**INSTRUCTIONS TO TENDERERS**

**1.0** **Earnest Money**

The Tenderer shall have to furnish Earnest Money for Rs. 62,000.00 (Rupees Sixty Two Thousand) only in the form of Bank Draft/Deposit at call from a nationalized bank pledged in favour of the Engineer-in-Chief, Power & Electricity Department in a separate cover super-scribing the Tender Specification, Number and Date of opening failing which the Tender will not be opened. Tribal Tenderers are allowed to submit Earnest Money for half the above amount. Manufacturers registered with NSIC, DGT&D and also SSI unit under Government of Mizoram is exempted for payment of Earnest Money provided Registration Certificate is enclosed.

**2.0** **Validity**

Tender should be kept valid for a period of 365(three hundred sixty five) Calendar days from the date of opening of Tenders. Validity less than 365 (three hundred sixty five) days will be liable for rejection.

**3.0** **Examination of the Documents**

The Tenderer shall examine General Conditions of Contract and Specifications to satisfy himself about all the Terms & Conditions and circumstances affecting the Contract Price. He shall quote price(s) according to his own views on these matters and understand that no additional allowances except as otherwise provided therein will be levied. The Purchaser shall not be responsible for any misunderstanding or incorrect information obtained by the Tenderer other than information given to the Tenderer in writing by the Purchaser. The Tenderer shall give his/her signature with seal in each and every page of the Tender Document as an indication of his/her acceptance of the Terms and Conditions of the Tender.

In the Tender, no overwriting is allowed. Dated initial should be given by the Tenderer to all corrections, if any, and the Seal stamped on each. Rates should be quoted both in figures and in words as far as practicable.

Non-Tribal Tenderers should submit the following alongwith their Tenders:

1) Authorised Dealer must submit an Authorised Dealership Certificate issued by Manufacturers.

1. ISI/BIS Certificate.
2. Documents showing past experience.

Tribal Tenderers should submit :

1) House Tax Payee Certificate

2) Authorised Dealer must submit an Authorised Dealership Certificate issued by Manufacturers.

3) ISI/BIS Certificate.

4) Documents showing past experience.

**4.0** **Patent Rights, etc**

The Tenderer shall indemnify the Purchaser against all Claims, Actions, Suits and Proceedings for the infringement or alleged infringement of any patent design or copy right protected either in the Country of origin or in India by the use of any equipment supplied by the Tenderer, but such indemnity shall not cover any use of equipment other than for the purpose indicated by or reasonably to be inferred from the specifications.

**5.0** **Reservation**

The Owner reserves the right to accept or reject, partly or wholly, or all the tenders without assigning any reason thereof. Further, the Owner is not bound to select the lowest Tenderer to execute the work. Tenderers who do not accept General Terms will be automatically rejected.

**6.0 Variations - Additions and Omission**

i) The Tenderer shall not modify the materials and equipment except directed in writing by the Purchaser.

ii) The Purchaser shall have the right to alter, amend, omit or otherwise vary the equipment by notice in writing to the Tenderer. The Tenderer shall carry out such variations except when said variations result on cost excess of 15% of the Contract Price, in which case the approval of the Purchaser shall be obtained. The amount of such variations shall be determined in accordance with the rate specified in the Contract so far as they may apply and where such rates are not available. These will be mutually agreed between the Purchaser and the Tenderer.

iii) If the Purchaser shall make variations in any part of the materials and equipment, a reasonable notice shall be given in writing to the Tenderer. In such cases where equipment has already been manufactured or is under manufacture, the Purchaser may consider payment of additional sum to the Tenderer. If in the opinion of the Tenderer such variation is likely to prevent or prejudice the Tenderer from fulfilling any of his obligations under the contract, he shall notify the Purchaser thereof in writing and the Purchaser shall decide whether or not the variation shall be carried out.

**GENERAL CONDITIONS OF CONTRACT**

**1.0 Scope of the Work**

The work is design, manufacture, test at works, supply, delivery at site, erection, testing at site and commissioning of the Electro-Mechanical equipments of 2x50kW, Tuiching Small Hydroelectric Project.

**1.1 Manner of Execution**

The Project will be executed on turnkey basis.

**2.0** **Definition of Terms**

The **'Contract'** means the Documents duly signed by both the Parties, forming formal Agreement executed between Power & Electricity Department, Govt. of Mizoram, Aizawl and the Tenderer.

**2.1** In the Contract, the following expressions shall, unless the context otherwise requires, have the meanings, hereby respectively assigned to them.

**2.2** **'Contract Price'** shall mean the total sum of financial involvement named in or calculated in accordance with the provisions of the Contract Price.

