

- 23.3.3 In case the vessel arrives at the port of destination and the corresponding shipping documents are not in the possession of the Purchaser due to the Contractor's inability to provide the same before the vessel's arrival, the Contractor will be responsible for any expenses due to storage, etc which may be imposed against the Purchaser.
- 23.3.4 The Parties shall be responsible for obtaining, their respective necessary approvals from the authorities for transportation of the plant, machinery and equipment. The Parties shall use its best endeavors in a timely and expeditious manner to assist the other contracting party in obtaining such approvals, if requested. The Contractor shall indemnify and hold harmless the Purchaser from and against any claim for damages to roads, bridges or any other traffic facilities that may be caused by the transport of the plant, machinery and equipment to the Site in case of FOR Site Contracts.

#### **23.4. NOTICE TO PURCHASER AND ACCEPTANCE FOR SHIPMENT**

When all tests to be performed in the Contractor's or Sub-Contractor's premises under the terms of this Contract have been successfully carried out, the plant, machinery and equipment will be accepted for dispatch, and the Purchaser or his duly authorized representative will issue an acceptance certificate upon the receipt of which the plant, machinery and equipment shall be packed up forthwith and made ready for dispatch. No plant, machinery and equipment shall be dispatched unless an acceptance certificate has been issued for the same and dispatch instruction given by the Purchaser to the Contractor which will be issued within seven (7) days of completion of inspection/testing. The Purchaser may also at its sole discretion release in lieu of such certificate a waiver certificate. While applying for such certificates, the Contractor shall list all parts, sub-assemblies and assemblies covered and shall indicate all inspections and tests performed on them during manufacture, with copies of inspection certificates. The satisfactory Completion of these tests or the issue of the certificate shall not bind the Purchaser to accept the plant, machinery and equipment, should it, on further tests, after Installation be found not to comply with the Contract and shall not release the Contractor from its liabilities, responsibilities and obligations for the due performance of the Contract. While giving intimation for dispatch of materials the Contractor shall quote:

Contract no. brief description of materials shipped, port of shipment, date of shipment, bill of lading and value of the consignment.

Corresponding data shall be shown for other means of transport.

#### **24.0 STORAGE**

In case the shipment of material to be furnished under the contract is delayed due to the Purchaser's inability to arrange ocean shipment, unfavorable unloading conditions at an Indian Port, or if shipment cannot be made for any other reason beyond the Purchaser's control, the Contractor may be requested to either hold the shipment at his factory or place the same in proper storage approved by the Purchaser. In the event the material is placed in storage, storage charges are to be mutually agreed upon which charges in no event shall exceed the warehouse storage

charges as fixed by tariffs prevailing at the time. If storage is away from the contractor's factory, the Purchaser will have the right, if he so elects and, acts promptly, to designate the storage in which the Contractor will place the plant, but such storage will be subject to the Contractor's approval as to suitability. In the event the plant is to be held at the contractor's factory or placed in the storage as above provided the contractor will promptly notify the purchaser whether or not the Contractor's general Plant Insurance covers the plant so that the purchaser will have an opportunity to obtain insurance if necessary. Should any shipment or part of it be cancelled or held back due to the non-compliance by the contractor of the purchaser's instructions, incorrect markings of packages, or mistakes of the kind, the storage charges and extra insurance premium deriving there from, and any other charges eventually incurred, will be to the account of the Contractor.

Any charges, including insurance, which may be for the Purchaser's account as above provides will be paid by the contractor and billed to the Purchaser after purchaser's approval. The holding of the plant at the contractor's factory or placing in storage as above provided will be deemed equivalent to "Shipment" for all purposes of payment and the contractor will allow the purchaser credit for freight on such plant unless the same is caused due to non-compliance by the Contractor or for reasons attributable to the Contractor. The plant so held at the contractor's factory or placed in storage will be held for Purchaser's account, and the contractor will upon request, deliver to the Purchaser such instruments as may be reasonably requested evidencing title in the Purchaser.

## **25.0 PASSAGE OF RISK AND INSURANCE**

### **25.1 Passage of Risks**

25.1.1 In case of imported materials and plant, machinery and equipment, for FOB Contracts, the risk shall pass from the Contractor to the Purchaser when the materials and equipment are placed on board the vessel for shipment as defined by "FOB Port of Shipment" INCOTERMS. In case of indigenous materials and equipment the Contractor shall deliver the same on FOR Site basis including unloading at plant Site and the risk shall pass from the Contractor to the Purchaser when the materials and equipment are delivered to the Site on board road transport vehicle arranged by the Contractor.

25.1.2 If any contract work, including supplies and services, perishes or becomes unserviceable from any cause whatsoever, the Contractor shall, on demand by the Purchaser, make replacement and in such a way as to avoid disturbances in the general progress of the Installation of the Work. This shall apply irrespective of the question whether or not the risk has passed to the Purchaser, or who shall be responsible for the unserviceableness as aforesaid.

### **25.2 Insurance**

In case of FOB port of shipment delivery for imported equipment, the Contractor shall arrange insurance for all equipment and materials to be supplied by him up to FOB port of shipment. In case of delivery of indigenous goods the Contractor shall arrange insurance for all equipment and materials up to the Site and unloading thereof. In order to enable the Purchaser to arrange proper

marine insurance for imported equipment, the Contractor shall co-operate with the Purchaser and provide necessary documentation in sufficient time for each package. Costs resulting from non-compliance by the Contractor of this provision shall be charged to the Contractor.

