

SECTION: 1
GENERAL CONDITIONS OF CONTRACT

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GENERAL TERMS & CONDITIONS OF CONTRACT

A. INTRODUCTION

1.0 APPLICATION

These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the contract.

2.0 STANDARDS

The Goods supplied under this contract shall conform to the standards mentioned in the Various Technical Specifications and when no applicable standard is mentioned; to the authoritative standard appropriate to the Goods and such standards shall be the latest issued by the concerned institution.

3.0 LANGUAGE AND MEASURES

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

4.0 CONTRACT DOCUMENTS

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

- a) General terms and conditions of contract, erection conditions of contract and all other documents included under and the special conditions of contract and various other sections.
- b) Specifications of the equipment to be furnished and erected under the contract as brought out in the accompanying technical specification.
- c) All the materials, literature, data and information of any sort given by the contractor subject to the approval of the owner/ consultant.
- d) Letter of award and any agreed variations of the conditions of the documents and special terms and conditions of contract if any.

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

5.0 USE THE CONTRACT DOCUMENTS AND INFORMATION

5.1 The contractor shall not, without the owner’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the owner in connection therewith, to any person other than a person employed by the contractor in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The contractor shall not, without the owner’s prior written consent, make use of any document or information enumerated in various contract documents except for purpose of performing the contract.

5.3 The contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of the works under this contract, or descriptions of the

site, dimensions, quantity, quality, or other information, concerning the works unless prior written permission has been obtained from the owner.

- 5.4 Any document, other than the contract itself, enumerated in various contract documents shall remain the property of the owner and shall be returned (in all copies) to the owner on completion of the contractor's performance under the contract, if so required by the owner.

6.0 MANNER OF EXECUTION OF CONTRACT

- 6.1 The owner, after the issue of the letter of award to the contractor, will send one copy of the final agreement to the contractor for his scrutiny and approval.
- 6.2 The Contract Agreement, unless otherwise agreed to, shall be signed within 60 days of the acknowledgement of the letter of award, at the office of the owner in respective Circle on a date and time to be mutually agreed. The contractor shall provide for signing of the contract, performance guarantee in **3 (Three) copies**, appropriate power of attorney and other requisite materials. In case the contract is to be signed beyond the stipulated time, the guarantee made by the Contractor will have to be extended accordingly.
- 6.3 The agreement will be signed on Non Judicial Stamp Paper (NJS) and in 5 (Five) original copies and the contractor shall be provided with one signed original and the rest will be retained by the owner.
- 6.4 The owner shall provide basic scheme giving single line diagram, location of poles (existing & new) and the contractor shall provide free of cost to the owner all the basic drawings and descriptive materials for approval of the Superintending Engineer, P&E, Lunglei Power Circle in at least six (6) copies to form a part of the contract.

7.0 ENFORCEMENT OF TERMS

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

B. GUARANTEE & LIABILITIES

8.0 TIME – THE ESSENCE OF CONTRACT

- 8.1 The time and the date of completion of the contract as stipulated in the contract by the owner without or with modifications, if any, and so incorporated in the letter of award, shall be deemed to be the essence of the contract. The contractor shall so organize his resources and perform his work as to complete it not later than the date agreed to.
- 8.2 The contractor shall submit a detailed PERT Network/Bar Chart within the time frame agreed consisting of adequate number of activities covering various key phases of the work such as design, procurement, manufacturing, shipment and field erection activities within thirty (30) days of 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. The contractor shall discuss the Network so submitted with the owner and the agreed Network shall form part of the contract documents. As provided in the clause of terms of payment in this section, finalization of the Network/Bar Charts will be pre-conditions to release of any initial advance to the contractor. During the performance of the contract, if in the opinion of the Engineer, proper progress is not maintained, suitable changes shall be made in the contractor's operations to ensure proper progress without any cost implication to the owner. The interface facilities to be provided by the owner in accordance with the agreed Network shall also be reviewed while reviewing the progress of the contractor.

