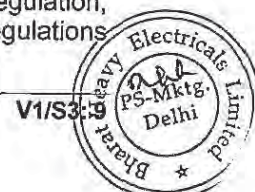
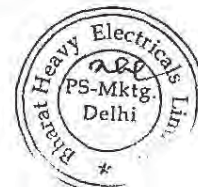


- **"Guaranteed Commercial Operation Date"** shall mean the date by which the Contractor has guaranteed to make the Plant ready for Commercial Operation after successful completion of Reliability Run.
- **"Guaranteed DM Water Consumption"** shall mean the guaranteed demineralised water consumption for the plant operation as stated at CL3.02.01 of VOL IIA/S-10
- **"Good Engineering Practices"** shall mean those practices, methods, acts, techniques and standards as may be followed or employed in the performance of the work and discharge of its obligations by the Contractor and which (i) are generally accepted internationally for use in the electric utility industry, taking into account conditions in India, in connection with power plants of the same or similar size and type as the Plant, (ii) are commonly used in prudent electric utility engineering, construction, project management and operations, and (iii) would be expected to result in performance of the services and completion of Works in a manner consistent with Applicable Laws, Applicable permits, reliability, safety, environmental protection, economy and expediency.
- **"Government Instrumentality" or "Competent Authority"** shall mean the Government of India, the Government of Gujarat, or any political subdivision, ministry, department, agency, corporation, commission or any regional, local or municipal authority or governmental body thereof or any other governmental or statutory body under the direct or indirect control of the Government of India or Government of Gujarat, or of any political subdivision, ministry, department, agency, corporation, commission, or any regional, local or municipal authority or governmental body thereof, and shall include without limitation any other governmental or statutory body in India having jurisdiction over the Plant or over the performance of any part of Work or the Works or any obligation of the Contractor or the Owner under the contract.
- **"Grid"** shall mean the system of electrical transmission and distribution of GETCO interconnecting different generating stations, transmission lines, sub-stations, circuits, transformers, switchgear and other equipment upto and on the GETCO side of the Interconnection Point.
- **"GETCO"** shall mean the Gujarat Energy Transmission Corporation Limited.
- **"Goods"** shall mean Equipment to be supplied under the Contract
- **"Reliability Run"** shall mean the first continuous operation of the Plant with sub-systems under varying loads to demonstrate satisfactory operation for a specified period (14 days) after completion of successful Initial Operations and conditions as specified elsewhere in the Contract.
- **"Hazardous Materials"** shall mean (i) hazardous materials, hazardous wastes, hazardous substances, toxic substances or contaminants as those terms are defined under any environmental law or regulation, including, but not limited to, Applicable Laws, and in the regulations



adopted or promulgated pursuant thereto; (ii) petroleum and petroleum products including crude oil and any fractions thereof; (iii) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; and (iv) any substance that, whether by its nature or its use, is subject to regulation under any environmental law or with respect to which any applicable environmental law or any Governmental Instrumentality requires environmental investigation, monitoring or remediation.

- **"Incoterms"** shall mean **"International Rules for the Interpretation of Trade Terms,"** as adopted by the International Chamber of Commerce (the "ICC") and as in force on the date of invitation of the bids. All matters relating to the Construction and interpretation of Incoterms shall be resolved by reference to the Guide to Incoterms.
- **"Taxes"** shall mean all taxes, duties, and cess imposed by the Government of India or any of its subdivisions (including value added tax), excise, storage and consumption taxes, service tax, import duties and customs duty and fees, license fees, sales and/or purchase taxes, octroi, entry tax, and labour cess applicable to any portion of the Works or Supplies, or any other tax, duty or fee of similar nature irrespective of the nomenclature used for the same
- **"Personal Taxes"** shall mean all taxes on income, profit, other real and personal property and franchise taxes, as well as personal income taxes of the Parties or any authorised persons acting on behalf of the Parties; and all applicable national, state and local payroll, social security, workers' compensation, employment taxes and contributions imposed by Applicable Law with respect to or measured by compensation (wage, salaries or other) paid to employees of the Parties, including taxes, health and welfare funds, pensions and annuities, disability insurance and all other similar social payments.
- **"Initial Operation"** with respect the Plant shall mean all operations undertaken as part of "Commissioning" after completion of "Preliminary Operation" first synchronization and upto commencement of "Trial Run". It shall be the first integral operation of the Plant including all Equipment / Systems, and shall include first light up / initial equipment rolling, equipment stretch-out, dry-out and operational chemical cleaning, no-load / partial load / full load runs for mechanical / electrical tryout and gathering of operational data; calibration, setting and Commissioning of control systems; and shutdown inspection and adjustment after running trials of the Plant including the Equipment.
- **"Inspector"** shall mean the authorized representatives appointed by the Owner or the Consultant for purpose of the inspection of Equipments for the purposes of the Contract.
- **"Interim Payment Certificate"** shall mean any payment certificate other



than Final Payment Certificate, issued by the Owner or Owner's Representative pursuant to clause 8.12.1 other than the final payment certificate.

