Engineer-in-Charge for alterations/ omissions/ additions /substitutions**

45.1 The Engineer-in-Charge shall have power (i) to make alterations in, omissions from, additions to, or substitutions for the original specifications, drawings, designs and instructions that may appear to him to be necessary or advisable during the progress of the work, and (ii) to omit a part of the Works in case of non-availability of a portion of the Site or for any other reasons he may consider necessary and/or reasonable. Any such alterations, omissions, additions or substitutions shall be ordered by the Engineer-in-Charge as a deviation. The Contractor shall be bound to carry out the said deviation in accordance with instructions given to him in writing by the Engineer-in-Charge and such alterations, omissions, additions or substitutions shall form part of the Contract as if originally provided therein and shall be carried out by the Contractor on the same conditions in all respects on which he agreed to do the original Works, except as otherwise provided herein.

#### **45.2 Permissible deviation limit for variations in Contract Items**

##### **45.2.1.1 For Contracts Other than overhauling**

In case of items of Work, quantities of which may change due to Site Conditions or any other reasons, the permissible limit of deviations over the original value of each item will be (+)20% for contracts other than those for overhauling. All the quantities of any item actually executed from 0-120% of the Contract quantity (0 to 1.2 times the quantity) will be payable at Contract rates for while the rates for the quantities above 120% of Contract quantity (1.2 times the Contract quantity) will be subject to review/revision.

##### **45.2.1.2 For Contracts for overhauling**

In case of items of Work, quantities of which may change due to Site Conditions or any other reasons, the permissible limit of deviations over the original value of each item will be (+)50% for contracts for overhauling. All the quantities of any item actually executed from 0-150% of the Contract quantity (0 to 1.5 times the quantity) will be payable at Contract rates for while the rates for the quantities above 150% of Contract quantity (1.5 times the Contract quantity) will be subject to review/revision.

45.2.2 In case the Bill of Quantities (BOQ) contains sub-items of Work under a Main Item, then the above permissible limits of deviation shall be applicable on the value of each such sub-item and not on the entire value of the Main Item.

45.2.3 The deviations up to the above permissible limits shall be carried out by the Contractor at the same rates and terms as per the Contract.

45.2.4 Rates of Items of Work derived on the basis as detailed in GCC Sub-Clause 45.2 shall not be eligible for price adjustment.

- 45.3 Methodology for Determination of Rates for variations of Contract Items beyond the permissible deviation limits**
- 45.3.1 For Contract Items which exceed the limits over the original value of that item as mentioned in GCC Sub-Clause 45.2.1 above, the Contractor may, within fourteen (14) days of the date of receipt of the order to carry out the said work, inform the Engineer-in-Charge of the rate which he proposes to claim for such item(s) of Work on Market Rate(s) basis, supported by analysis of the rate claimed and the relevant documents to substantiate the same. While working out the rates on the basis of market rate, 10% (Ten percent) of the rate to cover all overheads and profits of the Contractor shall be considered. The Engineer-in-Charge shall, within seventy (70) days thereafter, after giving due consideration to the rate(s) claimed by the Contractor, determine the rate(s), in consultation with the Contractor, on Market Rate(s) basis. In the event of disagreement between the Engineer-in-Charge and Contractor, even after the said seventy (70) days from the date of submission of claims of the rate(s) by the Contractor, the Engineer-in-Charge within a further period of twenty-one (21) days thereafter, shall fix the rate(s)/price(s) as are, in his opinion appropriate. The rate(s)/price(s) so fixed shall be notified to the Contractor and shall be final and binding.
- 45.3.2 If the Engineer-in-Charge fails to determine and notify the rate(s)/price(s) even after expiry of the said twenty-one (21) days, then the Contractor will be at liberty to refer the matter for resolution to the Employer within a further period of fourteen (14) days after the above said twenty one (21) days. If the Employer does not determine and cause the Engineer-in-Charge to notify the rate(s)/price(s), then the matter would be determined in accordance with the provisions of GCC Clause entitled "Settlement of Disputes". However, in the meanwhile, the Engineer-in-Charge will pay for the items of Work executed beyond the permissible deviation limits, at 75% (seventy-five percent) of the rate(s)/price(s) claimed by the Contractor with satisfactory supporting documents or at Contract Rate, whichever is less, purely on adhoc and provisional basis subject to adjustment.
- 45.3.3 In the event of the Contractor failing to inform the Engineer-in-Charge, within the stipulated period of fourteen (14) days time, the rate(s) which he proposes to claim, supported by relevant documents to substantiate the same, the rate(s) for such item(s) shall then be determined by the Engineer-in-Charge in consultation with the Contractor (if he so desires) on the basis of Market Rate(s) within seventy (70) days thereafter. The rate(s) /price(s) so determined shall be notified to the Contractor and shall be final and binding.
- 45.3.4 Rates of Items of Work derived on the basis as detailed in GCC Sub-Clause 45.3 shall not be eligible for price adjustment.
- 45.4 Methodology for Determination of Rates for Extra Items (Additional, Altered or Substituted Items) of Work**
- 45.4.1 Rates for Extra Items of Work (comprising of Additional, Altered or Substituted items of Work), shall be determined by the Engineer-in-Charge in the following order:
- (i) If the rate(s)/price(s) for extra items occurring in a particular Bill of Quantities (BOQ) are available in other Bill of Quantities (BOQ) forming part of the Contract, the lowest of such rate(s)/price(s) will be used, subject to the nature of work being comparable.
  - (ii) If the rate(s) cannot be derived as per (i) above, then
    - (a) In case of contracts with only one Bill of Quantities (BOQ) forming the part