- 8.3 Based on the agreed PERT Network/Bar Chart monthly reports shall be submitted by the contractor as directed by the Engineer.
- 8.4 Subsequent to the finalization of the PERT Network/BAR Chart, the contractor shall make available to the Engineer a detailed manufacturing programme in line with the agreed contract Network. Such manufacturing programme shall be reviewed, updated and submitted to the Engineer once in every two months thereafter.
- 8.5 The above PERT Network/Bar Charts/Manufacturing programme shall be compatible with the owner's computer environment and furnished to the owner on such media as may be desired by the owner.

9.0 EFFECTIVENESS OF CONTRACT

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

10.0 LIQUIDATED DAMAGES

10.1 For Equipment Portion (Excluding Spares)

- 10.1.1 If the contractor fails to successfully complete the commissioning within the scheduled time fixed under the contract, the contractor shall pay to the owner as liquidated damages and not as penalty, a sum specified for each specified period of delays. The details of such liquidated damages are brought out in the accompanying Special Conditions of Contract (SCC).
- 10.1.2 Equipment and materials will be deemed to have been delivered only when all its components, parts are also delivered. If certain components are not delivered in time, the equipment and materials will be considered as delayed until such time the missing parts are also delivered.

11.0 GUARANTEE

- 11.1 The contractor shall warrant that the equipment will be new, unused and in accordance with the contract documents and free from defects in material and workmanship for a period of twelve (12) calendar months commencing immediately upon the satisfactory commissioning. The contractor's liability shall be limited to the replacement of any defective parts in the equipment of his own manufacture or those of his sub-contractors under normal use and arising solely from faulty design, materials and/or workmanship provided always that such defective parts are repairable at the site and are not in meantime essential in the commercial use of the equipment. Such replaced/defective parts shall be returned to the contractor unless otherwise arranged. No repairs or replacement shall normally be carried out by the Engineer when the equipment is under the supervision of the contractor's supervisory Engineer.
- 11.2 In the event of any emergency, where in the judgment of the engineer, delay would cause serious loss or damages, repairs or adjustment may be made by the engineer or a third party chosen by the engineer without advance notice to the contractor and the cost of such work shall be paid by the contractor. In the event such action is taken by the engineer, the contractor will be notified promptly and he shall assist wherever possible in making necessary corrections. This shall not relieve the contractor of his liabilities under the terms and conditions of the contract.
- 11.3 If it becomes necessary for the contractor to replace or renew any defective portions of the works, the provision of this clause shall apply to portion of the works so replaced or renewed until the expiry of twelve (12) months from the date of such replacement or renewal. If any defects are not remedied within a reasonable time, the engineer may proceed to do the work at the contractor's risk and cost, but without prejudice to any other rights, which the owner may have against the contractor in respect of such defects.

- 11.4 The repaired or new parts will be furnished and erected free of cost by the contractor. If any repair is carried out on his behalf at the site, the contractor shall bear the cost of such repairs.
- 11.5 The cost of any special or general overhaul rendered necessary during the maintenance period due to defects in the equipment or defective work carried out by the contractor, the same shall be borne by the contractor.
- 11.6 The acceptance of the equipment by the engineer shall in no way relieve the contractor of his obligation under this clause.
- 11.7 In the case of those defective parts, which are not repairable at site but are essential for the commercial operation of the equipment, the contractor and the engineer shall mutually agree to a programme of replacement or renewal, which will minimize interruption to the maximum extent in the operation of the equipment.
- 11.8 At the end of the guarantee period, the contractor's liability ceases except for latent defects. For latent defects, the contractor's liability as mentioned in clause nos. 11.1 through 11.7 above, shall remain till the end of 5 years from the date of completion of guarantee period.
- 11.9 The provisions contained in this clause will not be applicable:
- a) If the owner has not used the equipment according to generally approved industrial practice and in accordance with the conditions of operations specified and in accordance with operating manuals, if any.
 - b) In cases of normal wear and tear of the parts to be specifically mentioned by the contractor in the offer.

12.0 TAXES, PERMITS & LICENCES

The contractor shall be responsible for payment of all taxes and duties up to destination.