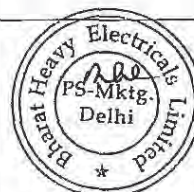
- **"Interconnection Facility"** shall mean all the facilities to be provided by the GETCO on the Site on GETCO's side of the Interconnection Point the location of which is specified in the Technical Specifications.
- **"Interconnection Point"** shall mean the 400kV Switchyard outgoing gantry from where the power is evacuated to the Grid by GETCO.
- **"Intellectual Property Rights" or "IP Rights"** shall mean copyright, all rights conferred under statute or common law in relation to inventions (including patents), registered trademarks, registered designs, circuit layouts, confidential information and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields
- **"Latent Defect"** shall mean the defects in design, materials and could not have been found prior to expiry of the Warranty Period mean a defect, which was in existence during the applicable Warranty period but was not reasonably discoverable during such Warranty period.
- **"Lenders"** shall mean those banks, firms or institutions who make available, from time to time, financing for the Project and whose identities have been notified to the Contractor.
- **"Letter of Intent" or "Lol"** shall mean the formal communication in writing by the Owner to the Contractor of the acceptance of the Contractor's Bid.
- **"Lien(s)"** shall mean any lien, claim, charge, encumbrance, cause of action, security interest, mortgage or other possessory or non-possessory interest in, on or against real, tangible or intangible property as administered under Applicable Law arising out of, due to, or otherwise as a result of the Contractor's acts or omissions, including any lien recorded or held by any Sub-Contractor or any other person entitled to a lien under Applicable Law.
- **"Limits of Rejection"** shall mean the limits prescribed to each of the Performance Guarantees, which if not adhered to, the Project shall be liable for rejection
- **"Liquidated Damages"** shall have the meaning as specified in 11.0 of the GCC.
- **"Local Currency"** shall mean the Indian Rupees.
- **"Manufacturer"** shall mean any entity or firm who is the producer and furnisher to the Contractor of any material or designer and fabricator of any equipment / systems which is to be incorporated in or forms part of the plant / works.
- **"Mandatory Spares"** shall mean the mandatory spares, and maintenance tools and tackles for the Plant, as specified in the Specifications, to be supplied by the Contractor under the Contract.

DEVELOPMENT CONSULTANTS
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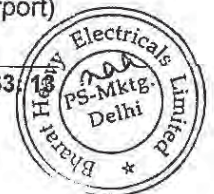
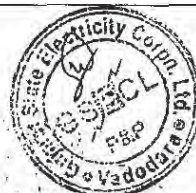


- **"Materials"** shall mean things of all kinds to be provided and incorporated in the Plant by the Contractor, including the items which are to be supplied by the Contractor under the Contract.
- **"Mechanical Completion"** shall mean with respect to the Plant, the completion of all works by the Contractor including completion of Construction, erection, installation, calibration and construction; testing services with respect to all mechanical, electrical, civil & structural, instrumentation and control systems (including Equipment) of the Plant, and the Plant has achieved a state of readiness for "Preliminary Operation". The existence of Punch List and pending issues items which do not prevent or adversely affect the Plant performance and safety, from being in a state of readiness for "Preliminary Operation" shall not be construed as preventing the Plant, from achieving Mechanical Completion.
- **"Milestone Payment Schedule"** shall mean the document, provided in Annexure [insert] hereof which sets forth (i) payments to be made by the Owner to the Contractor on schedule specified therein, and (ii) links each such payment with Project Milestones commencing on the Commencement Date. The Milestone Payment Schedule divides the contract price payment among certain progress milestones and may otherwise be adjusted from time to time in accordance with the contract.
- **"Month"** shall mean a month according to Gregorian calendar.
- **"Monthly Progress Report"** or **"Progress Report"** shall mean a progress report meeting the requirements set forth in clause 29 of the specification hereto.
- **"Notice to proceed"** or **"NTP"** shall mean the Owner's letter or notification intimating the Contractor to commence the Works.
- **"Notice in Writing"** or **"Written Notice"** shall mean a notice in writing, typed or printed or hand written characters, sent (unless delivered personally or otherwise proved to have been received) by registered post or by any agreed system of electronic transmission to the last known private or business address or registered office of the addressee and shall be deemed to have been received when in the ordinary course of post it would have been delivered.
- **"Operation Manual"** shall have the meaning set forth in Specification hereof.
- **"Owner"** or **"Purchaser"** shall mean Gujarat State Electricity Corporation Limited (GSECL) and shall, unless repugnant to the context thereof, include its successors, assigns as well as authorized officers & representatives.
- **"Owner's Representative"** shall mean the person appointed by the Owner from time to time and notified as such to the Contractor to act as Owner's Representative for the purposes of the Contract.
- **"Owner's Instructions"** or **"Owner's Representative's Instructions"**



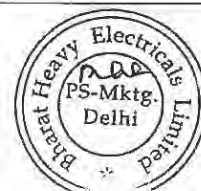
shall mean any drawings, specifications, instructions, details, directions and explanations, in writing issued by the Owner or by the Owner's Representative /Consultant from time to time during the subsistence of the Contract