- 25.2.1 Indigenous Cargo Insurance: For indigenous supplies, the policy to be maintained by the Contractor shall insure the goods originating in India from the Contractor's/Supplier's warehouse to Plant's warehouse/Site and up to completion of Installation, erection and commissioning. This will be inclusive of supplies to and from warehouse/factory of intermediate processors/suppliers. This policy will also cover the replacement items, if any.
- 25.2.2 Third Party Liability Insurance: The Insurance policy to be maintained by the Contractor shall cover third party liability. The third party liability shall cover the loss/disablement of human life (persons not belonging to the Contractor) and also cover the risk of damages to others' materials/equipment/properties during construction, erection and commissioning at Site. The value of third party liability for compensation for loss of human life or partial/full disablement shall be of required statutory value and shall nevertheless cover such compensation as may be awarded by a Court of Law in India or abroad and cover for damage to others' equipment/property.
- 25.2.3 Automobile Liability Insurance: Covering use of vehicles/mobile equipment used by the Contractor or its Sub-Contractors (whether or not owned by them) in connection with the execution of the Contract.
- 25.2.4 Contractor shall ensure that where applicable, its Sub-Contractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Sub-Contractors are covered by the policies taken out by the Contractor.
- 25.2.5 The Purchaser shall be the principal holder of the policy along with the Contractor. The Sub-Contractors of the Contractor shall not be holders or beneficiaries in the policy nor shall they be named in the policy. Purchaser reserves the exclusive right to assign the policy.
- 25.2.6 While the payment of premium may be phased in agreement with the insurance company, at no time shall goods and services required to be provided by the Contractor shall remain uninsured by the Contractor.
- 25.2.7 A copy of the Insurance policy shall be made available by the Contractor to the Purchaser within 15 (fifteen) days in advance, before start of the first dispatch and the contractor shall ensure that the policy shall be kept alive and valid at all times up to date of commissioning.
- 25.2.8 The Purchaser reserves the right to take out whatever policy that is deemed necessary by him if the Contractor fails to keep the said policy alive and valid at all times and/or causes lapses in payment of premium thereby jeopardizing the said policy. The cost of such policy(s) shall be recovered / deducted from the amount payable to the Contractor.

- 25.2.9 The surrounding value shall be Indian Rupees [●] (Rs. [●]).
- 25.3 Upon arrival of plant, machinery and equipment at Site the Contractor shall assume custody thereof and remain responsible thereafter for safe custody until the whole plant, machinery and equipment is successfully commissioned.
- 25.4 In order to adequately cover the works under such composite and comprehensive insurance, the Contractor shall fulfill the necessary requirements/obligations as per the terms of the Contract.
- 25.5 The Contractor shall arrange Accident Insurance Policy for all his personnel including foreign experts/specialists/personnel deputed to Site and Contractor's/his Sub-Contractors' manufacturing works as well as for his Indian engineers & supervisory staff. The Contractor shall also take out for his Indian workmen a separate policy as per Employee's Compensation Act and the applicable laws.
- 25.6 As soon as shipping documents for each shipment are ready, the Contractor shall cable to the Purchaser the details of the consignment along with its value giving the name of the vessel by which the shipment is made, port of shipment, date of shipment, net and gross weight of the materials in kilograms, volume of the package, FOB value of material, freight value and other shipping particulars etc. Costs resulting from non-compliance by the Contractor of these provisions shall be charged to the Contractor.
- 25.7 All the insurance claims for insurance policies maintained by the Contractor shall be processed by the Contractor and the items which are missing / damaged in transit or during handling, storage, erection and commissioning, shall be replaced / repaired by them without any extra cost to the Purchaser. Costs resulting from non-compliance by the Contractor of provisions of these sub clauses shall be charged to the Contractor.
- 25.8 All money received under any such policy shall be applied towards the replacement and repair of the plant, machinery and equipment damaged or destroyed or for the purpose for which it has been claimed but this provision shall not affect the Contractor's liabilities under the Contract. The provisions contained in this Clause are not intended to and do not impair or in any manner limit the liabilities or obligations assumed by the Contractor as may be set forth more specifically elsewhere in the Contract.

## **26.0 TIME FOR COMPLETION**

- 26.1 The time stipulated for dispatch, delivery or completion as the case may be dates to be computed from the Effective Date of the Contract. The overall time schedule for the entire work showing various activities like design & engineering, supply of equipment, civil and structural steelwork, Installation, Testing and Commissioning etc. shall be as per the Bar/ Pert Chart enclosed with Contract Specification and the same shall be binding to both the Contractor and the Purchaser.
- 26.2 The Contractor shall attain "Time for completion" of the Project in [●] months from the Effective Date of the Contract.

- 26.3 “Time for Completion” indicated above is based on the assumption that the Site will be handed over to the Contractor free of obstacles and all other preconditions for installation of the material delivered are fully met. .

## **27.0 DELIVERY TIME, DELAYS AND EXTENSION OF TIME**

- 27.1 A detailed schedule showing the start and finish of all phases and items of the work, as well as dates for delivery of materials and equipment and submission of drawings, shall be part of this Contract. This schedule shall show the time required for engineering, procurement and fabrication, as well as installation where applicable and subject to acts of God or Force Majeure or change in scope of Work shall be scrupulously adhered to by the Contractor.
- 27.2 In the event of any delay arising in any phase of the Contractor’s work, the Contractor shall promptly inform the Purchaser and Engineer of the expected delay giving reasons thereof and requesting an extension of time. It shall be the Contractor’s constant endeavor thereafter to act swiftly and make up for the delay to ensure that deliveries are made in time as far as possible.
- 27.3 An extension of time will normally be granted by the Purchaser, if he is satisfied that the delay arose out of reasons beyond the Contractor’s control and for the following reasons:
- a) any change in the Work as may be required and solely attributable to the Purchaser;
  - b) any occurrence of Force Majeure as provided in Clause 35 (Force Majeure) hereof;
  - c) any suspension order given by the Purchaser for reasons solely attributable to the Purchaser;
  - d) The default by the Purchaser under the Contract hereof, if proved to be cause for delay in completion of the Work by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

Should it appear, however, that the delay has been caused by factors within the control of the Contractor, the Purchaser may grant extension reserving its right to recover the amount of Liquidated Damages, but not by way of penalty, from the Contractor for such delayed **delivery** at 1% of Contract price including taxes, duties, levies, cess, etc. per completed week of delay or part thereof up to a maximum of 10% of the Contract Price including taxes, duties, levies, cess, etc. The payment or recovery of such damages shall not relieve the Contractor from his obligations to complete the Work or from any of his other obligations and liabilities under the Contract and the Purchaser shall also reserve to exercise any other right available under the Contract and under the applicable laws.

