

SECTION - II
GCC
GENERAL CONDITIONS OF CONTRACT
CONTENTS

Sl. No.	Description	Page No.
	A. Introduction	
1.0	Definition of Terms	
2.0	Application	
3.0	Standards	
4.0	Language and Measures	
5.0	Contract Documents	
6.0	Use of Contract Documents and Information	
7.0	Construction of the Contract	
8.0	Jurisdiction of Contract	
9.0	Manner of Execution of Contract	
10.0	Enforcement of Terms	
11.0	Completion of Contract	
	B. Guarantees and Liabilities	
12.0	Time – The Essence of Contract	
13.0	Effectiveness of Contract	
14.0	Liquidated Damages	
15.0	Guarantee	
16.0	Taxes, Permits & Licenses	
17.0	Replacement of Defective Parts and Materials	
18.0	Patent Rights and Royalties	
19.0	Defence of Suits	
20.0	Limitation of Liabilities	
21.0	Engineer’s Decision	
22.0	Power to vary or Omit Work	
23.0	Assignment and Sub-letting of Contract	
24.0	Change of Quantity	
25.0	Packing, Forwarding and Shipment	

- 26.0 Cooperation with other Contractors
and Consulting Engineers
- 27.0 No Waiver of Rights
- 28.0 Certificate not to affect Right of Owner
Liability of Contractor
- 29.0 Training of Owner's Personnel
- 30.0 progress Reports and Photographs
- 31.0 Taking Over

C. Contract Security and Payments

- 32.0 Contract Performance Guarantee
- 33.0 Contract Price Adjustment
- 34.0 Payment
- 35.0 Deductions from Contract Price

D. Spares

- 36.0 Spares

E. Risk Distribution

- 37.0 Transfer of Title
- 38.0 Insurance
- 39.0 Liability for Accidents and Damages
- 40.0 Delays by owner or his Authorised Agents
- 41.0 Demurrage, Wharf age etc.
- 42.0 Force Majeure
- 43.0 Suspension of Work
- 44.0 Contractor's Default
- 45.0 Termination of Contract on owner's initiative
- 46.0 Frustration of Contract
- 47.0 Grafts and Commissions etc.

F. Resolution of Disputes

- 48.0 Settlement of Disputes
- 49.0 Arbitration
- 50.0 Reconciliation of Account

A. INTRODUCTION

1.0 DEFINITION OF TERMS

- 1.1 The 'Contract' means the agreement entered into between the owner and the Contractor as per the Contract Agreement signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.2 'Owner' shall mean the ORISSA POWER TRANSMISSION CORPORATION LIMITED Bhubaneswar and shall include its legal representatives, successors and assigns.
- 1.3 'Contractor' or 'Manufacturer' shall mean the Bidder whose bid will be accepted by the owner for the award of the works and shall include such successful Bidder's legal representatives, successors and permitted assigns.
- 1.4 'Sub-Contractor' shall mean the person named in the Contract for any part of the works or any person to whom any part of the contract has been sublet by the Contractor with the consent in writing of the Engineer and will include the legal representatives, successors and permitted assigns of such person
- 1.5 'Engineer' shall mean the officer appointed in writing by the owner to act as Engineer from time to time for the purpose of the Contract.
- 1.6 'Consulting Engineer'/'Consultant' shall mean any firm or person duly appointed as such from time to time by the owner.
- 1.7 The terms 'Equipment', 'Stores' and 'Materials' shall mean and include equipment, stores and materials to be provided by the Contractor under the Contract.
- 1.8 'Works' shall mean and include the furnishing of material/equipment, labour and services, as per the Specifications and complete erection, testing and putting into satisfactory operation including all transportation, handling, unloading and storage at the Site as defined in the contract.

- 1.9 'Specifications' shall mean both technical as well as commercial part of the Specifications and Bidding Document forming a part of the Contract and such other schedules and drawings as may be mutually agreed upon.
- 1.10 'Site' shall mean and include the land and other places on, into or through which the works and the related facilities are to be erected or installed and any adjacent land, paths, street or reservoir which may be allocated or used by the owner or contractor in the performance of the contract.
- 1.11 The term 'Contract Price' shall mean the lump sum price quoted by the contractor in his bid with additions and/or deletions as may be agreed and incorporated in the Letter of Award, for the entire scope of works.
- 1.12 The term 'Equipment Portion' of the contract price shall mean the ex-works value of the material/equipment.
- 1.13 The term 'Erection Portion' of the contract price shall mean the value of field activities of the works including erection, testing and putting into satisfactory operation including successful completion of performance and guarantee tests to be performed at Site by the Contractor including cost of insurances.
- 1.14 'Manufacturer's Works' or 'Contractor's Works', shall mean the place of work used by the manufacturer, the Contractor, their collaborators/associates or Sub-Contractors for the performance of the Contract.
- 1.15 'Inspector' shall mean the owner or any person nominated by the owner from time to time, to inspect the equipment; stores or works under the contract and/or the duly authorized representative of the owner.
- 1.16 'Notice of Award of Contract'/'Letter of Award'/'Telex of Award' shall mean the official notice issued by the owner notifying the contractor that his bid has been accepted.
- 1.17 'Date of Contract' shall mean the date on which Notice of Award of Contract/Letter of Award has been issued.

- 1.18 'Month' shall mean the calendar month. 'Day' or 'Days' unless herein otherwise expressly defined shall mean calendar day or days of 24 hours each.
- 1.19 A 'Week' shall mean continuous period of seven (7) days.
- 1.20 'Writing' shall include any manuscript, type written or printed statement, under or over signature and/or seal as the case may be.
- 1.21 When the words 'Approved', 'Subject to Approval', 'Satisfactory', 'Equal to', 'Proper', 'Requested', 'As Directed', 'Where Directed', 'When Directed', 'Determined by', 'Accepted', 'Permitted', or words and phrases of like importance are used the approval, judgment, direction etc. is understood to be a function of the Owner/Engineer.
- 1.22 Test on completion shall mean such tests as prescribed in the Contract to be performed by the Contractor before the work is taken over by the owner.
- 1.23 'Start up' shall mean that time period required to bring the equipment covered under the Contract from an inactive condition, when construction is essentially complete, to the state ready for trial operation. The start up period shall include preliminary inspection and check out of equipment and supporting sub-system, initial operation of the complete equipment covered under the Contract to obtain necessary pre-trial operation data, perform calibration and corrective action, shut down, inspection and adjustment prior to the trial operation period.
- 1.24 'Initial Operation' shall mean the first integral operation of the complete equipment covered under the Contract with the sub-system and supporting equipment in service or available for service.
- 1.25 'Trial Operation', 'Reliability Test', 'Trial Run', 'Completion Test', shall mean the extended period of time after the start up period. During this trial operation period the unit shall be operated over the full load range. The length of trial operation shall be as determined by the Engineer, unless otherwise specified elsewhere in the Contract.