of the Contract, the rate(s)/price(s) for the extra item(s) shall be derived from the lowest of any similar item(s) in that Schedule.

- (b) In case of contracts with two or more Schedules of Quantities forming a part of the contract, the rates for the Extra Item(s) will be derived from the nearest similar item appearing in the Schedule in which the extra item is to be executed failing which from any other Schedule in which nearest similar item is available, the rate so derived being the lowest of such derived from nearest similar items in those other Schedules and used.

- 45.4.2 If the rate for any additional, altered or substituted item of work cannot be determined in the manner specified in GCC Sub-Clause 45.4.1 (i) & (ii) above, the Contractor shall, within fourteen (14) days of the date of receipt of the order to carry out the said Work, inform the Engineer-in-Charge under advice to the Employer of the rate which he proposes to claim for such item(s) of Work on Market Rate(s) basis, supported by analysis of the rate claimed and relevant documents to substantiate the same. While working out the rates on the basis of market rate, 10% (Ten percent) of the rate to cover all overheads and profits of the Contractor shall be considered. The Engineer-in-Charge shall, within seventy (70) days thereafter, after giving due consideration to the rate(s) claimed by the Contractor, determine the rate(s), in consultation with the Contractor, on Market Rate(s) basis. In the event of disagreement between the Engineer-in-Charge and Contractor, even after the said seventy (70) days from the date of submission of claims of the rate(s) by the Contractor, the Engineer-in-Charge within a further period of twenty-one (21) days thereafter shall fix the rate(s)/price(s) as are, in his opinion appropriate. The rate(s) /price(s) so fixed shall be notified to the Contractor and shall be final and binding.
- 45.4.3 If the Engineer-in-Charge fails to determine and notify the rate(s)/price(s) even after expiry of the said twenty-one (21) days, then the Contractor will be at liberty to refer the matter for resolution to the Employer within a further period of fourteen (14) days after the above said twenty-one (21) days. If the Employer does not determine and cause the Engineer-in-Charge to notify the rate(s)/price(s), then the matter would be determined in accordance with the provisions of GCC Clause entitled "Settlement of Disputes". However, in the meanwhile, the Engineer-in-Charge will pay for the extra items of Work, at 75% (seventy-five percent) of the rate(s)/price(s) claimed by the Contractor with supporting documents or at Contract Rate, whichever is less, purely on adhoc and provisional basis subject to adjustment.
- 45.4.4 In the event of the Contractor failing to inform the Engineer-in-Charge within the stipulated period of fourteen (14) days time the rate(s) which he proposes to claim, supported by relevant documents to substantiate the same, the rate(s) for such item(s) shall then be determined by the Engineer-in-Charge in consultation with the Contractor (if he so desires) on the basis of Market Rate(s) within seventy (70) days thereafter. The rate(s) /price(s) so determined shall be notified to the Contractor and shall be final and binding.
- 45.4.6 Rates for Extra Items of Work, derived on the basis as detailed in GCC Sub-Clause 45.4 above shall not be eligible for Price Adjustment.