In case the Contractor is a Consortium, the Purchaser shall recover the amount of Liquidated Damages, but not by way of Penalty, by making deduction from the account of the lead member of the Consortium, at 1% of Contract price including taxes, duties, levies, cess, etc. per completed week of delay or part thereof up to a maximum of 10% of the Contract Price including taxes, duties, levies, cess, etc.

## **28.0 PROGRESS REPORTS**

- 28.1 The Contractor shall submit to the Purchaser monthly progress reports on or about the 20th day of every month, giving the status of the Work along with adequate number of photographs, indicating the stages of implementation of the Work.
- 28.2 For this purpose, the Contractor's work shall be sub-divided and numbered consequently into major categories and arranged in such a manner as to describe the normal sequence of the Work. Progress shall be reported by these major categories in all reports, preferably with Critical Path Network diagram and a contract completion bar chart showing the starting and completion date of all major categories for engineering, purchasing, procurement of raw materials, manufacture, inspection and dispatch along with the percentage completion of each of the above.
- 28.3 The progress report shall include a drawings status report, containing a listing of all drawings required for the due performance of the Contract and documents as detailed in Clause 17.14 together with the related reference number and titles and giving the scheduled completion dates, dates when the drawings and documents have been / will be submitted and date of receipt of approval, etc.
- 28.4 The progress reports shall also include a manufacturing status report detailing the progress of procurement of raw materials, manufacture, when the particular item or sub-assembly is expected to be ready for inspection, status of inspection, delivery, etc. both for the Contractors work and those of his Sub-Contractors.
- 28.5 The proforma for the above progress reports will be indicated by the Purchaser. The Contractor shall submit two (2) copies of such reports, including photographs to the Purchaser. The Purchaser will have the right to depute its representatives to ascertain the progress of work at the premises or works of the Contractor or of any Sub-Contractor.
- 28.6 The submission, receipt and acceptance of such progress reports shall not prejudice the rights of the Purchaser under the Contract, nor shall operate as an estoppel against the Purchaser merely by the reason of the fact that he has not taken notice of or subjected to test any Information contained in such reports.

## **29.0 DEPUTATION OF EXPERTS BY THE CONTRACTOR**

- 29.1 The Contractor shall depute at Site it's foreign as well as India Experts from various disciplines for Installation, trial run, and commissioning and performance guarantee tests of the plant, machinery and equipment.
- 29.2 The experts shall undertake Installation, commissioning and conducting of performance guarantee tests of the plant, machinery and equipment with its auxiliaries as contracted herein so as to establish to the Purchaser that the guarantees as agreed by the Contractor in accordance with the Technical Specification are fully met and complied with.

29.3 The Contractor shall bear and pay all the cost / expenses for deputation of experts required including all costs / expenses towards remuneration, air travels from their country to India / at Site and back to their country, surface travel, local transport, accommodation, food & incidentals, communication system, medical, insurance, personal Indian Income Tax, etc. These experts should neither be treated as employees nor the agents of the Purchaser and the Contractor shall be liable for all the acts and omissions of the experts and the Contractor agrees to indemnify and hold harmless the Purchaser at all times for acts, deeds and omissions of the experts under the Contract.

**30.0 SUPERVISION OF ERECTION, START-UP & COMMISSIONING AND COMPLETE INSTALLATION, ERECTION, START-UP AND PUTTING INTO COMMISSION**

30.1 Supervision of Erection, Start-up & Commissioning:

30.1.1 When the Contractor requires the Contractor to provide services for the supervision of erection, start-up and putting into commission, the conditions outlined in this article will apply.

30.1.2 The Contractor shall however be solely responsible for the supervision of the work from the commencement of erection up to the demonstration of the performance guarantee of the plant and equipment supplied under the Contract. The responsibilities of Contractor shall include but not be limited to the following:

- (i). Ensuring the correctness of materials and equipment shipped in the order in which they will be required for erection.
- (ii). Advising on the safe handling of cargo at the unloading port and site storage for all materials and equipment.
- (iii). Ensuring correctness of erection of all plant and equipment supplied by the Contractor.
- (iv). Ensuring that adequate quantities of the correct commissioning spare and supplied are at site for the purposes of start-up.
- (v). Starting up and operating the plant to meet the specified performance guarantees.
- (vi). Handing over the plant to the Purchaser on the issue of the Provisional Acceptance Certificate.
- (vii). Advising on any matter pertaining to the erection and start-up on request by the Purchaser or Engineer.

30.1.3 In order to carry out his responsibilities under this section, the Contractor shall send the number experienced personnel to take up residence at site as established in the Contract. The erection and start-up schedule and the details of the strength and calibre of the resident staff the Contractor will be required to maintain at site shall be indicated in the tender by the Contractor and finalized between the Purchaser and the Contractor before the award of the contract. No resident staff shall be sent to Site until permission to do so is received from the Purchaser.