- 1.26 'Performance and Guarantee Tests' shall mean all operational checks and tests required to determine and demonstrate capacity, efficiency, and operating characteristics as specified in the Contract Documents.
- 1.27 The term 'Final Acceptance'/'Taking Over' shall mean the Owner's written acceptance of the works performed under the contract, after successful commissioning/completion of performance and guarantee tests, as specified in the accompanying Technical Specifications or otherwise agreed in the contract.
- 1.28 'Commercial Operation' shall mean the condition of operation in which the complete equipment covered under the Contract is officially declared by the owner to be available for continuous operation at different loads upto and including rated capacity. Such declaration by the owner, however, shall not relieve or prejudice the Contractor of any of his obligations under the Contract.
- 1.29 'Guarantee Period'/'Maintenance Period' shall mean the period during which the Contractor shall remain liable for repair or replacement of any defective part of the works performed under the Contract.
- 1.30 'Latent Defects' shall mean such defects caused by faulty designs, materials or workmanship which cannot be detected during inspection, testing etc. based on the technology available for carrying out such tests.
- 1.31 'Drawing', 'Plans' shall mean all:
- a) Drawings furnished by the owner/consultant as a basis of Bid/Proposals.
 - b) Supplementary drawings furnished by the owner/consultant to clarify and to define in greater detail the intent of the contract.
 - c) Drawings submitted by the contractor with his bid provided such drawings are acceptable to the owner/consultant.
 - d) Drawings furnished by the owner/consultant to the contractor during the progress of the work; and

- e) Engineering data and drawings submitted by the contractor during the progress of the work provided such drawings are acceptable to the Engineer/Owner.

1.32 'Codes' shall mean the following including the latest amendments and/or replacements, if any:

- a) Indian Electricity Act, 2003 and Rules and Regulations made thereunder.
- b) Indian Factory Act, 1948 and Rules and Regulations made thereunder.
- c) Indian Explosives Act, 1884 and Rules and Regulations made thereunder.
- d) Indian Petroleum Act, 1934 and Rules and Regulations made thereunder.
- e) ASME Test Codes.
- f) Institute of Electrical & Electronics Engineers (IEEE) Test Codes
- g) American Society of Testing & Materials (ASTM) Codes.
- h) American National Standard Institute (ANSI) Codes
- i) Standards of the Indian Standards Institution/Bureau of Indian Standards.
- j) Other Internationally approved standards and/or rules and regulations touching the subject matter of the contract. Words imparting the singular only shall also include the plural and vice-versa where the context so requires.

1.33 Words imparting 'Person' shall include firms, companies, corporations and associations or bodies of individuals, whether incorporated or not.

1.34 Terms and expressions not herein defined shall have the same meaning as are assigned to them in the Indian Sale of Goods Act (1930), failing that in the Indian Contract Act (1872) and failing that in the General Clauses Act (1897) including amendments thereof, if any.

The various Acts and Regulations are normally available for sale from the following addresses:

- i) Deputy Controller
Publication Department
Government of India
Civil Lines,
DELHI-110 006.
- ii) Deptt. of Publication
Government of India,
KitabMahal
Unit No.21, Emporia Building,
Baba Kharak Singh Marg,
NEW DELHI-110 001.

OR

With leading authorized Government of India Book – Sellers.

1.35 In addition to the above the following definitions shall also apply.

- a) 'All equipment and materials' to be supplied shall also mean 'Goods'.
- b) 'Constructed' shall also mean 'erected and installed'.
- c) 'Contract Performance Guarantee' shall also mean 'Contract Performance Security'.

2.0 APPLICATION

These General Conditions shall apply to the extent that they are not superceded by provisions in other parts of the Contract.

3.0 STANDARDS

The goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is

mentioned, to the authoritative standard appropriate to the goods and such standards shall be the latest issued by the concerned institution.

4.0 LANGUAGE AND MEASURES

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

5.0 CONTRACT DOCUMENTS

5.1 The term Contract Documents shall mean and include the following, which shall be deemed to form an integral part of the Contract:

- a) Notice Inviting Tender including letter forwarding the Bidding Documents, Instructions to Bidders, General Conditions of Contract and all other documents included in section-IV and the Special Conditions of Contract.
- b) Specifications of the equipment to be furnished and erected under the contract as brought out in the accompanying Technical Specifications & GTP.
- c) Contractor's Bid Proposal and the documents attached there to including the letters of clarifications thereto between the Contractor and the Owner/Consultant prior to the Award of Contract except to the extent of repugnancy.
- d) All the materials, literature, data and information of any sort given by the Contractor along with his bid, subject to the approval of the owner/consultant.
- e) Letter of Awards for Supply and Erection along with any agreed variations of the conditions of the documents and special terms and conditions of contract, if any.

5.2 In the event of any conflict between the above-mentioned documents the matter shall be referred to the Engineer whose decision shall be considered as final and binding upon the parties.

6.0 USE OF CONTRACT DOCUMENTS AND INFORMATION

- 6.1 The contractor shall not, without the owner's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the owner in connection therewith, to any person other than a person employed by the contractor in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for the purpose of such performance.
- 6.2 The contractor shall not, without the owner's prior written consent, make use of any document or information enumerated in various contract documents except for the purpose of performing the contract.
- 6.3 The contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of the works under this contract, or descriptions of the site, dimensions, quantity, quality or other information, concerning the works unless prior written permission has been obtained from the owner.
- 6.4 Any document, other than the contract itself, enumerated in various contract documents shall remain the property of the owner and shall be returned (in all copies) to the owner on completion of the contractor's performance under the contract if so required by the owner.

7.0 CONSTRUCTION OF THE CONTRACT

- 7.1 Notwithstanding anything stated elsewhere in the bid documents, the contract to be entered into will be treated as a single contract on turnkey basis.
- 7.2 Where the owner hands over his equipment to the contractor for executing, then the contractor shall at the time of taking delivery of the equipment/dispatch documents be required to execute an Indemnity Bond in favour of the owner in the form acceptable to **OPTCL** for keeping the equipment in safe custody and to utilize the same exclusively for the purpose of the said

contract. Samples of proforma for the Indemnity Bond are enclosed as **Annexure-XVII at section-IV.**

7.3 The contract shall in all respects be construed and governed according to Indian Laws.

7.4 It is clearly understood that the total consideration for the contract(s) has been broken up into various components only for the convenience of payment of advance under the contract(s) and for the measurement of deviations or modifications under the contract(s).

