



**KOLKATA METRO RAIL CORPORATION LIMITED  
EAST WEST METRO PROJECT**

**CONTRACT – BPEL(R)**

**DESIGN, MANUFACTURE, SUPPLY, TESTING & COMMISSIONING  
AND TRAINING OF PERSONNEL OF BATTERY POWERED ELECTRIC LOCO  
FOR CENTRAL PARK DEPOT**

**TENDER DOCUMENTS  
VOLUME 2**

**GENERAL CONDITIONS OF CONTRACT  
AND  
SPECIAL CONDITIONS OF CONTRACT  
(INCLUDING SCHEDULES)**

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**KOLKATA METRO RAIL CORPORATION LIMITED  
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## GENERAL CONDITIONS OF CONTRACT

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## GENERAL CONDITIONS OF CONTRACT

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

The following contract terms and expressions as used in the contract shall have the meanings assigned to them, except where the context otherwise requires. Words indicating persons or parties include corporations and other legal entities except where the context requires otherwise.

1.1.1 **“Appendix to Form of Tender”** means the completed pages in title Appendix, which are appended to and form part of the Tender.

1.1.2 **“Acceptance of Tender”** means the letter or memorandum communicating to the Contractor the acceptance of his tender and includes an advance acceptance of his tender.

1.1.3 **“Commencement Date”** means the date on which the Contractor shall commence the Works on the written instructions of the Employer contained in the Letter of Acceptance.

1.1.4 **"Consignee"** means where the machines/plants are required to be delivered (after the acceptance of tender).

1.1.5 **“Contract”** means the written Contract Agreement, the Letter of Acceptance, General Conditions of Contract, Special Conditions of Contract, the Employer’s Requirements, the Tender, the Notice of Invitation to Tender, Instructions To Tenderers, the Contractor’s Proposal, the Schedules, Clarifications issued and such further documents which are listed in the Letter of Acceptance or Contract Agreement.

1.1.6 **“Contractor”** means the supplier, firm or company whose Tender has been accepted by the Employer.

1.1.7 **“Contractor’s Representative”** means the person (if any) named as such in the Contract or other person appointed from time to time by the Contractor under Clause 4.3

1.1.8 **“Sub-contractor”** means any manufacturer or supplier to whom a part of the Works has been sub-contracted with the consent of the Employer.

1.1.9 **“Contract Period”** means the period from the Commencement Date to the end of supply of machines/plants and the mandatory maintenance period called Defects Liability Period.

1.1.10 **“Drawings”** means the Employer’s Drawings and the Drawings submitted by the Contractor and any modification of such drawings, if any, from time to time, to be furnished or for which the Engineer has issued a Notice of No Objection.

1.1.11 **"Designated Contractors"** means any of the following whose activities or the works they are engaged to carry out, affect or are affected by the Works, in any way or at any time:

- (a) contractors, design consultants and utility authorities engaged on the Project from time to time by the Employer;
- (b) sub-contractors of any tier of the contractors above; provided that the definition shall exclude the Contractor and his sub-contractors of any tier in relation to the Works.

1.1.12 **The “Purchaser” means the “Employer”** i.e. KOLKATA METRO RAIL CORPORATION LIMITED (KMRCL), its legal successors and assignees.

1.1.13 **“Engineer”** means General Consultant (GC) or any person/party nominated or appointed from time to time by the Employer to act as the

- Engineer for the purposes of the Contract and notified as such in writing to the Contractor.
- 1.1.14** "**Facilities**" means the Machine/Plant/Equipment to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.
- 1.1.15** "**Factory Tests**" means the tests required to be carried out in the factory premises on components, equipment, subsystem, system, etc. during and/or after manufacture in the factory.
- 1.1.16** The "**Inspecting Officer**" means the person, or organization specified in the contract for the purpose of inspection of machines/plants under the contract and includes his/their authorized representatives;
- 1.1.17** "**Integrated Testing**" means the programme of tests performed by the Contractor at the direction of the Engineer following satisfactory completion of Contractor's tests on his equipment, sub-systems or system to verify and confirm the compatibility and compliant performance of his equipment/ sub-system/ system with the equipment/ sub-system/ system provided by others.
- 1.1.18** "**Incoterms**" means international rules for interpreting trade terms published by the International Chamber of Commerce (2011 or latest edition), 38 Cours Albert 1<sup>er</sup>, 75008 Paris, France.
- 1.1.19** "**Letter of Acceptance**" means the formal acceptance to the Works of the Tender by the Employer.
- 1.1.20** "**Material**" means anything used in the manufacture or fabrication of the stores.
- 1.1.21** "**Machine**" means the plant/equipment to be supplied in accordance with the Contract.
- 1.1.22** "**Safety, Health and Environmental (SHE) Manual**" means the Employer's manual containing the requirements and conditions to be met during the execution of the Works by the Contractor.
- 1.1.23** "**Signed**" includes stamped, except in the case of acceptance of tender or any amendment thereof.
- 1.1.24** "**Site**" means the place specified in the contract at which any work is required to be executed by the Contractor under the contract or any other place approved by the Purchaser for the purpose.
- 1.1.25** "**Stores**" means the goods specified in the contract, which the Contractor has agreed to supply under the contract.
- 1.1.26** "**Tests on Completion**" means such test or tests as are prescribed by the specifications to be made by the Employer (Client), or his Authorized Representative, after erection at site, before the machine/plant is taken over by the Employer.
- 1.1.27** "**Works**" means the work, both permanent and temporary, or services to be carried out, designed, manufactured, fabricated, delivered to Site, erected, installed, completed, tested, commissioned, (including Integrated Testing and Commissioning) and remedying of any defects, and/ or supplied in accordance with the Contract and include Machine / Equipment and Materials and their accessories."
- 1.1.28** "**Performance Certificate**" means the certificate issued by the Engineer under Clause 10.4 after the machine/plant passed the Proving Test.
- 1.1.29** "**Taking Over Certificate**" means a certificate issued under Clause 9.1.
- Law and Language** **1.2** The Contract shall be governed by the Acts and Laws of India, the rules, regulations and bye-laws of the concerned public bodies and authorities.

Language of the Contract shall be English.

- |   |            |  |
|---|------------|--|
| <b>Contract Agreement</b>                       | <b>1.3</b> | The Employer and the Contractor shall execute a Contract Agreement in the form annexed in Schedule-1 to Special Conditions of Contract, within 45 days from the date of issue of Letter of Acceptance by the Employer and after receipt of Performance Bank Guarantee by the Employer from the contractor. The costs of stamp duties and similar charges imposed by law shall be borne by the Contractor.  |
| <b>Contract Document</b>                        | <b>1.4</b> | Subject to the Order of Precedence of the Contract Agreement, 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.  |
| <b>Priority of Documents</b>                    | <b>1.5</b> | <p>The documents forming the Contract are to be taken as mutually explanatory of one another. In the event of any ambiguity or conflict between the Contract Documents listed below, the order of precedence shall be the order in which the Contract Documents are listed:</p> <ul style="list-style-type: none"><li>(a) Contract Agreement</li><li>(b) Letter of Acceptance</li><li>(c) Tender Addenda</li><li>(d) NIT, ITT and Form of Tender (FOT) with Appendices</li><li>(e) Pricing document</li><li>(f) Special Conditions of Contract including Schedules</li><li>(g) General Conditions of Contract</li><li>(h) Employer's Requirements – Technical Specification and Drawings</li><li>(i) Safety, Health and Environment (SHE) Manual and SHE Conditions of Contract</li><li>(j) Contractor's Technical Proposal; and</li><li>(k) Detail Specification &amp; Rating of the Machine/Plant</li><li>(l) Any other documents forming part of the Contract</li></ul> |
| <b>Care and Supply of Technical Documents</b>   | <b>1.6</b> | <p>The Technical Documents shall be in the custody and care of the Contractor during the Contract.</p> <p>The Contractor shall keep on Site one complete set of the documents forming the Contract, the Construction and/or Manufacture Documents, Variations and other communications given or issued from time to time. The Employer, the Engineer and their assistants shall have the right to access these documents at all reasonable times.</p> <p>On discovery of any technical error or defect in a document intended to be used for the purpose of Contract, the Contractor shall promptly give notice to the Engineer of such error or defect.</p>   |
| <b>Communications</b>                           | <b>1.7</b> | Communications between parties, unless otherwise specified shall be effective only when made in writing and in English only. A notice will be effective only when it is delivered.   |
| <b>Employer's Use of Contractor's Documents</b> | <b>1.8</b> | <p>The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:</p> <ul style="list-style-type: none"><li>(a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Machines/Plants,</li><li>(b) entitle any person in proper possession of the relevant part of the</li></ul>   |

- Machines/Plants to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Facility, and
- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

<b>Contractor's Use of Employer's Documents</b>	<b>1.9</b>	The Contractor shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.
<b>Parties</b>	<b>1.10</b>	<p>The parties to the contract are the Contractor and the Purchaser, as defined in Clauses 1.1.6 and 1.1.12.</p> <p>If it is discovered that a person signing the tender or any other document in respect of the contract on behalf of the Contractor has no authority to do so, the Purchaser may, without prejudice to any other right or remedy of the Purchaser, cancel the contract and make or authorize the making of a purchase of the stores at the risk and cost of such person and hold such person liable to the Purchaser for all costs and damages arising from the cancellation of the contract including any loss which the Purchaser may sustain on account of such purchase. The provision of Clause 13.0 shall apply to every such purchase as far as applicable.</p>
<b>Contract</b>	<b>1.11</b>	This Contract is for the supply of the Machine/Plant of the description, specification and drawings, and in the quantities set forth in the contract on the date or dates specified therein. Unless otherwise specified, the Machine/Plant shall be entirely brand new and of the best quality and workmanship to the satisfaction of the Employer.
	<b>2</b>	<b>THE EMPLOYER</b>
<b>General Obligations</b>	<b>2.1</b>	The Employer shall provide the Site to the Contractor for carrying out the Works including testing and commissioning of equipment, plant and machinery at Site in accordance with the Contract.
<b>Access to and Possession of the Site</b>	<b>2.2</b>	For any such delay in handing over of site, Contractors will be entitled to only reasonable extension of time and no monetary claims whatsoever shall be paid or entertained on this account.
<b>Permits, Licences or Approvals</b>	<b>2.3</b>	<p>It shall be Contractor's exclusive responsibility to get approvals, permits or license required for the Contracts. However, the Employer may (where he is in a position to do so) provide reasonable assistance to Contractor at the request and cost of the Contractor in getting Permits, License or Approvals required during the Contract.</p> <p>The rendering of such assistance by the Employer shall not be interpreted as a pretext by the Contractor as condoning of any delay or non-performance of any of the Contractors obligations. The following-up of all such applications shall be the responsibility of the Contractor.</p>
	<b>3</b>	<b>THE ENGINEER</b>
<b>Appointment of Engineer</b>	<b>3.1</b>	The Employer shall notify the Contractor in writing of the appointment and identity of the Engineer and of any replacement from time to time.
<b>Duties and Authorities of the Engineer</b>	<b>3.2</b>	<p>The Engineer shall carry out the duties specified in the Contract. The Engineer shall have no authority to amend the Contract.</p> <p>The Engineer may exercise the authority specified in, or necessarily to be implied from the Contracts. If the Engineer is required to obtain the specific approval of the Employer before exercising such authority, process for approval of such authority to the Engineer shall be undertaken</p>

by the Employer at appropriate time.

The Engineer shall copy to the Employer all communications given or received by him in accordance with the Contract.

**Engineer's  
Instructions**      **3.3**

The Contractor shall comply with instructions given by the Engineer in accordance with the Contract.

No act or omission by the Engineer or Engineer's representative/assistants in the performance of any of the Engineer's duties or the exercise of any of the Engineer's powers under the Contract shall, in any way, operate to relieve the Contractor of any of the duties, responsibilities, obligations or liabilities imposed upon the Contractor by any of the provisions of the Contract.

**4      THE CONTRACTOR**

**General  
Obligations**      **4.1**

The Contractor shall design, manufacture, deliver and satisfy the defect liability period obligation (including associated purchases) with due care and diligence in accordance with the Contract.

The Contractor acknowledges responsibility for ascertaining and securing at his own cost:-

- (a) availability of electricity, water and gas;
- (b) availability of skilled manpower;
- (c) the equipment and facilities needed preliminary to and during the manufacture, installation, execution, testing (including Integrated Testing), and commissioning of the Machine/Plant and remedying of any defects;
- (d) the protection of the environment and adjacent structures during the installation, testing (including Integrated Testing), and commissioning of the Machine/Plant and remedying of any defects;

**Performance  
Guarantee**      **4.2**

(1) Amount of Performance Guarantee:

- (i) Within 28 days of receipt of the Letter of Acceptance, the successful Tenderer shall furnish Performance Guarantee in the form of a bank guarantee from an Indian Schedule Bank (excluding Cooperative Banks) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule for an amount of 10% (ten per cent) of the Contract price in types and proportions of currencies in which the Contract Price is payable. The approved form provided in the "Special Conditions of Contract" or any other form approved by the Employer shall be used for Performance Guarantee. The Performance Guarantee shall be valid up to three months beyond the final completion of Defect Liability Period against each contract.
- (ii) Failure of the successful Tenderer to furnish the required Performance Guarantee shall be a ground for the annulment of the award of Contract and forfeiture of the Tender Security.