**2.3** **'Equipment/Materials'** shall mean and include all Machinery, Apparatus, Materials etc to be provided/supplied under the Contract by the Tenderer

**2.4** **'F.O.T Price'** shall mean the cost of equipment up to destinations as specified in the Contract. The cost should include all Taxes (Central, States etc) Duties, Freight, Insurance, any other Taxes and Charges up to destination.

**2.5** **'General Conditions'** shall mean these General Conditions of Contract.

**2.6** **'Month'** shall mean a Calendar Month.

**2.7** **'Owner'** means the Power & Electricity Department, Govt. of Mizoram, Aizawl.

**2.8** **'Project’** refers to that mentioned under the headings of the Tender Specifications.

**2.9** **'Purchaser'** shall mean the Engineer-in-Chief, Power & Electricity Department, Govt. of Mizoram, Aizawl.

**2.10** **'Purchaser's Representatives'** shall mean any Person or Consulting Firm appointed and remunerated by the Purchaser to Supervise, Inspect, Test and Examine Workmanship on the Survey, Supply and erection works.

**2.11** **'The Tenderer'** shall mean the Bidder whose Bid has been accepted by the Purchaser and shall include the Bidder's Executors, Administrators, Successors and permitted assigns approved by Engineer-in-Chief, Power & Electricity Department, Mizoram, Aizawl.

**2.12** **'The Engineer/Engineer in charge'** shall mean the Engineer appointed by the Purchaser/Owner for the purpose of this Contract.

**2.13** The **'Specification'** shall mean the specification annexed to or issued with the General Conditions and shall include the Schedules and Drawings attached thereto as well as samples and patterns, if any.

**2.14** The word **'Ton'** or **'Tonne'** used in these specifications shall mean Metric Ton, unless otherwise specified.

**2.15 ‘Plant’** is any integral part of the works, which has mechanical, electrical, electronic or chemical or biological functions.

**3.0** **Contract Documents**

The term **'Contract Documents'** shall mean the following documents which shall be deemed to form an integral part of this Contract.

i) Contract Agreement, Instructions to Bidders and General Conditions on contract.

ii) Tenderer's proposal including the letters or clarifications there to between the Tenderer and the Purchaser prior to award of Contract and

iii) Equipment Specifications and Drawings. In the event of any conflict between the above mentioned documents, the Contract Agreement shall prevail.

**3.1 'Works'** means the materials and equipments to be supplied and the work to be executed as defined and set out in the specifications and includes all extra Work, Additions, Deletions, Substitutions and Variations ordered by the Engineer in accordance with the provisions of the Contract.

**3.2 "Tenderer'** means the Person, Firm or Corporation tendering for the works and His/Its Executors or Administrators or Successors or Assigns.

**3.3** **'Site'** means the land on, under, in or through which the works are to be executed or carried out or such lands as may be agreed between the Owner and the Tenderer as being reasonable and necessary for the carrying out of the work.

**4.0** **'Sub Tenderers'** used here refer to a Party or Parties having a direct contract with the Tenderer and to whom any part of the Contract has been sublet by the Tenderer with the consent in writing of the Engineer-in-Chief.

**4.1** **'Labourer'** shall mean all categories of labour engaged by the Tenderer, his Sub-Tenderers and his piece workers for work in connection with the execution of the work covered by the specifications. All these labourers will be deemed to be employed primarily by the Tenderer.

**4.2 'Fiscal Year'** shall mean a year beginning on 1st April and ending on 31st March in the succeeding year.

**4.3** **'Security Deposit'** shall mean all deposits whether in Government Securities, Fixed Deposit Receipts or Bank Guarantees from Nationalized Banks of India, amounts deducted from interim payments or in any other form as specified by the Purchaser pledged to the Owner for due performance of the Contract and shall be adjusted in case of compensations or penalties and which may stand for future either in part or whole as the situation demands.

**5.0 Letter of Intent** means the letter from the Engineer-in-Chief conveying his intention to accept the Bid subject to reservations as may have been stated therein.

**6.0 Letter of Award/Instruction to Commence** means the letter from the Engineer-in-Chief notifying the formal acceptance of the Bid subject to the terms and conditions finally arrived at after conduction/negotiation (if any).

**6.0** The term **'Manufacturer'** used herein refers to the party proposing to design, fabricate and manufacture as specified complete or in part.

**6.1 'Authorised Representative'** of the Owner shall mean any Authorised Officer of the Owner from the level of Junior Engineer and above.