8.0 JURISDICTION OF CONTRACT

8.1 The laws applicable to the contract shall be the laws in force in Orissa. The **Honb'le Courts** of Bhubaneswar shall have exclusive jurisdiction in all matters arising under this Contract.

9.0 MANNER OF EXECUTION OF CONTRACT

9.1 The owner, after the issue of the Letter of Award to the Contractor, will send one copy of the final agreement to the Contractor for his scrutiny and approval.

9.2 **The Agreement, unless otherwise agreed to, shall be signed within 15days of the acceptance of the Letter of Award, at the office of the owner at Bhubaneswar, on a date and time to be mutually agreed. The contractor shall provide for signing of the contract, performance guarantee in six copies, appropriate power of attorney and other requisite materials. In case the contract is to be signed beyond the stipulated time, the bid guarantee submitted with the proposal will have to be extended accordingly.**

9.3 **The Agreement will be signed in six originals and the contractor shall be provided with one signed original and the rest will be retained by the owner.**

- 9.4 The contractor shall provide free of cost to the owner all the Engineering data, drawings, and descriptive materials submitted with the bid, in **at least six(6) copies** to form a part of the contract immediately after issue of Letter of Award.
- 9.5 The equipments / material supplied under the contract shall be manufactured in the manner set out in the specification or where not set out , to the reasonable satisfaction of the purchaser's representative.

10.0 ENFORCEMENT OF TERMS

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

11.0 COMPLETION OF CONTRACT

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

B. GUARANTEES AND LIABILITIES

12.0 TIME - THE ESSENCE OF CONTRACT

- 12.1 The time and the date of completion of the contract as stipulated in the contract by the owner without or with modifications, if any, and so incorporated in the Letter of Award, shall be deemed to be the essence of the contract. The contractor shall so organize his resources and perform his work as to complete it not later than the date agreed to. **The entire scope of the work shall be completed as per the clause 16 of SCC.**

12.2 The contractor shall submit a detailed PERT network/bar chart within the time frame agreed consisting of adequate number of activities covering various key phases of the work such as design, procurement, manufacturing, shipment and field erection activities within **fifteen (15) days** of the date of Notification of Award. This network shall also indicate the interface facilities to be provided by the owner and the dates by which such facilities are needed. The contractor shall discuss the network so submitted with the owner and the agreed network shall form part of the contract documents. As provided in the clause of Terms of Payment in this Section, finalisation of the network/bar charts will be pre-condition to release of any initial advance to the contractor. During the performance of the contract, if in the opinion of the Engineer, proper progress is not maintained, suitable changes shall be made in the contractor's operations to ensure proper progress without any cost implication to the owner. The interface facilities to be provided by the owner in accordance with the agreed network shall also be reviewed while reviewing the progress of the contractor.

12.3 Based on the above agreed network/bar chart fortnightly reports shall be submitted by the contractor as directed by the Engineer.

12.4 Subsequent to the finalization of the network, the contractor shall make available to the Engineer a detailed manufacturing programme in line with the agreed contract network. Such manufacturing programme shall be reviewed, updated and submitted to the Engineer **once in every month thereafter**.

12.5 The above bar charts/manufacturing programme shall be compatible with the owner's computer environment and furnished to the owner on such media as may be desired by the owner.

13. EFFECTIVENESS OF CONTRACT

The contract shall be considered as having come into force from the date of the notification of award unless otherwise provided in the notification of award.

14. LIQUIDATED DAMAGES/PENALTY

14.1 For Equipment Portion (Excluding Spares)

14.1.1 If the contractor fails to successfully complete the supply and commissioning within the time fixed under the contract, the contractor shall pay to the owner as liquidated damages/penalty a sum specified for each specified period of delay. The details of such liquidated damages/penalty are brought out in the special conditions of contract.

14.1.2 Equipment and materials will be deemed to have been delivered only when all its components, parts are also delivered. If certain components are not delivered in time the equipment and materials will be considered as delayed until such time the missing parts are also delivered.

14.1.3 The total amount of liquidated damages for delay under the contract will be subject to a maximum of **5%** of the contract price.

14.2 For Spares

14.2.1 Unless otherwise specified in the Special Conditions of Contract, the liquidated damages/penalty for delay in supply of spares, beyond the dates stipulated under **Clause 36.2, Section GCC** shall be **½% (half per cent)** of the price of undelivered spares, per week or part thereof.

14.2.2 The total amount of liquidated damages/penalty for delay under the contract will be subject to a **maximum ten percent(10%)** of the value of spares ordered unless otherwise specifically mentioned in special Conditions of Contract.

14.3 Liquidated damages/penalty for not meeting performance guarantee during the performance and guarantee tests shall be assessed and recovered from the contractor as detailed in Technical Specifications/Special Conditions of Contract. Such liquidated damages shall be without any limitation whatsoever and shall be in addition to damages, if any, payable under any other clause of Conditions of Contract.

14.4 For Erection:

14.4.1 If the contractor fails to successfully complete the erection & commissioning within the time fixed under the contract, the contractor shall pay to the owner as Liquidated damage a sum specified for each specified period of delay. The Liquidated damage shall be ½% (half per cent) per week of delay or part thereof and the total amount of Liquidated damage for delay under the Contract will be subject to a maximum of 5% of the Contract Price.

15.0 GUARANTEE

15.1 The contractor shall warrant that the equipment / material will be new, unused and in accordance with the contract documents and free from defects in material and workmanship for a period of **sixty (60)** calendar months (as specified in the SCC) commencing immediately upon the satisfactory commissioning. The contractor's liability shall be limited to the replacement of any defective parts in the equipment of his own manufacture or those of his Sub-Contractors under normal use and arising solely from faulty design, materials and/or workmanship, manufacture or during erection. Such replaced/defective parts shall be returned to the contractor unless otherwise arranged. No repairs or replacement shall normally be carried out by the Engineer when the equipment is under the supervision of the contractor's supervisory Engineer. In case of original manufacturer offering guarantee available for longer time, the same should be made available to the owner.