- **"Owner or Purchaser"** shall mean Gujarat State Electricity Corporation Limited and shall include its successor(s) and assigns.
- **"Prime Bidder"** shall mean a reputed organization who submits a Bid and assumes single point responsibility acting by himself or on behalf of his associates. The Prime Bidder will be the party who will be contractually bound to the Owner.
- **"Owner Permits"** shall mean those Permits, No Objection Certificate (NOC), authorizations, consents and approvals required by the Owner to own, possess, operate and maintain the Plant and to generate electrical energy there from,
- **"Party"** shall mean either of the Owner or Contractor individually and **"Parties"** shall mean Owner and Contractor collectively.
- **"Permanent Works"** shall mean the permanent works, equipment and materials including all civil, electrical, control & instrumentation and mechanical works to be designed, engineered, manufactured, supplied, installed, erected, executed, Commissioned in accordance with the Contract and which form part of the Plant.
- **"Performance Guarantees"** shall mean the guaranteed capacity, efficiency and operating characteristics of the Plant as stipulated in Schedule of the Contract and Specifications.
- **"Performance Guarantee Tests"** shall mean, the tests specified in the Specifications and Schedule of the Contract to be conducted by the Contractor after entry into Commercial Operation of the Plant at the Site by the Contractor, other than the Tests before Commercial Operation, which shall be performed to demonstrate the achievement of Performance Guarantees, and shall be successfully conducted within three (3) Months of entry into Commercial Operation of the Plant.
- **"Performance Test"** with respect to the equipment/systems of the Plant shall mean the test to establish their design / rated performance conducted at site by the Contractor in accordance with the provisions of the contract.
- **"Permit"** shall mean any valid permit, authorization, license, registration, approval, consent, waiver, exemption, variance, franchise or any similar order of or from of any Government Instrumentality, court or other body having jurisdiction over the matter in question.
- **"Person"** shall mean any individual, corporation, partnership, association, joint stock company, trust, unincorporated organisation, joint venture, government or political subdivision or agency thereof.
- **"Port of Entry"** shall mean the final destination in India (sea or airport)



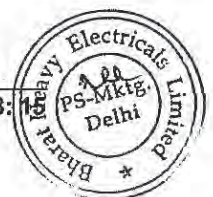
where customs duty, port and other handling charges are paid on imported materials.

- **"Power Purchase Agreement"** shall mean the Agreement between the Owner and the GUVNL for sale of electrical energy generated by the Facility to GUVNL.
- **"Preliminary Operation"** shall include all activities undertaken as part of Commissioning after Mechanical Completion up to commencement of Initial Operation and shall include mechanical and electrical checkouts, adjustments, calibration of instruments and protection devices, Commissioning of sub / supporting systems and static chemical cleaning of the Plant.
- **"Project"** or **"Plant"** shall mean the Facility and the work as an integrated whole, all as described in greater detail in the specification hereto.
- **"Project Documents"** shall mean the Power Purchase Agreement, the Financing Documents, the Contract, any Operation and Maintenance agreement in respect of the Plant, all fuel purchase agreements, all fuel transportation agreements and all other contracts relating to the Plant entered into by the Owner and shall include all Drawings and documents
- **"Protocol"** shall mean the statement of readings of any or all of Tests Before Commercial Operation and/or Performance Guarantee Test or any other tests performed by the Contractor under the Contract (which test has been witnessed by the Owner) and jointly signed by Owner and/or his representative or Inspector and Contractor and/or his representative.
- **"Provisional Acceptance Certificate"** shall mean the certificate issued by the Owner to the Contractor evidencing achievement of the COD by the Contractor.
- **"Prudent Utility Practices"** shall mean those practices, methods, equipment specifications and standards of safety and performance, as the same may change from time to time, as are generally accepted for use in electricity generating utilities taking into account conditions in India and commonly used in prudent electricity generation utility engineering and operations including design, engineering Construction, erection, Commissioning, operation and maintenance of power generating stations and equipment comprised therein lawfully, safely, efficiently and economically for facilities of the type and size similar to the Plant and that generally conforms to the Equipment manufacturer's operation and maintenance guidelines.
- **"Punch List"** shall mean the list in respect of the equipment / systems supplied / erected / commissioned, first prepared by Owner at the time of issuance of Provisional Acceptance Certificate of the equipment / systems, and thereafter periodically revised by Owner as necessary, which list shall set forth certain items of Work which remain to be performed by the Contractor in order to ensure that the Plant fully complies with all of the standards and requirements set forth in the Contract.

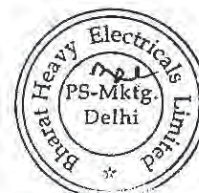


Provided, the Punch List and pending issues shall not include any items of work, alone or in the aggregate, the non-completion of which prevents the Plant as a whole from (a) being used for its intended purposes as described in the Contract in accordance with Applicable Laws and Applicable Permits or (b) being legally, safely and reliably placed in commercial operation

- **"QA Programme"** shall mean the comprehensive quality control and quality assurance programme to be followed by the Contractor in executing the Supplies, Construction/ Erection of the Works.
- **"Risk Transfer Date"** shall, subject to the obligation of the Contractor including, without limitation, in relation to the Performance Guarantee Test (and consequences of failure thereof including rejection) and Warranty, mean the date on which the Owner assumes the care and custody of the Equipment/Plant or the Plant enters in to Commercial Operation whichever is earlier.
- **"Schedule"** shall mean collectively all the schedules including Project Schedule, Milestone Schedule and other schedules pertaining to the work and the Plant as detailed in the Contract.
- **"Specifications"** or **"EPC Specification"** or **"Technical Specification"** shall mean collectively, the description of the scope, the Owner's requirements, design criteria, technical requirements, Final Proposal, drawings, programme of work Project Schedule, all Appendices to the contract, Appendices to these General Conditions of contract, Performance Guarantees, all terms and stipulations of the contract, and such amendments and revisions, as may be made in the Tender Documents or to the contract and all written agreements made after the execution of the contract by the Parties, or which may pertain to the method and manner of performing the work under the contract as agreed.
- **"Sub-contractor"** shall mean any Person (other than the Contractor or the Owner) to whom any part of the Works has been sub-contracted by the Contractor in accordance with the Contract and with prior approval of the Owner, or with whom the Contractor has entered into any contract for the supply of any Equipment in connection with the Works and with prior approval of the Owner, and shall include its legal successors in title or permitted assigns, and unless otherwise stated, all the Sub-contractors and suppliers to such Person and the term Sub-Contract shall be construed accordingly.
- **"Supplies"** shall mean the supply of the Equipment and the Mandatory Spares by the Contractor in connection with the performance of its obligations under the Contract, including all incidental activities thereto,
- **"Site"** shall mean the land and other places including existing roads and paths put at the disposal of the Contractor by the Owner in connection with the execution of the Contract.