**SPECIAL CONDITIONS OF CONTRACT**

**1.0 Price**

Firm rates for materials should be quoted FOT Destination. Rate should be inclusive of all taxes, duties, insurance, freight, handling charges, etc. For erection, firm rates should be quoted inclusive of all taxes.

**2.0** **Terms of Payment**

**a) For Manufacture, Supply and Delivery of Plants and Equipments:**

i) 10% of the cost of manufacture, supply and delivery of Electro-Mechanical equipments shall be paid as advance on submission of B.G of equivalent amount.

ii) Balance 80% of each consignment/cognizable shall be paid on submission of the following documents through a schedule bank:

* Invoice showing Contract number, goods’ description, quantity, unit price and total amount etc.
* Railway receipt/L.R
* Inspection certificate

iii) Balance 10% of the cost of manufacture, supply and delivery of Electro-Mechanical equipments shall be paid after satisfactory commissioning of the units against submission of B.G of equivalent amount.

iv) For spare items, 100% of price inclusive of all taxes & duties shall be paid after delivery of materials at site in full and good conditions.

**b) For Erection, Testing and Commissioning of Plants and Equipments:**

i) 10% of the contract price of erection shall be paid as initial mobilization advance.

ii) 25% of the contract price of erection shall be paid after satisfactory placement of equipments in position.

iii) 40% of the contract price of erection shall be paid on the basis of R.A. Bills to be raised against final alignment/assembly.

iv) 15% of the contract price of erection shall be paid on mechanical/hydraulic testing of the equipments.

v) Balance 10% shall be paid only after successful commissioning of units against submission of B.G of equivalent amount.

**3.0 Target Date of Completion**

The work should be completed in all respect 8 months from the date of signing of Contract Agreement and shall be implemented strictly in time with the help of PERT and CPM, which the Tenderer should submit along with the tender documents.

**4.0 Extension of Time**

If the supply of equipment or erection work is delayed due to any reasons, the Tenderer shall without delay give notice to the Purchaser in writing of his claim for an extension of time within 30 days of Scheduled Date of Delivery/Completion. The Purchaser on receipt of such notice may agree to extend the Contract Completion Date as may be reasonable but with Liquidated Damages. However, in the case of Force Majeure or in any such cases beyond the control of the Tenderer and are accepted as such by the Purchaser, the Completion Date may be extended without Liquidated Damages.

**5.0 Defect Liability Period**

“Defect Liability Period” means 12 calendar months after taking over of the Project by the Owner.

The Contract shall not be considered completed until a Defects Liability Certificate shall have been signed by the Engineer-in-Charge and delivered to the Contractor stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects there in to the Engineer’s satisfaction. The Defects Liability Certificate shall be given by the Engineer within 28 days after the expiration of the Defects Liability Period, or, if different defects liability periods shall become applicable to different sections or parts of the Permanent Works, the expiration of the latest such period, or as soon thereafter as any works instructed, pursuant to relevant clauses of this Chapter have been completed to the satisfaction of the Engineer-in-Charge.

Notwithstanding the issue of the Defects Liability Certificate, the Tenderer and the Owner shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issue of the Defects Liability Certificate which remains unperformed at the time such Defect Liability Certificate is issued and for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties.

If it appears to the Engineer or his Representative at any time during construction or reconstructions or prior to the expiry of the Defects Liability Period, as specified or 12 (twelve) calendar months from the certified date of final completion of entire work covered under the Contract, that any work has been executed with unsound, imperfect, or unskilled workmanship or that any materials or articles provided by the Tenderer for execution of the work are unsound or of a quality inferior to that contracted for, or otherwise not in accordance with the Contract or that any defect, shrinkage or other faults in the work arising out of defective or improper materials or workmanship, the Tenderer shall upon receipt of a notice in writing on that behalf from the Engineer, forthwith rectify or remove or reconstruct the works so specified in whole or in part as the case may be and/or remove that material/articles so specified and provide other proper and suitable materials at his own expense.

If the power house has to be shut down due to reasons attributable to Tenderer before the end of Defect Liability Period, the Tenderer has to compensate the Owner by giving the cost of deemed generation for the duration of power house shut down at the generation cost to be fixed by the appropriate authority.