13.0 PATENT RIGHTS AND ROYALTIES

Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes used in the works shall be deemed to have been included in the contract price. The contractor shall satisfy all demands that may be made at any time for such royalties or fees and he alone shall be liable for any damages or claims for patent infringements and shall keep the owner indemnified in that regard. The contractor shall, at his own cost and expense, 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 award. In the event of any suit or other proceedings instituted against the owner, the same shall be defended at the cost and expense of the contractor who shall also satisfy/comply with any decree, order or award made against the owner. But it shall be understood that no such machine, plant, work, material or thing have 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 the use of said apparatus, equipment or part thereof, replace it with non-infringing apparatus or equipment or modify it, so it becomes non-infringing.

14.0 DEFENCE OF SUITS

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

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

15.0 LIMITATION OF LIABILITIES

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

16.0 ENGINEER'S DECISION

16.1 In respect of all matters which are left to the decision of the engineer including the granting or withholding of the certificates, the engineer shall, if required to do so by the contractor, give in writing a decision thereon.

16.2 If, in the opinion of the contractor, a decision made by the engineer is not in accordance with the meaning and intent of the contract, the contractor may file with the engineer, within fifteen (15) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the engineer's decision and the decision shall become final and binding.

16.3 The Engineer's decision and the filing of the written objection thereto shall be a condition precedent to the right to request arbitration. It is the intent of the agreement that there shall be no delay in the execution of the works and the decision of the engineer as rendered shall be promptly observed.

17.0 POWER TO VARY OR OMIT WORK

17.1 No alteration, amendments, omissions, suspensions or variations of the works (hereinafter referred to as 'variation') under the contract as detailed in the contract document, shall be made by the contractor except as directed in writing by the Engineer, but the Engineer shall have full powers subject to the provisions 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 should carry out such variation and be bound by the same conditions as far as applicable as though the said variations occurred in the contract documents. If any suggested variations would, in the opinion of the contractor, if carried out, prevent him from fulfilling any of his obligations or guarantees under the contract, he shall notify the engineer thereof in writing and the engineer shall decide forthwith whether or not, the same shall be carried out and if the engineer confirm his instructions, the contractor's obligations and guarantees shall be modified to such an extent as may be mutually agreed. Any agreed difference in cost occasioned by any such variation shall be added to or deducted from the contract price as the case may be.

17.2 In the event of engineer requiring any variation, a reasonable and proper notice shall be given to the contractor to enable him to work his arrangement accordingly, and in cases where goods or materials are already prepared or any design, drawings or pattern made or work done requires to be altered, a reasonable and agreed sum in respect thereof shall be paid to the contractor.

17.3 In any case in which the contractor has received instructions from the engineer as to the requirement of carrying out the alterations or additional or substituted work which either then or later on, will in the opinion of the contractor, involve a claim for additional payment, the contractor shall immediately and in no case later than thirty (30) days, after receipt of the instructions aforesaid and before carrying out the instructions, advice the engineer to that effect. But the engineer 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 shall be confirmed in writing by the engineer.

17.4 In all the above cases, in the event of a disagreement as to the reasonableness of the said sum, the decision of the Engineer shall prevail.

17.5 Notwithstanding anything stated above in this clause, the Engineer shall have the full power to instruct the contractor, in writing, during the execution of the contract to vary the quantities of the items or groups of items in accordance with the provisions of clause entitled 'change of Quantity' in clause 19.0 of this section. The contractor shall carry out such variations and be bound by the same conditions as though the said variations occurred in the contract documents. However, the contract price shall be adjusted at the rates and the prices provided for the original quantities in the contract.

18.0 ASSIGNMENT AND SUB-LETTING OF CONTRACT

18.1 The contractor may after informing the Engineer and getting his written approval, assign or sublet the Contract or any part thereof other than for raw material, for minor details or for any part of the plant for which makes are identified in the Contract. Suppliers of the equipment not identified in the Contract or any change in the identified suppliers shall be subjected to approval by the Engineer. The experience list of equipment vendors under consideration by the Contractor for this Contract shall be furnished to the Engineer for approval, prior to procurement of all such items / equipment. Such assignment / sub-letting shall not relieve the Contractor of any obligation, duty or responsibility under the Contract. Any assignment as above, without prior written approval of Engineer, shall be void.