- **"Synchronisation"** shall mean electrical connection of the Plant to the Grid by means of the Interconnection Facility for the first time where the Plant and the Grid are matched in voltage, phase and frequency, after satisfactory Commissioning.
- **"Take Over" or "Taking Over"** shall mean taking-over of the whole Plant by the Owner for the purpose envisaged under the Contract after Commercial Operation Date and after successful completion of Performance Guarantee Tests complete within three months from the Commercial Operation of the Plant and successful completion of Tests Before Take Over, as well as liquidation and completion of pending items specified in Punch List in pursuant of the Contract.
- **"Temporary Works"** shall mean all temporary works of every kind (other than Contractor's Equipment) required for the execution and completion of the Works and the remedying of any defects.
- **"Tender Documents"** shall mean the documents for Invitation to Bid together with all amendments thereto and clarifications, if any, issued by the Owner or the Consultant from time to time in respect thereof.
- **"Tests before Commercial Operation"** shall mean in relation to the Plant, all tests prescribed in the Specification and any other tests agreed between the Owner and Contractor to be undertaken by the Contractor.
- **"Tests before Take Over"** shall mean the tests prescribed in the 'Specification', and any other such tests as may be agreed between the Owner and Contractor or instructed as a Change Order, which has to be carried out by the Contractor before the Plant is Taken Over.
- **"Tonne"** shall mean 1,000 Kilogram weight.
- **"Transmission Facilities"** shall mean all of the facilities to be located off the Site and to be constructed by or for the GETCO to connect the Interconnection Facilities to the Grid.
- **"Reliability Run Test" or "Trial Run"** of the Plant shall mean the -Period of 14 days of continuous operation after Synchronization, or extended period thereof if any as more particularly defined at Vol-II A/S-10/CL2.02.02 .
- **"Tests on Completion"** shall mean such tests as are prescribed in the Specifications and/or other tests as mutually agreed upon by the Owner and the Contractor to be carried out by the Contractor to prove satisfactory performance of the Works.
- **"Ton"**, shall mean 1,000 Kilogram weight, "Gallon" shall mean Imperial gallon, unless otherwise mentioned specifically.
- **"Unexpected Archaeological Condition"** shall mean uncovering or revealing of an unknown historical or archaeological site at or contiguous to the Site during performance of the Contract that was not

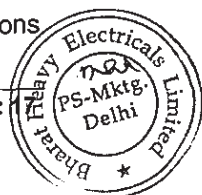
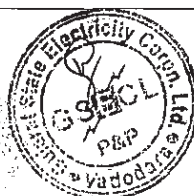


shown or indicated in the Subsurface Investigation and which Contractor could not have reasonably been expected to be aware of.

- **"Unpriced Technical Bid"** shall mean the unpriced technical bid submitted by the Successful Bidder as part of its Final Proposal
- **"Variation"** shall mean alterations, amendments, omissions, additions, or variations of the Equipment or the Supplies as agreed.
- **"Warranty"** shall mean all guarantees and warranties provided or agreed to be provided under the Contract for and in respect of the equipment, work, components, materials, Supplies and parts and works forming part of or incorporated in the Plant or relating thereto supplied or provided by the Contractor and shall include any guarantee or warranty provided or furnished by a sub-Contractor under a sub-contract.
- **Warranty Engineer** shall mean, the engineer deputed by the Contractor and staying at site, to be responsible for looking after / supervising Operation and Maintenance practices during warranty period.
- **"Week"** shall mean a continuous period of seven (7) Days.
- **"Wilful Misconduct"** shall mean that the Contractor has intentionally concealed the defect in full knowledge of the serious consequences that may flow from its existence and the defect is one, which the Owner could not have discovered on careful examination of the Plant at the time of commencement of Commercial Operation or during the Warranty Period.
- **"Work" or "Works"** shall mean the works and services involving engineering, procurement, Supplies, construction, installation, erection, Commissioning of the Plant and shall include all Permanent Works comprised in or forming part of the Plant and the temporary works or either of them as appropriate, and any other works required to be performed by the Contractor under the Contract.
- **"Warranty Period"** shall have the meaning assigned to the term under Clause 21.2 of the GCC, during which the Contractor shall bear all cost covering repair and/or replacement of any defective part of the Plant/ Equipment supplied, works done and services rendered under the Contract.

