

# **TENDER DOCUMENTS**

## **COMMERCIAL (IMPORTS)**



**NATIONAL ALUMINIUM COMPANY LIMITED**

**(A GOVT. OF INDIA ENTERPRISE)**

**REGISTERED OFFICE: NALCO BHAVAN,**

**P/1, NAYAPALLI,**

**BHUBANESWAR - 751 013**

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## **1.0 GENERAL INSTRUCTIONS**

- 1.1 The National Aluminium Company Limited, Bhubaneswar hereinafter called "NALCO / OWNER" will receive bids in respect of the work, items and equipment to be furnished and erected as set forth in the accompanying documents. All bids shall be prepared and submitted in accordance with these instructions.
- 1.2 Bids submitted after the time and date fixed for receipt of bids as set out in the invitation to Bid are liable to be rejected.
- 1.3 The terms "Works" referred herein shall cover the entire scope of the proposal, which includes supply and erection of items, equipments, labor and services including the successful completion of Performance Guarantee Tests.
- 1.4 The intention of the buyer is to have this contract executed as a divisible contract. It may be clearly understood by the tenderer that the Contract for supply, erection and commissioning under this tender are independent and separate and NALCO reserves the right to award separate contract for supply and for erection and commissioning to separate tenderers. In the event the contract is awarded to a single agency for supply and also for erection and commissioning, it may be clearly understood that the contract has to be executed as a divisible contract even in such a case.
- 1.5 NALCO prefers to have maximum indigenous content in the supplies and services covered in the scope of this tender. However, it must be noted that in case the technology / supplies are to come from imported sources, the foreign bidder may have a tie up arrangements with the Indian sub contractor for the activities / supplies to be made from India. However, it must be understood that the unit responsibility for the performance of the contract including supplies from foreign and Indian sources shall be that of the foreign bidder or the bidder who supplies basic design and technology.
- 1.6 The break-up of the complete scope envisaged in this enquiry is attached at Annexure-I. All bidders are requested to indicate positively the division of work (a) to be directly undertaken by the Bidder, (b) envisaged to be undertaken by Bidder's Indian Sub-Contractor with Bidder's unit responsibility and (c) to be excluded from Bidder's scope of responsibility.
- 1.7 Bids either from Foreign or Indian Bidders shall be made on the basis of Indigenization of scope to the maximum extent possible subject to quality, performance and timely delivery.
- 1.8 Foreign Bidders may indicate whether the supply and services under scope of this contract are eligible for any export financing / Govt. assistance. If so, terms & conditions indicating interest, fees, installments, repayment period of deferred payments etc. shall be clearly spelt out.
- 1.9 Bidders should clearly give the complete list of goods with item wise FOB and C&F prices for imported items indicating the currencies and country of origin.

## **2.0 SCOPE OF THE PROPOSAL**

2.1 The scope of the proposal shall be on the basis of a single bidder's responsibility, completely covering all the equipments, materials & services specified under the accompanying documents. It will include the following:

- (a) Complete System Design and Layout.
- (b) Detailed Design of the Equipment.
- (c) Complete manufacture including shop testing.
- (d) Providing engineering drawings, data, operation manuals to the Owner.
- (e) Packing, forwarding and transportation / shipment from manufacturer's works to the Project Site.
- (f) Receipt, storage, preservation and conservation of all equipments and materials at the Site.
- (g) Pre-assembly, if any, erection, testing and commissioning of the complete works.
- (h) Reliability tests and performance and guarantee tests on completion of commissioning.
- (i) Furnishing of Spares.

2.2 Bids not covering complete scope are liable for rejection

2.3 In principle, the party who is responsible for the process technology and, hence, the total system guarantee, shall undertake total responsibility for successful execution of the job/contract.

In case of a joint bid, the division of work between the foreign bidder and the Indian bidder shall be indicated specially indicating the bidder who will assume complete responsibility.

## **3.0 TIME SCHEDULE**

3.1 One of the main considerations for award of the Contract shall be demonstrated capability of the bidder to maintain the time schedule for performing the specified works at all stages of activities. Bidder who have not executed in time similar job in the past may not be considered.

## **4.0 BRAND NAMES**

The specific reference in these specifications and documents to any material by trade name, make or catalogue number shall be construed to as establishing standards of quality and performance and not as limiting conditions. However, Bidders may offer other similar materials and equipments provided they meet the specified standards, design and performance requirements.

## **5.0 SUBMISSION OF BIDS**

- 5.1 All bids shall be prepared by typing or printing with indelible ink and submitted separately in two parts;

Part-I : Original 1+4 sets of UNPRICED BID containing full technical drawings, data sheets, catalogues / literatures, etc. and commercial details including price schedules, BUT WITHOUT PRICE FIGURES.

Part-II : 3 (Three) sets of PRICED BID containing full details as above and including PRICE FIGURES.

EXCEPT FOR THE PRICE FIGURES PART-I AND PART-II SHALL BE IDENTICAL.

- 5.2 BIDS shall be address and sent to:

General Manager (Materials),  
National Aluminium Company Ltd.,  
NALCO BHAVAN,  
P/1,  
Nayapalli,  
Bhubaneswar - 751 013

- 5.3 Envelopes containing Part-I and Part-II of Bids shall be separately SUPERSCRIBED with:

PROJECT NAME :

MR No. :

DUE DATE :

PRICED BID / UNPRICED BID : (Whichever is applicable)

- 5.4 Foreign bidder may submit bids either directly or in association with their Indian collaborator, if any. In case no Indian Collaborator is envisaged, Foreign bidders should indicate in their bids the Indigenous supplies / services they intend to provide. However, the total responsibility to comply with contractual obligations shall read on the Foreign bidder. Foreign bidders should avoid sending the bids through their Indian Agents. Where appointment of Indian Agents of Foreign Bidders is unavoidable, the circumstances for this must be clearly explained and the commission / charges payable in Indian Rupees to such Agents shall be specified in the bids. Such Agents shall comply with all rules, regulations, procedures etc. prescribed by the Govt. of India.
- 5.5 Indian Bidders shall clearly indicate in the bids participation of their Foreign Collaborator, if any. In such case, the total responsibility to comply with all contractual obligations, including provision of back-to-back Guarantee from Foreign Collaborator, shall rest with Indian Bidder.

## **6.0     LANGUAGE OF THE BIDS**

All information in the bids shall be in English. Information in any other language shall be accompanied by its translation in English. Failure to comply with this may disqualify a bid. In the event of any discrepancy in meaning, the English language copy of all documents shall govern.

## **7.0     SIGNATURE OF BIDS**

- 7.1     The bid must contain the name, residence and place of business of the person or persons making the bid and must be signed and sealed by the bidder with his usual signature. The names of all persons signing should also be typed or printed below the signature.
- 7.2     Bid by a partnership firm must be furnished with full names of all partners and be signed with the partnership name, followed by the signature(s) and designation(s) of the authorized partner(s) or other authorized representative(s).
- 7.3     Bids by Corporation / Company must be signed with the legal name of the Corporation / Company by the President / Managing Director or by the Secretary or other person or persons authorized to bid on behalf of such Corporation / Company in the matter.
- 7.4     A bid by a person who affixes to his signature the word 'President', 'Managing Director', 'Secretary', 'Agent' or other designation without disclosing his principal will be rejected.
- 7.5     Satisfactory evidence of authority of the person signing on behalf of the Bidder shall be furnished with the Bid.
- 7.6     The Bidder's name stated on the proposal shall be the exact legal name of the firm.
- 7.7     Erasers or other changes in the bid documents shall be over the initials of the persons signing the bid.