18.2 For components / equipment procured by the Contractor for the purposes of the Contract, after obtaining the written approval of the Owner, the Contractor's purchase specifications and enquiries shall call for quality plan to be submitted by the suppliers along with their proposals. The quality plans called for from the Vendors shall set out, during the various stages of manufacture and installation, the quality practices and procedures followed by the Vendors quality control organization, the relevant reference document / standard used, acceptance level, inspection documentation raised, etc. Such quality plans of the successful vendors shall be discussed and finalized in consultation with the Engineer and shall form a part of the purchase order / contract between the Contractor and the Vendor. Within three weeks of the release of the purchase orders / contracts for such bought out items / components, a copy of the same without price details but together with detailed purchase specifications, quality plans and delivery conditions shall be furnished to the Engineer by the Contractor.

19.0 CHANGE OF QUANTITY

19.1 During the execution of the contract, the Owner reserves the right to increase or decrease the quantities of items under the Contract but without any change in unit price or other terms and conditions. Such variations unless otherwise specified in the accompanying Special Conditions of Contract and / or Technical Specification, shall not be subjected to any limitation for the individual items but the total variations in all such items under the Contract shall be limited to a percentage of the Contract price as specified in the Special Conditions of Contract.

19.2 The Contract price shall accordingly be adjusted based on the unit rates available in the Contract for the change in quantities as above. The base unit rates, as identified in the Contract shall however remain constant during the currency of the Contract, except as provided for in clause 27.5 below. In case, the unit rates are not available for the change in quantity, the same shall be subjected to analysis of rates to be approved by the Engineer in charge.

20.0 PACKING, FORWARDING AND SHIPMENT

20.1 The Contractor, wherever applicable, shall after proper painting, pack and crate all equipment in such a manner as to protect them from deterioration and damage during rail and road transportation

to the site and storage at the site till the time of erection. The contractor shall be held responsible for all damages due to improper package.

- 20.2 The Contractor shall notify the Owner of the date of each shipment from his works, and the expected date of arrival at the site for the information of the Owner.
- 20.3 The Contractor shall also give all shipping information concerning the weight, size and content of each packing including any other information the Owner may require.
- 20.4 The following documents shall be sent by registered post to the Owner within three days from the date of shipment, to enable the Owner to make progressive payments to the Contractor:
- Application for payment in the Standard format of the Owner (3 copies)
 - Invoice (6 copies)
 - Packing list (6 copies)
 - Pre-dispatch clearance certificate, if any (3 copies)
 - Test Certificate, wherever applicable (3 copies)
 - Insurance Certificate (3 copies)
- 20.5 The Contractor shall prepare detailed packing list of all packages and containers, bundles and loose materials forming each and every consignment dispatch to site.

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

21.0 NO WAIVER OF RIGHTS

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

22.0 CERTIFICATE NOT TO AFFECT RIGHT OF OWNER AND LIABILITY OF CONTRACTOR

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

23.0 PROGRESS REPORTS AND PHOTOGRAPHS

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

24.0 TAKING OVER

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

C. CONTRACT SECURITY AND PAYMENTS**25.0 CONTRACT PERFORMANCE GUARANTEE**

The Contractor shall submit contract performance guarantee for the proper fulfillment of the Contract in the prescribed form **within fifteen (15) days from “the date of signing the contract”**. The performance guarantee (s) shall be as per terms prescribed in Conditions of Contract, and/or special conditions of Contract.

26.0 CONTRACT PRICE ADJUSTMENT

All the prices/ price components of the contract shall remain firm and no adjustment of price shall be applicable during the currency of contract.

27.0 PAYMENT

27.1 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 payment made during the contract shall be on account payments only. The final payment will be made on completion of all Works and on fulfillment by the Contractor of all his liabilities under the contract.

27.2 Currency of Payment

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

27.3 Due Dates for Payments

The initial advance amount shall be payable after fulfillment of all the conditions laid down in the General Conditions of Contract, Clause 27.6 below and receipt of the contractor's invoice along with all necessary supporting documents for such advance payment. Owner will make progressive payment as and when the payment is due as per the terms of payment set forth in the accompanying General Conditions of Contract.

27.4 Application for Payment

27.4.1 The Contractor shall submit Application for the Payment in the prescribed proforma of the Owner. Proforma for application for payment is enclosed in forms of bid (Section-4).