(2) Release of Performance Guarantee:

- (i) The whole or such portion of the Performance Guarantee amount as he may consider fit shall be liable to be forfeited by the Employer at the discretion of the Employer, in the event of any breach of Contract on the part of the Contractor.
- (ii) The Performance Guarantee will be released to the Contractor within 3 months after the expiry of the final Defect Liability Period for the entire Work.

*Note: In case the DLP gets extended by some period, the Contractor will be advised about the extended DLP with a concurrent responsibility of extending the validity of the Performance Guarantee for the said period.*

<b>Representation on Works</b>	<b>4.3</b>	<p>Unless the Contractor's Representative is named in the Contract, the Contractor shall, within 14 days of Notice to Proceed, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint. The Contractor shall not revoke the appointment of the Contractor's Representative without the prior consent of the Engineer. The Contractor's Representative so nominated shall have full authority to act on behalf of the Contractor. The Contractor's Representative shall receive (on behalf of the Contractor) all notices, instructions, consents, approvals, certificates, determinations and other communications under the Contract. Whenever the Contractor's Representative is to be absent from the Site, a suitable replacement person shall be appointed, with prior consent of Engineer.</p> <p>Failure on part of the Contractor to comply with these provisions shall constitute a breach of Contract leading to action under Clause 13.2.</p>
<b>Facilities for and co-ordination with Others</b>	<b>4.4</b>	<p>The Contractor shall extend all necessary co-operation to the Employer, Engineer and co-ordinate with Designated Contractors who are carrying out on, or in the vicinity of, the Site, works not included in the Contract but forming part of the Project.</p>
<b>Vendors</b>	<b>4.5</b>	<p>(i) The Contractor shall not sub-contract the whole of the Works. (ii) Prior to award of Contract, the details as per Schedule-3 of the Special Conditions of Contract shall be completed, indicating those Vendors proposed by the Bidder in the corresponding Attachment to its Bid for the purpose of procurement of items of Facilities related to performance of the Contract, for approval by the Employer.</p>
<b>Compliance by Vendors</b>	<b>4.6</b>	<p>The Contractor shall be responsible for compliance by all Vendors of all the relevant provisions of the Contract.</p>
<b>Assignment of Vendor's Obligations</b>	<b>4.7</b>	<p>If a Vendor's obligations extend beyond the expiry date of Defects Liability Period then the Contractor shall assign the benefits of such obligations to the Employer.</p>
<b>Sufficiency of accepted Contract Amount</b>	<b>4.8</b>	<p>The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price. Unless otherwise stated in the Contract, the Contract Price shall cover all his obligations under the Contract and all things necessary for the proper design, execution and completion of the Works, testing and commissioning (including Integrated Testing and Commissioning) and remedying of any defects.</p>
<b>Access Route</b>	<b>4.9</b>	<p>The Contractor shall be deemed to have satisfied himself as to the suitability and availability of the access routes he chooses to use. The Contractor shall provide at his cost signs or directions, which he may consider necessary or as instructed by Engineer for the guidance of his staff, labour and others. The Contractor shall obtain any permission concessions and related easement right that may be required from the relevant authorities for the use of such routes, signs and directions.</p> <p>The Employer will not be responsible for any claims which may arise from the use or otherwise of any access route. The Employer does not guarantee the suitability or availability of any particular access route, and will not entertain any claim for any non-suitability or non-availability for continuous use during construction of any such route.</p>
<b>Rights of way and Facilities</b>	<b>4.10</b>	<p>The Employer will provide right of way (within KMRCL's land) for access thereto over routes established by the Contractor. The Contractor shall obtain, at his risk and cost, any additional facility outside the Site which he may require for the purpose of his activities related to the Contract.</p>
<b>Programmes</b>	<b>4.11</b>	<p>The Contractor shall submit a detailed programme (Project Execution Programme) to the Engineer after receipt of the Letter of Acceptance but not later than 28 days from the date of receipt of Notice to Proceed. The Contractor shall also submit a revised programme whenever the Engineer</p>

		<p>finds that the previous programme is inconsistent with actual progress or with the Contractor's obligations.</p> <p>Consent by the Engineer to Project Execution Programme shall not relieve the Contractor of any of his responsibilities or obligations under the Contract. If the Programmes indicate that a Key Date has not, or will not be met, it shall not, by itself entitle the Contractor to an extension of time in relation to such Key Date.</p>
<b>Progress Reports</b>	<b>4.12</b>	<p>The Contractor shall submit to the Engineer by the end of each calendar month his Monthly Progress Report covering all aspects related to execution of Works, including critical activities and problem areas, corrective action taken or planned. It shall also address interface issues/problems and resolution thereof.</p>
<b>Contractor's Equipment</b>	<b>4.13</b>	<p>(1) All Contractor's Equipment and Temporary Works provided by the Contractor shall, when brought on to the site, be deemed to be exclusively intended for installation &amp; commissioning of the Machines/Plants and not be removed without the consent in writing of the Engineer. Such consent shall not be unreasonably withheld or delayed.</p> <p>(2) Upon completion of the Works the Contractor shall remove from the Site all the said Contractor's Equipment, Temporary works and his unused materials.</p> <p>(3) The Employer shall not at any time be liable for the loss or damage to any of the Contractor's Equipment, Temporary Works or materials.</p>
<b>Safety of Works</b>	<b>4.14</b>	<p>The Contractor shall throughout the execution of the Contract including the carrying out of any testing, commissioning (including Integrated Testing and Commissioning), or remedying of any defect, comply with all relevant safety regulations, including provision of safety gear, lights, guards, fences and warning signs and watchmen for the safety and convenience of the public and all persons on or in the vicinity of the Site.</p> <p>Contractor is required to take note of all the necessary provisions in Employer's Safety, Health and Environment Manual (SHE Manual) and safety standards as specified in the Special Conditions of Contract. The Contractor shall also submit a detailed and comprehensive contract-specific Site Safety Plan in accordance with the provisions in Employer's SHE Manual and Employer's Requirements during installation, testing &amp; commissioning of the Machines/Plants.</p>
<b>Protection of the Environment</b>	<b>4.15</b>	<p>The Contractor shall conform to the Employer's Requirements in accordance with the provisions of Employer's SHE Manual in respect of protection of the environment.</p>
<b>Access for Engineer</b>	<b>4.16</b>	<p>The Contractor shall allow the Engineer or the Engineer's assistant or any other person authorised by him, at all times access to the Site, and to any place where work in connection with the Contract is being carried out or is intended to be carried out.</p>
<b>Contractor to keep Site Clear</b>	<b>4.17</b>	<p>Within 45 days of the physical completion of the installation, testing &amp; commissioning, the Contractor shall clear away and remove from site all Constructional Plant, surplus material and Temporary Works. He should leave the whole of the site and Works in a clean, tidy and workman like condition to the satisfaction of the Engineer.</p>
<b>Contractor's Operations on Site</b>	<b>4.18</b>	<p>The Contractor shall confine his operations to the Site, and to any additional area which may be provided to the Contractor and agreed by the Engineer as working areas. The Contractor shall take all necessary precautions to keep his personnel and equipment within the Site and such additional areas, and to keep and prohibit them from encroaching on adjacent land.</p>
<b>Publicity</b>	<b>4.19</b>	<p>The Contractor shall not publish or otherwise circulate alone or in</p>

		conjunction with any other person, any articles, photographs or other materials relating to the Contract, the Site, the Works, the Project or any part thereof, nor report to the press, or any radio or television network any information relating thereto, nor allow any representative of the media access to the Site, Contractor's Works Areas, or off-Site place of manufacture, or storage except with the permission, in writing, of the Employer.
<b>Disclosure of Relationship</b>	<b>4.20</b>	If the Contractor or any partner of the Contractor or Director of the Contractor's company is closely related to any of the Officers of the Employer or the Engineer, or alternatively, if any close relative of an officer of the Employer or the Engineer has financial interest / stake in the Contractor's firm, the same shall be disclosed by the Contractor at the time of filing his tender. Any failure to disclose the interest involved, shall entitle the Employer to rescind the Contract, without payment of any compensation to the Contractor. The Contractor shall note that he is prohibited from developing such interest during the Contract period.
<b>Use of Explosives</b>	<b>4.21</b>	Explosives if required on the Work shall be used by Contractor only with prior Approval of the Engineer and in the manner and to the extent permitted by him.
<b>Corrupt or fraudulent practices</b>	<b>4.22</b>	<p>(1) The Employer requires that the Tenderers/Contractors observe the highest standards of ethics during Tendering and execution of this Contract. In pursuance with this policy, the Employer:</p> <ul style="list-style-type: none"><li>(a) defines, for the purpose of these provisions, the terms set forth below as follows:<ul style="list-style-type: none"><li>(i) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to Employer, Engineer or any of their employees, influence in the procurement process or in Contract execution; and</li><li>(ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Employer, and includes collusive practice among Tenderers (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.</li></ul></li><li>(b) will reject the Tender for the Work or rescind the Contract if the Employer determines that the Tenderer/Contractor has engaged in corrupt or fraudulent practices under Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1947 or any other act enacted for the prevention of corruption by public servants and to recover from the Contractor the amount of any loss arising from such cancellation in accordance with the provision of Clause 13.2</li><li>(c) will declare a Contractor ineligible, either indefinitely or for a stated period of time, to be awarded a Contract/s if he at any time determines that the Contractor has engaged in corrupt or fraudulent practices in competing for, or in executing the Contract.</li></ul> <p>(2) In the event of rescission of Contract under Sub-Clause 4.22(1), the Contractor shall not be entitled to any compensation whatsoever, except for the work done up to the date of rescission of the Contract.</p>
<b>Quality Assurance</b>	<b>4.23</b>	The Contract shall be executed within the framework of an efficient Quality System. ISO 9001/200, EN ISO 10007 are the standards of reference for QA requirements applicable to the Contractor's activities such as design, manufacture and on-site activities.

<b>Work by Persons Other than Contractor</b>	<b>4.24</b>	<p>If the Contractor fails to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Engineer in accordance with the Contract within a reasonable time, the Engineer may give the Contractor 14 days' notice in writing to carry out such work or comply with such instruction. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work or instruction by his own workmen or by other contractors. Without prejudice to any other right or remedy, all additional expenditure properly incurred by the Employer in having such work or instruction carried out shall be recoverable by the Employer from the Contractor.</p> <p>If by reason of any accident occurring to, in, or in connection with the Works any remedial or other work shall, in the opinion of the Engineer, be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Engineer may authorise the carrying out of such remedial or other work by a person other than the Contractor. If the remedial or other work so authorised by the Engineer is 'Works', which, in the Engineer's opinion, the Contractor was liable to do under the Contract, all expenses properly incurred in carrying out the same shall be recoverable by the Employer from the Contractor. Provided that the Engineer shall, within two hours of the occurrence of any such accident, notify the Contractor thereof in writing.</p> <p>If by reason of any failure or other event occurring to, in, or in connection with the Works any remedial or other work shall, in the opinion of the Engineer, be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Engineer may authorise the carrying out of such remedial or other work by a person other than the Contractor. If the remedial or other work so authorised by the Engineer is 'Works', which, in the Engineer's opinion, the Contractor was liable to do under the Contract, all expenses properly incurred in carrying out the same shall be recoverable by the Employer from the Contractor. Provided that the Engineer shall, within six hours of the occurrence of any such emergency, notify the Contractor thereof in writing.</p>
<b>Confidentiality of Information</b>	<b>4.25</b>	<p>(1) The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract.</p> <p>(2) The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.</p> <p>(3) The obligation of a party under the Clause above, however, shall not apply to that information which:</p> <ul style="list-style-type: none"><li>(a) now or hereafter enters the public domain through no fault of that party.</li><li>(b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto.</li><li>(c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.</li></ul>
<b>Insolvency and Breach of Contract</b>	<b>4.26</b>	<p>The Purchaser may at any time, by notice in writing, terminate the contract without compensation to the Contractor in any of the following events, that is to say: -</p>

- i. if the Contractor being an individual or in a firm. shall at any time, be adjudged insolvent or shall have a receiving order or order for administration of his estate made against him or shall take any proceeding for composition under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any assignment or composition with his creditors or suspend payment or if the firm be dissolved under the Partnership Act, or
- ii. if the Contractor being a company is wound up voluntarily or by the order of a Court or a Receiver, Liquidator, or Manager on behalf of the debenture holders is appointed, or circumstances shall have arisen which entitle the Court or Debenture holders to appoint a Receiver, Liquidator or Manager, or
- iii. If the contractor commits any breach of the contract not herein specifically provided for.
- iv. Provided always that such termination shall not prejudice any right of action or remedy which shall have accrued or shall accrue thereafter to the Employer and provided also the Contractor shall be liable to pay to the Employer any extra expenditure he is thereby put to and the Contractor shall, under no circumstances, be entitled to any gain on repurchase.