## **8.0     INFORMATION REQUIRED WITH THE BIDS**

- 8.1     The bids must clearly indicate the name of the manufacturer, the type or model of each principal item of equipment proposed to be furnished and erected. The bid should also contain drawings and descriptive materials indicating general Dimensions, material from which the parts are manufactured, principles of operation, the extent of pre-assembly involved, major construction equipment proposed to be deployed, method of erection and the proposed erection organizational structure.
- 8.2     The above information shall be provided by the Bidder in the form of separate sheets, drawing, catalogues etc., in all copies of the bid.
- 8.3     Any bid not containing sufficient descriptive material to be described accurately the equipment proposed may be treated as incomplete and hence rejected. Such descriptive materials and drawings submitted by the Bidder will be retained by the Owner. Any major departure from these drawings and descriptive materials submitted will not be permitted during the execution of the Contract without specific written permission of the Owner.

8.4 Oral statements made by the Bidder at any time regarding quality, quantity or arrangement of the equipment or any other matter will not be considered.

8.5 Standard catalogue pages and other documents of the Bidder may be used in the bid to provide additional information and data as deemed necessary by the Bidder.

#### **9.0 UNDERSTANDING AND CLARIFICATION ON DOCUMENTS & SPECIFICATIONS**

9.1 The Bidder is required to carefully examine the specifications and documents and fully inform himself as to the conditions and matters, which may in any way affect the works or the cost thereof. If any Bidder finds discrepancies or omissions in the specifications and documents or is in doubt as to the true meaning of any part, he shall at once request in writing for an interpretation / clarification to the Owner, in triplicate. The Owner, then will issue interpretations and clarifications as he may think fit in writing. After receipt of such interpretations and clarifications, the Bidder may submit his bid but within the time and date as specified in the invitation to Bid. All such interpretations and clarifications shall form a part of the specifications and documents, and accompany the Bidder's proposal.

9.2 Verbal clarifications and information given by the Owner or his employee(s) or his representative(s) shall not in any way be binding on the Owner.

#### **10.0 LOCAL CONDITIONS**

10.1 It will be imperative on each Bidder to fully inform himself of all local conditions and factors which may have any effect on the execution of the Works covered under these documents and specifications. In their own interest, the Foreign Bidders are requested to familiarize themselves with the Income Tax Act, 1961; the Companies Act, 1956; Customs Act, 1962; Orissa Sales Tax Act and other related acts and laws prevalent in India. The Owner shall not entertain any request for clarifications from the Bidders regarding such local conditions.

10.2 It must be understood and agreed that such factors have properly been investigated and considered while submitting the bids. No claim for financial adjustment to the Contract awarded under these specifications and documents will be entertained by the Owner. Neither any change in the time schedule of the Contract nor any financial adjustments arising thereof shall be permitted by the Owner which are based on the lack of such clear information or its effect on the cost of Works to the Bids.

#### **11.0 PRICE SCOPE**

11.1 The bidders shall quote in their proposal prices for the entire scope of work on divisible contract basis and indicate the following break-up schedule.

(a) Design and Engineering charges for the complete works including Civil Works, including Indian Income Tax, if any.

(b) Unit Price on FOB Shipment basis, Ocean Freight and Insurance, quantity & total C&F value separately for each IMPORTED equipment and materials included in the quoted scope.

- (c) Unit price on FOR / FOT Site delivery basis including packing, forwarding, transportation, sales tax, excise duties, etc. separately for each INDIAN equipment and material included in the quoted scope.
- (d) Lump sum charges towards port and customs clearance at Indian Port of Entry, handling, forwarding, inland transportation and transit insurance for all the IMPORTED equipments, materials and spares.
- (e) Lump sum charges towards clearance and handling, transportation, storage, preservation and conservation of all equipments, materials and spares at Project Site.
- (f) Lump sum charges towards pre-assembly, if any, erection testing and commissioning of the complete system. Foreign supervision charges are to be separately shown.
- (g) LIST OF GUARANTEED SPARES for two years normal operation indicating parts name, catalogue no., quantity and Unit Price on Project Site Delivery Basis. If any shortfall is noticed during 2 years from date of commissioning, the same shall be supplied free of cost by the bidder.
- (h) List of components with item wise Unit Rate for all individual equipments and materials, to enable price ADJUSTMENT, if required during detailed engineering and execution of the work.

## **12.0 ESCALATION AND CURRENCY CHANGES**

- 12.1 The price quoted for the entire scope of work shall remain firm and fixed till complete execution of work.
- 12.2 In case any item, quoted as of Indian origin in the bid, but is subsequently transferred to the Imported category, the total cost (including custom duty, etc.) on Project Site- Delivery basis for such item will be payable by Owner at actual but maximum limited to the value quoted originally for that of Indian origin.
- 12.3 In case any item, quoted as imported in the bid, but in subsequently transferred to the Indian Category, the total cost on Project Site Delivery basis for such item will be payable by Owner at actuals but maximum limited to the CIF value quoted originally for that of imported origin.
- 12.4 Foreign Bidder shall Indicate bid prices only in US Dollar and only in Indian Rupees for that component of his price which the Bidder expects to spend in India.  
  
Indian bidder shall indicate bid prices in Indian Rupees only, separately for Imported & Indian components.
- 12.5 The payment shall be paid in the currency or currencies in which the prices have been stated by the successful bidder.



### **13.0 CUSTOMS DUTIES AND TAXES**

- 13.1 Foreign Bidders shall have the option if they would like that the Customs duties or levies levied on the Imported equipments by the Government of India or any State Governments be paid by the Owner directly to the Government of India or concerned State Government. In the event the Contractor is required by law to pay such levies in India, the same shall be reimbursed by the Owner to the Contractor i.e. the bidder awarded the Contract, in Indian Rupees upon presentation of Documentary evidence and subject to Owner's satisfaction that the bidder has taken sufficient action to reduce the tax liability to the maximum and within the legal provision. Bids must be specific on this point.
- 13.2 In case of domestic bids, all such Custom Duties and levies payable on components, sub-assemblies and raw materials by the local Bidders shall be included in the their prices and no claim on this behalf will be entertained by the Owner.
- 13.3 The Contractor shall include all taxes, duties, royalty of whatever nature, octroi, other local taxes etc. if any, in the quoted price.

Sales Tax or any other tax on material required for the work or also tax on works contract shall be payable by the Contractor and Owner will not entertain any claim whatsoever. Notwithstanding anything contain elsewhere in the contract the Owner shall deduct at source from the payment due to the Contractor the taxes as required under 13A (A) of Orissa Sales Tax Act or amended from time to time or under any other statute. The amount so deducted shall be paid by the Owner to the Sales Tax authority as per law. This is for the Contractor to deal with the Sales Tax authority directly in respect of any claim or refund relating to the above tax and Owner shall not be liable or responsible for any type of payment for reimbursement in this regard.

All benefits of taxes duties by way of credit under CENVAT shall be passed on to the Owner / Purchaser.

- 13.4 As regards the INCOME TAX, surcharge on Income Tax and other corporate taxes, the bidder shall be responsible for such payment to the authorities concerned.

Bidder may note that if any tax is deductible at source as per Indian Income Tax Law, the same will be so deducted before releasing any payment to the bidder. Accordingly, bidder shall have the responsibility to check and include such provisions of taxes in their prices and shall clearly spell out inclusions of taxes, if any, in their quoted prices.

### **14.0 EFFECT AND VALIDITY OF BID**

- 14.1 The submission of any bid connected with these documents and specifications shall constitute an agreement that the Bidder shall have no cause for action or claim, against the Owner for rejection of his bid. The Owner shall always be at liberty to reject or accept any bid or bids at his sole discretion and any such action will not be called into question and the Bidder shall have no claim in that regard against the Owner.
- 14.2 The bid should be kept valid for acceptance for a period of 6 (six) months from the bid due date.