**6.0 Completion of the work**

The work shall be completed to the entire satisfaction of the Engineer and in accordance with the time mentioned in the Contract. As soon as the work under the Contract is substantially completed as a whole, the Tenderer shall give notice of such substantial completion to the Engineer along with an understanding to complete any outstanding work during the Defects Liability Period. The Engineer, within 30 days or receipt of such notice, shall inspect the work and shall satisfy himself that the Work(s) has been substantially completed in accordance with the provisions of the Contract and then issue to the Contractor a Certificate of Completion indicating the date of completion. Should the Engineer notice that there are defects in the works or the works are not considered to be substantially completed, he shall issue a notice in writing to the Tenderer to rectify/replace the defective work or any part there of or complete the work, as the case may be, within such time as may be notified and after the Tenderer has complied with as aforesaid and gives notice of completion, the Engineer shall inspect the work and issue the Completion Certificate in the same manner as the aforesaid.

No Certificate of Completion shall be issued and no work shall be considered to be completed unless the Tenderer shall have removed from the work site and/or premises all his belongings/temporary arrangements made/brought by him for the purpose of execution of the work and cleared the site and/or premises in all respects and made the whole of the site and/or premises fit for immediate occupation/use to the satisfaction of the Engineer. If the Tenderer fails to comply with the above mentioned requirements on or before the date of completion of the work, the Engineer may, as he thinks fit, at the risk and cost of the Tenderer, fulfill such requirements and remove/dispose off the Tenderer’s belongings/temporary arrangements as aforesaid and the Tenderer shall have no claim in this respect except for any sum realized by the sale of the Tenderer’s belongings/temporary arrangements, less the cost of fulfilling the said requirements and any other amount that may be due from the Tenderer, should the expenditure on the aforesaid account exceed the amount by sale of such Tenderer’s belongings/ temporary arrangements then the Tenderer shall, on the demand of the Engineer, pay the amount of such excess expenditure.

**7.0 Taking over**

i) The work shall be taken over from the Tenderer by the Owner after he successfully commissioned the Project and after running with overload equivalent to full load of each unit for 700hrs to the satisfaction of the Owner’s Engineer.

(ii) The issuance of a Taking over Certificate shall in no way relieve the Tenderer of his responsibility for the satisfactory operation of the equipment in terms of the specifications.

**8.0** **Insurance of Equipment**

The materials and equipment shall be fully insured by the Tenderer against damage, lost, pilferage etc in transit. Insurance Document should be sent along with evidence of dispatch.

**9.0** **Replacement**

If the materials/equipments or any portion thereof is damaged or lost before taking over of the work by the Owner, the replacement of such materials/equipment shall be effected by the Tenderer within a specified time to avoid unnecessary delay in the commissioning of the materials and equipment. The replacement of materials/equipment damaged shall be made free of cost by the Tenderer.

**10.0 Rejection**

In the event that any portion of the works carried out by the Tenderer is found below standard or otherwise not in conformity with the requirements of the Contract Specifications, the Purchaser shall request the Tenderer in writing to rectify the same. The Tenderer on receipt of such notification shall rectify the work free of cost to the Purchaser. If the Tenderer fails to do so, the Purchaser may:

a) at its option replace or rectify such defective work and recover the extra cost so involved from the Tenderer plus 15% of the defective work.

b) terminate the Contract.

**11.0** **Inspection & Testing During Manufacture**

i) The Purchaser's representative shall be entitled at all reasonable times during manufacture to inspect, examine and test on the Tenderer's premises the material, manpower and workmanship of all equipment to be supplied under this Contract by the Tenderer and if part of the said equipment is being manufactured on other premise, the Tenderer shall obtain for the Purchaser's representative permission to, inspect, examine, and test as if the equipment were being manufactured on the Tenderer's premises. Such inspection, examination and testing shall not release the Tenderer from his obligations under this Contract.

ii) The Tenderer shall give the Purchaser's Representative thirty (30) days notice in writing of the date and the place at which the materials and equipment will be ready for testing.

iii) Inspection and Testing will be at the cost of Tenderer including providing assistance for labour, materials, electricity, fuel and instrument as may be required or as may be reasonably demanded by the Purchaser's Representative to carry out such tests efficiently.

iv) When the equipment has passed the specified tests, the Purchaser's Representative shall furnish a Certificate to his effect in writing to the Tenderer. The Tenderer shall provide reasonable copies of the Test Certificates to the Purchaser.

**12.0** **Guarantee**

The Tenderer shall provide cover of Guarantee to the materials and equipment supplied for a period of 12 (twelve) months from the date of commissioning of the materials/equipments. During the period of Guarantee the Tenderer shall remedy, at his expense, all defects in design, materials and workmanship that may develop under normal use of the materials and equipment upon written notice from the Purchaser who shall indicate in what respect the equipment is fault. The provision of this Clause including the cost of transport shall be implemented within the period specified by the Purchaser at the Tenderer's expense.