#### 45.5 **Work Schedules for variation beyond deviation limits & Extra Items**

The Engineer-in-Charge shall finalise a Work Schedule in consultation with the Contractor for items of Work beyond deviation limits and the Extra Items of Work to be executed and the date(s) specified in this agreed Work Schedule shall be considered as the date for working out the Price adjustment amount. The primary consideration by the Engineer-in-Charge while determining the time required for execution of the altered or substituted item(s) of Work, would be quantities of the altered or substituted and not the value of altered or substituted item(s) of Work.

#### 45.6 **Provisional payments**

Pending approval of the Rates for Contract Item(s) of Work beyond the permissible deviation limits as well as for Extra Items (Additional, Altered or Substituted item) of Work, provisional payment at an interim rate (75% of the rate/price determined by the Engineer-in-Charge), shall be made to the Contractor after recoveries as per terms and conditions of the Contract, in the interest of progress of Work, which shall be regularized after approval of Competent Authority.

#### 46. **Suspension of Works**

- 46.1 The Contractor shall, on receipt of the order in writing of the Engineer-in-Charge, suspend the progress of the Works or any part thereof for such time and in such manner as the Engineer-in-Charge may consider necessary for any of the following reasons:
- (i) On account of any default on part of the Contractor; or
  - (ii) for proper execution of the Works or part thereof for reasons other than the default on the part of the Contractor; or
  - (iii) for safety of the Works or part thereof, for reasons other than those attributable to the Contractor.
- 46.2 The Contractor shall, during such suspension, properly protect and secure the Works to the extent necessary and carry out the instructions given in that behalf by the Engineer-in-Charge.
- 46.3 If the suspension is ordered for reasons (ii) & (iii) in Sub-Clause 46.1 above, in so far as it concerns suspension of part of the Works or whole of the balance, the Contractor shall be entitled to an extension of time equivalent to the period of suspension plus 25% thereof. The Contractor shall not be eligible for any other compensation whatsoever for such suspension, except as otherwise provided herein under.
- 46.4 If the suspension is ordered for reasons (ii) & (iii) in Sub-Clause 46.1 above, as far as it concerns the entire balance of Works on the date of suspension and if such period of suspension cumulatively exceeds twenty-eight (28) days, then in addition to extension of time as in Sub-Clause 46.3 above, the Contractor shall be eligible for compensation, as the Employer may consider reasonable, in respect of salaries and/or wages paid by the Contractor to his employees and labour at site, remaining idle during the cumulative period of suspension, adding to the total thereof, a reasonable percentage as determined appropriate by the Engineer-in-Charge, to cover indirect expenses and incidentals of the Contractor, provided the Contractor submits his claim supported by details to establish the reasonableness of his claim to the Engineer-in-Charge under advice to the Employer within fourteen (14) days of the expiry of the said twenty-eight (28) days period.
- 46.5 If for any reason other than for reasons of Contractor's default as per GCC Sub-Clause 46.1(i) above, if the Contract remains suspended for a continuous period exceeding ninety (90) days, then the Employer and the Contractor shall mutually discuss and agree for a suitable course of action regarding the recommencement/ reinstatement of the suspended work or alternatively treat the suspension as termination / abandonment of the Works by the Employer as per GCC Sub-Clause 47.1 herein. If out of above discussion it is determined that the Contract has to be treated as terminated under the provisions of GCC Sub-Clause 47.1, then the Contractor shall be eligible for compensation as envisaged in GCC Sub-Clause 47.1.1 herein.