<b>Design</b>	<b>5</b>	<b>DESIGN</b>
<b>General Obligations</b>	<b>5.1</b>	The Contractor shall design and provide all necessary specifications for the Machine/Plant in accordance with the site plans and Employer's requirements. Any design detail, plan, drawing, specifications, notes, annotations, and information required shall be provided in such sufficient format, details, extent, size and scale and within such time as may be required to ensure effective execution of Works and/or as otherwise required by the Engineer.
<b>Manufacture Documents</b>	<b>5.2</b>	<p>The Manufacture Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, documents described in Clause 5.4 (As Built Document), and Clause 5.5 (Operations and Maintenance Manuals). The Contractor shall prepare all Manufacture Documents in sufficient detail and shall also prepare any other document necessary to instruct the Contractor's personnel.</p> <p>Each of the Manufacture Documents shall, when considered ready for use, be submitted to the Engineer for pre-manufacture review. Execution of construction/ manufacture related to the Contract shall not commence until the Engineer has provided with no objection the Manufacture Document.</p> <p>Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects if found at any stage in any construction and/or manufacture documents, shall be rectified by the Contractor at his own cost and any approval, consent or review (under this Clause or otherwise) by the Employer/Engineer of the Manufacture and Construction Documents under this Clause shall not relieve the Contractor from any obligations or responsibility under the Contract.</p>
<b>Technical Standards and Regulations</b>	<b>5.3</b>	Execution of the Contract shall comply with the specifications, technical standards, safety and environmental regulations and other standards specified in the Employer's Requirements or defined by the applicable laws and regulations.
<b>As-Built Drawings and Documents</b>	<b>5.4</b>	The Contractor shall prepare a complete set of "as-built" drawings for the Machine/Plant and its installation, showing the exact "as-built" sizes and details of the works as executed. Prior to the issue of Taking Over Certificate, the Contractor shall submit to the Engineer one soft copy in addition to six printed copies of the relevant "as-built drawings" The Works

shall not be considered to be completed for the purposes of Taking Over under Clause 9.1 until such documents have been submitted to the Engineer.

**Operation and Maintenance Manuals**

**5.5**

The Contractor shall prepare, and submit to the Engineer, Operation and Maintenance Manuals in accordance with the Employer's Requirements and in sufficient detail for the Employer to operate, maintain, adjust and repair the Machines/Plants. The Operation and Maintenance Manuals and drawings submitted by the Contractor shall, if required, be updated by him during the Defects Liability Period and re-submitted for review by the Engineer.

**Intellectual Property Rights and Royalties**

**5.6**

The Contractor shall indemnify the Employer and the Engineer from and against all claims and proceedings on account of infringement (or alleged infringement) of any patent rights, registered designs, copyright, design, trademark, trade name, know-how or other intellectual property rights in respect of the Machines/Plants, the Contractor's Equipment, work method, or Plant, or Materials, or anything whatsoever required for the Machine/Plant and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. The Contractor shall be promptly notified of any claim under this Clause made against the Employer. The Contractor shall, at his cost, conduct negotiations for the settlement of such claim, and any litigation or arbitration that may arise from it. The Employer or the Engineer shall not make any admission which might be prejudicial to the Contractor, unless the Contractor has failed to take over the conduct of the negotiations, litigation or arbitration within a reasonable time after having been so requested. In the event of the Contractor failing to act at the Engineer's notice, the Employer shall be at full liberty to deduct any such amount of pending claim from any amount due to the Contractor under this Contract or any other Contract between the Employer and the Contractor.

Insofar as the patent, copyright or other intellectual property rights in any Plant, Design Data, plans, calculations, drawings, documents, Materials, know-how and information relating to the Works shall be vested in the Contractor, the Contractor shall grant to the Employer, his successors and assignees a royalty-free, non-exclusive and irrevocable licence to use and reproduce any of the works, designs or inventions incorporated and referred to in such Plant, documents or Materials and any such know-how and information for all purposes relating to the Works (including without limitation the design, manufacture, installation, reconstruction, Testing, commissioning, completion, reinstatement, extension, repair and operation of the Works) for the Employer's own use.

If any patent, registered design or software is developed by the Contractor specifically for the Machines/Plants, the title thereto shall vest in the Employer and the Contractor shall grant to the Employer a non-exclusive irrevocable and royalty-free licence to use, repair, copy, modify, enhance, adapt and translate in any form such Software for Employer's own use.

If any software is developed under the Contract or used by the Contractor for the purposes of storing or utilising records over which the Contractor or a third party holds title or other rights, the Contractor shall permit or obtain for the Employer (as the case may require) the right to use and apply that Software free of additional charge (together with any modifications, improvements and developments thereof) for the purpose of the design, manufacture, installation, reconstruction, testing, commissioning, completion, reinstatement, extension, repair, modification or operation of the Works, or any part thereof, or for the purpose of any Dispute.

The Employer reserves the right to use other Software on or in connection with the Works.

	<b>6</b>	<b>STAFF AND LABOUR</b>
<b>Engagement of Staff and Labour</b>	<b>6.1</b>	The Contractor shall make his own arrangements for the engagement of staff and labour at his own cost.
<b>Labour Laws</b>	<b>6.2</b>	<p>In dealing with labour and employees, the Contractor shall comply fully with all laws and statutory regulations pertaining to engagement, payment and upkeep of the labour in India.</p> <p>The Contractor shall be solely accountable for violation of any labour law by it and will pay any such claim/damage to the authorities forthwith on demand. If any moneys shall, as a result of any instructions, directions or decisions from the Authorities or claim or application made under any of the labour laws or regulations, be directed to be paid by the Employer, such moneys shall be deemed to be moneys payable to the Employer by the Contractor and he will pay the same to the Employer forthwith on demand, without demur and without asking for any reasons/explanations from the Employer. On failure of the Contractor to repay the Employer any moneys paid or to be paid by it as aforesaid within seven days after the same shall have been demanded, the Employer shall be entitled to recover the amount from any moneys due or accruing to the Contractor under this or any other Contract between the Employer and the Contractor.</p>
<b>Health and Safety</b>	<b>6.3</b>	Precaution shall be taken by the Contractor to ensure the health and safety of his staff and labour. The Contractor shall arrange for adequate medical facilities at the Site at all times, and will ensure complete compliance with relevant Clauses of Employer's Health, Safety and Environment Manual (SHE Manual).
<b>Contractor's Superintendence</b>	<b>6.4</b>	The Contractor shall provide all necessary superintendence during the design and execution of the Contract. Such superintendence shall be provided by persons having adequate knowledge of the operations to be carried out for the satisfactory and safe execution of the Works.
<b>Contractor's Personnel</b>	<b>6.5</b>	The Contractor shall employ (or cause to be employed) only persons who are appropriately qualified, skilled and experienced. The Engineer may require the Contractor to remove any person employed on the Site or Works found guilty of misconduct, incompetency or negligence in performance of his duties.
<b>Report of Accidents To Labour</b>	<b>6.6</b>	The Contractor shall be responsible for safety of all employees, employed by him for execution of the Contract, and shall report accidents to any of them, however and wherever occurring at Site, to the Engineer and shall make every arrangement to render all possible assistance and to provide prompt and proper medical attention. The compensation for affected Workers or their relatives shall be paid by the Contractor in such cases with utmost expedition in accordance with the Workmen's Compensation Act.
	<b>7</b>	<b>QUALITY CONTROL</b>
<b>Manner of Execution</b>	<b>7.1</b>	Machine to be supplied shall be manufactured, and all ancillary work to be done shall be executed, in the manner set out in the Contract in a proper, workmanlike and careful manner, with properly equipped facilities and non-hazardous Materials, and in accordance with recognized good practice.
<b>Delivery to Site</b>	<b>7.2</b>	The Contractor shall be responsible for procurement, transport, receiving, unloading and safe keeping of all Plant/Machine Construction Materials, Contractor's Equipment and other things required for the completion of the Works.
<b>Inspection</b>	<b>7.3</b>	The Employer and the Engineer shall at all reasonable times be entitled to inspect, examine, measure and test the materials and workmanship of all

		<p>Machines/Plants/Equipment and Materials to be supplied under the Contract.</p> <p>The Contractor shall give the Engineer full opportunity to carry out these activities including providing access, facilities, permissions and safety equipment.</p>
<b>Testing</b>	<b>7.4</b>	<p>This Clause shall apply to all tests specified in the Contract.</p> <p>The Contractor shall provide all documents and other information necessary for all types of testing, and labour, materials, and instruments as are necessary to carry out such tests efficiently.</p> <p>The Engineer shall give the Contractor not less than 7 days' notice of his intention to attend the tests.</p> <p>The expense of conducting such Tests shall be borne by the Contractor. No such testing shall relieve the Contractor from any obligation or responsibility.</p>
<b>Rejection</b>	<b>7.5</b>	<p>If, as a result of inspection, examination or testing, any Plant/Machine, Material, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the same and by giving notice to the Contractor with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item after rectification complies with the Contract.</p>
<b>Liability after Inspection and Testing</b>	<b>7.6</b>	<p>The Contractor shall not be released from any liability or obligation under the Contract by reason of any such inspection or testing or witnessing of testing.</p>
<b>Cost of Employer's Attendance Including Travel</b>	<b>7.7</b>	<p>The Employer shall bear the costs of attendance including travel, boarding and lodging for the Employer, the Engineer or his assistant for the purposes of Clauses 7.3 and 7.4 above. The cost of attendance including travel, boarding and lodging for the Employer, Engineer or his assistants for the purpose of Clause 7.5 shall be borne by the Contractor.</p>
<b>Tests on Completion</b>	<b>7.8</b>	<p>(1) <u>Contractor's Obligations</u>: The Contractor shall carry out the Tests on Completion at his own cost in accordance with the Contract and shall provide the documents in accordance with Clauses 5.4 and 5.5. The Contractor shall give, to the Engineer, 14 days' notice of the date after which the Contractor will be ready to carry out the Tests on Completion. Unless otherwise agreed, such Tests shall be carried out within 7 days after this date, on such day or days as the Engineer shall instruct.</p> <p>As soon as the Machines/Plants have passed the Tests on Completion, the Contractor shall provide the Engineer and the Employer with a certified report of the results of all such Tests.</p> <p>(2) <u>Delayed Tests</u>: If the Engineer opines that Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out such Tests within 21 days after the receipt of the notice. If the Contractor fails to carry out the Tests on Completion within 21 days, the Engineer may proceed with such Tests at the risk and cost of the Contractor. The Tests on Completion then shall be deemed to have been carried out in the presence of the Contractor and the results of such Tests shall be accepted as accurate.</p> <p>(3) <u>Failure to Pass Tests on Completion</u>: If the Machines/Plants fail to pass the Tests on Completion or a part thereof, the Engineer shall be entitled to:</p> <ul style="list-style-type: none"><li>(a) order repetition of Tests on Completion;</li><li>(b) reject the supply, in which event the Employer shall have the same remedies against the Contractor as are provided under</li></ul>

Clause 13; or

- (c) issue a Taking Over Certificate if the Employer so requires. The Contract Price shall then be reduced by such amount as determined by the Engineer (agreed by both Parties and paid before this Taking-Over Certificate is issued) and as shall be appropriate to cover the reduced value to the Employer as a result of this failure. The Contractor shall then proceed in accordance with his other obligations under the Contract.

**Integrated testing and system commissioning**

**7.9**

- (1) Integrated Testing: Tests on Completion shall also include Integrated Testing. The Contractor shall, following satisfactory Tests on Completion, perform, at the direction of the Engineer, required tests to verify and confirm the compatibility and complete performance of his Machine/Plant with the works, equipment, sub-systems or system provided by others.
- (2) Compilation of Test Results: The results of the Integrated Testing and Commissioning shall be compiled and evaluated by the Engineer and the Contractor.
- (3) Re-testing: If the Machines/Plants fail to pass the Integrated Testing and Commissioning, the Engineer shall require such failed Tests, to be repeated under the same terms and conditions. If such failure and retesting result from a default of the Contractor and cause the Employer to incur costs, the same shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due, or to become due, to the Contractor.
- (4) Failure to Pass Test: If the Machines/Plants fail to pass Integrated Testing and Commissioning and the Contractor in consequence proposes to make any adjustment or modification to the Machine/Installation or a part thereof, the Engineer may, with the approval of the Employer, instruct the Contractor to carry out such adjustment or modification, at his own cost and to satisfy the requirements of Integrated Testing and Commissioning within such time as the Employer / Engineer may deem to be reasonable.