## **15.0 AWARD OF CONTRACT**

- 15.1 Notification of Award of Contract will be made in writing to the successful Bidder by the Owner initially in the form of Letter / Telex of Intent which will be formalized by a Contract to be signed by both Owner and Bidder. All contractual obligations including delivery shall commence from the date of Letter / Telex of Intent.
- 15.2 Owner reserves the right to award one or more separate contracts in line with the terms & conditions specified in the accompanying technical specifications.

## **16.0 IMPORT OF EQUIPMENT REQUIRED FOR ERECTION, TESTING AND COMMISSIONING**

Indian Customs Act, 1962 permits Import of erection equipment required by foreign contractor to perform his work in India under the Contract. The bidders may study these provisions and submit their quotation taking into account such facilities provided by the Government.

## **17.0 CONTRACT PERFORMANCE GUARANTEE**

- 17.1 As a Contract Security, the successful Bidder, to whom the work is awarded, shall be required to furnish a Performance Bank Guarantee in the Proforma attached herewith in favor of the Owner within 30 days from the date of Letter / Telex of Intent. Failure to submit the performance bank guarantee within the above time shall be treated as breach of contract and shall entitle the Owner to place the order on others at the risk and cost of successful bidder, in addition to forfeiture of Earnest money deposit. The guarantee amount shall be equal to 10% (Ten percent) of the total Contract Price and it shall guarantee the faithful performance of the contract in accordance with the terms & conditions specified in the documents and specifications. The guarantee shall be valid for the entire period of the Contract, namely till the end of Guarantee period. The guarantee amount shall be payable without demur on demand to the Owner either in US Dollar in the case of foreign bidders and in Rupees in the case of Indian bidders without any condition whatsoever. In the case of joint bidding by foreign party along with Indian party, the performance bank guarantee shall be submitted by the Party having unit responsibility from an Indian Nationalized Bank.
- 17.2 If the Bank Guarantee stated in Clause 17.1 above gets reduced / deducted for reasons of non-fulfillment of any contractual obligation before commencement of guarantee period, the Contractor shall immediately take action to increase the value of Bank Guarantee to 10% (ten percent) of the contract price, to cover his warranties as stated in 17.0.
- 17.3 The Performance Guarantee will be returned to the Contractor without any interest at the end of the warranty period subject to fulfillment of all contractual obligations by the Contractor.

## **18.0 MAINTENANCE TOOLS AND TACKLES**

The bid shall include all special tools and tackles required for the operation and maintenance of the equipment in each equipment package. The Bidders shall indicate all the above items in the proposal sheets in the form of a schedule giving therein the description and the quantity of each item.

The lump sum price to be quoted by the Bidder shall include the price for these tools and tackles.

**19.0 DEVIATION TO BID DOCUMENT**

The bidders are requested to carefully study all the contract documents like invitation to bid, instructions to bidders, general terms & conditions of the contract and all other documents and they shall prepare a deviation statement, if any, clearly indicating the deviations sought for by the bidder.

Any deviation not mentioned in the statement and mentioned anywhere else in the bid will not be considered and if such items are not clearly explained in the deviation statement, it will mean that the contractor has agreed to all other terms & conditions mentioned in the above bid documents.

**20.0 CHECK LIST**

The Bidders are requested to duly fill in the checklists enclosed as Annexure-I and Annexure-II. This checklist gives only certain Important items to make sure that the necessary data / information is provided by him in his bid. This, however, does not relieve the Bidder of this responsibility to make sure that his bid is otherwise complete in all respects.

- 21.0** The Bidders are requested to submit a list of buyers to whom the same or similar types of equipment have been supplied by them and which are under operation. The detailed addresses of such Buyer's office / works including Tele phone, Fax Nos. & Contact Persons and Order Reference are to be mentioned.

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## **1.0 SCOPE OF CONTRACT**

- 1.1 The scope of the Contract shall be the design, manufacture, supply and erection including testing and commissioning of the equipments, in accordance with the specifications and documents, at the Site of Aluminium Complex at Orissa.
- 1.2 The General Terms & Conditions shall form a part of the specifications and documents.

## **2.0 CONTRACT DOCUMENTS**

- 2.1 The term 'Contract documents' shall mean and include the following which shall be deemed to form an integral part of the Contract :
- (a) Invitation to Bid, Instructions to Bidders, General Terms and Conditions of Contract and all other documents included therein.
  - (b) Contractor's bid proposal including the letters of clarifications thereto between the Contractor and the Consultant, representing Owner, prior to the Award of Contract.
  - (c) All the materials, literature, data and information of any sort given by the Contractor along with his bid, subject to the approval of the Consultant / Owner.
  - (d) The 'CONTRACT AGREEMENT' between the Contractor and the Owner for the execution of the works.
  - (e) Specification of the equipments to be furnished and erected under the Contract as brought out in the accompanying technical specifications.
  - (f) Any agreed variations to the conditions of the documents and specifications and special terms and conditions of Contract, if any.

## **3.0 DEFINITION OF TERMS**

- 3.1 'Owner' shall mean the National Aluminium Company Limited, Bhubaneswar, India (A Government of India Enterprise) and shall include their legal representatives, successors and permitted assigns.
- 3.2 '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.
- 3.3 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 sub-let by the Contractor with the consent in writing of the Owner and will include the legal representatives, successors and permitted assigns of such person.

- 3.4 Consulting Engineer / Consultant' shall mean any person or Agency appointed by Owner and intimated to the Contractor and shall include their legal representatives, successors and permitted assigns who will be construed to be acting in all circumstances for and on behalf of the Owner.
- 3.5 The terms 'Equipment', 'Stores' shall mean and include plant, stores and materials to be provided by the Contractor under the Contract.
- 3.6 'Works' shall mean and include the supply of equipment, labor and services, as per the technical specifications and complete erection, testing and commissioning of the equipments including activities covered under the clause 2.0 SCOPE OF PROPOSAL of Instructions to Bidders.
- 3.7 'Specification' shall mean the technical specifications forming a part of the Contract and such other schedules and drawings as may be mutually agreed upon.
- 3.8 'Site' shall mean and include the land and other places on, into or through which the additions to Aluminium Complex and the related facilities including the residential colony are to be constructed and any adjacent land, path, street or reservoir which may be allocated or used by the Consultant / Owner or Contractor in the performance of the contract.
- 3.9 Manufacturer's Works or 'Contractor's Works' shall mean the place of work used by the Manufacturer, the Contractor, their Collaborators or Sub-Contractors for the performance of Works.
- 3.10 "Inspector' shall mean the Consultant / Owner or any person nominated by the Consultant / Owner from time to time, to inspect the equipments, stores or work under the Contract and / or the duly authorized representative of the Consultant / Owner.
- 3.11 'Notice of Award of Contract' / Telex of Intent / Letter of Intent' shall mean the official notice issued by the Owner notifying the Contractor that his proposal has been accepted and that the Contractor is required to sign the Contract Agreement.
- 3.12 'Effective Date of Contract' shall mean the date on which Notice of Award of Contract / Letter of Intent is issued to the successful Bidder.
- 3.13 'Month' shall ordinarily mean the calendar month, unless the context is obviously otherwise. 'Day' or 'Days' unless herein otherwise expressly defined shall mean calendar day or days of 24 hours each.
- 3.14 'Writing' shall include any manuscript, typewritten or printed statement, under or over signature and / or seal as the case may be.
- 3.15 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 import are used, the approval, judgment, direction etc., is understood to be a function of the Consultant / Owner.
- 3.16 'Tests on Completion' shall mean such tests as prescribed in the Contract to be performed by the Contractor before the works are taken over by the Owner.