15.2 In the event of any emergency where in the judgment of the Engineer, delay would cause serious loss or damages, repairs or adjustment may be made by the Engineer or a third party chosen by the Engineer without advance notice to the contractor and the cost of such work shall be paid by the contractor. In the event such action is taken by the Engineer, the contractor will be notified promptly and he shall assist wherever possible in making necessary corrections. This shall not relieve the contractor of his liabilities under the terms and conditions of the contract.

15.3 If it becomes necessary for the contractor to replace or renew any defective portions of the works the provision of this clause shall apply to portion of the works so replaced or renewed until the expiry of sixty(60) months from the date of such replacement or renewal. If any defects are not remedied within a

reasonable time, the Engineer may proceed to do the work at the contractor's risk and cost but without prejudice to any other rights which the owner may have against the contractor in respect of such defects.

- 15.4 The repaired or new parts will be furnished and erected free of cost by the contractor. If any repair is carried out on his behalf at the site, the contractor shall bear the cost of such repairs.
- 15.5 The cost of any special or general overhaul rendered necessary during the maintenance period due to defects in the equipment or defective work carried out by the contractor, the same shall be borne by the contractor.
- 15.6 The acceptance of the equipment by the Engineer shall in no way relieve the contractor of his obligations under this clause.
- 15.7 In the case of those defective parts, which are not repairable at site but are essential for the commercial operation of the equipment, the contractor and the Engineer shall mutually agree to a programme of replacement or renewal, which will minimize interruption to the maximum extent in the operation of the equipment.
- 15.8 At the end of the guarantee period, the contractor's liability ceases except for latent defects. For latent defects, the contractor's liability as mentioned in Clause Nos. 15.1 through 15.7 above, shall remain till the end of 5 years from the date of completion of guarantee period.
- 15.9 The Contractor shall not stand guaranteed for the materials supplied by OPTCL but shall stand guarantor for the execution of the materials

16.0 TAXES, PERMITS & LICENCES

- 16.1 The contractor shall be liable and pay all non-Indian taxes, duties, levies lawfully assessed against the owner or the contractor in pursuance of the contract. In addition the contractor shall be responsible for payment of all Indian duties, levies and taxes lawfully assessed against the contractor for his

personal income and property only. This clause shall be read in conjunction with Clause 15.0 of Section **ITB**.

- 16.2** Audited balance sheet & profit & loss account of the bidder for the previous five years should be enclosed to access the financial soundness of the bidders.

17.0 REPLACEMENT OF DEFECTIVE PARTS AND MATERIALS

- 17.1 If during the performance of the contract, the Engineer shall decide and inform in writing to the contractor that the contractor has manufactured any equipment, material or part of equipment unsound and imperfect or has furnished any equipment inferior to the quality specified, the contractor on receiving details of such defects or deficiencies shall at his own expense **within seven (7) days of his receiving the notice**, or otherwise, within such time as may be reasonably necessary for making it good, proceed to alter, reconstruct or remove such works and furnish fresh equipment/materials upto the standards of the specifications. **In case, the contractor fails to do so, the Engineer may on giving the contractor seven (7) days notice in writing of his intentions to do so, proceed to remove the portion of the works so complained of and at the cost of the contractor perform all such works or furnish all such equipment/material provided that nothing in this clause shall be deemed to deprive the owner of or affect any rights under the contract which the owner may otherwise have in respect of such defects and deficiencies.**

- 17.2 The contractor's full and extreme liability under this clause shall be satisfied by the payment to the owner of extra cost, of such replacement procured including erection as provided for in the contract, such extra cost being the ascertained difference between the price paid by the owner for such replacements and the contract price by portion for such defective equipment/materials/works and repayments of any sum paid by the owner to the contractor in respect of such defective equipment/material. Should the owner not so replace the defective

equipment/materials the contractor's extreme liability under this clause shall be limited to repayment of all sums paid by the owner under the contract for such defective equipment/materials.

18.0 PATENT RIGHTS AND ROYALTIES

Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes used in the works shall be deemed to have been included in the Contract Price. The contractor shall satisfy all demands that may be made at any time for such royalties or fees and he alone shall be liable for any damages or claims for patent infringements and shall keep the owner indemnified in that regard. The contractor shall, alleged infringement of any patents involved in the works, and, in case of an award of damages, the contractor shall pay for such award. In the event of any suit or other proceedings instituted against the owner, the same shall be defended at the cost and expense of the contractor who shall also satisfy/comply with any decree, order or award made against the owner. But it shall be understood that no such machine, plant, work, material or thing has been used by the owner for any purpose or any manner other than that for which they have been furnished and installed by the contractor and specified under these specifications. Final payment to the contractor by the owner will not be equipment, or any part thereof furnished by the contractor, is in such suit or proceedings held to constitute infringement, and its use is enjoined, the contractor shall at his option and at his own expense, either procure for the owner, the right to continue the use of said apparatus, equipment or part thereof, replace it with non-infringing apparatus or equipment or modify it, so it becomes non-infringing.

19.0 DEFENCE OF SUITS

If any action in court is brought against the owner or Engineer or an officer or agent of the owner, for the failure, omission or neglect on the part of the contractor to perform any acts, matters, covenants or things under the contract, or for damage or injury caused by the alleged omission or negligence on the part of the contractor, his agents, representatives or his Sub-

Contractors, or in connection with any claim based on lawful demands of sub-contractors, workmen, suppliers or employees, the contractor shall in all such cases indemnify and keep the owner, and the Engineer and/or his representative, harmless from all losses, damages, expenses or decrees arising of such action.

20.0 LIMITATION OF LIABILITIES

The final payment by the owner in pursuance of the contract shall mean the release of the contractor from all his liabilities under the contract. **Such final payment shall be made only at the end of the Guarantee/Warranty period, and till such time as the contractual liabilities and responsibilities of the contractor, shall prevail.** All other payments made under the contract shall be treated as on-account payments.

21.0 ENGINEER'S DECISION

- 21.1 In respect of all matters which are left to the decision of the Engineer including the granting or with-holding of the certificates, the Engineer shall, if required to do so by the contractor, give in writing a decision thereon.
- 21.2 If, in the opinion of the contractor, a decision made by the Engineer is not in accordance with the meaning and intent of the contract, the contractor may file with the Engineer, **within seven (7) days** after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the Engineer's decision and the decision shall become final and binding.
- 21.3 The Engineers' decision and the filing of the written objection thereto shall be a condition precedent to the right to request arbitration. It is the intent of the Agreement that there shall be no delay in the execution of the works and the decision of the Engineer as rendered shall be promptly observed.