**Acceptance of stores dispatched after the expiry of Delivery Period**

**7.10**

- (1) In case where only a portion of the stores ordered is tendered for inspection at the fag end of the delivery period and also in cases where inspection is not completed in respect of the portion of the stores tendered for inspection during the delivery period because of the reason that adequate notice for inspection in accordance with Clause 7.3 was not given by the Contractor, the Purchaser reserves the right to cancel the order of the balance quantity, at the risk and expense of the Contractor without any further reference to him. If the stores tendered for inspection during or at the fag end of the delivery period are not found acceptable after carrying out the inspection, Purchaser is entitled to cancel the contract in respect of the same at the risk and expense of the Contractor. If, however, the stores tendered for inspection are found acceptable, the Purchaser may grant an extension of the delivery period subject to the following conditions: -
  - i. The purchaser has the right to recover from the Contractor the liquidated damages on the stores, which the Contractor has failed to deliver within the period fixed for delivery.
  - ii. That no increase in price on account of any statutory increase in or fresh imposition of Custom Duty, Excise Duty, Sales Tax, Freight charges or on any account of any other tax or duty leviable in respect of the stores specified in the contract, which takes place after the date of delivery period stipulated in the said Acceptance of Tender, shall be admissible on such of the said stores as are delivered after said date.
  - iii. That notwithstanding any stipulation in the contract for increase in price on any other ground, no such increase which takes place

after the delivery date stipulated in the contract shall be admissible on such of the said stores as are delivered after the said date.

- iv. But nevertheless the Purchaser shall be entitled to the benefit of any increase in price on account of reduction in or remission of Customs Duty, Excise Duty, Sales Tax or on account of any other ground which takes place after the expiry of the delivery date stipulated in the contract. The Contractor shall allow the said benefit in his bills or in the absence thereof shall certify that no decrease in price on account of any of these factors has taken place.
- (2) The Contractor shall not dispatch the stores till such time an extension in terms of Clause 7.10(1)(i) to (iv) above is granted by the Purchaser and accepted by the Contractor. If the stores are dispatched by the Contractor before an extension letter aforesaid is issued by the Purchaser and the same are accepted by the consignee, the acceptance of the stores shall be deemed to be subject to the conditions (i) to (iv) mentioned in Clause 7.10(1) above.
  - (3) In case where the entire quantity has not been tendered for inspection within the delivery period stipulated in the contract and the Purchaser chooses to grant an extension of the delivery period the same would be subject to conditions (i) to (iv) mentioned in the Clause 7.10(1) above.

## **8 COMMENCEMENT, COMPLETION AND DELAY**

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|---|------------|--|
| <b>Commence-<br/>ment of Works</b>              | <b>8.1</b> | The Contractor shall commence the work on the Facilities within the period specified in the Schedule of Key Dates (Appendix FT1 of Form of Tender) and shall thereafter proceed with execution of the Contract in accordance with the time schedule as specified in the Schedule of Key Dates.   |
| <b>Time for<br/>Completion</b>                  | <b>8.2</b> | Time is the essence of Contract. The Contractor shall ensure satisfactory completion of the scope of works within the time specified in the Schedule of Key Dates.   |
| <b>Delay</b>                                    | <b>8.3</b> | <p>In case of delay on the part of the Contractor, the Contractor shall be liable to pay liquidated damages and any other compensation for the damages suffered by the Employer as per Clause 8.5. This is without prejudice to the right of the Employer to rescind the Contract.</p> <p>Failure or delay by the Employer or the Engineer, to hand over to the Contractor the Site necessary for execution of Works, or any part of the Works, or to give necessary notice to commence the Works, or to provide necessary Drawings or instructions or clarifications or to supply any material, plant or machinery, which under the Contract, is the responsibility of the Employer, shall in no way affect or vitiate the Contract or alter the character thereof, or entitle the Contractor to damages or compensation thereof but in any such case, the Engineer shall extend the time period for the completion of the Contract, as in his opinion is / are reasonable.</p> |
| <b>Extension of<br/>Time for<br/>Completion</b> | <b>8.4</b> | <p>(1) <u>Extension of Time</u>: The Contractor may apply for an extension of the Time for Completion if the Work is or will be delayed either before or after the Time for Completion by any of the following causes:</p> <ol style="list-style-type: none"><li>(a) "Force Majeure" referred to in Clause 16.</li><li>(b) The Contractor's work held up for not being given possession of or access to the Site in accordance with the Contract.</li><li>(c) Instruction of the Engineer to suspend the Works and the Contractor not being in default as to reasons of suspension.</li><li>(d) Acts or omissions of other Designated Contractors in executing work not forming part of this Contract and on whose</li></ol>   |

performance, the performance of the Contractor necessarily depends.

- (e) Any act of prevention or Breach of the Contract by the Employer and not mentioned in this Clause.
- (f) Any order of Court restraining the performance of the Contract in full or in any part thereof and the Contractor not being in default as to reason of such order of court.
- (g) Any other event or occurrence which, according to the Employer is not due to the Contractor's failure or fault, and is beyond his control without Employer being responsible for the same.
- (h) An Employer's Variation.

However, the Contractor shall not be entitled to any extension of time without any LD (as stipulated in Appendix FT-1 to FOT Sl.No.5) where the instructions or acts of the Employer or the Engineer are necessitated by or intended to cure any default of or breach of Contract by the Contractor or where any delay is due to:

- (a) non-availability or shortage of Contractor's equipment, labour, utility services, Plant and Materials,
- (b) inclement weather conditions, and
- (c) the Contractor not fulfilling his obligations under Clause 4.4.

If the Contractor considers himself to be entitled to an extension of time for Completion, he shall give notice to the Engineer of such intention as soon as possible and in any event within 28 days of the start of the event giving rise to the delay and full and final supporting details of his application within 21 days of the last day of delay, together with any notice required by the Contract and relevant to such Clause. If the cause of delay continued for a period exceeding 7 days, the Contractor shall submit interim details at intervals of not more than 28 days (from the first day of such delays).

The Engineer shall proceed in accordance with Clause 3.3 to agree or determine either prospectively or retrospectively such extension of the Time for Completion as may be due. The Engineer shall notify the Contractor accordingly.

- (2) Extension of time for completion for other reasons: The Contractor shall not be entitled to an extension of time by reason of any delay to any activity in carrying out of the Works unless in the opinion of the Engineer such delay results in or may be expected to result in a delay to completion of the Works, or achievement of any Stage by the relevant Key Date.

Any extension to a Key Date shall not by itself entitle the Contractor to an extension to any other Key Date and the Time for Completion.

**Liquidated Damages for Delay**      **8.5**

The liquidated damages are recovered by the Employer from the Contractor for delay and not as penalty. The liquidated damages shall be recovered as specified in the Contract Conditions in Appendix FT-1 to the Form of Tender.

The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due, or to become due, to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligations to complete the Works, or from any other of his duties, obligations or responsibilities under the Contract.

At any time after the Employer has become entitled to liquidated damages, the Engineer may give notice to the Contractor under Clause 13.1, requiring the Contractor to complete the Works within a specified reasonable time. Such action shall not prejudice the Employer's entitlements to recovery of liquidated damages, under this Clause and to

terminate under Clause 13.2.

The decision of the Engineer as to the compensation payable by the Contractor under this Clause shall be final and binding.

**Rate of Progress**      **8.6**      If for any reason which does not entitle the Contractor to an extension of time, the rate of progress of the Works is at any time, in the opinion of the Engineer, too slow to ensure timely completion of the Works or achievement of any Stage by the relevant Key Date the Engineer may so notify the Contractor in writing. The Contractor shall thereupon take such steps as are necessary, or in default of taking such steps, shall take such steps as the Engineer may reasonably instruct in writing, to expedite progress so as to complete the Works or any Section in time or achieve any Stage by the relevant Key Date. The Contractor shall not be entitled to any additional payment for taking such steps.

If any steps taken by the Contractor in meeting his obligations under this Clause cause the Employer to incur additional costs, such costs shall be recoverable from the Contractor by the Employer, and shall be deducted by the Employer from any monies due, or to become due, to the Contractor.

**Suspension of Work**      **8.7**      The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works stating the grounds for such action. During suspension, the Contractor shall protect, store and secure such part or whole of the Works against any deterioration, loss or damage.

**Consequences of Suspension**      **8.8**      The Contractor shall not be entitled to extra cost (if any), incurred by him, during the period of suspension of Work, if such suspension is:

- (a) provided for in the Contract, or
- (b) necessary for proper execution of Works or by reasons of weather condition or by some default on the part of the Contractor, or
- (c) necessary for the safety of Works or any part thereof, or
- (d) necessary for the safety of adjoining public or other property or safety of the public or workmen or those who have to be at the site, or
- (e) to ensure safety and to avoid disruption of traffic and utilities, as also to permit fast repairs and restoration of any damaged utilities,

If suspension is ordered by the Engineer for reasons other than those mentioned above then the Contractor's entitlement are in the table below:

Sr. No.	Suspension Period	Extension of Time	Compensation for the suspension period	Remarks
1	Upto 14 days	NO	NO	Engineer may give extension of time in exceptional circumstances
2	15 – 30 days	YES	NO	Extension of time as considered proper by the Engineer
3	Above 30 days	YES	As per Daily rate of wages for idle labour/employees	Compensation as assessed by the Engineer on submission of documentary proof by the Contractor to Engineer's satisfaction
4	Above 90 days	NO	As per Sub-Clause 13.3(4) of GCC	Contractor may ask for closure of the Contract, or deletion from the Contract of that part of Works which has been suspended

<b>Resumption of Work</b>	<b>8.9</b>	After receipt of permission or of an instruction to proceed, the Contractor shall, after notice to the Engineer, and together with the Engineer, examine the Works, Plant / Equipment and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works, Plant / Equipment and Materials, which has occurred during the suspension.
<b>Delivery</b>	<b>8.10</b>	<p>(1) <u>In case of Local Contracts:</u></p> <p>(i) The Contractor shall as may be required by the Purchaser either deliver free or F.O.R at the place detailed in the contract, the quantities of the stores detailed therein and the stores shall be delivered or dispatched not later than the dates specified in the contract. The delivery will not be deemed to be complete until and unless the stores are inspected and accepted by the Inspecting Officer as provided in the contract.</p> <p>(ii) Notwithstanding any inspection and approved by the Inspecting Officer on the Contractor's premises, property in the stores shall not pass on the Purchaser until the stores have been received, inspected and accepted by the consignee.</p> <p>(2) <u>In case of Foreign Contracts:</u> The stores shall be delivered by the Contractor free on board such vessels in such port or ports named in the quotation, as the Purchaser or his nominee may require.</p> <p>Such number of inspection certificates, advice notices, packing accounts and invoices, as may be required by the purchaser or his nominee, shall be furnished by the Contractor at his own cost.</p> <p>(3) <u>Notification of Delivery:</u> Notification of delivery or dispatch in regard to each and every instalment shall be made to the Purchaser, consignee and Port consignee (if applicable) immediately on dispatch or delivery. The Contractor shall further supply to the consignee, or the interim consignee, as the case may be, a packing account quoting number and date of the acceptance of tender and date of dispatch of the stores. All packages shall be fully described in the packing account and full details of the contents for the packages and quantity of materials shall be given to enable the consignee to check the stores on arrival at destination. The copy of Railway Receipt/Consignment note or Bill of Lading with other shipping documents, if any shall be forwarded to the consignee and or the port consignee named in the contract, as The contractor shall bear and reimburse to the Purchaser demurrage charges, if any, paid by reason of delay on the part of the Contractor in forwarding the copy of the Railway Receipt, Consignment Note or Bill of Lading and other shipping documents.</p> <p>(4) <u>Time for and Date of Delivery:</u> The time for and the date specified in the contract or as extended for the delivery of the stores shall be deemed to the essence of the contract and delivery must be completed not later than the dates so specified or extended.</p> <p>(5) <u>Progressing of Deliveries:</u> The contractor shall allow reasonable facilities and free access to his works and records to the inspecting officer; progress officer or such other officer as may be nominated by the Purchaser for the purpose of ascertaining the progress of the deliveries under the contract.</p>
	<b>9</b>	<b>EMPLOYER'S TAKING OVER</b>
<b>Taking Over Certificate</b>	<b>9.1</b>	The installed Machines/Plants shall be taken over by the Employer when they have been completed in accordance with the Contract, have passed the Tests on Completion, including Integrated Testing and Commissioning, and a Taking Over Certificate for the Works has been issued. The Contractor may apply by notice to the Engineer for a Taking

Over Certificate not earlier than 14 days before the Machines/Plants will, in the Contractor's opinion, be complete and ready for taking over. The Engineer shall, within 28 days after the receipt of the Contractor's application:

- (a) issue the Taking Over Certificate to the Contractor, stating the date on which the commissioning of the Machines/Plants/Equipment was completed, including the Tests and Integrated Testing and Commissioning, as well as completion of supply of O&M documentation and training to Employer's Personnel in accordance with the Contract; or
- (b) reject the application, giving his reasons and specifying the work required to be done by the Contractor to enable the Taking Over Certificate to be issued. The Contractor shall then complete such work before issuing a further notice under this Clause.

The first Machine/Plant shall, after completion of Testing and Commissioning, be subject to intensive service trials for a period of 30 days. The remaining machines/plants, if any, will be subject to intensive service trials for at least 10 days. Any defects, deficiencies detected during these Service Trials shall be made good promptly by the Contractor to the satisfaction of Engineer. The Engineer shall thereafter consider issue of Taking over Certificate for respective machine/plant. The time limit of 28 days stipulated for the Engineer to take action on the Contractor's application for issue of Taking Over Certificate will commence after expiry of the above mentioned period of service trials.