27.4.2 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 equipment shipped/brought on to the site pursuant to the Contract up to the date mentioned in the application and for the period covered since the last preceding certificate, if any.

27.4.3 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, provided that no sum shall be included in any interim payment certificate in respect of the works that, according to the decision of the Engineer, does not comply with the contract, or has been performed, at the date of certificate prematurely.

27.5 Mode of Payment

- 27.5.1 Payment due on dispatch of Equipment shall be made by the Owner's Bank or directly to the Contractor as per the payment schedule.
- 27.5.2 The payment of the advance, test charges, if any, price adjustment, any other supply payment, taxes and duties (whenever admissible) in land transportation (including port handling), insurance and the erection portion of the Works shall be made direct to the contractor by the Owner.

27.6 TERMS OF PAYMENT

27.6.1 FOB/ Ex-works Price and Erection

The terms of payments for ex-works price-components of the equipment and erection are detailed in Special Conditions of Contract. A certain percentage of the equipment and erection costs shall be paid as initial advance on fulfillment of the following by the Contractor:

- a) Acknowledgement of the Letter of Award by the Contractor.
 - b) Detailed Invoice for advance payment
 - c) Establishment of Contractor site offices, commencement of Erection Ground work and certification by Engineer that satisfactory mobilization of erection exists.
 - d) An unconditional & irrevocable Bank Guarantee for the equivalent amount covering the advance amount which shall initially be kept valid up to the end of ninety (90) days after the schedule date for successful completion of commissioning and shall be extended from time to time until ninety (90) days beyond the actual date of successful completion of commissioning, as maybe required under the Contract.
 - e) An unconditional & irrevocable Bank Guarantee for five percent (5%) of the total Contract Price towards Contract Performance Guarantee (CPG) which shall initially be kept valid up to ninety (90) days after the expiry of Warranty/Guarantee Period of the Equipment as per Clause No. 11.0 of GCC, and shall be extended from time to time as maybe required under the Contract.
- 27.6.2 All further payments under the contract shall be made as stipulated in the Special Conditions of Contract after signing the Contract Agreement. The payments linked with the dispatch of materials shall only be made after production of all dispatch documents as specified in the relevant contract conditions which will inter-alia include the Material Dispatch Instruction issued by the Owner.

28.0 DEDUCTION 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 claimed by the Owner. All such claims shall be billed by the Owner to the Contractor regularly as and when they fall due. Such bills shall be supported by appropriate and certified vouchers or explanations, to enable the contractor to properly identify such claims. Such claims shall be paid by the Contractor within thirty (30) days of the receipt of the corresponding bills and if not paid by the Contractor within the said period, the Owner may then deduct the amount, from any amount due or becoming due by him to the contractor under the Contract or may be recovered by sections of Law or otherwise.

D. SPARES

29.0 SPARES

Spares are as shown in the Bill of Quantities.

E. RISK DISTRIBUTION**30.0 TRANSFER OF THE TITLE**

- 30.1 Transfer of the title in respect of equipment and materials supplied by the contractor to the owner pursuant to the terms of the contract shall pass on to the owner with ex-works dispatch and negotiation of dispatch documents.
- 30.2 This Transfer of Title shall not be construed to mean the acceptance and the consequent “Taking Over” of equipment and materials. The contractor shall continue to be responsible for the quality and performance of such equipment and materials and for their compliance with the specifications until “Taking Over” and the fulfillment of guarantee provisions of this Contract.
- 30.3 This Transfer of Title shall not relieve the Contractor from the responsibility for all risks of loss or damage to the equipment and materials as specified under the clause entitled “Insurance” of this Section.