**13.0** **Force Majeure**

The term **'Force Majeure'** shall herein mean Riots (other than among the Tenderer’s Employees), Civil Commotion (to the extent not Insurable), War (whether declared or not), Invasion, Act of Foreign Enemies, Hostilities, Civil War, Rebellion, Revolution, Insurrection, Military or Usurped Power, Damage from Aircraft, Nuclear Fission, such as Earthquake (above 7 Magnitude on Richter Scale), Lightning, Unprecedented Floods, Fires not caused by Tenderer's negligence and other such causes over which the Tenderer has no control and are accepted as such by the Purchaser, whose decision shall be final and binding.

In the event of either party being rendered unable by Force Majeure to perform any obligation required to be performed by them under this Contract, the relative obligation of the Party effected by such Force majeure shall be treated as suspended for the period during which such Force Majeure cause lasts, provided the Party alleging that it has been rendered unable as aforesaid, thereby shall notify within 10 days of the alleged beginning and ending thereof giving full particulars and satisfactory evidence in support of such cause. The Purchaser shall verify the facts and grant such extension or as the case may be as fact justify.

**14.0 Payment due from the Tenderer**

All cost and damages for which the Tenderer is liable to the Purchaser including a recovery of advance will be deducted by the Purchaser from any money due to the Tenderer under the Contract.

If for any unavoidable reasons, payment is delayed, the Tenderer shall neither charge any interest for the delay in payment nor the Tenderer shall stop the contract work on account of this.

**15.0 Performance Bond or Bank Guarantee for Security**

At the time of signing the Contract, the Tenderer shall provide the Purchaser with Security Deposit for a Performance Bond or a Performance Bank Guarantee for an amount of 10% (ten percent) of the total Contract Price. This Bond or Guarantee will be released at the end of the Guarantee Period and on written request by the Tenderer. Form of Bank Guarantee attached.

**16.0** **Delay in Completion**

If the Tenderer shall fail to complete the work within the time specified in the Contract Agreement or extension of time without Liquidated Damage, the Purchaser shall recover from the Tenderer as liquidated damages a sum of one half of one percent (0.5 %) of the Balance Contract Value, for each Month (30 days) of delay from the expiry of Scheduled Date of Completion. The total Liquidated Damages shall not exceed 10% (ten percent) of the Contract Price.

**17.0** **Tenderer's Default & Liability**

i) The Purchaser may upon written notice of default to the Tenderer terminate the Contract in circumstances detailed here under:

a) If in the judgement of the Purchaser, the Tenderer fails to complete the work within the time specified in the contract agreement or within the period for which extension has been granted by the Purchaser to the Tenderer.

b) If in the judgement of the Purchaser, the Tenderer fails to comply with any of the other provisions of the Contract.

ii) In the event the Purchaser terminates the Contract in whole or in parts as provided in Clause 18.0, the Purchaser reserves the right to purchase upon such terms and in such a manner as he may deem appropriate, materials and equipment similar to that terminated and the Tenderer will be liable to the Purchaser for any additional costs for delay as defined in Clause 16.0 of the General Conditions until such reasonable time as may be required for the final supply of equipment.

iii) If the Contract is terminated as provided in Clause 18.0 the Purchaser in addition to any other rights provided in this Article may require the Tenderer to transfer title and deliver to the Purchaser under any of the following cases in the manner and as directed by the Purchaser:

a) Any completed materials and equipment

b) Such partially completed materials and equipment, Drawings, Information and Contract Rights {hereinafter called Manufacturing Material} as the Tenderer has specifically produced or acquired for the performance of the contract as terminated. The purchaser shall pay to the Tenderer the Contract Price for completed materials and equipment delivered to and accepted by the Purchaser and for manufacturing material delivered and accepted.

iv) In the event the Purchaser does not terminate the Contract as provided in Clause 16.0 the Tenderer shall continue the performance of the Contract, in which case he shall be liable to the Purchaser for liquidated damages for delay as set out in Clause 14.0 until the equipment is accepted.