2.2 Interpretation of Bid Document

- 1) General Conditions shall be read in conjunction with Instructions to Bidders, special Conditions, Technical Specifications, Drawings and other documents forming part of the Bid Document wherever permissible or the context so requires.
- 2) Notwithstanding the sub-division of the Bid Document into sections and volumes, every part of each shall be deemed to be supplementary to and complementary of each other.
- 3) All headings and marginal notes to the items of the General Conditions



or to the Specifications or to any other document forming part of the Bid Document are solely for the purpose of giving a concise indication of the general subject matter thereof and not a summary of the contents thereof and they shall never be deemed to be part thereof or be used in the interpretation or construction thereof.

- 4) Wherever it is mentioned in the Bid that the Contractor shall perform certain work or provide certain facilities it is understood that the Contractor shall do so at his cost and the price shall be deemed to have included the cost of such performances and provisions so mentioned.
- 5) The materials, designs and workmanship shall satisfy the applicable standards, specifications contained herein and codes referred to. Where the Bid Document stipulates requirements in addition to those contained in the standards and codes, those additional requirements shall also be satisfied.
- 6) For the purposes of the Contract including General Conditions of Contract, the expression "legally, safely and reliably placed in commercial operation" shall mean that the Facility, will operate in the manner intended as described in the contract, in accordance with all Applicable Laws and Applicable Permits, and without undue risk of damage or injury to the Plant or Persons.
- 7) Words incorporating the singular only shall also include the plural and vice -versa where the context requires.
- 8) "Writing" shall include any manuscript typed or hand-written or printed statement, including E- Mail and facsimile transmission under or over signature or seal as the case may be.

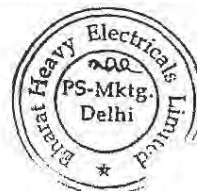
2.3 Priority of documents

For the purpose of interpretation of the Contract, especially in the event of any inconsistency, the following order of precedence shall apply:

Order of Precedence:

The order of precedence shall be the order in which the documents are listed below:

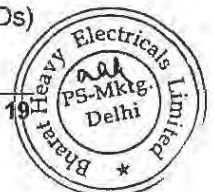
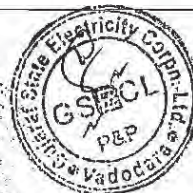
- i) The Contract Agreement
- ii) Letter of Award duly accepted by the Contractor together with its amendments, if any.
- iii) Pre Award Minutes of Meeting, Resolutions to Deviations / Clarifications
- iv) Pre-bid clarifications issued by the Owner and Amendments to Tender specifications
- v) General Conditions, ITB, Special conditions for erection and Construction
- vi) Technical Specifications
- vii) Contractor's Bid Proposal



3.0 SCOPE OF WORK

3.1 The scope of work, if not otherwise mentioned in the Contract, shall be on the basis of a single Contractor's responsibility, completely covering all the equipment specified under the accompanying Technical Specifications. The Works include the following: -

- a) Detailed design of all the equipment and sub-systems as per Specifications;
- b) Complete manufacture of all the Equipment including shop assembly and testing as per Specifications, supply of special tools and tackles and services necessary for satisfactory execution of the Contract;
- c) Providing Engineering Drawings, Data and operation manual, etc. for Owner's/Consultant's approval.
- d) Packing and transportation of the Goods from the Manufacturer's Works to the Site including freight charges, insurance coverage;
- e) Supply of Mandatory Spares;
- f) Receipt, unloading, storage, preservation and conservation of the Goods at the Site;
- g) Erection, Testing and Commissioning, trial run of all the equipment at the Site, Tests on Completion, putting into Commercial Operation;
- h)
 - i) Performance Guarantee Tests on successful completion of Reliability Run
 - ii) Reliability Test shall commence after completion of Commissioning of the Plant. Length of such operation shall be as specified in [VOL-II/A/S-10/CI 2.02.02 PAGE 3] of the Contract.
- i) Providing construction, erection, testing and commissioning supervision personnel to supervise the work, erection, testing and Commissioning of the Plant;
- j) All civil works including supply of all materials and temporary works etc. as needed;
- k) Structural work including supply of all materials, Consumables and temporary works etc. as needed;
- l) Architectural works as approved by the Owner;
- m) Providing three sets of as commissioned Drawings, three sets of as commissioned data/specification/parameter sheets duly signed by the relevant competent authority, and five sets of Compact disks (CDs) should be submitted prior to Take Over.



Provided that all Works shall be done as per the requirements of the Contract including, without limitation, the Drawings and Documents approved by the Owner and the Specifications.

Provided further that the Contractor shall, unless specifically excluded in the Contract, perform all such Work and/or supply all such items and materials not specifically mentioned in the Contract but are required for attaining Commercial Operation of the Plant as if such work and/or items and materials were expressly mentioned in the Contract and in a manner that ensures that the Plant is fit for the purpose intended.

3.2 STANDARD OF CARE

The Contractor shall execute and complete the Works in a safe, prudent and reliable manner in strict accordance with the Contract and with Good Engineering Practices.

4.0 CONTRACT PRICE

4.1 The Contract Price shall be for the entire scope of the Work with the breakdowns as specified in Schedule of Prices.

The Contract Price shall be lump-sum and firm, and valid for the entire period of the Contract.