31.0 INSURANCE

- 31.1 The Contractor at his cost shall arrange, secure and maintain all insurance as may be pertinent to the Works and obligatory in terms of law to protect his interest and interests of the Owner against all perils detailed herein. The form and the limit of such insurance as defined herein together with the under-writer in each case shall be acceptable to the Owner. However, irrespective of such acceptance, the responsibility to maintain adequate insurance coverage at all time during the period of contract shall be of the contractor alone. The contractor’s failure in this regard shall not relieve him of any of his contractual responsibilities and obligations. The insurance covers to be taken by the contractor shall be in a joint name of the Owner and the Contractor. The Contractor shall, however, be authorized to deal directly with Insurance Company or companies and shall be responsible in regard to maintenance of all insurance covers. Further, the insurance should be in freely convertible currency.
- 31.2 Any loss or damage to the equipment during handling, transportation, storage, erection, putting into satisfactory operation and all activities to be performed till the successful completion of commissioning of the equipment shall be to the account of Contractor. The Contractor shall be responsible for preference of all claims and make good the damages or loss by way of repairs and/or replacement of the equipment, damaged or lost. The transfer of title shall not in any way relieve the Contractor of the above responsibilities during the period of Contract. The contractor shall provide the Owner with copy of all insurance policies and documents taken out by him in pursuance of the contract. Such copies of documents shall be submitted to the Owner immediately after such insurance coverage. The Contractor shall also inform the Owner in writing at least thirty (30) days in advance regarding the expiry/cancellation and/or change in any of such documents and ensure revalidation, renewal, etc., as may be necessary well in time.
- 31.3 The perils required to be covered under the insurance shall include, but not be limited to fire and allied risks, miscellaneous accidents (erection risks) workman compensation risks, loss or damage in transit, theft, pilferage riot and strikes and malicious damages, civil commotion, weather condition, accidents of all kinds, etc. The scope of such insurance shall be adequate to cover the replacement/reinstatement cost of the equipment for all risks up to and including delivery of goods and other costs till the equipment is delivered at Site. The insurance policies to be taken should be on replacement value basis and/or incorporating escalation clause. Notwithstanding the extent of insurance cover and the amount of claim available from the underwriters, the contractor shall be liable to make good the full replacement/rectification value of all equipments/materials and to ensure their availability as per project requirements.
- 31.4 All costs on account of insurance liabilities covered under the contract will be to Contractor’s account and will be included in Contract Price. However, the owner may from time to time, during the pendency of the contract, may ask the contractor in writing to limit the insurance coverage, risks and in such a case, the parties to the contract will agree for a mutual settlement, for reduction

in Contract price to the extent of reduced premium amount. The Contractor, while arranging the insurance shall ensure to obtain all discounts on premium which may be available for higher volume or for reason of financing arrangement of the project.

- 31.5 The clause entitled 'Insurance' under the Section ECC (section-3), covers the additional insurance requirements for the portion of the works to be performed at the Site.

32.0 LIABILITY FOR ACCIDENTS AND DAMAGES

Under the Contract, the Contractor shall be responsible for loss or damage to the plant until the successful completion of commissioning as defined elsewhere in the Bidding Documents.

33.0 DELAYS BY OWNER OR HIS AUTHORISED AGENTS

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

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

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

34.0 DEMURRAGE, WHARFAGE, ETC.

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

F. FORCE MAJEURE

35.0 SUSPENSION OF WORK

- 35.1 The Owner reserves the right to suspend and reinstate execution of the whole or any part of the Works without invalidating the provisions of the Contract. Orders for suspension or reinstatement of the Works will be issued by the Engineer to the Contractor in writing. The time for completion of the works will be extended for a period equal to the duration of the suspension.

- 35.2 Any necessary and demonstrable cost incurred by the Contractor as a result of such suspension of the Works will be paid by the Owner, provided such costs are substantiated to the satisfaction of the Engineer. The Owner shall not be responsible for any liabilities, if suspension or delay is due to some default on the part of the Contractor or his Sub-Contractor.

36.0 CONTRACTOR'S DEFAULT

- 36.1 If the Contractor shall neglect to execute the Works with due diligence and expertise or shall refuse or neglect to comply with any reasonable order given to him, in the Contract by the Engineer in connection with the works or shall contravene the provisions of the Contract, the owner may give notice in writing to the contractor to make good the failure, neglect or contravention complained of. Should the contractor fail to comply with the notice within thirty (30) days from the date of serving the notice, then and in such case the Owner shall be at liberty to employ other workmen and forthwith execute such part of the works as the Contractor, may have neglected to do or if the owner shall think fit, without prejudice to any other right he may have under the Contract to take the work wholly or in part out of the contractor's hands and re-contract with any other person or persons to complete the works or any part thereof and in that event the Owner shall have free use

of all Contractor's equipment that may have been at the time on the site in connection with the works without being responsible to the Contractor for fair wear and tear thereof and to the exclusion of any right of the contractor over the same, and the Owner shall be entitled to retain and apply any balance which may otherwise be due on the Contract by him to the contractor, or such part thereof as may be necessary, to the payment of the cost of executing the said part of the work or of completing the Works as the case may be. If the cost of completing of Works or executing a part thereof as aforesaid shall exceed the balance due to the contractor, the contractor shall pay such excess. Such payment of excess amount shall be independent of the liquidated damages for delay which the contractor shall have to pay if the completion of works is delayed.