**18.0** **Termination of the Contract**

i) If the Tenderer finds it impracticable to continue operation or if owing to Force Majeure reasons or to any cause beyond his control, the Purchaser finds it impossible to continue operation then prompt notification in writing shall be given by the party affected to the other.

ii) If the delay or difficulties so caused cannot be expected to cease or become avoidable or if in operations cannot be resumed within 6(six) months then either parties shall have the rights to terminate the Contract upon 10(ten) days written notice to the other. In the event of such termination of the Contract, payment to the Tenderer will be made as follows :

a) The Tenderer shall be paid for all materials and equipment approved by the Purchaser's representative and for any other legitimate expenses due to him.

b) If the Purchaser Terminates the Contract owing to Force Majeure or due to any cause beyond his control, the Tenderer shall additionally be paid for any work done during the said 6 (six) months period including any financial commitment made for the proper performance of the Contract and which are not reasonably defrayed by payments under (a) above.

c) The Purchaser shall also release all Bond and Guarantees at its disposal except in cases where the total amount for payment made to the Tenderer exceeds the final amount due to him in which case the Tenderer shall refund the excess amount within 60(sixty ) days after termination and the Purchaser thereafter shall release all Bonds and Guarantees. Should the Tenderer fail to refund the amounts received in excess within the said period, such amounts shall be deducted from the Bonds or Guarantee provided.

iii) On Termination of the Contract for any cause the Tenderer shall see to the orderly suspension and termination of operations, with due consideration to the interest of the Purchaser with respect to completion, safeguarding or storing of equipment produced for the performance of the contract and the salvage and resale thereof.

**19.0** **The Engineer shall, on such Termination of the Contract, have Powers**

i) To take possession of the site of Work under the Contract as well as the Land/Premises allotted to the Tenderer for his preliminary, enabling and Works and

ii) To take possession of any Materials, Constructional Plant, Equipment, Implements, Stores, Structures etc thereon.

The Engineer shall also have powers to carry out the incomplete Work by any means or through any other Agency or by himself at the risk and cost of the Tenderer. In such a case, the value of the Work done through such agencies shall be credited to the Tenderer at his Contract prices and the Tenderer shall pay the excess amount, if any incurred in completing the Work as aforesaid as stipulated herein.

**20.0** On termination of the Contract in full or in part, the Engineer may direct that a part or whole of such Plant, Equipment and Materials, Structures be removed from the site of the Work as well as from the land/premises allotted to the Tenderer for his preliminary, enabling and ancillary Works, within a stipulated period. If the Tenderer shall fail to do so within the period specified in a notice in writing by the Engineer, the Engineer may cause them to be sold, the net proceeds of such sale to the credit of which shall be released after completion of Works and settlement of amounts under the Contract.

**21.0** If the expenses incurred or to be incurred by the Department for carrying out and completing the incomplete Work or part of the same, as certified by the Engineer, are in excess of the value of the Work credited/to be credited to the Tenderer, the difference shall be paid by the Tenderer to the Department. If the Tenderer fails to pay such an amount, as aforesaid, within thirty days of receipt of notice in writing from the Engineer, the Engineer shall be empowered to recover such amount from any sums due to the Tenderer on any account under this or any other Contract or from his Security Deposit or otherwise.

**22.0** Also, the Engineer shall have the right to sale any or all of the Tenderer's unused materials, constructional plant, equipment, implements, temporary building/structures etc. and apply the proceeds of sale thereof towards the satisfaction of any sums due from the Tenderer under the Contract and if thereafter there maybe any balance outstanding from the Tenderer, the Engineer shall have powers to recover the same in accordance with the provisions of the Contract.

**23.0** All decisions/actions of the Engineer under this clause as aforesaid shall be conclusive and binding on the Tenderer.

**24.0 Bankruptcy**

If the Tenderer shall become Bankrupt or have a receiving order made against him or compound with his Creditors, or being a Corporation commence to be wound up, not being a voluntary winding up for the purpose only of amalgamation or reconstruction, or carry on its business under a receiver for the benefit of its Creditors or any of them the Purchaser shall be at liberty:-

a) to Terminate the Contract forthwith by notice in writing to the Tenderer or to be liquidator or receiver or to any person in whom the Contract may become vested and to act in the manner provided in the previous clauses, as though the last mentioned notice has been the notice referred to in such Article and the materials and equipment has been taken out of the Tenderer's hand.

b) to give such liquidator, receiver, or other person the option of carrying out the contract subject to his providing a guarantee for the due and faithful performance of the contract upto an amount to be determined by the Purchaser.

**25.0** **Contingent Fees**

The Tenderer warrants that he has not employed any person to solicit or secure the contract upon any agreement for a Commission, Percentage, Brokerage or Contingent Fee, broach of this warranty shall give the Purchaser the right to cancel the Contract or to take any other measure as the Purchaser may deem fit. The warranty does not apply to commissions payable by the Tenderer to Established/Commercial or Selling Agent for the purpose of securing business.

**26.0** **Non-Assignment**

The Tenderer shall not assign or transfer the contract or any part thereof without the prior approval of the Purchaser.