**10 DEFECTS LIABILITY**

**Completion of Outstanding Work and Remedying Defects**

**10.1** "Defects Liability Period" shall mean the defects liability period of 24 months from the date of Taking Over Certificate. Provided that, if any part of the Machine/Plant or sub-systems or component of that part has been replaced, renewed or repaired, the Defects Liability Period in respect of that part or sub-system or components of that part shall start from the date of such replacement, renewal or repair has been completed to the satisfaction of the Engineer.

The Contractor shall remedy, at no extra cost to the Employer, the defects or failures (fair wear and tear excluded) after installed Machines/Plants are taken over by the Employer until the end of Defects Liability Period.

**Cost of Remedying Defects**

**10.2** Outstanding work stated in the Taking Over Certificate shall be executed by the Contractor at his own cost, if the necessity for such work is due to:

- (a) the design of the Works;
- (b) Plant, Machine, Materials or workmanship not being in accordance with the Contract; or
- (c) failure by the Contractor to comply with any of his other obligations.

**Extension of Defects Liability Period**

**10.3** The Defect Liability Period shall be extended by a period, after the Works are taken over, during which the Works or any Section or item of Plant/Machine, cannot be used, for the purposes for which they are intended, by reason of a defect or damage.

**Performance Certificate**

**10.4** The Performance Certificate shall be given by the Engineer by the date 28 days after expiry of the Defects Liability Period.

Only the Performance Certificate shall be deemed to constitute approval of the Works.

**Unfulfilled Obligations**

**10.5** After the Performance Certificate has been signed by the Engineer and delivered to the Contractor, stating the date on which the Contractor completed his obligations to the Engineer's satisfaction, the Contract shall be considered to be complete. However, the Contractor and the Employer shall remain liable for the fulfilment of any obligation, which remains

unperformed at that time. For the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force.

**11 CONTRACT PRICE AND PAYMENT**

**Contract Price 11.1** Unless otherwise stated in the Special Conditions of Contract, the Contract Price shall be a fixed lump sum price. The Contract price shall be inclusive of all taxes, levies, duties, royalties and other charges leviable and payable to the authorities.

The Contract price shall not be adjusted in respect of any increase or decrease of cost to the contractor in carrying out the work by reason including of:

- 1) an alteration in the rates of wages or allowances payable to labour or a change in the conditions of employment thereof;
- 2) a change in the cost of materials (whether for the permanent or temporary works), consumables stores, fuel or power;
- 3) a variation in the rates of freight or insurance;
- 4) variation in the incidence of landing charges;
- 5) a variation in the cost of any other matter or thing of whatsoever nature except as stated in Special Conditions of Contract.

Nothing extra shall be payable over the quoted rates, notwithstanding any provision to the contrary in any law for the time being in force, save and except what is specifically provided in General or Special Conditions of Contract.

The Contract Price shall not be adjusted to take into account any increase or decrease in cost resulting from any change in taxes, duties, levies from the last date of submission of the Tender to the completion date including the date of the extended period of Contract unless a contrary provision exists in Special Conditions of Contract.

**Payment Terms 11.2** (a) The standard payment terms subject to recoveries, if any, by way of Liquidated Damages will be as per Appendix FT-1 to Form of Tender.  
(b) Payments shall be made as per Clause 1.5.1.1(i) & (ii) or 1.5.2.1(i) & (ii) of "Pricing Document", Appendix FT-2 to FOT.

**Interim and Final Payment 11.3** After scrutiny and certification by Engineer, the payment mentioned in Clause 1.5.1.1(i) & (ii) or 1.5.2.1(i) & (ii) of "Pricing Document" will be made by the Employer within 28 days. The amount certified shall account for all deductions and all amounts due from the Contractor

The Final Bill will be the balance 20% payment of the supply value of stores which becomes due upon Commissioning and issue of Taking Over Certificate as per Clause 1.5.1.1(iii) or 1.5.2.1(iii) of "Pricing Document", Appendix FT-2 to FOT; as well as any other amount considered due.

When submitting the final bill, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all monies due to the Contractor under the Contract. Such discharge may state that it shall become effective only after payment due under the Final Payment Bill has been made.

The payment of Final Bill will be made within 3 (three) weeks after issuing of Taking Over Certificate as per Clause 1.5.1.1(iii) or 1.5.2.1(iii) of "Pricing Document", Appendix FT-2 to FOT and submission of Bills.

**Issue of Final Payment Certificate 11.4** The Engineer shall issue to the Employer, with a copy to the Contractor, the Final Payment Certificate within 28 days after releasing of Final Payment.

**Calculation of Payments in 11.5** All payments made by the Employer pursuant to the terms of the Contract shall be in the currency or currencies specified in the Contract. Wherever

<b>Foreign Currency</b>		any sum in a foreign currency has to be converted into Indian Rupees for any purpose, the exchange rate to be employed for such conversion shall be the selling rate of exchange for those currencies published by Aid Accounts and Audit Division, Ministry of Finance, Govt. of India on the last working day (28) twenty eight days before the latest date of Tender Submittal..
<b>Rounding off</b>	<b>11.6</b>	In every payment to the Contractor, sums of less than fifty paise shall be omitted and sums of fifty paise and more up to one rupee shall be reckoned as one rupee.
<b>Payment By Cheque and E-Payment</b>	<b>11.7</b>	All payments to the Contractor will be made by cheque and/or “E-payment” as desired by the Employer.
<b>Signature On Receipts For Payments</b>	<b>11.8</b>	Every receipt of payment to Contractor including refund of the Performance Guarantee shall be signed by the person authorized to do so on his behalf. In the event of death of any of the Contractor’s partners in case the Contractor is a partnership firm, during the validity of the Contract, it is hereby expressly agreed that every receipt by any one of surviving Contractor’s partners, shall, if so signed as aforesaid, be a good and sufficient discharge as aforesaid, provided that nothing in this Clause shall be deemed to prejudice or affect any claim, which the Employer may hereafter have against the legal representatives of any Contractor’s partner so dying, for or in respect of breach of any of the conditions of the Contract. Provided also that nothing contained in this Clause shall be deemed to prejudice or affect the respective rights and obligations of the Contractor’s partners, or of the legal heirs / representatives of any deceased Contractor / partner’s interest.
<b>Recovery of money due to the Employer</b>	<b>11.9</b>	All damages (including, without limitation, liquidated damages), costs, charges, expenses, debts, or sums for which the Contractor is liable to the Employer under any provision of the Contract may be deducted by the Employer from monies due to the Contractor under the Contract including, without limitation, and the Employer shall have the power to recover any balance not so deducted from monies due to the Contractor under any other contract between the Employer and the Contractor.  When the Contractor has assigned to a third party the right to receive monies due, or, to become due, under the Contract to the Contractor or charged such monies in favour of a third party, the Employer’s right to deduct damages (including without limitation liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer from monies due to the Contractor under the Contract shall be limited to the right expressed above.
	<b>12</b>	<b>VARIATIONS</b>
<b>No Variations Envisaged</b>	<b>12.1</b>	Since the Contractor is required to supply stores (i.e. Synchronized Mobile Lifting Jacks), all the technical issues will get resolved before Contract is awarded. Therefore, variation in the terms of the Contract is not envisaged after it is awarded.
	<b>13</b>	<b>TERMINATION OF THE CONTRACT</b>
<b>Notice to Contractor</b>	<b>13.1</b>	If the Contractor fails to carry out any of his obligations the Engineer may give notice to the Contractor requiring him to make good such failure and remedy the same within such time as the Employer / Engineer may deem reasonable within a period of 30 days only.
<b>Termination of Contract Due to Contractor’s</b>	<b>13.2</b>	If the contractor fails to adhere to the KEY DATEs stipulated in the contract or as extended or at any time repudiates the contract before the expiry of such period, the Employer may without prejudice to his other rights: <ul style="list-style-type: none"> <li>a. Recover from the Contractor liquidated damages as prescribed in</li> </ul>

**Default**

the Contract Conditions in Appendix FT-1 to Form of Tender; or

- b. Cancel the contract or a portion thereof and, if so desired, execute the remaining portion of supply/installation of the Machines/Plants at the risk and cost of the Contractor.

Where action is taken under sub-clause (b) above, the Contractor shall be liable for any loss which the Purchaser may sustain on that account provided the purchase, or, if there is an agreement to purchase, such agreement is made, in case of failure to deliver the stores within the period fixed for such delivery in the contract or as extended within nine months from the date of such failure and in case of repudiation of the contract before the expiry of the aforesaid period of delivery, within nine months from the date of cancellation of the contract. The Contractor shall not be entitled to any gain on such purchase and the manner and method of such purchase shall be in the entire discretion of the Purchaser. It shall not be necessary for the Purchaser to serve a notice of such purchase on the Contractor.

Note: - In respect of the stores which are not easily available in the market and where procurement difficulties are experienced, the period for making risk purchase shall be nine months instead of six months provided above.

**Conditions Leading To termination Of Contract**

**13.2.1** The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with a notice under Clause 13.1;
- (b) abandons or repudiates the Contract;
- (c) without reasonable excuse acceptable to the Engineer, fails to commence the Works in accordance with the Contract;
- (d) sub-contracts the whole of the Works or assigns the Contract without approval of the Employer;
- (e) becomes bankrupt or insolvent or goes into liquidation except voluntary liquidation for the purpose of amalgamation or reconstruction;
- (f) persistently disregards instructions of the Engineer or contravenes any provisions of the Contract, or
- (g) fails to adhere to the agreed programme of work by margin of 10% of the stipulated period or 60 days, whichever is earlier, or fails to complete the Works or parts of the Works within the stipulated or extended period of completion, or is unlikely to complete the whole Work or part thereof within time because of poor record of progress; or
- (h) fails to remove materials from the Site, or pull down and replace work, after receiving notice from the Engineer to the effect that the said materials or Works have been condemned or rejected, or
- (i) fails to take steps to employ competent and/or additional staff and labour, or
- (j) fails to afford the Engineer or his representative proper facilities for inspecting the Works or any part thereof, or
- (k) indulges in corrupt or fraudulent practices as explained in Sub-Clause 4.22(1).

In any one these events or circumstances, the Employer may upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in case of sub-clause (e) or (i), the Employer may by notice terminate the Contract immediately.

The Employer's decision to terminate the Contract shall not prejudice any other rights of the Employer under the Contract.

After termination, the Employer may complete the works and/ arrange for any other entities to do so at the risk and cost of the Contractor. The Employer and his entities may then use the roads, the Contractor's documents and his design document made by or on behalf of the

Contractor.

On termination of Contract due to Contractor's default, the Employer shall be entitled to:

- (a) forfeit the whole or such portion of the Performance Guarantee amount as he may consider fit, and
- (b) recover from the Contractor the cost of carrying out the balance work in excess of the sum which he would have been paid according to the certificate of the Engineer, if the works had been carried out and completed by the Contractor under the terms of Contract. Such certificate shall be final and binding upon the Contractor. The amount to be recovered may be deducted by the Employer from any monies then due or which, at any time thereafter, may become due to the Contractor alone or jointly under this or any other Contract or otherwise.

For the purpose of this Clause, a reasonable excuse shall be one, which in the opinion of the Engineer has resulted from:

- Circumstance which
  - is beyond the Employer's or Contractor's control and
  - made the failure unavoidable and
- It is evidenced by the Contractor to the satisfaction of the Engineer that the failure was remedied without unreasonable delay once that obstacle was out of the way.

**Valuation at the date of Termination**      **13.2.2**      The Engineer shall, within 90 days from the date of termination of the Contract under Sub-Clause 13.2.1, determine and advise the Contractor of the value of the Construction and/or Manufacture Documents, Machine/Plant, Materials, Contractor's Equipment and works and all sums then due to the Contractor as at the date of termination.

**Payment after Termination**      **13.2.3**      After termination under Sub-Clause 13.2.1, the Employer shall not be liable to make any further payments to the Contractor until the costs of design, manufacture, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established.

The Employer shall be entitled to recover from the Contractor the extra costs, if any, of completing the Works after allowing for any sum due to the Contractor under Sub-Clause 13.2.2. If there are no such extra costs, the Employer shall pay any balance to the Contractor.

**Non-exercise of power not to constitute waiver**      **13.2.4**      Provided always that in case any of the powers conferred upon the Employer by Clause 13.1 and Sub-Clause 13.2.1 above, shall have become exercisable, and the same may not have been exercised, the non-exercise thereof shall not constitute waiver of any of the conditions thereof.

**Termination by Contractor**      **13.3**      (1) Default of Employer: In the event of the Employer:

- (a) failing to pay the Contractor, without reasonable cause, the amount due under any certificate of the Engineer within 56 days, subject to any deduction that the Employer is entitled to make under the Contract, or
- (b) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation,

then the Contractor may give notice requiring the Employer to remedy the default within 28 days after receipt of the notice. If the Employer fails to remedy the default or fails to propose steps reasonably acceptable to the Contractor to do so and in that case, the Contractor may terminate the Contract after issue of 14 days' notice to the Employer with a copy to the Engineer. In this case, the Contractor

shall be compensated as per Sub-Clause no. 13.3(4).