4.2 The price for the Goods of origin outside India shall be the CIF Price.

4.3 Taxes and Duties

4.3.1 For the Goods of Indian origin, all Taxes shall be deemed to be included in the Contract Price. However excise duty, sales tax, works contract tax, octroi, and similar taxes as payable on finished goods and included in the Contract Price shall be indicated separately considering exemptions which may ordinarily be available/applicable at the prevailing structured rate. Further, Service Tax on Service portion of the Contract will be indicated separately. The normal prevailing rates of aforesaid taxes and duties and exemptions/concessions to the same with concessional rates shall be indicated. In case of delay in delivery not attributable to the Owner, any increase in the rates of aforesaid taxes beyond the scheduled date of delivery shall be to the Contractor's account. The amount of aforesaid taxes paid shall be reimbursed to the Contractor by the Owner upon presentation of documentary evidence upto the limit indicated in the bid offer.

4.3.2 The Taxes and Duties mentioned in Clause 4.3.1 for direct dispatch able items to Site from bidder's Sub Contractors, Sub Vendors, JV Companies whose works are located within India shall be reimbursed by the Owner upon presentation of documentary evidence upto the limit indicated in the bid offer.

4.3.3 In the case where Equipment have been listed under the schedule of items of foreign origin (to be imported) and such list have been accepted by the Owner, the responsibility of obtaining an import license, taking procedures thereon and payment of Taxes will rest with the Contractor though technically Owner will remain as an Importer. The Contractor shall prepare all required documents for



the Owner to make application for such import license and extend all possible assistance to the Owner for expeditious clearance of the license as and when requested by the Owner. The Contractor shall also arrange for payment of Taxes against any consignment on behalf of the Owner and the amount paid towards Taxes will be reimbursed by the Owner to the Contractor in Indian Rupee on presentation of documentary evidence as per Contract. In the case of delay in delivery not attributable to the Owner, any increase in the Taxes, port handling and port clearing charges as well burden due to rise in foreign exchange rate shall be to the Contractor's account.

The Bidder is to furnish a detailed list of imported equipment and materials and quantities against each item along with his Bid.

- 4.3.4 In the case of raw materials, components, sub-assemblies and other equipment and materials imported by the Indian Contractor for value addition, construction materials and Consumables, if any, all such import duties and levies payable shall be deemed to have been included in the Contract Price and no separate claim on this behalf will be entertained by the Owner.
- 4.3.5 Additionally, the Contractor shall bear and shall be liable for the payment of its Personal Taxes.
- 4.3.6 The Contractor and all its expatriate personnel shall be responsible for the timely and prompt filing of all returns, documents, estimates, accounts, information and details complete and accurate in all respects as may be required under the applicable laws/regulations of India by the appropriate authorities in India. In case the Contractor or any of its expatriate personnel do not comply with the above requirements, which results in any penalty, interest or other liability, the same shall be borne by the Contractor.
- 4.3.7 GSECL will arrange C Forms as applicable on quarterly basis. Also TDS certificate will be issued on quarterly basis.
- 4.3.8 Taxes and duties in the proposal shall be the rates prevailing fifteen (15) days prior to the date of opening of Techno Commercial Bid.

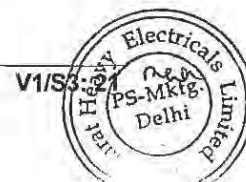
4.4 Price Adjustment for Quantity Variation in the Works and Change Order

- 4.4.1 Quantities of Equipment required by the Specification may be in certain cases, subject to variation pursuant to the Change Order in accordance with the procedure set out in this Clause 4.4.

4.4.2 Changes

(i) Owner shall have the right at any time by written notice to Contractor to make changes to the Work, whether such changes are modifications, alterations, deletions or additions. Contractor agrees to effect such changes in the Work as Owner may from time to time request subject to mutual agreement. The Change Order shall be limited within +/- 15% of Total Contract Price.

(ii) Any request by Owner for a change shall be delivered to Contractor in writing and shall be sufficiently definite and detailed to give Contractor an adequate basis on which to prepare a preliminary change order pursuant to Clause 4.4.3.



(iii) Upon receipt of Owner's request for a change, Contractor shall prepare a preliminary change order and deliver the same to Owner within ten (10) days time or any reasonable time mutually agreed following Contractor's receipt of such request.

(iv) Throughout the performance of the Works Contractor shall have a continuing obligation to suggest to Owner for Owner's consideration:

(a) All such changes as Contractor considers desirable; and

(b) Such other changes known to Contractor as may be necessary to incorporate significant new developments in technology which are applicable or appropriate to the Plant.

(c) Contractor shall submit any such suggestion in the form of a preliminary change order pursuant to Article 4.4.3.

4.4.3 Preliminary Change Orders

(i) Each preliminary change order submitted by Contractor to Owner pursuant to Clause 4.4.2 or any other express provision of the Contract shall be in writing and be accompanied by such information and data as will be reasonably required by Owner to evaluate properly the proposed execution of the work in question, the effect, if any, on the Work, scope of Work, an adjustment in one or more of the (i) Contract Price, (ii) Guaranteed Commercial Operation Date, (iii) Milestone Payment Schedule, (iv) any of the Performance Guarantees, or (v) any provision/scope of the Contract.

(ii) Owner shall reject or approve at its sole discretion each preliminary change order as expeditiously as proper consideration of the nature of the change may reasonably permit.

(iii) The cost of all work involved in preparing the information and data required to accompany the preliminary change order involved and for any additional analytical or investigative work requested by Owner in connection therewith is included in the Contract Price.