- 30.1.4 At any time during the erection period the Purchaser shall have the right to ask the Contractor to temporarily withdraw his Site staff or reduce the strength of the staff in order to keep pace with the erection programme or for any reason whatsoever at its sole discretion. In such case, the Purchaser will bear the air economy class/ first class train travelling and out-of-pocket expenses for the return trip of the personnel involved between the Site and the city of origin by the shortest route. The Purchaser will give the Contractor two (2) weeks' notice prior to requesting the temporary withdrawal of the Contractor's personnel.
- 30.1.5 The Contractor shall ensure that each individual of the Contractor's personnel resident at the Site shall cooperate with the personnel of the Purchaser. And any and all other contractors engaged in work in or around the job site, in order to avoid difficulties in carrying out work. Failure to accomplish this cooperation shall be just cause for the removal of such individual and his replacement by suitable other personnel by the Contractor at his expenses forthwith upon request by the Purchaser. In case of disagreement as to the cause for such removal and replacement, the decision of the Purchaser shall be final and binding.
- 30.1.6 On completion of the erection work and connecting up of the electrical power supply and utilities, the Contractor shall promptly notify the Purchaser of the proposed date of the commencement of Start-up operations. The duration of the Start-up period shall be established in a schedule which shall be part of the Contract. The Purchaser will provide labour, powers, fuel, utilities and supplies for operating the plant during the start-up period when the plant will be operated under the supervision of the Contractor.
- 30.1.7 Should the start-up period extend beyond the scheduled period due to either difficulties encountered with the Contractor's plant and equipment or inadequacy of the Contractor's staff, the Purchaser shall have the right to charge such amount as may be deemed reasonable by him for the material and services provided by the Purchaser as mentioned in Clause 30.1.6 above for the extended period.
- 30.2 Complete Installation, Erection, Start-up and Putting into Commission:
- 30.2.1 When the Contract requires the Contractor to undertake complete Installation of the plant, machinery and equipment, start-up and putting into commission, the conditions stated in this Clause will apply in conjunction with the other clause in so far as they are applicable.
- 30.2.2 Except otherwise expressly provided herein the responsibilities of the Contractor shall include but not be limited to, the following:
- i. Ensuring the correctness of material and equipment are shipped in the order in which they will be required for Installation.
  - ii. Taking delivery of equipment from the Purchaser's store at site and moving into the Contractor's storage and / or installation Site.



- iii. Opening of crates and packing cases, inspection and checking of equipment / materials.
- iv. Repairing and replacement of equipment / materials damaged or lost in transit or at Site and in filling and processing of insurance claims for damaged / loss of equipment / materials.
- v. Ensuring that adequate quantities of correct commissioning spares and supplies are available at Site for the purpose of the start-up of the plant, machinery and equipment.
- vi. Making arrangements to draw electricity and water to the installation Site from selected locations at site (to be within 300 m from the installation Site) where electricity and power shall be provided by the Purchaser, at such terms and conditions as stipulated in the Contract free of cost to the Contractor.
- vii. Checking foundations as constructed, including final adjustment of foundation levels by chipping and dressing, checking location, elevations etc., for anchor Bolts and carrying out minor civil works as may be required in connection with the installation work.
- viii. Complete installation of all materials and equipment supplied by the Contractor or his Sub-Contractor. This shall include the complete installation of equipment. Piping, hangers, structures etc. supplied under the Contract, including aligning, lining and levelling and connecting up electric power supply water and utilities, applying, including touching up, of approved final painting to all equipment, piping, hangers, structures etc. as supplied under the Contract.
- ix. Starting up and commissioning the plant, machinery and equipment to meet specified performance guarantees and handing over the plant to the Purchaser on issue of the provisional acceptance certificate.
- x. Providing all consumable, materials and stores required for the commissioning and installation work and for performance guarantee test, unless otherwise provided in the Contract, for due performance of the Contract.
- xi. Providing all ladders, platforms, temporary supports and other necessary facilities required for the handling and installation of the equipment supplied under the Contract.
- xii. Unless otherwise provided in the Contract, providing all construction / installation equipment welding equipment, installation and lifting tools and tackles, instruments and appliances required for the installation work, as well as

equipment tools and tackles for the transportation to Site of installation of all equipment, supplied under the Contract.

- xiii. Providing necessary supervisory and advisory personnel, staff, skilled and unskilled labour, including electrical personnel with approved license as per Indian Electricity Rule 1956as amended from time to time, to ensure that the whole of the installation work is completed in all respects within the period specified in the Contract. The Contractor shall ensure when local laws require, the concerned employees obtain and hold certificates of competency for their work from the competent authority.

30.2.3 The Contractor shall be responsible for protection and / or diversion of underground and all existing over ground services indicated in the drawing made available to the Contractor and form part of Contract Specification.

30.2.4 On the completion of the installation work and connecting up of electric power supply, water and utilities, the Contractor shall promptly notify the Purchaser and Engineer of the proposed date of the commencement of the start-up operations. The duration of the start-up and commissioning period shall be established in a schedule which shall be part of the Contract. The Purchaser will provide facilities, such as skilled & unskilled manpower, input/ raw materials, fuel, power, water and utilities to the Contractor as required for operating the equipment during such period, and during this period the equipment shall be operated under the supervision of the Contractor.

30.2.5 Should the erection and installation or the start up and commissioning of the Plant and equipment extend beyond the scheduled period due to difficulties encountered with the equipment supplied under the Contract or due to inadequacy of the Contractor's staff or due to incorrectness in erection work or due to any other reason for which the Contractor is responsible, the Purchaser will have the right to realize such amount from the Contractor as may be deemed reasonable by the Purchaser for the extended period.

### **31.0 PERFORMANCE GUARANTEE TESTS AND PROVISIONAL ACCEPTENCE**

31.1 The Contractor shall be responsible for carrying out performance guarantee tests as per the Contract Specification in the presence of the Purchaser on all plant, machinery and equipment supplied by him. This responsibility shall rest with the Contractor regardless of whether the erection has been carried out by him or any other agency.