- 3.17 'Start-up' shall mean the time period required to bring the equipments 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-systems initial operation of the complete equipments 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.
- 3.18 'Initial Operation' shall mean the first integral operation of the complete equipment covered under the Contract with sub-system and supporting equipment in service or available for service.
- 3.19 'Trial Operation', 'Reliability Test', 'Trial Run', 'Completion Test' shall mean the extending period of time after the start-up period. During the trial operation period the unit shall be operated over the full load range. The length of Trial Operation shall be as specified else where in the Contract.
- 3.20 'Performance and Guarantee Tests' shall mean all operational checks and test required to determine and demonstrate capacity, efficiency, and operating characteristics as specified in the Contract Documents.
- 3.21 '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 up to and including rated capacity.
- 3.22 The terms 'Final Acceptance' shall mean the Owner's written acceptance of the works performed under the Contract, after successful completion of Performance and Guarantee Tests.
- 3.23 'Warranty 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.
- 3.24 'Drawings', 'Plans' shall mean all
- (a) Drawings furnished by the Consultant / Owner as a basis for proposals.
  - (b) Supplementary drawings furnished by the Consultant / Owner to clarify and to define in greater detail the intent of the Contract.
  - (c) Drawings submitted by the Contractor with his proposal provided such drawings are acceptable to the Consultant / Owner.
  - (d) Drawings furnished by the Consultant / Owner 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 consultant / Owner.
- 3.25 'Codes' shall mean the following, including the latest amendments, and / or replacements, if any, as applicable:



- (a) Indian Boiler Act, 1923 and Rules and Regulations made there under.
- (b) Indian Electricity Act, 1905 and Rules and Regulations made there under.
- (c) Indian Factory Act, 1948 and Rules and Regulations made there under.
- (d) Indian Explosive Act, 1884 and Rules and Regulations made there under.
- (e) Indian Petroleum Act, 1934 and Rules and Regulations made there under.
- (f) A.S.M.E. Test Codes
- (g) A.I.E.E. Test Codes
- (h) American Society of Materials Testing Codes
- (i) Standards of the Indian Standards Institution
- (j) Other internationally approved standards and / or Rules and Regulations touching the subject matter of the contract.

3.26 Words importing the singular only shall also include the plural and vice versa where the context so requires.

3.27 Words importing 'Person' shall include firms, companies, corporations and associations or body of individuals, whether incorporated or not.

#### **4.0 CONTRACTOR TO INFORM HIMSELF FULLY**

The contractor shall be deemed to have carefully examined all Contract Documents to his entire satisfaction. If he shall have any doubt as to the meaning of any portion of the Contract Documents, he shall, before signing the contract, set forth the particulars thereof, and submit them to the Consultant / Owner in writing in sextuplicate in order that such doubt may be removed. The Consultant / Owner will provide such clarifications as may be deemed necessary, in writing to the Contractor which will be treated as final & binding on the Contractor. Any information otherwise obtained from the Consultant / Owner shall not in any way relieve the Contractor of his responsibility to fulfill his obligations under the contract.

#### **5.0 CONTRACT AGREEMENT AND PERFORMANCE GUARANTEE**

The Contract Agreement shall be signed between the parties within 45 days from the date of letter / TOI. The expenses for the preparation and stamping the contract agreements shall be to the account of the contractor. The Performance Guarantee shall be as per the terms prescribed in the Clause 17.0 of the Instructions to Bidders.

## **6.0 MANNER OF EXECUTION OF CONTRACT**

- 6.1 The Owner, after the issue of the Letter of Intent / Telex of Intent to the Contractor, will send one copy of the final agreement to the Contractor for his scrutiny and approval. The Contractor shall thereafter arrange to prepare the Contract Agreement, appropriately stamped and shall furnish to Owner Original with copies of the same. For this purpose the Contractor shall prepare a detailed deviation statement to tender documents and submit the same within 30 days of LOI / TOI. The Owner shall scrutinize the deviation statement immediately and finalize the contract document for execution.
- 6.2 The agreement, unless otherwise agreed to, shall be signed at the office on a date and time to be mutually agreed. The Contractor shall provide for signing of the Contract, appropriate power of attorney and other requisite materials.

## **7.0 EFFECT AND JURISDICTION OF CONTRACT**

- 7.1 The Contract shall be considered as having come into force from the date of the acceptance of Award of Contract / Letter of Intent.
- 7.2 The laws applicable to this Contract shall be the laws in force in India. The Courts of Bhubaneswar shall have exclusive jurisdiction in all matters arising under this Contract.

## **8.0 ASSIGNMENTS AND SUB -LETTING OF CONTRACT**

The Contractor may after informing the Consultant and getting his written approval, assign or sub-let the contract or any part thereof other than for raw-materials, for minor details or for any part of the plant for which the makers are named in the Contract, provided that any such assignment shall not relieve the Contractor from any obligation, duty or responsibility under the Contract. Any assignment as above, without the prior written approval of the Consultant shall be void.

## **9.0 PATENT RIGHTS AND ROYALTIES**

Royalties and fees for patents covering materials, articles, apparatus, devices, equipments 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 and Consultant, indemnified in that regard. The Contractor shall, at his own cost and expenses, defend all suits or proceedings that may be instituted for alleged infringement of any patents involved in the works, and, in case of an award of damages, the Contractor shall pay for such an award. In the event of any suit or other proceedings instituted against the Owner, the same shall be defended at the cost and expenses of the Contractor who shall also satisfy / comply 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 made while any such suit or claim remains unsettled. In the event any apparatus or 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 use of said apparatus, equipment or part thereof, replace it with non-infringing apparatus or equipment or modify it, so it becomes non-infringing.

## **10.0 TIME - THE ESSENCE OF CONTRACT**

10.1 The time and the date of completion of Works as stipulated in the Contractor's proposal and accepted by the Owner 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 time for completion shall be reckoned from the date of acceptance of the Letter of Intent by the Contractor.

## **11.0 PERT NETWORK**

The Contractor shall submit a detailed PERT network within the time frame agreed above consisting of adequate number of activities covering various key phases of the Works such as design, procurement, manufacturing, shipment and field erection activities within 15 (fifteen) days after the date of Notice of Award of Contract. This network shall also indicate the interface facilities to be provided by the Owner and the dates by which such facilities are needed. Contractor shall discuss the network so submitted with the Consultant / Owner and the agreed network which may be in the form as submitted or in revised form in line with the outcome of discussions shall form part of the Contract, to be signed within 30 (thirty) days from the date of Notice of Award of Contract. During the performance of the Contract, if in the opinion of the Consultant / Owner proper progress is not maintained suitable changes shall be made in the Contractor's operations to ensure proper progress.

The above PERT network shall be reviewed and periodic review reports shall be submitted by the Contractor as directed by the Consultant / owner.

## **12.0 CONTRACT PRICE**

The lump sum prices quoted by the Contractor in his bid with additions and deletions as may be agreed before signing of the Contract, for the entire scopes of the work viz. Supply and erection of equipments covered under the specification and documents shall be treated as the Contract Price.

### **12.1 Adjustment of Prices for Weights**

The total net binding weight of the Equipments is covered under the specification and documents. Should the total net weight of such actual supplies fall below 95% of the above weight, a deduction at the average price per tonne of Equipment shall be made for the difference between the binding weight and the net weight supplied. No adjustment shall be made if the total net weight of the actual supply exceeds the binding weight.

## **13.0 DEDUCTIONS FROM CONTRACT PRICE**

All costs, damages or expenses, which the Owner may have paid for which under the Contract, the Contractor is liable / will be 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 15 (fifteen) 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 money due or becoming due by him to the Contractor under the Contract or may be recovered by actions of law or otherwise, including encashment of performance bank guarantee if the Contractor fails to satisfy the Owner of such claims.