22. POWER TO VARY OR OMIT WORK

- 22.1 No alterations, amendments, omissions, suspensions or variations of the works (hereafter referred to as 'variation') under the contract as detailed in the Contract Documents, shall be made by the contractor except as directed in writing by the Engineer, but the Engineer shall have full powers subject to the provisions hereafter contained, from time to time during the execution of the contract, by notice in writing to instruct the contract to make such variation without prejudice to the contract. The contractor shall carry out such variation and be bound by the same conditions as far as applicable as though the said variations occurred in the Contract Documents. If any suggested variations would, in the opinion of the contractor, if carried out, prevent him from fulfilling any of his obligations or guarantees under the contract, he shall notify the Engineer thereof in writing and the Engineer shall decide forthwith whether or not, the same shall be carried out and if the Engineer confirms his instructions, the contractor's obligations and guarantees shall be modified to such an extent as may be mutually agreed. Any agreed difference in cost occasioned by any such variation shall be added to or deducted from the contract price as the case may be.
- 22.2 In the event of Engineer requiring any variation, a reasonable and proper notice shall be given to the contractor to enable him to work his arrangement accordingly, and in cases where goods or materials are already prepared or any design, drawings or pattern made or work done requires to be altered, a reasonable and agreed sum in respect thereof shall be paid to the contractor.
- 22.3 In any case in which the contractor has received instructions from the Engineer as to the requirement of carrying out the alterations or additional or substituted work which either then or later on, will in the opinion of the contractor, involve a claim for additional payment, the contractor shall immediately and in no case **later than seven(7) days**, after receipt of the instructions aforesaid and before carrying out the instructions, advise the Engineer to that effect. But the Engineer shall not become liable for payment of any charges in respect of any such variations, unless the instructions for the performance of the same shall be confirmed in writing by the Engineer.

- 22.4 If any variation in the works results in reduction of contract price, the parties shall agree, in writing, so to the extent of any change in the price, before the contractor proceeds with the change.
- 22.5 In all the above cases, in the event of a disagreement as to the reasonableness of the said sum, the decision of the Engineer shall prevail.
- 22.6 Notwithstanding anything stated above in this clause, the Engineer shall have the full power to instruct the contractor, in writing, during the execution of the contract to vary the quantities of the items or groups of items in accordance with the provisions of clause 24 entitled 'Change of Quantity' in **GCC**. The contractor shall carry out such variations and be bound by the same conditions as though the said variations occurred in the Contract Documents. However, the contract price shall be adjusted at the rates and the prices provided for the original quantities in the Contract.

23. ASSIGNMENT AND SUB-LETTING OF CONTRACT

- 23.1 The contractor may, after informing the Engineer and getting his written approval, assign or sub-let the contract or any part thereof other than for raw material, for minor details or for any part of the plant for which makes are identified in the contract. Suppliers of the equipment not identified in the contract or any change in the identified suppliers shall be subjected to approval by the Engineer. The experience list of equipment vendors under consideration by the contractor for this contract shall be furnished to the Engineer for approval prior to procurement of all such items/equipment. Such assignment/sub-letting shall not relieve the contractor of any obligation, duty or responsibility under the contract. Any assignment as above, without prior written approval of Engineer, shall be void.
- 23.2 For components/equipment procured by the contractor for the purposes of the contract, after obtaining the written approval of the owner, the contractor's purchase specifications and enquiries shall call for quality plan to be submitted by the suppliers along with their proposals. The quality plans called for from the vendors shall set out, during the various stages of manufacture

and installation, the quality practices and procedures followed by the vendors' quality control organization, the relevant reference document/standard used, acceptance level, inspection documentation raised, etc. Such quality plans of the successful vendors shall be discussed and finalized in consultation with the Engineer and shall form a part of the Purchase Order/Contract between the Contractor and the Vendor. Within three weeks of the release of the Purchase Orders/Contracts for such bought out items/components a copy of the same without price details but together with detailed purchase specifications, quality plans and delivery conditions shall be furnished to the Engineer by the Contractor.

24. CHANGE OF QUANTITY

- 24.1 During the execution of the contract, the owner reserves the right to increase or decrease the quantities of items under the contract but without any change in unit price or other terms and conditions. Such variations unless otherwise specified in the accompanying Special Conditions of Contract and/or technical Specifications, shall not be subjected to any limitation for the individual items but the total variations in all such items under the contract shall be limited to a percentage of the contract price as specified in the Special Conditions of Contract.
- 24.2 The contract price shall accordingly be adjusted based on the unit rates available in the contract for the change in quantities as above. The base unit rates, as identified in the contract shall however remain constant during the currency of the contract. In case the unit rates are not available for the change in quantity, the same shall be subjected to mutual agreement.

25. PACKING, FORWARDING AND SHIPMENT

- 25.1 The contractor, wherever applicable, shall after proper painting, pack and crate all equipment in such a manner as to protect them from deterioration and damage during rail and road transportation to the site and storage at the site till the time of erection. The contractor shall be held responsible for all damages due to improper packing.

- 25.2.1 The contractor shall notify the owner of the date of each shipment from his works, and the expected date of arrival at the site for the information of the owner.
- 25.3 The contractor shall also give all shipping information concerning the weight, size and content of each packing including any other information the owner may require.
- 25.4 The following documents shall be sent by registered post to the owner **within three days** from the date of shipment, to enable the owner to make progressive payments to the contractor:

Application for payment in the standard format (Annexure XIX at Section IV) of the owner (3 copies)

Invoice (6 copies)

Packing list (6 copies)

Pre-despatch clearance certificate, if any (3 copies)

Test Certificate, wherever applicable (3 copies)

Insurance certificate (3 copies)

- 25.5 The contractor shall prepare detailed packing list of all packages and containers, bundles and loose materials forming each and every consignment dispatched to site.

The contractor shall further be responsible for making all necessary arrangements for loading, unloading and other handling right from his works upto the site and also till the equipment is erected, tested and commissioned. He shall be solely responsible for proper storage and safe custody of all equipment.

- 25.6 Further requirements for packing & marking shall be as per clause 5 of Technical Specification.

26. COOPERATION WITH OTHER CONTRACTORS

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

27. NO WAIVER OF RIGHTS

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

28. CERTIFICATE NOT TO AFFECT RIGHT OF OWNER AND LIABILITY OF THE CONTRACTOR

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

certificate nor the acceptance by him of any sum paid on account or otherwise affect or prejudice the rights of the owner against the contractor.