## **47. Termination**

### **47.1 Termination by the Employer**

If at any time after award of Contract, the Employer shall decide to abandon or reduce the scope of the Works for any reason whatsoever and hence not require the whole or any part of the Works to be carried out by the Contractor, the Engineer-in-Charge shall give notice in writing to that effect to the Contractor and the Contractor except as herein under provided, shall have no claim to any payment of compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the Works in full but which he did not derive in consequence of the said termination of the whole or part of the Works.

47.1.1 The Contractor shall be paid at Contract rates full amount for works executed at Site and, in addition, a reasonable amount as certified by the Engineer-in-Charge for the items hereunder mentioned which could not be utilised on the Work to the full extent because of the said termination:

- (a) Any cost incurred on preliminary site work, e.g. access roads, labour huts, staff quarters and site offices; storage accommodation and water storage tanks, etc.
- (b) (i) The Employer shall have the option to take over Contractor's facilities/ materials or any part thereof either brought to Site or of which the Contractor is legally bound to accept delivery from suppliers (for incorporation in or incidental to the Work), provided, however, the Employer shall be bound to take over the materials or such portions thereof as the Contractor does not desire to retain. For materials taken over or to be taken over by the Employer, cost of such materials shall, however, take into account purchase price, cost of transportation and deterioration or damage which may have been caused to materials whilst in the custody of the Contractor.
  - (ii) For Contractor's materials not retained by the Employer, reasonable cost of transporting such materials from Site to Contractor's permanent stores or to his other Works, whichever is less. If materials are not transported to either of the said places, no cost of transportation shall be payable.
- (c) If any materials issued by the Employer are rendered surplus, the same except normal wastage shall be returned by the Contractor to the Employer at rates not exceeding those at which these were originally issued less allowance for any deterioration or damage which may have been caused whilst the materials were in the custody of the Contractor.
- (d) Reasonable compensation for transfer of Contractor's T&P from Site to Contractor's permanent stores or to his other Works, whichever is less. If T&P are not transported to either of the said places, no cost of transportation shall be payable.

47.1.2 The Contractor shall, if required by the Engineer-in-Charge furnish to him wage books, time sheets and other relevant documents as may be reasonably necessary to enable him to certify the reasonableness of the amount payable under this Clause.

### **47.2 Termination on Contractor's Death**

47.2.1 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 Employer 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 Employer shall be entitled to cancel the Contract as to its incomplete part without the Employer being liable in any way to payment of any compensation to the estate of the 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 Employer that the legal representatives of the deceased Contractor or the 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 Employer shall not hold the estate of the deceased Contractor and/or the surviving partners of the Contractor's firm liable for damages for not completing the Contract.

### 47.3 **Termination for Contractor's Default**

#### 47.3.1 If the Contractor:

- (a) at any time makes default in proceeding with the Works with due diligence and continues to do so after a notice of seven (7) days in writing from the Engineer-in-Charge; or
- (b) commits default in complying with any of the terms and conditions of Contract and does not remedy it or take effective steps to remedy it within seven (7) days after a notice in writing is given to him in that behalf by the Engineer-in-Charge; or
- (c) fails to complete the Works or items of Work with individual dates of completion, on or before the date(s) of completion, and does not complete them within the period specified in a notice given in writing in that behalf by the Engineer-in-Charge; or
- (d) offers, or gives or agrees to give to any person in Employer's service or to any other person on his behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for the Employer; or
- (e) enters into a contract with the Employer in connection with which commission has been paid or agreed to be paid by him or to his knowledge, unless the particulars of any such commission and the terms of payment thereof have been previously disclosed in writing to the Employer/ Engineer-in-Charge; or
- (f) obtains a Contract with the Employer as a result of ring bidding or other non-bonafide methods of competitive bidding; or
- (g) being an individual, or if a firm, any partner thereof, at any time be adjudged insolvent or have a receiving order or order for administration of his estate made against him or shall take any proceedings for liquidation or composition (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) under any Insolvency Act for the time being in force or make any conveyance or assignment of his affective or composition or arrangement for the benefit of his creditors or purport so to do, or if any application be made under any Insolvency Act for the time being in force, for the sequestration of his estate or if a trust deed be executed by him for benefit of his creditors; or
- (h) being a company, shall pass a resolution or the Court shall make an order for the liquidation of its affairs, or a receiver or manager on behalf of the debenture holders shall be appointed or circumstances shall arise which entitle the Court or debenture holders to appoint a receiver or manager; or