#### **14.0 PACKING, FORWARDING AND SHIPMENT**

##### **14.1 Foreign Contractors**

14.1.1 The Contractor wherever applicable shall after proper painting, pack and crate all equipments for sea shipment in a manner suitable for export to a tropical, humid climate region in accordance with the internationally accepted export practices and in such a manner so as to protect it from damage and deterioration in transit by road, rail and / or sea and during storage at the Site till the time of erection. The Contractor shall be held responsible for all damages due to improper packing.

14.1.2 The Contractor shall notify the Consultant / Owner of the date of each shipment from the port of embarkation as well as the expected date of arrival of such shipment at the designated port of arrival only for enabling the Owner to be prepared for any of his (Owner's) own Customs clearance formalities at the port of dis-embarkation.

14.1.3 The Contractor shall give complete shipping information concerning the weight, size, content of each package including any other information the Consultant / Owner may require.

##### **14.1.4 Foreign Invoice**

The following documents shall be air -mailed to the Owner within seven days from the date of shipment to enable the Owner to make progressive payments to the Contractor.

- Bill of Lading (2 non-negotiable copies)
- Invoice (2 copies)
  
- Test Certificate (2 copies) & Inspection Release Note
  
- Invoice for Ocean Freight (2 copies)

Also 2 sets of the above documents shall simultaneously be air mailed by the Contractor to the Consultants, if any.

##### **14.2 Indian Contractors**

14.2.1 Indian Contractors wherever applicable shall after proper painting, pack and crate all equipments in such a manner as to protect them from deterioration and damage during rail and road transportation and 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.

14.2.2 The Contractor shall notify the Consultant / Owner of the date of each shipment from his works and expected date of arrival at the Site for the information of the Consultant / Owner.

14.2.3 The Contractor shall also give all shipping information concerning the weight, size and content of each packing including any other information the Consultant / Owner may require.

14.2.4 **Domestic Invoice:**

The following documents shall be sent by registered post to the Owner within 3 days from the date of shipment, to enable the Owner to make progressive payments to the Contractor:

- Invoice (2 copies)
- Test Certificate (4 copies) & Inspection Release Note
- Railway Receipt / Lorry Receipt (2 copies)

Also 2 sets of the above documents shall simultaneously be airmailed by the Contractor to the Consultant.

14.3 The Contractor shall prepare detailed packing list of all packages and containers, bundles and loose material 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 work till 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 equipments.

15.0 **DEMURRAGE, WHARFAGE ETC.**

All demurrage, wharfage and other expenses incurred due to delayed clearance of the material or any other reason including delayed receipt of shipping documents, or mistake in the preparation of shipping documents etc. shall be to the account of the Contractor. However, in case of foreign Contractors the Consultant / Owner may offer assistance to the extent possible to the Contractor for getting the necessary documentary import clearance formalities completed at the port of discharge.

16.0 **INSURANCE**

16.1 The owner will arrange for INSURANCE of equipment and material, included under the scope of contract, to cover

- (a) Risks in transit by ship / air between Contractor's port of shipment / air port and Indian Port of entry.
- (b) Risks in transit by rail / road during inland transportation up to the Project Site.
- (c) Risks during storage and erection at the Project Site till the plant is fully commissioned under an open general policy. The Owner shall intimate the name of Insurance Company and other details in due course.

- 16.2 The Contractor shall furnish dispatch particulars of each consignment including its value immediately to the Insurance Company. If for any delay in intimating of dispatch particulars to the insurance on the part of the Contractor the claims for damages are rejected, the Contractor shall be fully responsible for replacement of the damaged equipment.
- 16.3 The risks that are to be covered under the insurance shall include but not be limited to the loss of damage in transit, theft, pilferage, riot, civil commotion, weather conditions, accidents of all kinds, fire, war, risk, etc. The scope of such insurance shall cover the entire value of the Works from time to time.
- 16.4 In respect of equipment damaged in transit or during erection and commissioning, the Contractor shall replace them expeditiously and the replacement cost payable by the Owner shall be limited to the invoice cost of damaged equipment. In case of consignment received at the Project Site in outwardly sound condition of package but found shortage / damage on being opened the liability for free replacement will be accepted by the Contractor.

#### **17.0 LIABILITY FOR ACCIDENTS AND DAMAGES**

Under the Contract, the Contractor shall be responsible for loss or damage to the plant until the plant is taken over in accordance with Contract Conditions.

#### **18.0 LIQUIDATED DAMAGES FOR DELAY IN COMPLETION**

If the Contractor fails in the due performance of the contract to supply / erection / testing / commissioning the equipment within the time fixed in the contract or any extension thereof, he shall be liable at the discretion of the Engineer to the liquidated damages and not by way of penalty amounting to ½% (one half of one percent) of the contract price per week. The contractor's liability for delay shall not in any case exceed 10% (ten percent) of the total contract price.

If the Contractor shall fail to supply the equipment or any part thereof within a reasonable period after the expiry of the appointed time or extended time as may be provided for in the contract, the provision in clause No. 19 "Negligence" shall become operative, in addition to the liability of L.D. as above.

#### **19.0 CONTRACTOR'S DEFAULT**

If the Contractor neglects to execute the work with due diligence and expedition or refuses or neglect to comply with any reasonable orders given to him in writing by the Engineer-in-connection with the work, or contravene the provisions of the contract, the Purchaser may give notice in writing to the Contractor calling upon him to make good the failure, neglect or contravention complained of. Should the Contractor fail to comply with such notice within a period considered reasonable by the Purchaser from the date of service thereof, in the case of failure, neglect or contravention capable of being made good within that time or otherwise within such time as may in the opinion of the Purchaser be reasonably necessary for making it good, then and in such case the Purchaser shall have the option and be at liberty to take the work wholly or in part, out of the Contractor's hand and may carry on the work envisaged in the contract at a price with any other person or persons to execute the same or any part thereof and provide any other materials, tools, tackle or

labor for the purpose of completing the works or part thereof. In such event the Purchaser shall without being responsible to the Contractor for fair wear and tear of the same be entitled to seize and take possession and have free use of all materials, tools, tackle or other things which may be on the Site, for use at any time in connection with the work to the exclusion of any right of the Contractor over the same and the Purchaser shall be entitled to retain and apply balance sum which may otherwise be then due on the contract by him to the Contractor or such part thereof as may be necessary, to the payment of the cost of execution of such work as aforesaid. If the cost of executing the work as aforesaid shall exceed the balance due to the Contractor and the Contractor fails to make good the deficit, the said materials, tools, tackle, construction plant or other things, the property of the Contractor as may not have been used up in the completion of the works, may be sold by the Purchaser and the proceeds applied towards the payments of such difference and the cost of and incidental to such sale. Any outstanding balance existing after crediting the proceeds of such sale shall be paid by the Contractor on the certificate of the Engineer, but when all expenses cost and charges incurred in the completion of the work are paid by the Contractor all such things not used up in the completion of the works and remaining unsold shall be removed by the Contractor. If the proceeds of the above sale of Contractor's materials, tools, tackle, construction plant etc. are insufficient to cover the executing the aforesaid work, the balance remaining after crediting the proceeds of such sale shall be recoverable from the Contractor by encashing the Bank Guarantee available / any other money payable by Purchaser or by action of law.

Notwithstanding anything contained above, the Purchaser may determine the contract due to any breach of failure of the contract without notice before determining the contract as above, if in the opinion of the Purchaser, the default or defaults committed by the Contractor is / are curable and can be cured by the Contractor if an opportunity is given to him, then the Owner may issue a notice in writing calling upon the Contractor to cure the default within such time as may be as specified in the notice.

In the event of termination, the Security Deposit will be forfeited without reference to the contractor and if no amount is available towards Security Deposit and identical amount is recoverable from the Contractor.