**27.0** **Certificate not to Affect Rights of the Purchaser of the Tenderer**

The issuance of any certificate by the Purchaser or any extension of time granted by the Purchaser shall not prejudice the rights of the Purchaser in terms of the contract nor will this relieve the Tenderer of his obligations for due performance of the Contract.

**28.0 Settlement of disputes**

i) Except as otherwise specifically provided in the Contract, all disputes concerning question of fact arising under the Contract shall be decided by the Purchaser subject to a written appeal by the Tenderer to the Purchaser, these decisions shall be final to the Parties hereto.

ii) Any disputes or differences including those considered as such by only one of the Parties arising out of or in connection with this Contract shall be to the extent possible settled amicably between the Parties. If amicable settlement cannot be reached then all disputes issues shall be settled by Arbitration.

**29.0 Arbitration**

i) If at any time, any question, disputes or difference whatsoever shall arise between the Tenderer and the Purchaser upon or in relation to or in connection with this Contract, either of the Parties may give to the other notice in writing of the existence of such a question dispute or difference and the same shall be referred to two Arbitrators, one to be nominated by the Purchaser and the other to be nominated by the Tenderer or in case of such arbitration not agreeing, then to an Umpire to be appointed by the Arbitrator in writing, before proceeding with the reference and the decision of the Arbitrator or in the event of their not agreeing of the Umpire appointed by them, shall be final and binding on the Parties and the provision of the Indian Arbitration and Conciliation Act, 1996 and of the Rules there under and any statutory modifications thereof shall be deemed to apply and be incorporated in this Contract. Such a notice of the existence of any question, dispute or difference in connection with this contract shall be served by either party within 90 days of the issue of the Taking Over Certificate by the Purchaser, failing which all rights and claims under this Contract shall be deemed to have been forfeited and absolutely barred.

ii) Upon every or any such reference, the cost of and incidental to the reference and award respectively, shall be at discretion of the Arbitrators or in the event of their not agreeing of the Umpire appointed by them who, may determine the amount thereof or direct the same to be fixed as between solicitor and client, or as between Party, and Party shall direct by whom and to whom and in what manner the same shall be borne and paid.

iii) The work under this Contract shall, if reasonably possible, continue during arbitration proceedings, and no payments due from or payable by the Purchaser shall be withheld on account of such proceedings except to the extent which may be in dispute.

**30.0 Jurisdiction**

No legal proceedings shall be taken to enforce any claim and no suit rising out of any conflict shall be instituted except in a court of competent jurisdiction located within **MIZORAM**.

**31.0** **Language and Measure**

All Documents pertaining to the Contract including Specifications, Schedule, Notice, Correspondence, Operating and Maintenance Instructions, Drawings, or any other writings shall be in English Language. The Metric System of measurement shall be used exclusively in this Contract.

**32.0** **Correspondence**

i) Any notice to the Tenderer under terms of the Contract shall be served by registered mail or by hand at the Tenderer's principal place of business.

ii) Any notice to the Purchaser shall be served at the Purchaser's Principal office in the same manner.

**33.0 Consignee and Paying Authority**

|  |  |  |
| --- | --- | --- |
| **Name of Work** | **Paying Authority** | **Consignee** |
| Design, manufacture, test at works, supply, delivery at site, erection, testing at site and commissioning of the Electro-Mechanical equipments 2x50kW, Tuiching Small Hydroelectric Project. | TBA | TBA |

**34.0 Legal Addresses of the Parties**

The addresses of the Parties to the Contract are as follows :

**Purchaser :** The Engineer-in-Chief,

Power & Electricity Department

Govt. of Mizoram, Aizawl.

**Tenderer :** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Bank Guarantee for Advance Payment**

We .................................................................. (hereinafter called as 'Bank') do hereby agree to pay on demand in writing from ...................................................................... (hereinafter called 'the Owner') of any amount upto and not exceeding Rs. .................................................. (Rupees ..................................................................................................................) only to the owner on behalf of M/s ................................................................................. (hereinafter called the 'Tenderer') who received an order for ............................................................................................ against tender No. ................................................... dated ............................ (hereinafter called as the 'contract') and whereas the contract provides for payment as advance at the rate of 15% value of the contract by the owner to the Tenderer against this undertaking.

Whereas this guarantee shall be valid and binding on the Bank upto and including ............................................................................................................................. and the liability against this guarantee from Bank to the owner shall be limited to the amount remaining outstanding out of 10% advance payment after progressive adjustment of the same in the normal bills for progressive work by the Tenderer.

The liability of the Bank under this guarantee shall not be impaired or discharged by any extension of time or variations or alternations made, given, conceded to agree with or without the knowledge of the Bank by or between the owner and the Tenderer.