29. TRAINING OF OWNER'S PERSONNEL

29.1 The contractor shall undertake to train free of cost, Engineering personnel selected at the works site unless otherwise specified in the Technical Specifications. The period and the nature of training for the individual personnel shall be agreed upon mutually between the contractor and the owner. The details of the number of persons to be trained, period of training, nature of training etc. shall be as outlined in accompanying Technical Specifications/Special Conditions of Contract.

30. PROGRESS REPORTS AND PHOTOGRAPHS

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

31. TAKING OVER

Upon successful completion of all the tests to be performed at site on equipment furnished and erected by the contractor, the Engineer shall issue to the contractor a Taking Over Certificate as proof of the final acceptance of the equipment. Such certificate shall not unreasonably be withheld nor will the Engineer delay the issuance thereof on account of minor omissions or defects, which do not affect the commercial operation and/or cause any serious risk to the equipment. Such certificate shall not relieve the contractor of any of his obligations which otherwise survive, by the terms and conditions of the contract after issue of such certificate.

C. CONTRACT SECURITY AND PAYMENTS

32. CONTRACT PERFORMANCE GUARANTEE

The contractor shall furnish Contract Performance Guarantee(s) for the proper fulfillment of the contract in the prescribed form **within fifteen(15) days** of "Notice of Award of Contract". The performance guarantee(s) shall be as per terms prescribed in **Section ITB, Conditions of Contract (Section-II)**.

33.0 CONTRACT PRICE ADJUSTMENT

The price shall be FIRM and valid till completion of the work.

34.0 PAYMENT

34.1 The payment to the contractor for the performance of the works under the contract will be made by the owner as per the guidelines and conditions specified herein. All payments made during the contract shall be on account payments only. The final payment will be made on completion of all works and on fulfillment by the contractor of all his liabilities under the contract.

34.2 Currency of Payment

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

34.3 Due Dates for Payments

Owner will make progressive payment as and when the payment is due as per the terms of payment set forth in the accompanying Special Conditions of Contract. Progressive payments other than those under the letter of credit will become due and payable by the owner within thirty (30) days of the date of receipt of contractor's bill/invoice/debit note by the owner provided the documents submitted are complete in all respects.

34.4 Payment Schedule

The contractor shall prepare and submit to the Engineer for approval, a break up of the contract price. This contract price break up shall be interlinked with the agreed detailed **PERT network** of the contractor setting forth his starting

and completion dates for the various key phases of works prepared as per conditions in **clause 12.0of this Section.**

Any payment under the contract shall be made only after the contractor's price break up is approved by the Engineer. The aggregate sum of the contractor's price break up shall be equal to the lump sum contract price. A price break up over valuing those items of supply which will be shipped first will not be accepted.

34.5 **Application for Payment**

34.6 The Contractor shall submit application for the payment in the prescribed proforma of the owner. Proforma for application for payment is enclosed as **Annexure-XIX of section-IV.**

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

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

34.9 **Mode of Payment**

34.10 Payment due on dispatch of equipment shall be made by the owner through owner's Bank or directly to the contractor as per the payment schedule.

34.11 The payment of the taxes and duties (whenever admissible) inland transportation (including port handling), insurance and the erection portion of the works shall be made direct to the contractor by the owner.

34.12 **Terms of Payment**

- a) The terms of payments for various activities under the contract are as specified in clause-5 of the special condition of contract.

34.13 Inland Transportation and Insurance

Inland transportation (including port handling) and inland insurance charges shall be paid to the contractor on prorata to the value of the equipment received at site and on production of the invoices by the contractor. However, wherever equipment wise inland transportation charges have been called for in the 'Bid Proposal Sheets' and have been furnished by the

contractor, the payment of inland transportation charges shall be made after receipt of equipment at site based on the charges thus identified by the contractor in his Proposal and incorporated in the contract. The aggregate of all such prorata payments shall however not exceed the total amounts quoted by the Bidder in his bid and incorporated in the contract.

35.0 DEDUCTIONS FROM CONTRACT PRICE

All costs, damages or expenses which the owner may have paid, for which under the contract contractor is liable, will be claimed by the owner. All such claims shall be billed by the owner to the contractor regularly as and when they fall due. Such bills shall be supported by appropriate and certified vouchers or explanations, to enable the contractor to properly identify such claims. Such claims shall be paid by the contractor within thirty(30) days of the receipt of the corresponding bills and if not paid by the contractor within the said period, the owner may then deduct the amount, from any monies due or becoming due by him to the contractor under the contract or may be recovered by actions of Law or otherwise.

D. SPARES

36.0 SPARES

- 36.1 All the spares for the equipment under the contract will, strictly, conform to the specification and documents and will be identical to the corresponding main

equipment/components supplied under the contract and shall be fully interchangeable.

36.2 Spares shall be as per the spare list enclosed. The quality plan and the inspection requirement finalized for the main equipment will also be applicable for the corresponding spares.

36.3 The contractor will provide the owner with the manufacturing drawings, catalogues, assembly drawings and any other document required by the owner so as to enable the owner to identify the recommended spares. Such details will be furnished to the owner as soon as they are prepared but in any case not later than six months prior to commencement of manufacture of the corresponding main equipment.

36.4 The contractor will provide the owner with all the addresses and particulars of his sub-suppliers while placing the order on vendors for items/components/equipment covered under the contract and will further ensure with his vendors that the owner, if so desires, will have the right to place order(s) for spares directly on them on mutually agreed terms based on offers of such vendors.

36.5 **Warranty for spares**

The contractor shall warrant that all spares supplied will be new and in accordance with contract documents and will be free from defects in design, materials and workmanship and shall further guarantee for sixty(60) months.

36.7 In addition to the spares as per the list, if the owner further identifies certain particular items of spares, the contractor will submit the prices and delivery quotations for such spares **within 30 days** of receipt of such request with validity period for **6 months** for consideration by the owner and placement of order for additional spares if owner so desires.

36.8 The contractor shall guarantee the long term availability of spares to the owner for the full life of the equipment covered under the contract. The contractor shall guarantee that before going out of production of spare parts of the

equipment, he shall give the owner at least **twelve (12) months** advance notice so that the latter may order his bulk requirement of spares, if he so desires. The same provision will also be applicable to Sub-Contractor of any spares by the contractor or his Sub-Contractors. Further, in case of discontinuance of manufacture of any spares by the contractor or his Sub-Contractors, the contractor will provide the owner, two years in advance, full manufacturing drawings, material specifications and technical information required by the owner for the purpose of manufacture of such items.