The Engineer's decision on the amount payable on this account shall be final and binding.

- (2) Contractor's Entitlement to Suspend the Work: The Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 56 days, subject to any deduction that the Employer is entitled to make under the Contract, after giving 28 days' prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.

If the Contractor suspends work or reduces the rate of work in accordance with the provisions of this Sub-Clause and thereby suffers delay or incurs costs the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 8.4, and
  - (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.
- (3) Cessation of Work by Contractor: After termination under Clause 13.3, the Contractor shall:
- (a) cease all further work, except for such work as may be necessary and instructed by the Engineer for the purpose of making safe or protecting those parts of the Works already executed, and any Work required to leave the Site in a clean and safe condition,
  - (b) hand over all Construction and/or Manufacture Documents, Plant, Rolling stock, and Materials for which the Contractor has received payment,
  - (c) hand over those parts of other Works executed by the Contractor up to the date of termination, and
  - (d) remove all Contractor's Equipment which is on the Site and repatriate all his staff and labour from the Site.

Any such termination shall be without prejudice to any other right of the Contractor under the Contract.

- (4) Payment on Termination: After termination under Sub-Clause 13.3(1) the Employer shall return the Performance Guarantee, and shall pay the Contractor an amount calculated and certified in accordance with the following conditions:
- (a) The value of approved materials actually brought to the site and reasonably required to execute the works during next three months, as per approved programme, and
  - (b) Value of work completed up to date by the Contractor at rates specified in the Contract, after taking into account any deductions, retentions, set-off.
  - (c) In addition a sum not exceeding 2% (two percent) of the value of the work remaining incomplete on the date of Termination notice taking effect.

The payment as above are full compensation for termination under this Clause and the Contractor has no claim for damages or other entitlements whether under the contract or otherwise.

- (5) In case of termination/ foreclosure of the Contract under whatsoever circumstances, any remaining tools, plants, equipment and surplus materials of the Employer with the Contractor will be returned to the Employer at Employer's depot at the Contractor's cost. In case of the failure of the Contractor to do so, the Employer will be entitled to recover their cost from the Contractor from the amount becoming due

to the Contractor or from any other money due in any other contracts between the Employer and the Contractor. The decision of the Engineer of the amount to be recovered will be final decision and full credit at rates initially charged to the Contractor shall be allowed for such materials. Similarly the Employer shall be entitled to recover the cost of the unreturned material, plants, equipment and tools from the Contractor where such material have been supplied free of cost or on lease basis to the Contractor as stipulated in the Contract.

- |                                       |             |  |
|---------------------------------------|-------------|--|
| <b>Survival</b>                       | <b>13.4</b> | <p>Termination of this Contract:</p> <p>(a) shall not relieve the Contractor or the Employer of any obligations already incurred hereunder which expressly or by implication survives Termination hereof and</p> <p>(b) except as otherwise provided in any provision of this Contract limiting the liability of either party, shall not relieve either party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.</p>   |
| <b>Extension of Time for Delivery</b> | <b>13.5</b> | <p>If such failure as in the aforesaid Clause 13.2 shall have arisen from any cause which the Purchaser may admit as reasonable ground for extension of time, the Purchaser shall allow such additional time as he considers to be justified by the circumstances of the case, and shall forgo the whole or such part, as he may consider reasonable, of his claim for such loss or damage as aforesaid.</p>   |
| <b>Consequences of Rejection</b>      | <b>13.6</b> | <p>If on the stores, being rejected by the Inspecting Officer or Interim Consignee or Consignees at the destination, the Contractor fails to make satisfactory supplies within the stipulated period of delivery, the Employer shall be at liberty to:-</p> <ul style="list-style-type: none"><li>i) require the Contractor to replace the rejected stores forthwith but in any event not later than a period of 21 days from the date of rejection and the Contractor shall bear all cost of such replacement including freight, if any on such replacing and replaced stores but without being entitled to any extra payment on that or any other account; or</li><li>ii) Purchase or authorize the purchase of quantity of the stores rejected or others of a similar description (when stores exactly complying with particulars are not in the opinion of the Employer, which shall be final, readily available) without notice to the Contractor at his risk and cost and without affecting the Contractor's liability as regards the supply of any further instalments due under the contract; or</li><li>iii) Cancel the contract and purchase or authorize the purchase of the stores or other of a similar description (when stores exactly complying with particulars are not in the opinion of the Employer, which shall be final, readily available) at the risk and cost of the contractor. In the event of action being taken under sub-clause (ii) above or under this sub-clause, the provisions of Clause 13.2 above will apply as far as applicable.</li><li>iv) Where under the contract the price payable is fixed C.I.F. port of export F.O.R dispatching station, the Contractor shall, if the stores are rejected at destination by the consignee, be liable, in addition to his other liabilities, including refund of price recoverable in respect of the stores so rejected, to reimburse to the Employer the freight and all other expenses incurred by the Employer in this regard.</li></ul> |
| <b>Removal of Rejected Stores</b>     | <b>13.7</b> | <p>i. On rejection of any stores submitted for inspection at a place other than the premises of the Contractor, such stores shall be removed by the Contractor at his own cost subject as herein after stipulated, within 21 days of the date of intimation of such rejection. If the concerned communication is addressed and posted to the Contractor at the address mentioned in the contract, it will be deemed to have been</p>   |

served on him at the time when such communication would in the course of ordinary post reach the Contractor, provided that where the price or part thereof has been paid, the consignee is entitled without prejudice to his other rights to retain the rejected stores till the price paid for such stores is refunded by the Contractor save that such retention shall not in any circumstances be deemed to be acceptance of the stores or waiver of rejection thereof.

- ii. All rejected stores shall in any event and circumstances remain and always be at the risk of the Contractor immediately on such rejection. If such stores are not removed by the Contractor within the periods aforementioned, the Inspecting Officer may remove the rejected stores and either return the same to the Contractor at his risk and cost by such mode of transport as the Purchaser or Inspecting Officer may decide, or dispose of such stores at the Contractor's risk and on his account and retain such portion of the proceeds, if any, from such disposal as may be necessary to recover any expense incurred in connection with such disposals (or any price refundable as a consequence of such rejection). The purchaser shall, in addition, be entitled to recover from the Contractor handling and storage charges on the rejected stores after the expiry of the time-limit mentioned above.
- iii. The stores that have been dispatched by rail and rejected after arrival at destination may be taken back by the contractor either at the station where they were rejected or at the station from which they were sent, after refunding the price paid for such stores and other charges refundable as a consequence of such rejection. If the contract is placed for delivery F.O.R. station of dispatch, the Contractor shall pay the carriage charges on the rejected consignment at public tariff rates from the station of dispatch to the station where they are rejected. If the Contractor elects to take back the goods at the station from which they were dispatched, the goods shall in addition, be booked back to him freight to-pay at public tariff rates and at Contractor's risk. The Contractor shall be liable to reimburse packing and incidental costs and charges incurred in such return of rejected stores in addition to other charges refundable as a consequence of rejection. The goods shall remain the property of the Contractor unless and until accepted by the Purchaser after inspection.

## **14 RISK AND RESPONSIBILITY**

**Indemnity 14.1** The Contractor shall indemnify and hold harmless the Employer, the Engineer, the Designated Contractors, representatives and employees from and against all actions, suits, proceedings, claims, damages, losses, expenses and demands of every nature and description, by reasons of any act or omissions of the Contractor, his representative or his employees in the execution of the Works, including professional services provided by the Contractor or in the guarding the same.

These indemnification obligations shall include but not be limited to claims, damages, losses, damage proceedings, charges and expenses which are attributable to:

- (a) sickness, or disease, or death of, or injury to any person; and
- (b) loss of, or damage to, or destruction of any property (other than the Works) including consequential loss of use; and
- (c) loss, damage or costs arising from the carriage of Machine / Plant / Equipment and Materials.

**Employer's Risks 14.2** The Employer's risks of loss or damage to physical property in India and of death and personal injury occurring in India in consequence of the performance of obligations under the Contract are:

- (a) war, hostilities (whether war be declared or not), invasion, act of

- (b) foreign enemies, rebellion, revolution, insurrection, or military or usurped power, or civil war, within India,
  - (c) riot, commotion or disorder by persons unless solely restricted to or caused by employees of Contractor currently or formerly engaged in the Works,
  - (d) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly, except to the extent to which the Contractor may be responsible for the use of any radio-active material,
  - (e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
  - (f) terrorism, munitions of war and explosive materials, and
  - (g) use or occupation by the Employer of any part of the Works, except as may be specified in the Contract.
- Consequences of Employer's Risks**      **14.3**      If an Employer's risk results in loss or damage, the Contractor shall promptly notify the Engineer and shall rectify this loss or damage to the extent required by the Engineer.
- If the Contractor suffers delay and/or incurs cost from rectifying this loss or damage, the Contractor shall give notice to the Engineer and shall be entitled to claim:
- (a) Extension of time for any such delay, if completion is or will be delayed, under Clause 8.4, and
  - (b) amount of such cost, which shall be included in the Contract Price.
- Contractor's Risks**      **14.4**      The Contractor's risks are all risks other than the Employer's risks given in Clause 14.2.
- Limitation of Liability**      **14.5**      Except as provided otherwise in these Conditions, neither party shall be liable to the other party for loss of use of any Works, loss of profit, loss of any Contract or any other indirect or consequential loss or damage which may be suffered by the other party in connection with the Contract. The total liability of the Contractor to the Employer under the Contract shall not exceed the Contract Price unless otherwise specified in SCC, except that the following shall not limit the liability of the Contractor:
- (a) Under Clauses 5.5, 7.8 and 8.6;
  - (b) Under any other provisions of the Contract which expressly impose a greater liability;
  - (c) In cases of fraud, wilful misconduct or illegal or unlawful acts, or; and
  - (d) In cases of acts or omissions of the Contractor which are contrary to the most elementary rules of diligence which a conscientious Contractor would have followed in similar circumstances.
- Ownership of Machines/ Plants and Materials**      **14.6**      (a) Ownership of the Machines/Plants and Equipment (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer on arrival at Employer's site.
- (b) Ownership of the Machines/Plants and Equipment (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Machines/Plants and Equipment are brought on to the Site.
  - (c) Ownership of the Contractor's Equipment used by the Contractor in connection with the Contract shall remain with the Contractor.
  - (d) Ownership of any Machine/Plant and Equipment in excess of the requirements for the Works shall revert to the Contractor upon Completion of the Works or at such earlier time when the Employer and the Contractor agree that the Machine/Plant and Equipment in question are no longer required for the Works.
  - (e) Notwithstanding the transfer of ownership of the Machines/Plants and

Equipment, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor until Completion of the Works.

**15 INSURANCE**

- Insurances**      **15.1**      The Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances as set forth below, in the joint names of Employer and Contractor.
- Transit Insurance for Machines/ Plants including Spares**      **15.2**      Transit Insurance, covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Machines/Plants (including spare parts thereof) and to other consumables to be provided by the Contractor for installation and commissioning of the Machines/Plants.
- This Transit Insurance covers (i) all-risk marine insurance from Manufacturer's Factory to Port in the Country of origin upto the Netaji Subhas Dock (NSD) Port in Kolkata, India & (ii) insurance from NSD Port in Kolkata upto Employer's site at Central Park Depot in Kolkata in case of imported equipment.
- For indigenous equipment, the Transit insurance shall cover the insurance from the manufacturer's factory to the Employer's site at Central Park Depot in Kolkata.
- The all-risk Transit Insurance shall be for full replacement cost of the Machines/Plants, Spares and consumables including Custom Duty, Excise Duty as well as Sales Tax/VAT, as applicable.
- Insurance for Machines / Plants at Site**      **15.3**      The Contractor shall insure the Machines/Plants at site against all loss or damage, in the joint names of Employer and Contractor. Such insurance shall be in such a manner that the Employer and the Contractor are covered from the Access Date (as stipulated in Attachment to Appendix FT-1 of FOT) until the date of issue of the Taking Over Certificate for the Machines/Plants. The Contractor shall extend said insurance to provide cover until the date of expiry of Defect Liability Period, for loss or damage of Machines/Plants for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking Over Certificate, and for loss or damage occasioned by the Contractor during DLP.
- Such insurance shall be for a limit not less than the full replacement cost of Machines/Plants (including spares and consumables) including Custom Duty, Excise Duty as well as GST as applicable and shall also cover the cost of demolition and removal of debris.
- Insurance for Workers**      **15.4**      The Contractor shall effect and maintain insurance in the joint names of Employer and Contractor against losses and claims arising from the death or injury to any person employed by the Contractor during installation, testing & commissioning of the Machines/Plants prior to issue of Taking over Certificate as well as the operation of the Machines/Plants during DLP in such a manner that the Employer and the Engineer are indemnified under the policy of insurance.
- Insurance Against Damage to Property**      **15.5**      (a) Contractor's Property: DELETED  
(b) Employer's Property: The Contractor shall insure in the joint names of Employer and the Contractor against any loss or damage which may occur to any physical property / equipment (except things insured under Clause 15.3) which may arise out of the performance of the Contract and occurring before the issue of Performance Certificate. Such insurance shall be for the full replacement value of property and equipment damaged.
- General Requirements**      **15.6**      The insurance described in Clause 15.2 can be effected with a reputed foreign Insurance Company in case of a foreign supplier only. The other