- (i) assigns, transfers, sublets (engagement of labour on a piece-work basis or of labour with materials not to be incorporated in the work, shall not be deemed to be subletting) attempts to assign, transfer or sublet the entire Works or any portion thereof without the prior written approval of the Employer;

the Employer may, without prejudice to any other right to remedy which shall have accrued or shall accrue thereafter to the Employer by written notice, cancel the Contract as a whole or only such items of work in default, from the Contract.

47.3.2 The Employer shall on such cancellation have rights to:

- (a) take possession of the Works and any materials, construction plant, implements, stores, etc., thereon; and/or
- (b) carry out the incomplete Work by any means at the risk and cost of the Contractor.

47.3.3 On cancellation of the Contract in full or in part, the Employer shall determine what amount, if any, is recoverable from the Contractor for completion of Works or part of the Works or in case the Works or part of the Works is not completed, the loss or damage suffered by the Employer. In determining the amount, credit shall be given to the Contractor for the value of the work executed by him up to the time of cancellation, the value of Contractor's material taken over as well as incorporated in the work, and use of tools and plants belonging to the Contractor.

47.3.4 Any excess expenditure incurred or to be incurred by the Employer in completing the Works or part of the Works or the excess loss or damages suffered or may be suffered by the Employer as aforesaid after allowing such credit shall be recovered from any money due to the Contractor on any account, and if such money is not sufficient the Contractor shall be called upon in writing to pay the same within twenty-eight (28) days.

47.3.5 If the Contractor fails to pay the required sum within the aforesaid period of twenty-eight (28) days, the Engineer-in-Charge shall have the right to sell any or all of the Contractor's unused materials, construction plant, implements, temporary buildings etc. and apply the proceeds of sale thereof towards the satisfaction of any sums due from the Contractor under the Contract and if thereafter there be any balance outstanding from the Contractor, it shall be recovered from him.

47.3.6 Any sums in excess of the amounts due to the Employer and unsold materials, construction plant etc., shall be returned to the Contractor, provided always that if cost or anticipated cost of completion by the Employer of the Works or part of the Works is less than the amount which the Contractor would have been paid had he completed the Works or part of the Works, such benefit shall not accrue to the Contractor.

#### **48. Possession prior to completion**

The Engineer-In-Charge shall have the right to take possession of or use any completed or partially completed work or part of the work. Such possession or use shall not be deemed to be an acceptance of any completed work in accordance with the contract agreement. If such prior possession or use by the Engineer-In-Charge delays the progress of work, equitable adjustment in the time of completion will be made.

#### **49. Adherence to Fraud Prevention Policy**

The Contractor along with its Associate / Collaborator / Sub-Contractors / Sub-Vendors / Consultants / Service Providers shall strictly adhere to the Fraud

Prevention Policy of Employer displayed on its website <http://www.ntpctender.com>.

The Contractor along with their ~~his~~ associate/ collaborator/ subcontractors/ subvendor/ consultant/ service providers shall observe the highest standards of ethics and shall not indulge or allow anybody else working in their organization to indulge in fraudulent activities during execution of the contract. The Contractor shall immediately apprise the Employer about any fraud or suspected fraud as soon as it comes to his notice.

If in terms of above policy it is established that the Contractor/his representatives have committed any fraud while executing the contract then the Security Deposit shall be forfeited.