36.9 Further in case of discontinuance of supply of spares by the contractor or his Sub-Contractors, the Contractor will provide the Owner with full information for replacement of such spares with other equivalent makes, if so required by the Owner.

36.10 The prices of all future requirements of items of spares **beyond 5 years** operational requirement will be derived from the corresponding ex-works price at which the order for such spares have been placed by owner as part of mandatory spares or recommended spares. Ex-works order price of future spares shall be computed in accordance with the price adjustment provisions covered under the main contract excepting that the base indices will be counted from the scheduled date of successful completion of trial operation of the last equipment under the main project and there will be no ceiling on the amount of variation in the prices. The above option for procuring future long term requirement of spares by the owner shall remain valid **for a period of 5 years** from successful completion of commissioning of last unit of equipment.

36.11 The contractor will indicate in advance the delivery period of the items of spares, which the owner may procure in accordance with above sub-clause. In case of emergency requirements of spares, the contractor would make every effort to expedite the manufacture and delivery of such spares on the basis of mutually agreed time schedule.

36.12 In case the contractor fails to supply the mandatory, recommended or long term spares in accordance with the terms stipulated above, the owner shall be entitled to purchase the same from alternate sources at the risk and the cost of

the contractor and recover from the contractor, the excess amount paid by the owner over the rates worked out on the above basis. In the event of such risk purchase by the owner, the purchases will be as per the works and procurement policy of the owner prevalent at the time of such purchases and the owner at his option may include a representative of the contractor in finalizing the purchases.

It is expressly understood that the final settlement between the parties in terms of the relevant clauses of the Bidding Documents shall not relieve the contractor of any of his obligations under the provision of long term availability of spares unless otherwise discharged in writing by the owner.

E.RISK DISTRIBUTION

37.0 TRANSFER OF TITLE

37.1 Transfer of title in respect of equipment and materials supplied by the contractor to OPTCL pursuant to the terms of the contract shall pass on to OPTCL with negotiation of dispatch documents.

37.2 This Transfer of Title shall not be construed to mean the acceptance and the consequent "Taking Over" of equipment and materials. The contractor shall continue to be responsible for the quality and performance of such equipment and materials and for their compliance with the specifications until "Taking Over" and the fulfillment of guarantee provisions of this contract.

37.3 This Transfer of Title shall not relieve the contractor from the responsibility for all risks of loss or damage to the equipment and materials as specified under the clause entitled "Insurance" of this Section.

38.0 INSURANCE

38.1 The contractor at his cost shall arrange, secure and maintain all insurance as may be pertinent to the works and obligatory in terms of law to protect his interest and interests of the owner against all perils detailed herein. The form and the limit of such insurance as defined herein together with the under-writer

in each case shall be acceptable to the owner. However, irrespective of such acceptance, the responsibility to maintain adequate insurance coverage at all time during the period of contract shall be of contractor alone. The contractor's failure in this regard shall not relieve him of any of his contractual responsibilities and obligations. The insurance covers to be taken by the contractor shall be in the joint name of the owner and the contractor. The contractor shall, however, be authorized to deal directly with Insurance Company or Companies and shall be responsible in regard to maintenance of all insurance covers. Further the insurance should be in freely convertible currency.

- 38.2 Any loss or damage to the equipment during handling, transportation, storage, erection, putting into satisfactory operation and all activities to be performed till the successful completion of commissioning of the equipment shall be to the account of the contractor. The contractor shall be responsible for preference of all claims and make good the damages or loss by way of repairs and/or replacement of the equipment, damaged or lost. The transfer of title shall not in any way relieve the contractor of the above responsibilities during the period of contract. The contractor shall provide the owner with copy of all insurance policies and documents taken out by him in pursuance of the contract. Such copies of documents shall be submitted to the owner immediately after such insurance coverage. The contractor shall also inform the owner in writing at least sixty(60) days in advance regarding the expiry/cancellation and/or change in any of such documents and ensure revalidation, renewal etc. as may be necessary well in time.
- 38.3 The perils required to be covered under the insurance shall include, but not be limited to fire and allied risks, miscellaneous accidents (erection risks) workman compensation risks, loss or damage in transit, theft, pilferage, riot and strikes and malicious damages, civil commotion, weather conditions, accidents of all kinds etc. The scope of such insurance shall be adequate to cover the replacement/ reinstatement cost of the equipment for all risks upto and including delivery of goods and other costs till the equipment is delivered at site. The insurance policies to be taken should be on replacement value basis

and/or incorporating escalation clause. Notwithstanding the extent of insurance cover and the

amount of claim available from the underwriters, the contractor shall be liable to make good the full replacement/rectification value of all equipment/materials and to ensure their availability as per project requirements.

- 38.4 All costs on account of insurance liabilities covered under the contract will be on contractor's account and will be included in contract price. However, the owner may from time to time, during the pendency of the contract, ask the contractor in writing to limit the insurance coverage, risks and in such a case, the parties to the contract will agree for a mutual settlement, for reduction in contract price to the extent of reduced premia amount. The contractor, while arranging the insurance shall ensure to obtain all discounts on premia which may be available for higher volume or for reason of financing arrangement of the project.

39.0 LIABILITY FOR ACCIDENTS AND DAMAGES

Under the contract, the contractor shall be responsible for loss or damage to the plant until the successful completion of commissioning as defined elsewhere in the Bid Document.

40.0 DELAYS BY OWNER OR HIS AUTHORISED AGENTS

- 40.1 In case the contractor's performance is delayed due to any act of omission on the part of the owner or his authorized agents, then the contractor shall be given due extension of time for the completion of the works, to the extent such omission on the part of the owner has caused delay in the contractor's performance of the contract.

Regarding reasonableness or otherwise of the extension of time, the decision of the Engineer shall be final.

40.2 In addition, the contractor shall be entitled to claim demonstrable and reasonable compensation if such delays have resulted in any increase in cost. The owner shall examine the justification for such a request for claim and if satisfied, the extent of compensation shall be mutually agreed depending upon the circumstances at the time of such an occurrence.

41.0 DEMURRAGE, WHARFAGE ETC.

All demurrage, wharf age and other expenses incurred due to delayed clearance of the material or any other reason shall be to the account of the contractor.

42.0 FORCE MAJEURE

42.1 Force majeure is herein defined as any cause which is beyond the control of the contractor or the owner as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the contract, such as:

- a Natural phenomena, including but not limited to floods, droughts, earthquakes and epidemics;
- b Acts of any Government, domestic or foreign, including but not limited to war, declared or undeclared, priorities, guarantees, embargoes.