<b>for Insurances</b>		insurances described herein above shall invariably be effected with an Indian Insurance company or any foreign insurance company who have valid licence for conducting insurance business in India
		In case the premium is paid by the Employer for any default by the contractor, the same amount shall be recovered from the contractor's bill.
	<b>16</b>	<b>FORCE MAJEURE</b>
<b>Definition of Force Majeure</b>	<b>16.1</b>	<p>In this Clause, "force majeure" means an event beyond the control of the Employer and the Contractor, which makes it impossible or illegal for a party to perform, including but not limited to:</p> <ul style="list-style-type: none"><li>(a) act of God;</li><li>(b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo;</li><li>(c) rebellion, revolution, insurrection, or military or usurped power, or civil war;</li><li>(d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly;</li><li>(e) riot, commotion or disorder, unless solely restricted to employees of the Contractor currently or formerly engaged on the Works;</li><li>(f) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague;</li><li>(g) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster;</li><li>(h) shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure.</li></ul>
<b>Contractor's Responsibility</b>	<b>16.2</b>	If affected by such Force Majeure, the Contractor shall notify the Engineer within one day from the date of occurrences of the event and of any proposals for overcoming the consequences of the Force Majeure, including any reasonable alternative means for performance, but shall not carry out these proposals without the consent of the Engineer.
<b>Employer's Responsibility</b>	<b>16.3</b>	If affected by such Force Majeure, the Employer shall promptly notify the Engineer and the Contractor of any proposals for overcoming the consequences of the Force Majeure.
<b>Payment to Contractor</b>	<b>16.4</b>	If the Works shall suffer loss or damage due to such Force Majeure, the Contractor shall be entitled to have included, in an Interim Payment Certificate, the Cost of work executed in accordance with the Contract.
<b>Release from Performance Under the Law</b>	<b>16.5</b>	If under the law of the Contract the Employer and the Contractor are released from further performance, the sum payable by the Employer to the Contractor shall be for the work done under the Contract, but not for any defective work or work done which has been destroyed or damaged before its measurement. The Employer shall have the option to takeover any Plant / Equipment and Materials lying at site, at rates provided for in the Contract, failing that, as per rates which are determined to be fair and reasonable by the Engineer.
	<b>17</b>	<b>CLAIMS, DISPUTES, CONCILIATION AND ARBITRATION</b>
<b>Procedure for Claims</b>	<b>17.1</b>	<p>If the Contractor intends to claim any additional payment under any clause of these Conditions or otherwise, the Contractor shall give notice to the Engineer as soon as possible and in any event within 28 days of the start of the event giving rise to the claim.</p> <p>The Contractor shall keep such contemporary records as may be</p>

necessary to substantiate any claim, either on the Site or at any other location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer shall, on receipt of such notice, inspect such records and may instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all such records, and shall (if instructed) submit copies to the Engineer.

Within 28 days of such notice, or such other time as may be agreed by the Engineer, the Contractor shall send to the Engineer an account, giving detailed particulars of the amount and basis of the claim. Where the event giving rise to the claim has a continuing effect, such amount shall be considered as interim. The Contractor shall then, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event.

If the Contractor fails to comply with this Clause, he shall not be entitled to claim any additional payment.

<b>Payment for Claims</b>	<b>17.2</b>	The Contractor shall be entitled to have included in any Interim Payment Certificate such amount for any claim as the Engineer considers due, after taking approval from the Employer. If the particulars supplied are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment for such part of the claim as has been substantiated.
<b>No legal action Till Dispute Settlement Procedure is Exhausted</b>	<b>17.3</b>	Any and all Disputes shall be settled in accordance with the provisions of Clause 17. No action at law concerning or arising out of any Dispute shall be commenced unless and until all applicable Dispute resolution procedures set out in Clause 17 shall have been finally exhausted in relation to that Dispute or any Dispute out of which that Dispute shall have arisen with which it may be or may have been connected.
<b>Notice of Dispute</b>	<b>17.4</b>	For the purpose of Clause 17.5, a Dispute shall be deemed to arise when one party serves on the other party a notice in writing (hereinafter called a "Notice of Dispute") stating the nature of the Dispute provided that no such notice shall be served later than 28 days after the date of issue of Performance Certificate by the Engineer.
<b>Two Stages for Dispute Resolution</b>	<b>17.5</b>	Disputes shall be settled through two stages: (a) Conciliation procedures. In the event this procedure fails to resolve the Dispute then; (b) Arbitration procedures
<b>Conciliation</b>	<b>17.6</b>	Within 60 days of receipt of Notice of Dispute, either party shall refer the matter in dispute to conciliation.  Conciliation proceedings shall be initiated within 30 days of one party inviting the other in writing to Conciliation. Conciliation shall commence when the other party accepts in writing this invitation. If the invitation is not accepted then Conciliation shall not take place. If the party initiating conciliation does not receive a reply within 30 days from the date on which he sends the invitation he may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.  The Conciliation shall be undertaken by one Conciliator selected from a panel of Conciliators maintained by the Employer. The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner.
<b>Conciliation Procedure</b>	<b>17.7</b>	The Employer shall maintain a panel of Conciliators with requisite qualifications and professional experience who shall be from serving or retired engineers of Government Departments, or of Public Sector Undertakings. Out of this panel, a list of three Conciliators shall be sent to the Contractor who shall choose one of them to act as Conciliator and conduct conciliation

proceedings in accordance with “The Arbitration and Conciliation Act, 1996”, of India. The party serving notice of dispute on the other party shall also serve such notice on the Conciliator chosen as per this Clause. The Employer at the time of offering the panel of Conciliators to be appointed as Conciliator shall also supply the information with regard to the qualifications of the said Conciliators nominated in the panel along with their professional experience, phone nos. and addresses to the Contractor.

In the event of the Contractor not choosing the Conciliator from the panel furnished by the Employer, within a period of 30 days, the Employer is at liberty to choose and nominate a Conciliator from the same panel and communicate to the Contractor which will be final and binding on the Contractor.

The Employer and the Contractor shall in good faith co-operate with the Conciliator and, in particular, shall endeavour to comply with requests by the Conciliator to submit written materials, provide evidence and attend meetings. Each party may, on his own initiative or at the invitation of the Conciliator, submit to the Conciliator suggestions for the settlement of the dispute.

When it appears to the Conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the Conciliator may reformulate the terms of a possible settlement in the light of such observations.

If the Parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the Parties, the Conciliator may draw up, or assist the Parties in drawing up, the settlement agreement.

When the Parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

The Conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the Parties.

As far as possible, the conciliation proceedings should be completed within 60 days of the receipt of notice by the Conciliator.

**Termination of Conciliation Proceedings 17.8**

The conciliation proceedings shall be terminated:

- (a) by the signing of the settlement agreement by the Parties on the date of agreement; or
- (b) by written declaration of the Conciliator, after consultation with the Parties, to the effect further efforts at conciliation are no longer justified, on the date of declaration; or
- (c) by a written declaration of the Parties to the Conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration; or
- (d) by a written declaration of a Party to the other Party and the Conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of declaration.

Upon termination of the conciliation proceedings, the Conciliator shall fix the costs of the conciliation and give written notice thereof to the Parties. The costs shall be borne equally by the Parties unless settlement agreement provides for a different apportionment. All other expenses incurred by a Party shall be borne by that Party.

**Arbitration 17.9**

If the efforts to resolve all or any of the disputes through conciliation fails, then such disputes or differences, whatsoever arising between the Parties, arising out of touching or relating to construction/ manufacture, measuring operation or effect of the Contract or the breach thereof shall be referred to Arbitration in accordance with the following provisions:

- (a) The Arbitration Board will consist of three Arbitrators. The Contractor

may select his own Arbitrator and Employer will propose an Arbitrator from the panel selected by the Employer. The third Arbitrator will be selected in accordance with "the Section 11 of Arbitration and Conciliation Act, 1996", of India. All Arbitrators shall be Indian nationals, ordinary residing in India with technical competence and experience.

The Arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/ demand of appointment of Arbitrator from either Party. Neither Party shall be limited in the proceedings before such Arbitrator(s) to the evidence nor arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the Arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to Arbitrator/s. The arbitration proceedings shall be held in KOLKATA only. The language of proceedings, which of documents and communication shall be English.

- (b) The Employer at the time of offering the panel of Arbitrators to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrators nominated in the panel along with their professional experience, phone nos. and addresses to the Contractor.
- (c) The cost of arbitration shall be shared equally by the contractor and the Employer.

<b>Interest on Arbitration Award</b>	<b>17.10</b>	Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period, till the date on which the award is made.
<b>Cost of Arbitration</b>	<b>17.11</b>	The Arbitrator shall be paid an hourly fee fixed by the Employer plus reasonable expenditures incurred in the execution of its duties as Arbitrator, and these costs shall be divided equally between the Employer and the Contractor.
<b>Jurisdiction of Courts</b>	<b>17.12</b>	Where recourse to a Court is to be made in respect of any matter, the high court at KOLKATA shall have the exclusive jurisdiction to try all disputes between the parties.
<b>Suspension of Work on Account of Arbitration</b>	<b>17.13</b>	The reference to Conciliation / Arbitration shall proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, Engineer and the Contractor shall not be altered by reasons of arbitration being conducted during the progress of the Works. Neither party shall be entitled to suspend the work or part of the work to which the dispute relates on account of arbitration and payments to the Contractor shall continue to be made in terms of the Contract.
	<b>18</b>	<b>SERVICE OF NOTICES</b>
<b>Notice to Contractor</b>	<b>18.1</b>	(a) All notices to the Contractor shall be served by post or telex or telefax or by hand to the Contractor or his authorized representatives. In case of notices delivered by post, they will be deemed to have been delivered after 7 days of dispatch. (b) The Contractor shall, on award of the Contract, furnish to the Engineer, the name, designation, address and telephone, telex and telefax numbers and e-mail address of his representative referred to in Clause 4.3.
<b>Notice to Employer and Engineer</b>	<b>18.2</b>	All notices to the Employer or Engineer shall be served by post or telex or telefax, or by delivering by hand to the address nominated for the purpose.

<b>Change of Address</b>	<b>18.3</b>	Parties to the Contract may change the nominated address with a notice to all concerned.
	<b>19</b>	<b>SECRECY</b>
<b>Official Secrets Act</b>	<b>19.1</b>	The Contractor shall take all reasonable steps necessary to ensure that all persons employed in any work in connection with the contract, have full knowledge of the Official Secrets Act and any regulations framed there under.
<b>Information that may be of Use to Enemy of India</b>	<b>19.2</b>	Any Information obtained in the course of the execution of the contract by the Contractor, his servants or agents or any person so employed, as to any matter whatsoever, which would or might be directly or indirectly, of use to enemy of India, must be treated secret and shall not any time be communicated to any person.
<b>Consequences of Breach</b>	<b>19.3</b>	Any breach of the aforesaid conditions shall entitle the Purchaser to cancel the Contract and to purchase or authorize the purchase of the stores at the risk and cost of the Contract in accordance with the Clause 13.2 of the General Conditions of Contract. In the event of such cancellation, the stores or parts manufactured in the execution of the contract shall be taken by the Purchaser at such price as he considers fair and reasonable and the decision of the Purchaser as to such price shall be final and binding on the Contractor.

## SPECIAL CONDITIONS OF CONTRACT

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## **SPECIAL CONDITIONS OF CONTRACT**

### **1. Proven Design (Appendix FT-3 to Form of Tender)**

The bidder should have carried out design, manufacture, supply, testing and commissioning of at least 1 nos. of Battery Powered Electric Loco in last five years (ending 31st December 2017) which will be in service for a period of at least 2 years (ending 31st December 2017) after commissioning in a country other than the country of manufacture.

### **2. Defects Liability (GCC Clause 10)**

"Defects Liability Period" shall mean the defects liability period of 24 months from the date of Taking Over Certificate.

The Defect Liability Period of the Battery Powered Electric Loco begins with the taking over of the Battery Powered Electric Loco. During the Defect Liability Period the Contractor shall provide, free of cost, competent and skilled personnel in one shift of 8 hours daily and maintain adequate stock of spares so as to promptly fulfil his obligations to remedy the defects or failure as laid down in Particular Specification. Besides, the Contractor shall ensure availability of competent and skilled manpower to attend to defects on call as stipulated in Clause 9 of the Particular Specification.