**50. Limitation of Liability**

Except in cases of criminal negligence or willful misconduct,

(a) Neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and

(b) The aggregate liability of the either party to the other party, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

Notwithstanding anything contained hereinabove, the aggregate liability of the Employer to the Contractor shall not exceed the Total Contract Price, less payments already released to the Contractor, if any.

**51. Policy for withholding and banning of Business dealings**

The employer has in place a policy for withholding and banning of business Dealings as enclosed. Business dealings may be withheld or banned with the Bidder/Contractor on account of any default by the contractor under GCC clause 47.3.1 or any of the grounds detailed in the said Banning Policy.

Declaration on Policy for withholding and banning of Business dealings duly filled as per employer's format is enclosed in the Section VII: Bid Forms and Procedures. This declaration is to be submitted along with the Technical Bid.

**52. Disposal of Scrap**

The Contractor shall with the agreement of the Employer promptly remove from the site any 'Scrap' generated during performance of any activities at site in pursuance of the Contract. The term 'Scrap' shall refer to scrap/ waste/ remnants arising out of the fabrication of structural steel work and piping work at the project site in the course of execution of the contract and shall also include any wastage of cables during the termination process while installing the cables. GST applicable, if any, shall be to Contractors account.

The ownership of such Scrap shall vest with the Contractor except in cases where the materials for the items have been issued by the Employer from its stores for their installation only without any adjustment to the Contract Price. The removal of scrap shall be subject to the Contractor producing the necessary clearance from the relevant authorities (Custom, GST etc.), if required by the law, in respect of disposal

of the scrap. The liability for the payment of the applicable taxes/ duties shall be that of the Contractor.

The scrap generated out of Owner issue material without any adjustment to the Contract Price is to be returned to the Employer. Also the scrap generated out of any material, Plant and Equipment specifically stipulated in the Bill of Quantities in the Contract shall be the property of the Employer whether or not incorporated in the Work is to be returned to the Employer.

**53. Disposal of surplus material, Plant & Equipment**

Ownership of any material, Plant and Equipment brought by Contractor in excess of the requirements for the Work (i.e. surplus material) shall revert to the Contractor upon Completion of the Work or at such earlier time when the Employer and the Contractor agree that the materials in question are no longer required for the Work. However, any material, Plant and Equipment specifically stipulated in the Bill of Quantities in the Contract shall be the property of the Employer whether or not incorporated in the Work.

The Contractor shall remove from the site such surplus material brought by him in pursuance of the Contract, subject to the Contractor producing the necessary clearance from the relevant authorities (Customs, GST etc.), if required by law, in respect of re-export or disposal of the surplus material locally. The liability for the payment of the applicable taxes/duties, if any, on the surplus material so re-exported and/or disposed locally shall be that of the Contractor.

The Contractor shall also indemnify to keep the Employer harmless from any act of omission or negligence on the part of the Contractor in following the statutory requirements with regard to removal /disposal of surplus material. The Indemnity Bond shall be furnished by Contractor as per proforma enclosed. Further, in case the laws require the Employer to take prior permission of the relevant Authorities before handing over the surplus material to the Contractor, the same shall be obtained by the Contractor on behalf of the Employer.

The surplus generated out of Owner issue material without any adjustment to the Contract Price is to be returned to the Employer. Also any surplus generated out of any material, Plant and Equipment specifically stipulated in the Bill of Quantities in the Contract shall be the property of the Employer whether or not incorporated in the Work.

**54 No Claim for interest or damage**

**54.1 Interest on money due to the contractor:**

No omission on the part of the Employer to pay the amount due upon measurement or otherwise shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee/security/retention money or payments in arrears nor upon any balance which may on the final settlement of his account be due to him.

**54.2 No claim for interest or damage:**

No claim for interest or damage will be entertained or be payable by the Employer in respect of any amount or balance which may be lying with the Employer or may become due upon settlement/adjudication of any dispute, difference or misunderstanding between the parties by way of arbitration or court proceedings or otherwise or in respect of any delay or omission on the part of the Employer in making intermediate or final payment or in respect of any amount/damage which may be claimed through arbitration or court proceedings or in any other respect whatsoever.