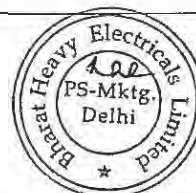
4.4.4 Change Orders

(i) Except as provided in Clause 4.4.5, Contractor shall not act upon any preliminary change order unless the Owner has executed a written Change Order.

(ii) Any adjustment of the Contract Price pursuant to the Change Order shall take into account, among other things, the elimination or avoidance of Work to be performed resulting from the changes in the Work and from assistance given by Owner.

4.4.5 Performance of Change Order pending agreement

If Owner and Contractor fail to agree on the effect of a Change Order and as a result a Change Order is not executed, Owner may nevertheless require Contractor to perform the Work as changed by delivering to Contractor a Change Order signed by Owner and Contractor shall complete all work specified in such Change Order and the dispute shall be resolved as provided in Clause 39:



The Owner shall pay to the Contractor in accordance with the Contract, such amount as has been ascertained by Owner as payable for such Change Order pending the resolution of the dispute. Contractor's performance of the Work as changed shall not prejudice either party's position regarding the effects of such change.

4.4.6 Variations in Contract Price

Except as otherwise provided in the Contract any increase or reduction of the Contract Price resulting from any Change Order shall be for the account of Owner, provided that no increase in the Contract Price shall be granted with respect to a change if:

- (1) The providing of the additional services is necessary in order for Contractor to satisfy its responsibility to make the Plant operable and capable of performing as contemplated under the Contract and to ensure that the Plant when completed and the Work is performed in accordance with the Contract;
- (2) The additional services are required because of delays attributable to Contractor, to late deliveries of Equipment or Contractor's Equipment or to labour shortages or relate to any rectification or remedy of defects or deficiencies required under the Contract;
- (3) The additional services are required because of a breach of any of the Guaranteed Commercial Operation Date and Performance Guarantees or Warranties under the Contract; or
- (4) The change relates to re-performance of any of the Work because of Contractor's failure to follow Owner's Specifications.

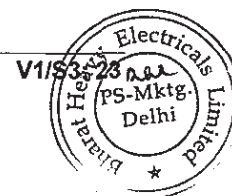
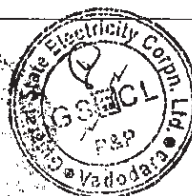
It is clarified that any adjustments in the Contract Price shall be made only in accordance with this Clause 4.4.

4.4.7 Not Considered Changes

Without prejudice to any other provision of the Contract, the following shall not be considered under any circumstances as changes in or within the Work, nor shall any of the following be taken into account when calculating the effect upon the Contract Price of changes in or within the Work nor shall any of the following of themselves be considered the basis for any adjustment of the Contract Price:

- (1) Any escalation in the cost of Equipment or labour;
- (2) Any increase in manpower hourly rates;
- (3) Currency fluctuations in respect of costs included within the Contract Price; and
- (4) Any change in the sourcing of Equipment.

4.4.8 The Work shall be subject to further detailing by the Parties from time to time and that, such detailing shall not be considered as a change in Work. In addition, a request by Owner that Contractor perform services or provide Equipment or Contractor's Equipment not specifically included within the Scope of Work shall not be considered a request for a change in the Work if it is required to make the Plant operable and capable of performing as specified in the Contract.



5.0 **TIME : THE ESSENCE OF CONTRACT**

The time and date of completion of the Work as stipulated in the Contract Document and the Guaranteed Commercial Operation Date shall be deemed to be the essence of the Contract. The Contractor shall so organize his resources and perform so as to complete the Work not later than the aforesaid date.

The Contractor shall submit a PERT network showing various key phases of the Work such as design, procurement, manufacturing, shipment, and field erection and construction activities within thirty (30) days after the date of receipt of Notice to Proceed. This network where applicable shall indicate the interface facilities to be provided by the Owner and the dates by which such facilities are needed by the Contractor and also the programme for phase wise release of Work Site for erection work as may be needed by Contractor.

The Contractor shall discuss the network so submitted with the Owner and the same shall be finalized pursuant to such discussions. The agreed network may be in the form as submitted or in revised form in line with the outcome of discussions and shall form part of the Contract Document.

The above PERT network shall be reviewed and periodic review reports shall be submitted by the Contractor to the Owner as directed by him.

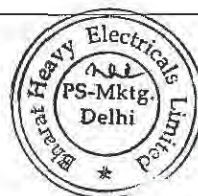
The Contractor shall make available to the Owner detailed manufacturing, delivery, erection, testing and commissioning programmes in line with the agreed PERT network in the form of PERT or Bar Chart as desired by the Owner within ninety (90) days from the date of receipt of Notice to Proceed. During performance of the Contract, such programmes shall be renewed, updated and submitted to the Owner as and when needed by him or periodically as specified by him. If in the opinion of the Owner/Engineer proper progress is not maintained, suitable changes shall be made in the Contractor's operation to ensure proper progress.

5.0A **TRANSFER OF TITLE AND RISK**

5.0A1 The legal title (but not risk which shall be transferred on the Risk Transfer Date) of the Equipment dispatched from any country outside India, shall be passed on to the Owner on the point of embarkation. However, the physical possession of such goods will remain in the hands of the Contractor for performance of the balance Scope of Work. The Contractor shall submit, in such form and within such time as required by the Owner, an indemnity bond indemnifying the Owner from any loss or damage to the equipment/material for the period between point and embarkation and the Taking Over the Plant by the Owner.