31.2 On the completion of a satisfactory start-up and commissioning operation, the Contractor shall notify the Purchaser in writing of the proposed date of the commencement of the performance tests. A detailed procedural protocol shall be prepared by the Contractor to this effect, which shall be discussed and agreed upon and provided to the Purchaser. Every item of plant, machinery and equipment, as well as the plant machinery and equipment as a whole, supplied by the Contractor shall undergo a performance test unless otherwise decided by the Purchaser. The duration of the performance tests shall be as provided in the Contract Specification. The man power utilization

for carrying out the performance guarantee test by the Contractor shall not be more than the strength of normal operation recommended by the Contractor and accepted by the Purchaser.

- 31.3 During the performance test the plant, machinery and equipment will be operated by the Purchaser under the supervision of the Contractor. The Contractor shall provide adequate engineers/specialists and commissioning spares for smooth conducting of the performance guarantee test. Unless otherwise agreed to in the Contract, the Purchaser will provide necessary input material, skilled and unskilled labour, fuel, power, utilities and other relevant supplies.
- 31.4 Should the operation of the plant, machinery and equipment during the performance test be interrupted then the performance test shall be re-started and run again for the period as specified in the Contract. The Purchaser may at his discretion permit the period of test run prior to the interruption to be reckoned as part of the above mentioned period, in which case the test will be run for the duration of the balance period on re-commencement.
- 31.5 The Purchaser will have the right to charge such amounts as may be deemed reasonable for materials and services provided by the Purchaser, in case performance tests continue for an unreasonably long period due to interruption as defined in Clause 31.4 above. The Purchaser shall charge the Contractor on actuals.
- 31.6 The plant, machinery and equipment shall be considered to have concluded the performance test satisfactorily if, during the entire duration of the test, save as expected in Clause 31.4 above, the plant, machinery and equipment shall have delivered the guaranteed specified output or operated at the guaranteed specified capacity utilizing the quantity and quality of raw materials, utilities, fuel and supplies as specified in the Contract Specification.
- 31.7 On the satisfactory completion of the performance guarantee test, the Purchaser will issue a Provisional Acceptance Certificate provided the Contractor undertake to rectify all defects which do not influence normal operation but which are nevertheless present in the plant and which are indicated in writing by the Purchaser.
- 31.8 Normally, the entire plant, machinery and equipment will have to satisfactorily complete the performance test before the issue of the Provisional Acceptance Certificate. In special circumstances and at the Purchaser's sole discretion, the Provisional Acceptance Certificate may be issued for a part of the plant, machinery and equipment.
- 31.9 The date of completion of performance guarantee test shall be considered to be the date of the PAC, and the plant, machinery & equipment is ready for commencement of commercial production.

## **32.0 DEFECT LIABILITY PERIOD AND FINAL ACCEPTENCE**

- 32.1 The defect liability or guarantee period shall be as stated in Clause 32.2 and after satisfactory completion of guarantee period the Purchaser will issue the Contractor a Final Acceptance Certificate (FAC). During the guarantee period the plant, machinery and equipment will be operated by and under the supervision of the Purchaser according to instruction issued by the

Contractor but the plant, machinery and equipment will not be deemed to have been formally taken over by the Purchaser. On the satisfactory completion of the guarantee period and issuance of the FAC, the Contractor shall be relieved of its contractual obligations under the Contract and the Contractor shall be entitled to receive the agreed payment towards FAC.

- 32.2 The Contractor shall warrant that the facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the plant, machinery and equipment and structures and refractories supplied and of the work executed for twelve (12) months from the date of issue of Provisional Acceptance Certificate.
- 32.3 The Purchaser shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Contractor to inspect the defect.
- 32.4 The Purchaser shall afford the Contractor all necessary access to the Work and the Site to enable the Contractor to perform his obligations. The Contractor may, with the consent of the Purchaser and after submission of Bank Guarantee for the equivalent cost of plant, machinery and equipment, remove from the Site any plant, machinery and equipment or any part of the Works that are defective if the nature of the defect, and / or any damage to the plant, machinery and equipment caused by the defect, is such that repairs cannot be expeditiously carried out at the Site. In case defective parts are not repairable at Site but it is essential in the mean time for the commercial use of plant, the Contractor shall replace at Site free of cost to the Purchaser, the defective parts, before the defective parts are removed from the Site.
- 32.5 If the repair, replacement or making good is of such a character that it may affect the efficiency of the plant, machinery and equipment or any part thereof, the Purchaser may give to the Contractor a notice requiring that tests of the defective part of the plant, machinery and equipment shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.
- 32.6 If such part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the plant, machinery and equipment passes such tests. The Purchaser and the Contractor shall agree upon the tests. If the Contractor does not commence the rectification either by repair or replacement of such defects within 30 (thirty) days from the date of notice by the Purchaser or does not complete the rectification with reasonable diligence and within a reasonable time, the Purchaser may, at its option, rectify the defects at the Contractor's expense. The Purchaser shall, in such case, deduct from payment due to the Contractor the expenses incurred by the Purchaser for remedy of such defects without prejudice to the other rights of the Purchaser under the Contract and under the applicable laws.
- 32.7 If the Contractor fails to commence the work necessary to remedy such defect of any damage to the plant, machinery and equipment caused by such defect within a reasonable time, which shall in no event considered to be less than 15 (fifteen) days, the Purchaser may, following notice to the Contractor, proceed to do such work, and the costs incurred by the Purchaser in connection therewith shall be paid to the Purchaser by the Contractor or may be deducted by the Purchaser from any money due to the Contractor or claimed under the performance Bank Guarantee.

- 32.8 If the plant, machinery and equipment or any part thereof cannot be used by reason of such defect and for making good of such defect, the Defect Liability Period of the plant, machinery and equipment or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Purchaser because of any of the aforesaid reasons.
- 32.9 Except as provided in the Contract, in the event of loss of or damage to property / accident or injury to workers / indemnification, hereof, the Contractor shall be under no liability whatsoever and howsoever arising, in respect of defects in the plant, machinery and equipment, design or engineering or work executed that appear after completion of the project or any part thereof, except where such defects are the result of the negligence, fraud, criminal or willful action of the Contractor.
- 32.10 In addition, the Contractor shall also provide an extended warranty for any repaired or replaced component of the plant, machinery and equipment for a period of minimum twelve (12) months from the date of repair / replacement.