This guarantee shall remain in full force until …………………………….. and unless a suit or action to enforce a claim under the guarantee is filed against the Bank within 6 months from that date (ie. ………………………), all the rights of the owner under this guarantee shall be forfeited and the Bank shall be relieved and discharged from all liability thereon.

Dated this ........................... day of ........................... 20....

For and on behalf of the Bank

The above guarantee is accepted by me on behalf of P&E Department,

Govt. of Mizoram, Aizawl.

Engineer-in-Chief (P&E)

Mizoram : Aizawl

**Form of Bank Guarantee**

(In lieu of Contract/Performance Guarantee Form)

To,

The Engineer-in-Chief,

Power & Electricity Deptt.,

Govt. of Mizoram, Aizawl.

In consideration of the Engineer-in-Chief, Power & Electricity Deptt., Govt. of Mizoram, Aizawl (Hereinafter called 'the Purchaser', the expression of which shall, unless repugnant to the subject or context, include his successors and assigns) having agreed under the terms and conditions of order No................................................................ Dated ............................. made between Power & Electricity Deptt., Government of Mizoram, and M/s .................................................... (hereinafter called 'the said contract') to accept a Deed of Guarantee as herein provided for Rs. ........................ (Rupees ................................................................) only from a Nationalised or Scheduled Bank in lieu of the Contract Performance Guarantee to be made by the Tenderer or in lieu the deduction to be made from the Tenderer's bills, for the due fulfilment, by the said Tenderer, of the terms and conditions contained in the said contract No.................................................... we, the ............................................... Bank and having its registered office at ....................................................... (hereinafter referred to as 'the said Bank') do hereby undertake and agree to indemnify and keep indemnified the Power & Electricity Deptt., Govt. of Mizoram from time to time to the extent of Rs. ................................... (Rupees .................................................................................................................) only i.e. 10% of the total contract value against any loss or damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by the Power & Electricity Deptt., Govt. of Mizoram by reason of any breach or breaches by the said Tenderer of any of the terms and conditions contained in Clause 5.0 of the said contract and to unconditionally pay the amount claimed by the Purchaser on demand and without demur to the extent aforesaid.

2. We ...................................... Bank further agrees that the Purchaser shall be the sole judge of and as to whether the said Tenderer has committed any breach or breaches of any of the terms and conditions of the said contract and the extent of loss, damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by the Power & Electricity Deptt., Govt. of Mizoram on account thereof and the decision of the Purchaser that the said Tenderer has committed such breach of breaches and as to the amount or amount of loss, damage, cost, charges and expenses caused to or suffered by or that may be caused to or suffered by the Power & Electricity Deptt., Govt. of Mizoram from time to time shall be final and binding on us.

3. We, the said Bank, further agrees that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said contract and till all the dues of the Purchaser under the said contract or by virtue of any of the terms and conditions governing the said contract have been fully paid and its claim satisfied or discharged and till the Purchaser certifies in writing that the terms and conditions of the said contract and accordingly discharges this Guarantee subject, however, that the Purchaser shall have no claim under this Guarantee after the expiry of the equipment Guarantee period of 12 calendar months as provided in Clause ‘**Guarantee**’ of the said contract or from the date of cancellation of the said contract, as the case may be, unless a notice of the claim under this Guarantee has been served on the Bank before the expiry of the said equipment Guarantee period.

4. The Purchaser shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee or Indemnity, from time to time to vary any of the terms and conditions of the said contract or to extent time of performance by the said Tenderer to postpone from any time and from time to time any of the powers exercisable by it against the said Tenderer and either to enforce or for bear from enforcing any of the terms and conditions governing the said contract or securities available to the Purchaser and the said Bank shall not be released from its liability under these presents by any exercise by the Purchaser of the liberty with reference to the matters aforesaid or by reasons of time being given to the said Tenderer or any other forbearance, act or omission on the part of the Purchaser or any indulgence by the Purchaser to the said Tenderer or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of so releasing the Bank from its such liability.

5. It shall not be necessary for the Purchaser to proceed against the Tenderer before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank notwithstanding any security which the Purchaser may have obtained or obtain from the Tenderer shall at the time when proceedings are taken against the Bank hereunder be outstanding or unrealised.

6. We the Bank lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Purchaser in writing and agree that any change in the Constitution of the said Tenderer or the said Bank shall not discharge our liability hereunder.

Dated this................................... day of 201....

For and on behalf of the Bank

The above Guarantee is accepted by me on behalf of P&E Department,

Govt. of Mizoram, Aizawl

Engineer-in-Chief (P&E)

Mizoram : Aizawl