## **20.0 OUT - BREAK OF WAR**

- 20.1 If during the currency of the contract there shall be an out-break of war whether declared or not, in that part of the world which whether financially or otherwise materially affect the execution of the Works, the Contractor shall unless and until the Contract is terminated under the provisions in this clause continue to use his best endeavor to complete the execution of the Works provided always that the Owner shall be entitled, at any time after such out-break of war, to terminate the Contract by giving notice in writing to the Contractor and upon such notice being given the Contract shall, save as to the rights of the parties under this clause and to the operation of the clauses entitled Settlement of Dispute and Arbitration hereof, be terminated but without prejudice to the rights of either party in respect of any antecedent breach thereof.
- 20.2 If the Contract shall be terminated under the provisions of the above clause, the Contractor shall with all reasonable diligence remove from the Site all the Contractor's equipments and shall give similar facilities to his Sub-Contractors to do so.

### **20.3 Payment if the Contract is terminated**

If the contract shall be terminated as aforesaid, the Contractor shall be paid by the Owner (in so far as much amounts of items shall not have already been covered by payments on account made to the Contractor) for all work executed and accepted by the Owner prior to the date of termination at the rate and prices provided in the Contract and in addition to the following:

- (a) The amount payable in respect of any preliminary items so far as the work or service comprised therein has been carried out or performed and an appropriate portion as certified by the Owner of any such items of the work or service comprised in which has been partially carried out or performed.
- (b) Any other expenses which the Contractor has expended for performing the works under the Contract subject to being duly certified by the Owner based on documentary evidence for having incurred such expenses.

20.4 In the event of any dispute in regard to the price of the works and portion of the payment to be made to Contractor, the matter will be referred to Arbitration as per the Clause 27. The decision of the Arbitrator(s) shall be final & binding on both the parties.

20.5 The Contractor will be further required to transfer the title and provide the Owner with the following in the manner and as directed by the Owner:

- (a) Any completed works.
- (b) Such partially completed work including drawings, information and Contract rights as the Contractor has specially performed, produced or acquired for the performance of the Contract.

### **21.0 FORCE MAJEURE**

21.1 Any delays in or failure of the performance of either parties thereto shall not constitute default hereunder or give rise to any claims for damages, if any, to the extent such delays or failure of performance caused by occurrences such as acts of God or the Public enemy, expropriation or confiscation of facilities by Government authorities, compliance with any other or request of any Government authorities, act of war, rebellion, sabotage, fire, flood, explosions, riots or illegal strikes provided always that such occurrences result in impossibility of performance of the contract.

21.2 Only events of Force Majeure, which impedes the execution of the Contract at the time of its occurrence, shall be taken into cognizance.

### **22.0 TERMINATION OF CONTRACT ON OWNER'S INITIATIVE**

22.1 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 15 (fifteen) days notice in writing to the Contractor of his intention to do so.



22.2 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 upon terms satisfactory to the Owner, stop all further sub-contracting or purchasing activity related to the work terminated, and assist the Owner in maintenance, protection, and disposition of the Works acquired under the Contract by the Owner.

22.3 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.

### **23.0 NO WAIVER OF RIGHTS**

Neither the inspection by the Owner or the Consultant or any of their officials, employees, or agents nor any order by the Owner or the Consultant for payment of money or any payment for or acceptance of, the whole or any part of the Works by the Owner or the Consultant, nor any extension of time, nor any possession taken by the Consultant 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.

### **24.0 CERTIFICATE NOT TO AFFECT RIGHT OF OWNER AND LIABILITY OF CONTRACTOR**

No interim payment certificate of the Owner, nor any sum paid on account, by the Owner, nor any extension of time for execution of the works granted by the Consultant / Owner shall affect or prejudice the rights of the Owner against the Contractor or relieve the Contractor of his obligations for the due performance of the Contract, or be interpreted as approval of the Works done or of the equipment supplied and no certificate shall create liability in the Owner to pay for alterations, amendments, variations or additional Works not ordered. In writing, by the Consultant / Owner 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 of otherwise affect or prejudice the rights of the Contractor against the Owner.

### **25.0 SETTLEMENT OF DISPUTE**

25.1 Except as otherwise specially provided in the Contract all disputes concerning questions of fact arising under the Contract shall be decided by the Owner subject to a written appeal by the Contractor to the Owner, whose decision shall be final to the parties hereto.

25.2 Any dispute or differences including those considered as such by only one of the parties arising out of or in connection with the Contract shall be to the extent possible settled amicably between the parties.

25.3 If amicable settlement cannot be reached then all disputed issues shall be settled by arbitration as provided in clauses 26 below.

## **26.0 ARBITRATION**

- 26.1 All disputes or differences arising under the contract whether during or after completion of the contract or whether before or after determination, for closure or breach of the contract (other than those in respect of which the decision of any person is by the contract expressed to be final and binding) shall after written notice by either party to the contract to the other of them and to the Appointing Authority hereinafter mentioned be referred for adjudication to a sole Arbitrator to be appointed as hereinafter provided.

For the purpose of appointing the sole Arbitrator referred to above, the CMD NALCO who shall be Appointing Authority will send within thirty days of receipt of the notice to the contractor a panel of three names of persons.

The Contractor shall on receipt of the names as referred select any one of the person names to be appointed as a sole Arbitrator and communicate his name to the Appointing Authority within thirty days of receipt of the names. The Appointing Authority shall there upon appoint the said person as the sole Arbitrator.

If the Contractor fails to communicate such selection as provided above within the period specified, the Appointing Authority shall make the selection and appoint the selected person as the Sole Arbitrator.

If the Arbitrator so appointed is unable to / unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever sole arbitrator shall be appointed as aforesaid. The work under the contract shall not be stopped during the arbitration proceedings.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notices to both the parties fixing the date of the first hearing.

The Arbitrator may, from time to time, with the consent of the parties, enlarge the time for making and publishing the award.

The Arbitrator shall give a separate award in respect of each dispute or difference and shall give a reasoned and speaking award / awards.

The venue of Arbitration shall be at Bhubaneswar. However, if the situation so warrants, it may as and when required, be held at the place where the Site of Work is situated.

The fees, if any, of the Arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award including the fees, if any, of the Arbitrator shall be in the discretion of the Arbitrator who may direct to and by whom and in what manner, such costs or any part thereof shall be paid and may fix or settle the amount of costs to be so paid.

The award of the Arbitrator shall be final and binding on both the parties.

Subject to aforesaid the provisions of the Arbitration Act 1940 or any statutory modification or re-enactment thereof and the rules made there under, and for the time being in force, shall apply to the Arbitration proceeding under this clause.

For Public Sector Enterprises guidelines as per circular of BPE No. 15.9.86 BPE (FIN), dated 30.3.89 as amended from time to time will be applicable for resolving any disputes.

## **27.0 GRAFTS AND COMMISSIONS etc.**

Any graft, commissions gift or advantage given, promised or offered by or on behalf of the Contractor or his partner, agent, officers, director, employee or servant or any one 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 amounts so payable from any money otherwise due to the Contractor under the Contract.

## **28.0 LANGUAGE AND MEASURES**

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

## **29.0 TRANSFER OF RISK / TITLE**

- 29.1 The passage of risk / Ownership from the CONTRACTOR and the Sub-Contractor as the case may be, to the PURCHASER, shall be governed by the following:
- 29.2 The title to all imported Materials, Delivered by the CONTRACTOR in terms of this Agreement, shall pass on to the PURCHASER at the time the said Materials have passed the rail of the carrying Vessel at the Port of Shipment.
- 29.3 In respect of Imported Materials directly dispatched to Sub-Contractor's works for further processing, notwithstanding the fact that the title for such Materials shall have passed to the PURCHASER at the time the said Materials have passed the rail of the carrying Vessel at the port of shipment. The CONTRACTOR shall remain responsible for such Materials, till the time of their arrival at the Site.
- 29.4 The title to all Indian materials, delivered by the CONTRACTOR, in terms of this Agreement, shall pass to the PURCHASER on its being handed over to the nominated transporter.