### **33.0 CHANGES IN THE WORK**

- 33.1 The Purchaser shall have the right to propose and / or consider Contractor's proposal, and subsequently order the Contractor from time to time during the performance of the Contract to make any changes, modification, addition or deletion to, in or from the Plant, Machinery & Equipment (hereinafter called "Change"), provided that such Change falls within the general scope of the plant, machinery and equipment and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Plant, Machinery & Equipment and the technical compatibility of Change envisaged with the nature of Plant, Machinery & Equipment as specified in the Contract.
- 33.2 If the Purchaser proposes and / or considers Contractor's proposal for a Change pursuant to Clause 33.1 hereof, it shall send to the Contractor a "Change Request" requiring the Contractor to prepare and furnish to the Purchaser as soon as reasonably practicable a "Change Proposal" which shall include the following-
- a) Brief description of the Change
  - b) Effect on the Time for Completion
  - c) Estimated cost of the Change
  - d) Effect on functional Guarantees (if any)
  - e) Effect on any other provisions of the Contract
- 33.3 The pricing of the Change Proposal shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rate for the valuation of the Change.

- 33.4 On receipt of the Change Proposal, Purchaser and the Contractor shall mutually agree upon all matters therein contained. Within Thirty Days after such agreement, the Purchaser shall, if it intends to proceed with the Change, issue the Contractor a Change Order.
- 33.5 If the Purchaser decides not to proceed with the Change for whatever reason, it shall, within the period of Thirty Days, notify the Contractor accordingly.

#### **34.0 OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

- 34.1 All drawings, specifications, materials and design furnished by the Purchaser, Engineer, or their representatives shall be treated as the strictly confidential property of the Purchaser. All such drawings, specifications, manuals and other materials shall be returned to the Purchaser upon the completion of the work under this Contract. No copies, duplications or Photostats shall be retained by the Contractor without the consent of the Purchaser.
- 34.2 All drawings, specifications, and manuals and all specific designs furnished by or through the Contractor shall be treated as strictly confidential by the Purchaser, his employees and agents and shall be the property of the Purchaser who is entitled to use them for execution of the Contract and operation & maintenance of the plant, machinery and equipment being subject to the Contract.

#### **35.0 FORCE MAJEURE**

If at any time during the continuance of this Contract, the performance in whole or in part, neither party shall be liable of performance under this Contract, any obligations under the Contract of any party is prevented or delayed due to reasons beyond such party's control, including but not limited to acts of God, fire, flood, earthquake other natural catastrophes, any law, order, regulation, direction, action of any civil or military authority, national emergencies, insurrections, riots, war (whether declared or not), hostility, acts of the public or enemy, civil commotion, sabotage, explosion epidemic, quarantine restrictions, strikes and lock-outs, work stoppage or other labour difficulties, absence of the usual means of communication or transportation (hereinafter referred to as 'eventuality') provided however the party to which the force majeure has happened shall use commercially reasonable efforts to eliminate such an event.

Force majeure shall also be deemed in the event of any regulatory decision or government order requiring the either party to suspend its service(s) or operation(s) for any reasons whatsoever.

Notice of the happening of any such eventuality or force majeure as mentioned herein shall be given by either party to the other within fifteen (15) days from the date of the occurrence thereof along with supporting proof of the occurrence of the Force Majeure event , neither party shall, by reason of such eventuality, be entitled to terminate this Contract, nor shall either party have any claim for damages against the other in respect of such non-performance, or delay in performance, and the work under this Contract shall be resumed as soon as practicable after such eventuality has come to an end or ceased to exist, and the decision of the Purchaser as to whether the work has been so resumed shall be final and conclusive.

Certificate of a Chamber of Commerce (Commerce and Industry) or other competent authority or organization of respective country shall be a sufficient proof of commencement and cessation of the above circumstances.

The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The time for completion shall be extended by number of days the party giving notice was prevented from performing his obligation due to Force Majeure, in accordance with Clause 27 hereof.

Should one or both parties be prevented from fulfilling their contractual obligations by a state of force majeure lasting continuously for a period of at least six (6) months, both the parties shall consult each other regarding the further implementation of the Contract, provided always that, if no mutually agreed arrangement is arrived at within a period within three (3) months from the expiry of the six (6) months referred to above, the Contract shall be deemed to have expired at the end of the said six (6) months referred to above. The above mentioned expiry of the Contract will imply that both the parties have the obligation to reach an agreement regarding the winding up and financial settlement of the Contract.

### **36.0 TEMPORARY SUSPENSION**

#### **36.1 Temporary Suspension during manufacture and Installation**

- 36.1.1 The Purchaser may at any time temporarily stop the work being performed under the Contract or any part thereof by notice in writing to the Contractor specifying the reasons and approximate period of such suspension. All work so stopped shall be resumed by the Contractor based on a schedule to be mutually agreed upon between the Purchaser and the Contractor. Total cumulative period of such temporary suspension shall not exceed a period of six (6) months. However, if the period of temporary suspension exceeds six (6) months, the Parties shall mutually agree on the further course of action.
- 36.1.2 The Purchaser will not pay the Contractor for any work which is performed during such an interval of suspension, and the Purchaser shall not be liable to the Contractor for any damages or loss caused by such a suspension of work. However, the reasonable cost of necessary preservation of specific items, storage, watch & ward, withdrawal and re-deputation, etc, which is required during such suspension period, not for reasons attributable to the Contractor, to ensure proper resumption of work shall be mutually agreed between the Purchaser and the Contractor and shall be borne and paid by the Purchaser.