- 36.2 In addition, such action by the Owner as aforesaid shall not relieve the Contractor of his liability to pay liquidated damages for delay in completion of works as defined in clause 10.0 of this Section.

Such action by the Owner as aforesaid, the termination of the Contract under this clause shall neither entitle the contractor to reduce the value of the contract Performance Guarantee nor the time thereof.

37.0 TERMINATION OF CONTRACT ON OWNER'S INITIATIVE

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

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

- 37.3 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.

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

38.0 FRUSTRATION OF CONTRACT

- 38.1 In the event of frustration of the contract of supervening impossibility in items of Section 56 of the Indian Contract Act, parties shall be absolved of their responsibility to perform the balance portion of the contract, subject to provisions contained in sub-clause 38.2 below:

- 38.2 In the event referred to in sub-clauses 37.1 & 37.2 above, the parties shall mutually discuss to arrive at reasonable agreement on all issues including amounts due to either party for the work already done on "Quantum merit" basis which shall be determined by mutual agreement between the parties.

39.0 GRAFTS AND COMMISSIONS, ETC.

Any graft, commission, 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 amount so payable from any money otherwise due to Contractor under the Contract.

G. RESOLUTION OF DISPUTES**40.0 SETTLEMENT OF DISPUTES**

- 40.1 Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the parties.
- 40.2 If any dispute or difference of any kind whatsoever shall arise between the Owner and the Contractor, arising out of the contract for the performance of the works whether during the progress of the Works or after its completion or whether before or after the termination, abandonment or breach of the Contract, it shall, in the first place, be referred to and settled by the Engineer, who, within a period of thirty (30) days after being requested by either party to do so, shall give written notice of his decision to the Owner and the Contractor.
- 40.3 Save as hereinafter provided, such decision in respect of every matters so referred shall be final and binding upon the parties until the completion of the Works and shall forthwith be given effect to by the contractor who shall proceed with the works with all due diligence, whether he or the Owner requires arbitration as hereinafter provided or not.
- 40.4 If after the Engineer has given written notice of his decision to the parties, no claim to arbitration has been communicated to him by either party within thirty (30) days from the receipt of such notice, the said decision shall become final and binding on the parties.
- 40.5 In the event of the Engineer failing to notify his decision as aforesaid within thirty (30) days after being requested as aforesaid, or in the event of either the Owner or the Contractor being dissatisfied with any such decision, or within (30) days, after the expiry of the first mentioned period of thirty (30) days, as the case may be, either party may require that the matters in dispute be referred to arbitration as hereinafter provided.

41.0 ARBITRATION

- 41.1 All disputes or differences in respect of which the decision, if any, of the Engineer has not become final or binding as aforesaid shall be settled by arbitration in the manner hereinafter provided.
- 41.1.1 The arbitration shall be conducted by three arbitrators, one each to be nominated by the Contractor and the Owner and third to be appointed as an umpire by both the arbitrators in accordance with the Arbitration & Conciliation Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.
- 41.1.2 The arbitration shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification thereof. The venue of arbitration shall be Mizoram only.
- 41.2 The decision of the majority of the arbitrators shall be final and binding upon the parties. The arbitrators may, from time to time with the consent of all the parties enlarge the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.

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

42.0 RECONCILIATION OF ACCOUNTS

The Contractor shall prepare and submit every 1 (one) month, a statement covering payments claimed and the payments received vis-à-vis the works executed, for reconciliation of accounts with the Owner. The Contractor shall also prepare and submit a detailed account of Owner issued Materials received and utilized by him for reconciliation purpose in a format to be discussed and finalized with the Owner before the award of the Contract.