### **3. Limitation of Liability (GCC Clause 14.5)**

It is expected that Contractor will supply stores as per Specifications approved by Employer. If the Contractor fails to supply, test and commission the BPEL at the site as per Contract, the Contractor shall be liable to compensate the Employer with the full amount already drawn by the Contractor (Clause 1.5.1 Or 1.5.2 of Pricing Document, Appendix FT-2 to FOT) in addition to all the handling/clearance charges at Indian Port as well as transportation cost of machine/plant from Indian Port to Site. The Contractor's liabilities under the Contract shall be equal to the total Contract Price as explained above.

### **4. Conciliation [GCC Clause 17.5(a)]**

If a dispute or difference is referred to a Conciliator, the Engineer shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Engineer's instructions, provided that if the Conciliator upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Clause 18.1, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Conciliator shall decide, and the Time for Completion shall be extended accordingly.

### **5. Conciliation Procedure (GCC Clause 17.6)**

Appointment of Conciliator shall be as per Section 64 of Indian Arbitration and Conciliation Act, 1996", which states:

- (a) In conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;
- (b) In conciliation proceedings with two conciliators, each party may appoint one conciliator;
- (c) In conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

Procedure for Conciliation may be as per Section 65, Role of Conciliator may be as per Section 67 and as per other Sections relevant to reconciliation which may be followed as stated in Section 61 to Section 82 of Indian Arbitration and Conciliation Act, 1996.

### **6. Notices (GCC Clause 18)**

- (a) Employer's address for Notice purposes:

Attention: Managing Director

Street Address: KMRCL Bhawan (HRBC Office Complex),

Munshi Premchand Sarani, Kolkata-700021, India.

Telephone: 033-66071115

Facsimile number: 033-66071116

E-mail address: [ceekmrc@gmail.com](mailto:ceekmrc@gmail.com)

(b) Contractor's address for Notice purposes:

Attention: *[insert full name of person, if applicable]*

Street Address: *[insert street address and number]*

Floor/ Room number: *[insert floor and room number, if applicable]*

City: *[insert name of city or town]*

ZIP Code: *[insert postal ZIP code, if applicable]*

Country: *[insert name of country]*

Telephone: *[include telephone number, including country and city codes]*

Facsimile number: *[insert facsimile number, including country and city codes]*

E-mail address: *[insert e-mail address, if applicable]*

## 7. Facilities in the Labour Camp

If the Contractor employs 10 or more woman contract labour for KMRCL work, the contractor is required to provide facilities in the labour camp for looking after their children.

## 8. KMRCL Labour Welfare Fund Rules

### 8.1 Sources of the Fund

The Labour Welfare Fund will be created jointly by KMRCL and the Contractors. A contractor shall remit a minimum amount of Rs. 1 lakh against every case of death or total incapacitation and KMRCL would also contribute a matching amount.

### 8.2 Objectives of the Fund

The objectives of the Fund are:-

- (i) To ensure that widow and children of the deceased worker is given monetary assistance for bringing up of the children.
- (ii) If the children are orphans, their upkeep and educational requirements should be met with from the fund till one of the children becomes major and is gainfully employed.

### 8.3 Allocation of Fund

Allocation of fund for the various activities shall be decided by the Standing Committee at the beginning of each financial year. Any reallocation during the year, if necessitated, will also be decided by the Committee.

### 8.4 Accounts of the Fund

The accounts of the Fund shall be maintained separately in appropriate form. An account shall be opened in a nationalised bank in the name of "KMRCL LABOUR WELFARE FUND A/C".

### 8.5 Audit

The accounts of the Fund shall be audited annually by an Auditor appointed by the Committee.

### 8.6 General

In case of death due to accident, the immediate relative of the deceased should be given an ex-gratia payment by the Contractor. The Contractor should also provide employment to one of the dependents of the deceased under the ongoing Contract, if the family of the deceased have no other means of livelihood and the family was dependent on the income of the deceased.

In case of any major accident, an enquiry should be ordered by the Head of Project/Department of KMRCL within 24 hours and report made available to the Committee within 72 hours. The enquiry committee should consist of one officer from KMRCL and one from contractor's side.

Any payments made from the KMRCL Labour Welfare Fund to the widow or children of the deceased worker are outside the payments to be made by the contractor under the statutory laws of the country.

All decisions taken by a majority shall prevail. However, the Managing Director/KMRCL is competent to alter, modify or cancel any decision taken by the Committee.

#### **8.7 Management of the Fund**

The fund shall be managed and administered by the following two committees. The Standing Committee and Case to Case Committee consist of following:

##### **Standing Committee:**

- |   |             |
|---|-------------|
| (i) Chief Engineer  | – Chairman  |
| (ii) General Manager (Administration)                                 | – Secretary |
| (iii) FA & CAO  | – Member    |
| (iv) Chief Signal & Telecommunication Engineer                        | – Member    |
| (v) Chief Electrical Engineer   | – Member    |
| (vi) Contractor's Representative (Major works in any particular year) |             |
| (vii) Any other representative considered necessary by MD             |             |

##### **Case to Case Committee:**

- |                                    |   |
|------------------------------------|---|
| (i) GM (Administration) – Chairman | (ii) Dy. Chief Engineer – Secretary       |
| (iii) Dy. FA & CAO                 | (iv) Contractor's Representative – Member |

The above are the Standard Committee and Case-to-case Committee. However, the Managing Director may at his discretion change the above constitution.

#### **8.8 Compensation to Individual Cases**

Regarding payments to death/incapacitation, the general procedure to be adopted is as follows:

- (i) A token amount of Rs. 25,000 from contractor's contribution and additional Rs. 25,000 from KMRCL's side totalling to Rs. 50,000/- may be paid to all cases. This amount of Rs. 50,000/- should be paid to the legal heir of the deceased immediately on confirmation of the death.

#### **9. Recovery of Money Due to the Employer**

All damages (including, without limitation, liquidated damages), costs, charges, expenses, debts, or sums for which the Contractor is liable to the Employer under any provision of the Contract may be deducted by the Employer from monies due to the Contractor under the Contract and the Employer shall have the power to recover any balance not so deducted from monies due to the Contractor under any other contract between the Employer and the Contractor.

#### **10. Contract Price and Payment (GCC Clause 11)**

The payment procedure will be followed as per the process mentioned in the Pricing Document, Appendix FT-2 to the Form of Tender of Vol.1.

#### **11. Transit Insurance and Other Insurances (GCC Clause 15)**

The Terms & Conditions of the Insurance to be procured by the Contractor shall be subject to the approval of the Engineer.

#### **12. Performance Guarantee for CAMC**

Before release of the Performance Guarantee for the Contractor as per GCC Clause 4.2(2), the Contractor shall furnish to the Employer a Performance Security in the form of a Bank Guarantee for an amount of 10% of the value of the Comprehensive Annual Maintenance Contract (CAMC) awarded. The Bank Guarantee has to be from a Scheduled Commercial Bank in India (excluding Co-operative Banks) or from a Scheduled Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule and the Form of "Performance Guarantee" provided in this document shall be used. The Performance Security shall be furnished within 30 days before the completion of DLP.

Failure of the successful tenderer to submit the required Performance Security shall constitute sufficient grounds for the annulment of the award of maintenance contract and forfeiture of the

Performance Guarantee provided for the main Contract (Purchase Contract) of the Battery Powered Electric Loco.

The Performance Security will be released to the Contractor within 3 months after the expiry of the Comprehensive Annual Maintenance Contract period.

**13. Change in cost due to legislation**

"Change in Law" means the occurrence or coming into force of the following, at any time after the date of submission of Tender.

(a) Any new tax which is imposed after the due date of submission of tender and which impact the performance of the Contractors with increased cost or which results in extra financial gains to the Contractor due to decreased cost in execution of works.

(b) Change in any Law pertaining to work having the said impact.

Then such additional or reduced cost shall be certified by the Engineer after examining records provided by the contractor and shall be paid by or credited to the Employer.

## SCHEDULE-1 OF SPECIAL CONDITIONS OF CONTRACT

### CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BETWEEN

(1) Kolkata Metro Rail Corporation Limited, a corporation incorporated under the laws of India and having its principal place of business at KMRCL Bhawan (2<sup>nd</sup>& 3<sup>rd</sup> Floor), HRBC Complex, Munshi Premchand Sarani, Kolkata-700021, India (hereinafter called “the Employer”), and (2) *[name of Contractor]*, a corporation incorporated under the laws of *[country of Contractor]* and having its principal place of business at *[address of Contractor]* (hereinafter called “the Contractor”).

WHEREAS the Employer desires to engage the Contractor to carry out detailed design, detailed engineering, manufacture, supply, delivery and storage at site, testing and commissioning (including integrated testing & commissioning), demonstration of performance of system/equipment, remedy any defects during 24 months Defect Liability Period of the Synchronized Mobile Lifting Jacks for the Kolkata East West Metro Project (“the Works”) and the Contractor have agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

**Article 1.**

1.1 Contract Documents (Reference GCC Clause 1.5)

**Contract Documents**

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement
- (b) Letter of Acceptance
- (c) Tender Addenda
- (d) NIT, ITT and Form of Tender (FOT) with Appendices
- (e) Pricing document
- (f) Special Conditions of Contract including Schedules
- (g) General Conditions of Contract
- (h) Employer’s Requirements – Particular Specification and Drawings
- (i) Safety, Health and Environment (SHE) Manual and SHE Conditions of Contract
- (j) Contractor’s Technical Proposals (as listed); and
- (k) Detail Specifications & Rating of the Machine/Plant
- (l) Any other documents forming part of the Contract

1.2 Priority of Documents (Reference GCC Clause 1.5)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

1.3 Definitions (Reference GCC Clause 1.1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of Contract.

**Article 2.**

2.1 Contract Price and Payment (Reference GCC Clause 11)

**Contract Price and Terms of Payment**

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of:

*[amount of foreign currency in words], [amount in figures] and [amount of local currency in words], [amount in figures], as specified in Annexure-A or Annexure-B of Appendix FT-2 or such other sums as may be determined in accordance with the terms and conditions of the Contract.*

2.2 Terms of Payment (Reference GCC Clause 11)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the corresponding Appendix (Terms and Procedures of Payment) hereto.

**Article 3.  
Commencement  
Date for  
Determining Time  
for Completion**

3.1 Commencement Date (Reference GCC Sub-Clause 1.1.3)

The Time of Completion of the Works shall be determined from the date of issue of Letter of Acceptance (LOA).

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

\_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
*[Title]*

in the presence of \_\_\_\_\_

Signed by, for and on behalf of the Contractor

\_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
*[Title]*

in the presence of \_\_\_\_\_

## SCHEDULE-2 OF SPECIAL CONDITIONS OF CONTRACT

### PERFORMANCE GUARANTEE

(To be stamped in accordance with the Stamp Act of the Country of Issuing Bank)

To: KOLKATA METRO RAIL CORPORATION LIMITED, KMRCL Bhawan (2<sup>nd</sup>& 3<sup>rd</sup>Floor)HRBC Complex, Munshi Premchand Sarani, Kolkata, India, PIN -700021.

**WHEREAS**..... (Name and address of Design and Construct Contractor) (hereinafter called "the Contractor") has undertaken, in pursuance of Contract SMLJ/DSM/08 to carry out detailed design, detailed engineering, manufacture, supply, delivery and storage at site, testing and commissioning (including integrated testing & commissioning), demonstration of performance of system/ equipment of Synchronized Mobile Lifting Jacks and remedy any defects in the Works of the Contract SMLJ/DSM/08 (hereinafter called "the Contract") and more described in LOA number ..... dated .....

**AND WHEREAS** it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee from a Schedule Commercial Bank (excluding Cooperative Banks) or from a Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule acceptable to the Employer or from an Indian Nationalised Bank for the sum specified herein as security for compliance with his obligations in accordance with the Contract.

**AND WHEREAS** we (Insert name and address of Bank) have agreed to give the Contractor such a Bank Guarantee:

**NOW THEREFORE** we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor up to a total of ..... (amount of Guarantee in respective of currencies)..... (in words), such sum being payable in the types and proportion of currencies in which the Contract Price is payable and we hereby unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil or argument any sum or sums within the limits of ..... (amount of guarantee in respective of currencies) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the contract or of the Works to be performed there under or of any of the contract documents which may be made between you and the Contractor shall in any way release us from any liability under the guarantee and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid for 28 days after the completion of Defect Liability Period of the Synchronized Mobile Lifting Jacks. The pendency of any dispute or arbitration or other proceedings shall not affect this guarantee in any manner.

SIGNATURE AND SEAL OF THE GUARANTOR

-----

NAME OF BANK -----

ADDRESS -----

DATE -----

Notes:

1. The stamp papers of appropriate value shall be purchased in the name of the Bank, which issue the 'Bank Guarantee'.

**SCHEDULE-3**  
**OF SPECIAL CONDITIONS OF CONTRACT**

**LIST OF PROPOSED VENDORS**  
**(Refer Clause 4.5 of the GCC)**

The following Vendors are proposed for carrying out the item of the Facilities indicated. Where more than one Vendor is listed, we hereby agree that we shall notify the Employer of our choice in good time prior to appointing any selected Vendor.

S.No.	Item of Facilities	Proposed Vendor(s)	Nationality

**Signature of Tenderer**