## **30.0 RELEASE OF INFORMATION**

The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photograph 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.

### **31.0 CONSTRUCTION OF THE CONTRACT**

- 31.1 Notwithstanding anything contained elsewhere, this Contract shall be read and construed as a Divisible Contract.

In case of a joint bid submitted under joint participation between the Foreign and Indian Bidders, three separate contracts will be awarded: One between Owner and the Foreign Contractor covering foreign portion and Second between Owner and the Indian Contractor covering Indian rupee portion. One between all the three parties.

- 31.2 The Contract shall in all respects be construed and governed according to Indian Laws.

### **32.0 COMPLETION OF CONTRACT**

Unless otherwise terminated under the provision of any of the relevant clause, this Contract shall be deemed to have been completed at the expiration of the Guarantee Period as provided for under the clause entitled 'Guarantee'.

### **33.0 ENFORCEMENT OF TERMS**

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 herein provided, shall in no way be construed to be a waiver of such provision, rights options or in any way to affect the validity of the Contract. The exercise by either party of any of its rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have hereunder.

### **34.0 OWNER's / CONSULTANT's DECISION**

- 34.1 In respect of all matters which are left to the decision of the Consultant / Owner including the granting or withholding of the certificates, thereon Consultant / Owner shall, if required to do so by the Contractor, give in writing a decision thereon.
- 34.2 If in the opinion of the Contractor, a decision made by the Consultant / Owner is not in accordance with the meaning and intent of the Contract, the Contractor may file with the Consultant / Owner within 15 (fifteen) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as acceptance of the Consultant's / Owner's decision and the decision shall become final and binding.
- 34.3 The Consultant's / Owner's decision and the filing of the written objection thereto shall be a condition precedent to the right to request for 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 Consultant / Owner as rendered shall be promptly observed.

### **35.0 CO-OPERATION WITH OTHER CONTRACTORS AND CONSULTING ENGINEER**

The Contractor shall agree to co-operate with the Owner's, other Contractors and Consulting Engineers and freely exchange with them such technical information as is necessary to obtain the most efficient and economical design and to avoid unnecessary duplication of efforts.

The Consultant shall be provided with four copies of all correspondence addressed by the Contractor to other Sub-Contractors and Consulting Engineers in respect of such exchange of Technical Information.

### **36.0 TRAINING OF OWNER'S PERSONNEL**

36.1 The Contractor shall undertake to train, free of cost, engineering personnel selected and sent by the Owner at the Works of the Contractor unless otherwise specified in the Technical Specifications. The period and the nature of training for the individual personnel shall be agreed upon mutually between the Contractor and the Owner. These engineering personnel shall be given special training in the shops, where the equipment will be manufactured and / or in their collaborator's works and where possible, in any other plant where equipment manufactured by the Contractor or his collaborators is under installation or test to enable those personnel to become familiar with the equipment being furnished by the Contractor.

36.2 All traveling and living expenses for the engineering personnel to be trained during the total period of training will be borne by the Owner. These engineering personnel while undergoing training shall be responsible to the Contractor for discipline.

36.3 In the event of the Owner, for any reason, failing to avail of the training facilities, he shall not be entitled for any rebate whatsoever on this account.

### **37.0 SUSPENSION OF WORK**

37.1 The Consultant / 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 re-instatement of the works will be issued by the Consultant to the Contractor in writing. The time for completion of the Works will be extended for period equal to duration of the suspension.

37.2 Any necessary and demonstrable costs incurred by the Contractor as a result of such suspension of the Works will be paid by the Owner, provided such costs are substantiated to the satisfaction of the Owner. 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.

### **38.0 POWER TO VARY OR OMIT WORK**

38.1 No alterations, amendments, omissions, suspensions or variations of the Works (hereinafter referred to as 'Variation' under the Contract as detailed in the Contract Documents), shall be made by the Contractor except as directed in writing by the Consultant / Owner, but the Consultant / Owner shall have full power, subject to the provision hereinafter contained from time to time during the execution of the Contract, by notice in writing, to instruct the Contractor to make such variation without prejudice to the Contract. The Contractor shall carry out such Variations occurred in the

Contract Documents. If any suggested Variation would, in the opinion of the Contractor, if carried out, prevent him from fulfilling any of his obligations or guarantees under the contract he shall notify the Consultant / Owner thereof in writing and the Consultant / Owner shall decide forthwith whether or not, the same shall be carried out and if the Consultant / Owners confirms his instructions, Contractors, 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.

- 38.2 In the event of the Consultant / Owner requiring any Variation, such reasonable and proper notice shall be given to the Contractor to enable him to work his arrangements accordingly, and in cases where goods or materials are already prepared or any design, drawings or pattern made or work done requires to be altered, a reasonable and agreed sum in respect thereof shall be paid to the Contractor.
- 38.3 In any case in which the Contractor has received instructions from the Consultant / Owner as to the requirement of carrying out the altered or additional substituted work which either then or later on, will in the opinion of the Contractor, involve a claim for additional payment, the Contractor shall immediately and in no case later than 30 (thirty) days, after receipt of the instructions, advise the Consultant / Owner to that effect. But the Owner shall not become liable for the payment of any charges in respect of any such Variations, unless the instructions for the performance of the same are confirmed in writing, by the Consultant / Owner.
- 38.4 If any Variation in the Works, results in reduction of Contract price, the parties shall agree in writing, as to the extent of any change in the price, before the Contractor proceeds with the change.
- 38.5 In all the above cases, in the event of a disagreement as to the reasonableness of the said sum, the decision of the Consultant / Owner shall prevail.

### **39.0 GUARANTEE**

- 39.1 The Contractor shall warrant that the equipments will be new and in accordance with the Contract Documents and be free from defects in material and workmanship for a period of 12 (twelve) calendar months commencing immediately upon the satisfactory completion of the performance guarantee tests or 24 (twenty four) months from the date of completion of erection whichever expires earlier. The Contractor's liability shall be limited to the replacement of any defective parts in the equipments of his own manufacture or those of his sub- Contractor, under normal use and arising solely from faulty design, materials and / or workmanship provided always that such defective parts are repairable at the Site and are not in the mean time essential in the commercial use of the plant. Such replaced defective parts shall be returned to the Contractor unless otherwise arranged. No repairs or replacement shall normally be carried out by the Consultant / Owner, when the plant is under the supervision of the Contractor's supervisory engineers.
- 39.2 In the event of an emergency where, in the judgment of the Consultant / Owner, delay would cause serious loss or damage, repairs or adjustments may be made by the Consultant / Owner or a third party chosen by the Consultant / Owner 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 Consultant /

Owner, the Contractor will be notified promptly and he shall assist wherever possible in making the necessary corrections. This shall not relieve the Contractor's liability under the terms and conditions of the contract.

- 39.3 If it becomes necessary for the Contractor to replace or renew any defective portions of the plant under this clause, the provisions of this clause shall apply to the portions of the plant so replaced or renewed until the expiration of 12 (twelve) months from the date of such replacement or renewal. If any defects be not remedied within a reasonable time, the Consultant / owner may proceed to do the work at the Contractor's risk and costs, but without prejudice to any other rights which the Owner may have against the Contractor in respect of such defects.

The repaired or new parts will be supplied 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 repair. In case of Imported Items Contractor shall be responsible for all cost up to erection including import duty, clearing, forwarding, transport expenses etc.