If the aggregate duration of the suspensions of the Contract for reasons not due to Contractor's default exceeds six (6) months on account of one or more periods of suspension, then the Parties shall mutually agree on the further course of action. In the event of termination of the Contract for reasons of suspension solely attributable to the Purchaser the documented costs incurred by the Contractor and if agreed by the

Purchaser, in performing the portion of the scope of supply prior to termination incurred for the execution and/or by the Contractor prior to the date of termination shall be paid by the Purchaser.

The extra/additional cost (if any) incurred by the Contractor in giving effect to the Purchaser's order under this Clause shall be borne by the Purchaser unless such suspension is (i) otherwise provided for in the Contract; (ii) necessary for proper execution of the work or by reason of weather or other force majeure conditions or by some default on the part of the Contractor; (iii) necessary for safety works or part thereof, provided the Contractor shall not be entitled to recover any such extra cost unless he gives notice in writing of his intention to claim to the Purchaser with 30 days of the purchaser's order. The Purchaser shall settle and determine the extra payment to be made to the Contractor in respect of such claims as the Purchaser/Engineer shall consider fair and reasonable.

### **37.0 PATENT INFRINGEMENT AND INDEMNITY**

#### **37.1 Patent Infringement**

- 37.1.1 The Contractor shall at all times protect, indemnify and save/ keep harmless the Purchaser, its successors, assigns, , any claim made by a third party against all liability, including costs, expenses, claims, suits or proceedings at law, in equity or otherwise, arising out of, or in connection with, any actual or alleged patent infringement (including process patents, if any), or violation of any license with respect thereto, by reason of the manufacture and/or sale by, or on behalf of, the Contractor of the plant or any part thereof, or the purchase thereof by the Purchaser or the use thereof in India for the purchase for which it is furnished, or the sale by the Purchaser, its successors or assigns or products made, manufactured, fabricated, processed or produced with the said plant or any part thereof, and will defend or settle at the Contractor's own expense, any such claims, suits, or proceedings.
- 37.1.2 The Purchaser will promptly notify the Contractor in writing of any such claim, suit, action or proceeding coming to its attention, giving authority and all available information and assistance for the Contractor's defense of the same. If at any time the installation of the plant, or any part thereof or the use thereof in India for the purpose for which it is furnished, or the sale of products produced therewith, is prevented or enjoined because of patent infringement or claimed infringement, the Contractor shall promptly at his own expense, either procure for the Purchaser the right to use and continue to use such plant or replace the same at his own expense with equally efficient non-infringing plant satisfactory under all requirements of the Contract, so that the operation of the Purchaser's plant will not be unduly delayed or interrupted. If shipment of the plant, or any part thereof is prevented by attachment, injunction or otherwise at, or in the course of transit from, the Contractor's factory or other point of origin to the site of the Purchaser's plant, as a result of any claim of Patent infringement, the Contractor shall, at his own cost and expense, promptly furnish and post the necessary bond or take such other steps as may be necessary to enable shipment to be made without delay. The Purchaser will have



the right at its own expense to retain counsel of its own choice to collaborate in the defense of any such claim, suit action on proceeding.

### **37.2 Indemnity**

The Contractor assumes responsibility for, and shall at all times indemnify and save harmless the Purchaser, the Engineer, or their officers or employees from all losses, liability, claims, costs, expenses, taxes and assessments, including penalties, punitive damages, attorney's fees and court costs which are, or may be, required with respect to any breach of the Contractor's obligations under this Contract, or for which the Contractor has assumed responsibility under this Contract, including those imposed under any contract, local or national law or laws, or in respect to all salaries, wages, or the compensation of all persons employed by the Contractor or his Sub-Contractors or suppliers in connection with the performance of any work covered by the Contract. The Contractor shall execute and deliver and shall cause his subcontractors and suppliers to execute and deliver such other further instruments and to comply with such requirements of such laws, and regulations as may be necessary there under to confirm and effectuate this Contract and to protect the Purchaser, Engineer, or their officers or employees. The Purchaser shall not be in any way responsible for any accident or damages incurred or claims arising there from during the period of Erection, Installation and putting into operation and commissioning of the plant, machinery and equipment under the responsibility and supervision of the Contractor.

### **38.0 ENVIRONMENT**

- 38.1 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to avoid injury, damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Contractor shall ensure that air emission, surface discharges and effluent from the Site during the Contract period shall not exceed the values indicated in the Purchaser's requirements, and shall not exceed the values prescribed by law. The Contractor shall conform to the Purchaser's requirements and shall indemnify the Purchaser against any liability or damages or claims arising out of his operations.
- 38.2 The Contractor shall abide by the following environment, safety and health policy of the Purchaser.
- a) The Contractor must adhere to all the applicable statutory laws pertaining to safety, health and environment.
  - b) The Contractor must ensure that there is no wastage of water at the Work Site. The Contractor must also ensure that all the water tapping points are leak proof.
  - c) All the motor vehicles of the Contractor used for transporting materials/machinery etc. should have pollution control certificates and the same should be submitted at the time of obtaining gate passes. A copy of the same must be exhibited/pasted on the vehicle also.
  - d) The Contractor must ensure dust suppression measures in the work areas by sprinkling of water etc. and also ensure that all his workers use dust masks while working in dusty areas.
  - e) The Contractor must ensure proper housekeeping at site by keeping the work areas free from unwanted material and greases, oil to avoid slips & falls.

- f) The Contractor must ensure that all the debris generated during the work is transported safely to dump yard such that there is no spillage of debris on the road during transportation (by covering with a plastic sheet/tarpaulin)
- g) All the garbage collected from, dust bins etc. should be transported in covered vehicles.
- h) All the material which may be recycled / reused should be transported to the designated place for reuse/recycling.
- i) All the cut jungle growth and trees should be disposed at the dumping yard without open air burning.
- j) The Contractor must ensure that there is no spillage of oil or paints on the floors/grounds etc.
- k) All representatives/supervisors/workers of contractors must take safety and environmental induction training and comply with the instructions given therein.