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

42.2 The contractor or the owner shall not be liable for delays in performing his obligations resulting from any force majeure cause as referred to and/or defined above.

The date of completion will, subject to hereinafter provided, be extended by a reasonable time even though such cause may occur after contractor's performance of obligation has been delayed due to other causes.

43.0 SUSPENSION OF WORK

- 43.1 The owner reserves the right to suspend and reinstate execution of the whole or any part of the works without invalidating the provisions of the contract. Orders for suspension or reinstatement of the works will be issued by the Engineer to the contractor in writing. The time for completion of the works will be extended for a period equal to duration of the suspension.
- 43.2 Any necessary and demonstrable cost incurred by the contractor as a result of such suspension of the works will be paid by the owner, provided such costs are substantiated to the satisfaction of the Engineer. The owner shall not be responsible for any liabilities if suspension or delay is due to some default on the part of the contractor or his sub-contractor.

44.0 CONTRACTOR'S DEFAULT

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

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

44.2 In addition, such action by the owner as aforesaid shall not relieve the contractor of his liability to pay liquidated damages for delay in completion of works as defined in **clause 14.0** of this Section.

44.3 Such action by the owner as aforesaid the termination of the contract under this clause shall not entitle the contractor to reduce the value of the contract performance guarantee nor the time thereof. The contract performance guarantee shall be valid for the full value and for the full period of the contract including guarantee period.

45.0 TERMINATION OF CONTRACT ON OWNER'S INITIATIVE

45.1 The owner reserves the right to terminate the contract either in part or in full due to reasons other than those mentioned under clause entitled 'Contractor's Default'. The owner shall in such an event give fifteen **(15) days** notice in writing to the contractor of his decision to do so.

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

In the event of such a termination the contractor shall be paid compensation, equitable and reasonable, dictated by the circumstances prevalent at the time of termination.

45.3 If the contractor is an individual or a proprietary concern and the individual or the proprietor dies and if the contractor is a partnership concern and one of the partners dies then unless the owner is satisfied that the legal representatives of the individual contractor or of the proprietor of the propriety concern and in the case of partnership, the surviving partners, are capable of carrying out and completing the contract the owner shall be entitled to cancel the contract as to its uncompleted part without being in any way liable to payment of any compensation to the estate of deceased contractor and/or to the surviving partners of the contractor's firm on account of the cancellation of the contract. The decision of the owner that the legal representatives of the deceased the contract shall be final and binding on the parties. In the event of such cancellation the owner shall not hold the estate of the deceased contractor and/or the surviving partners of the estate of the deceased contractor and/or the surviving partners of the contractor's firm liable to damages for not completing the contract.

46. FRUSTRATION OF CONTRACT

46.1 In the event of frustration of the contract because of supervening impossibility in terms of **the Indian Contract Act**, parties shall be absolved of their responsibility to perform the balance portion of the contract, subject to provisions contained in **sub-clause 46.3 below**.

46.2 In the event of non-availability or suspension of funds for any reasons, whatsoever (except for reason of willful or flagrant breach by the owner) and/or contractor then the works under the contract shall be suspended.

Furthermore, if the owner is unable to make satisfactory alternative arrangements for financing to the contractor in accordance with the terms of the contract within three months of the event, the parties hereto shall be

relieved from carrying out further obligations under the contract treating it as frustration of the contract.

- 46.3 In the event referred to in sub-clauses 46.1 and 46.2 above the parties shall mutually discuss to arrive at reasonable settlement on all issues including amounts due to either party for the work already done on "Quantum merit" basis which shall be determined by mutual agreement between the parties.

47 GRAFTS AND COMMISSIONS ETC.

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

F RESOLUTION OF DISPUTES

48 SETTLEMENT OF DISPUTES

- 48.1 Any dispute(s) or difference(s) arising out of or in connection with the contract shall, to the extent possible, be settled amicably between the parties.
- 48.2 If any dispute or difference of any kind, whatsoever, shall arise between the owner and the contractor arising out of the contract for the performance of the works whether during the progress of the works or after its completion or whether before or after the termination, abandonment or breach of the contract, it shall, in the first place, be referred to and settled by the Engineer, who, within a **period of thirty (30)** days after being requested by either party to do so, shall give written notice of his decision to the owner and the contractor.
- 48.3 Save as hereinafter provided, such decision in respect of every matters so referred shall be final and binding upon the parties until the completion of the

works and shall forthwith be given effect to by the contractor who shall proceed with the works with all due diligence, whether he or the owner requires arbitration as hereinafter provided or not.

- 48.4 If after the Engineer has given written notice of his decision to the parties, no claim to arbitration has been communicated to him by either party **within thirty(30) days** from the receipt of such notice, the said decision shall become final and binding on the parties.
- 48.5 In the event of the Engineer failing to notify his decision as aforesaid **within thirty(30) days** after being requested as aforesaid, or in the event of either the owner or the contractor being dissatisfied with any such decision, or **within thirty(30) days** after the expiry of the first mentioned period of thirty days, as the case may be, either party may require that the matters in dispute be referred to arbitration as hereinafter provided.

49 ARBITRATION

All disputes or differences in respect of which the decision, if any, of the Engineer has not become final or binding as aforesaid shall be settled by arbitration in the manner hereinafter provided.

- 49.1 The arbitration shall be conducted by three arbitrators, one each to be nominated by the contractor and the owner and the third to be appointed as an umpire by both the arbitrators in accordance with the Indian Arbitration Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.

The arbitration shall be conducted in accordance with the provisions of the **Indian Arbitration Act, 1940** or any statutory modification thereof. The venue of arbitration shall be Bhubaneswar of Orissa state.

- 49.2 The decision of the majority of the arbitrators shall be final and binding upon the parties. The arbitrators may, from time to time with the consent of all the

parties enlarge the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.

- 49.3 The arbitrator shall have full powers to review and/or revise any decision, opinion, direction, certification or valuation of the Engineer in accordance with the contract, and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Engineer for the purpose of obtaining the said decision.
- 49.4 No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.
- 49.5 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the contract.

50 RECONCILIATION OF ACCOUNTS

The contractor shall prepare and submit **every six months**, a statement covering payments claimed and the payments received vis-à-vis the works executed, for reconciliation of accounts with the owner. The contractor shall also prepare and submit a detailed account of Owner Issue materials received and utilized by him for reconciliation purpose in a format to be discussed and finalized with the owner before the award of contract.

All other disputes shall come under the jurisdiction of THE HIGH COURT OF ODISHA.