- 39.4 The cost of any special or general overhaul rendered necessary during the maintenance period due to defects in the plant or defective work carried out by the Contractor, the same shall be borne by the Contractor.
- 39.5 The acceptance of the equipment by the Engineer shall in no way relieve the Contractor of his obligation under this clause.
- 39.6 In the case of those defective parts which are not repaired at Site but are essential for the commercial operation of the equipment, the Contractor and the Consultant / Owner shall mutually agree to a program of replacement or renewal which will minimize interruption to the maximum extent, in the operation of the equipment.
- 39.7 At the end of the Guarantee Period, the Contractor's liability ceases except for latent defects in respect of goods supplied by Sub- Contractors to the Contractor where a longer guarantee (more than 12 months) is provided by such Sub-Contractors, the Owner shall be entitled to the benefit of such longer guarantees.

#### **40.0 REPLACEMENT OF DEFECTIVE PARTS AND MATERIALS**

- 40.1 If during the progress of the Works the Consultant / Owner shall decide and inform in writing to the Contractor, that the Contractor has manufactured any plant or part of the plant unsound or imperfect or has furnished the plant inferior than the quality specified, the Contractor on receiving details of such defects or deficiencies shall at his own expenses within 7 (seven) days of his receiving the notice, or otherwise, within such time as may be reasonably necessary for making it good proceed to alter, re-construct or remove such work and furnish fresh equipments up to the standards of the specifications. In case the Contractor fails to do so, the Consultant / Owner may on giving the Contractor 7 (seven) 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 work or furnish all such equipments provided that nothing in the 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.

40.2 The Contractor's full and extreme liability under this clause shall be satisfied by the payments to the Owner of the extra cost, of such replacements procured including erections 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 portion for such defective plants and repayments of any sum paid by the Owner to the Contractor in respect of such defective plant. Should the Owner not so replace the defective plant the Contractor's extreme liability under this clause shall be limited to the repayment of all sums paid by the Owner under the Contract for such defective plant.

#### **41.0 DEFENCE OF SUITS**

If any action in court is brought against the Owner or Consultant 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, workmen, suppliers or employees, the Contractor shall in such cases indemnify and keep the Owner, and the Consultant and / or his representative harmless from all losses, damages, expenses or decrees arising out of such action.

#### **42.0 LIMITATIONS OF LIABILITIES**

The final payment by the Owner in pursuance of this Contract terms shall not mean release of the Contractor from all his liabilities under the Contract. The Contractor will be liable and committed under this contract to fulfill all his liabilities and responsibilities, till such time Performance Bank Guarantee is released by the Owner.

#### **43.0 FOREIGN FIELD PERSONNEL**

The Contractor shall submit to the Consultant / Owner a complete list of foreign field personnel (including necessary data as may be required by Consultant / Owner) required for the performance of the works in India. He shall also intimate the program of their visit to India and departure from India during the pendency of the Contract. The Owner will have the right to review the list of such personnel and ask for increase in the strength or re-schedule the visits of such personnel if in the opinion of the Engineer, the list of personnel mentioned is not sufficient for effective performance of the Contract.

#### **44.0 TAXES, PERMITS & LICENCES**

The Contractor shall be liable and pay all non-Indian taxes, duties, levies, lawfully assessed against the Owner 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 effects only.

#### **45.0 PROGRESS REPORTS AND PHOTOGRAPHS**

During the various stages of the Works in pursuance of the Contract, the Contractor shall at his own cost submit periodic progress reports as may be reasonably required by the Consultant / Owner 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 Consultant and shall be submitted in at least 3 (three) copies.

#### **46.0 SPARES**

The Contractor shall guarantee the Owner that before going out of production of Spare Parts for the equipment furnished and erected he shall give at least 12 (twelve) months advance notice to the Owner so that the latter may order his requirement of Spares in one lot, if he so desires.

#### **47.0 PAYMENT**

47.1 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 the Works and on fulfillment by the Contractor of all his liabilities under the Contract.

##### **47.2 Currency of Payment:**

The payments for the foreign currency portion of the Contract price will be made in the currency of the bid. If the bid is in a currency other than that of the country of origin of goods, payment may be made in an amount equivalent to the bid price in the currency of the country of origin. The Indian Rupee portion of Contract Price stated in the Contractor's bid will be paid in Indian Rupee.

##### **47.3 Due Dates for Payment:**

Owner will make progressive payment as and when the payment is due as per the terms of payment set forth in the Contract. Payment other than that under the Letter of Credit will become due and payable by the Owner within 30 (thirty) days from the date of receipt of Contractor's bill / invoice / debit note by the Owner, provided the documents submitted are complete in all respects.

##### **47.4 Payment Schedule:**

The Contractor shall prepare and submit to the Consultant / Owner for approval, a break-up of the Contract Price. This Contract Price break-up shall be inter-linked with the agreed detailed PERT network of the Contractor setting forth his starting and completion dates for the various key phases of Works. Any payment under the Contract shall be made only after the Contractor's price break-up is approved by the Consultant. The aggregate sum of the Contractor's price break-up shall be equal to the total Contract Price.

##### **47.5 Application for Payments:**

47.5.1 The Contractor shall submit to the Owner separate applications for payments in different currencies whenever payment is to be made in more than one currency.

47.5.2 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

equipments 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.

47.5.3 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.

**47.6 Mode of Payment:**

47.6.1 In the case of Foreign Vendors the Owner will establish an irrevocable Letter of Credit in favor of the Contractor through the Owner's bank in India, valid for the completion period agreed to between the Contractor and the Owner. The payments, due on completion of various activities from CIF point (Indian Port of Entry) up to & including handing over the Plant / System to the Owner, shall be progressively paid direct to the Contractor by the Owner.

47.6.2 In the case of Indian Vendors, payment shall be made against submission of documents either directly to Owner or through Owner's bankers.

**47.7 Terms of Payment:**

47.7.1 The terms of payment for the price-components of the equipment and its erection are detailed herein for each equipment package. A certain percentage of the equipment and erection costs, for each package shall be paid as initial advance on fulfillment of the following, by the Contractor.

(i) For the price-component of equipment:

(a) Acceptance of Letter of Intent

(b) Submission of an unconditional Bank Guarantee covering the advance amount.

(ii) For the erection price - components

(a) On establishing his office at Site preparatory to mobilization of his erection establishment, and

(b) Submission of an unconditional Bank Guarantee for an equivalent amount.

47.7.2 All further payments under the Contract shall be made as stipulated in the technical specifications and after signing the Contract.

**47.7.3 Ocean Freight & Marine Insurance:**

In case of foreign Bidders, the Ocean Freight and Marine Insurance charges shall be paid on production of invoices, evidence of shipment and other supporting documents for Marine Insurance and Ocean Freight Price Components. In case of marine insurance, however, the total of all payments shall not exceed the total amount quoted by the Contractor in his bid for marine insurance.

#### **48.0 COMPLETENESS OF CONTRACT**

All equipment, mounting, fitting, accessories or apparatus which may not have been specifically mentioned, but which are usual or necessary in the equipment or for the efficient working of the plant shall be deemed to have been included in Contract and shall be provided by the Contractor without any extra charge. All plant and apparatus shall be complete in all details whether such details are mentioned in this Contract or not. The decision regarding the necessity or otherwise for any accessory for efficient operation of the plant shall be mutually arrived at by the Owner / Consultant and the Contractor. It shall be ensured that the equipment supplied in respect to each of equipment envisaged in Contract is complete and composite. In case of a joint bid which is ultimately split into two separate contracts, the completeness of the Contract shall imply that any one Contractor shall supply, after taking into account the supplies covered under the contract with the other Contractor, all the rest of the equipment and accessories required for satisfactory commissioning and efficient operation of the total system, whether specifically mentioned or not in the Contract.