### **39.0 REMEDIES OF PURCHASER**

- 39.1 All costs or expenses for which the Contractor may become liable to the Purchaser under the Contract will be recovered from any invoice of the Contractor after informing the Contractor .If no amount is due to the Contractor such amount will be billed with evidence by the Purchaser to the Contractor. The Contractor shall pay the bills within sixty (60) days after receipt or advice the Purchaser of any objections within fifteen (15) days.
- 39.2 Failure of either party to insist upon strict performance of any of the terms and conditions of the Contract will not be deemed as a waiver of any rights or remedies that the said party may have and will not be deemed as a waiver of any subsequent default under the terms and conditions of the Contract. No right or remedy of the either party will be exclusive of any other right or remedy and the said party will have all rights and remedies given under the Contract and now or hereafter existing in law or by statute. The shipping or delivery by the Contractor or receiving of the payment by from the Purchaser for the plant, machinery and equipment under this Contract will not be deemed a waiver of any rights for any prior failure by the Contractor to comply with any of the provisions of the Contract.
- 39.3 All costs, charges damages or expenses which the Purchaser may have paid, for which under the Contract, the Contractor is liable, may be deducted, by the Purchaser from any money due or becoming due by him to the Contractor under the contract, or may be recovered by action of law or otherwise from the Contractor.

### **40.0 ARBITRATION**

Any dispute(s) or difference(s) whatsoever arises under or out of or in connection with the EOI/contract, or in respect of any defined legal relationship associated therewith or derived there from, shall be resolved/settled amicably, through mutual negotiation; failing which the differences shall be resolved by way of arbitration in accordance with the India International Arbitration Centre (IIAC) Arbitration Rules 1996. The authority to appoint the arbitrator(s) shall be the India International Arbitration Centre (IIAC) And will provide administrative services in accordance with India International Arbitration Centre (IIAC) Arbitration Rules 1996. The seat of arbitration shall be India. The language of the arbitration proceeding shall be English. The place of arbitration proceedings shall be Hyderabad, Telangana, India.

In case of PSU/Government organization DPE guidelines in force or as amended from time to time shall be applicable. In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/Port Trusts inter se and also between CPSEs and Government dept./Organizations (Excluding disputes concerning Railways, Income Tax, Customs & Excise Dept.), such disputes or differences shall be taken up by either party for resolution through AMRCD as mentioned in DPE OM No. 4(1)/ 2013- DPE(GM)/FTS-1835 dated 22/5/2018 or the latest DPE Guidelines issued from time to time.

#### **41.0 ADDITIONAL CONDITIONS FOR COMPLETE ERECTION OF EQUIPMENT**

41.1 When the Contract requires the Contractor to undertake complete erection of plant, machinery and equipment start-up and putting into commission, the following conditions will apply, in conjunction with other clauses of the conditions of contract as stated hereinbefore in so far as they are applicable.

- (i) The Contractor shall be solely responsible for the satisfactory Installation, start-up and commissioning of the plant, machinery and equipment supplied under the Contract, including demonstration of performance guarantees notwithstanding that the Contractor may have been assisted by the Purchaser or his authorized representative in doing so.
- (ii) If the Contractor performs any work in a manner contrary to the Contract without the written approval of the Engineer/Purchaser, the Contractor shall bear all the costs arising there from and shall be responsible for all the losses to the Purchaser arising there from.

#### **41.3 Installation**

Installation and erection work shall be carried out by the Contractor in the presence and under the general supervision and to the satisfaction of the Engineer/Purchaser. The Contractor shall receive instructions and directions from the Engineer/Purchaser in connection with the Work and shall strictly abide by the same, within the preview of the Contract. If the Contractor performs

any work in a manner contrary to the Contract without the written approval of the Engineer/Purchaser, the Contractor shall bear all the costs arising therefrom and shall be responsible for all the damages and direct losses to the Purchaser arising therefrom.

#### **41.4 Facility to Purchaser's Engineers**

The Contractor shall provide every reasonable facility and opportunity to the Purchaser's engineers and personnel as required by the Purchaser to become familiar with the Installation, erection, operation and maintenance of the equipment supplied under the Contract.

#### **41.5 Programme and Particulars of work and Progress Reports**

41.5.1 The Contractor shall submit to the Purchaser for his approval before the commencement of erection work and subsequently, at such times as may be required by the Purchaser, the programme and order in which the Contractor proposes to carry out the work, with the date and completion times for various parts and phases of the work, including particulars regarding the Contractor's arrangements for carrying out the work and of the erection and transportation equipment and tools and category wise staff and labour which the Contractor shall engage on the work, such programmes shall be within the overall time schedule of completion of erection of equipment as specified in the contract. The submission to and approval by, the Purchaser of such programme or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

41.5.2 During the progress of the Work, the Contractor shall submit to the Engineer monthly progress reports and such other reports on the Installation work and the Contractor's field organization as may be required by the Engineer.

#### **41.6 Contractor's Agent and Personnel**

41.6.1 In order to carry out responsibilities under this section, the Contractor shall employ one competent agent, whose name shall be previously communicated in writing by the Contractor to the Purchaser, to superintend the Installation work. The said agent shall be constantly present at Site during working hours and during the extended period so granted to carry out the Installation work and any instructions given to the said agent by the Purchaser and / or Engineer shall be deemed to have been given to the Contractor.

41.6.2 The Contractor shall ensure that his agent and every other personnel employed by him at Site shall co-operate with any and all others agencies engaged in the Site. Failure to extend such co-operation or misconduct or incompetence or negligence by any individual including the agent, shall be sufficient cause for removal from the Site of such individual by the Contractor and the Contractor shall remove such individual forthwith from the Site, if required by the Purchaser. In such cases, the Contractor shall provide immediately competent personnel to replace such individual.

#### **41.7 Working Hours**