The transfer of title of goods shall take place when the goods in deliverable country/state are placed on board vessel for onward transmission to the Owner. The clean Bill of Lading issued by the Master of the Vessel shall be indicative of such deliverable country/state. Risk shall however continue to be that of the Consignor/Contractor upto the Taking Over of the Plant.

5.0A2 The Contractor shall remain responsible for, and shall bear the risk of loss or damage to, the Equipment in its possession and the Plant from the Commencement Date until the Risk Transfer Date. Provided that the transfer of risk shall be without prejudice to the obligation of the Contractor under the Contract.



6.0 PERFORMANCE BANK GUARANTEE FOR DUE PERFORMANCE OF THE WORK

6.1 The Contractor, upon receipt of Notice to Proceed from Owner shall furnish a Performance Bank Guarantee in the form specified as per Annexure-D as the performance security, for an amount equal to 17.5% of the total Contract Price under the Contract for diligent and due fulfillment by the Contractor of all obligations under the terms and conditions of the Contract. The initial Performance Bank Guarantee of 17.5% will be permitted to be reduced to 10% on completion of Reliability Run, completion of Performance Guarantee Test, and /payment of liquidated damages,(if applicable) whichever is later.

6.2 The Performance Bank Guarantee shall be liable to be invoked towards and claims and/or damages due to the Owner for failure of the Contractor to meet his obligations under the Contract. The Bank Guarantee shall be valid until it is released at the end of Warranty Period as stipulated in Clause 21 of this Section.

6.3 However, the amount of the Performance Bank Guarantee, after expiry of the Warranty Period, may be reduced in proportion to the Work released from Warranty obligations at the discretion of the Owner.

The Performance Bank Guarantee amount in case of divisible Contract shall be 17.5% of the total value of the Contract for the faithful performance of the Contract in accordance with the Contract Document. The guarantee amount shall be payable to the Owner in the currency of the consideration of the Contract without any condition whatsoever and their Guarantee shall be irrevocable.

6.4 In addition to the grounds specified above, The Performance Bank Guarantee is shall be liable to be invoked in the event:

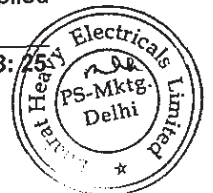
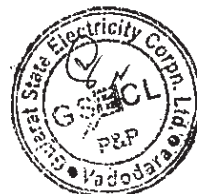
- a) The Owner has obtained an award in arbitration and the amount awarded has not been paid within thirty (30) days after the award, or
- b) The Contractor has gone into liquidation or has been declared bankrupt, or
- c) Any other reason which may adversely affect the contractual obligations of the Contractor.

Performance Guarantee is intended to secure the satisfactory performance by the Contractor of the entire Contract.

7.0 SUPPLY, ERECTION CONTRACT/DIVISIBLE CONTRACT

Notwithstanding anything stated elsewhere in the Bid Document, the Contract to be awarded is on the basis of Supply- Erection Contract (Divisible Contract) with single point responsibility. In the mode of contracting on the basis of Supply-Erection, the supply portion of the Contract will relate to the supply of the Plant and the erection portion will relate to port clearance, port handling, inland transportation, insurance, storage, unloading, erection, construction, testing, commissioning, Engineering, Project Management etc. as will be defined in the Contract Document.

In the case of a divisible contract, the title of ownership of Goods to be supplied



shall pass on to the Owner on dispatch Ex-works/F.O.B. However, until the Work is completed in all respects and the Plant is taken over by the Owner, the Goods shall remain within the custody of the Contractor. The above arrangement shall not in any way dilute the responsibility of the Contractor for the successful commissioning of the Plant and completion of other works as per Bid Specifications and both the contracts shall contain a cross default clause, namely, that a breach of one contract shall automatically be classified as a breach of the other contract, which will confer a right on the Owner to levy LD from other contractor and to terminate also the other contract as well at the risk and cost of the Contractor.

8.0 TERMS OF PAYMENT

8.1 The terms of payment for the price components of the Supplies of Equipment and Mandatory Spares, civil and architectural works, and erection are detailed in the Contract Agreement.

8.1.1 Initial Advance

The advance in accordance with the provisions of Clause 8.4, 8.5, 8.6, 8.7, and 8.8 of these GCC (each of such advance being referred to as "Advance Payment") will be paid on fulfillment of all of the following conditions by the Contractor:

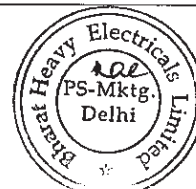
- i) Signing of Contract Agreement;(Agreement shall be signed within 45 days from the date of acceptance of LOA)
- ii) Submission of an unconditional Performance Security (Performance Bank Guarantee) as per clause -6.0 of the General Conditions;
- iii) Submission of an unconditional additional Performance Guarantee /by concerned entity, as prescribed by the Owner;
- iv) Submission of a preliminary Project network schedule indicating major milestones based on the Work schedule.
- v) Submission of Advance Payment Bank Guarantee as per clause-8.2 below.

Submission of detailed Project Network Schedule shall be made within 45 days from the date of signing of Contract.

8.2 Documentation and Bank Guarantee for Advance Payment

The Contractor shall furnish the following documentation as a condition for making request for Advance Payment.

- i) Invoice for amount of Advance Payment in original and five (5) copies.
- ii) Bank guarantee in the proforma attached with Volume-1, Section-2, Annexure-I-I for an amount equivalent to the aggregate amount of Advance Payment ("**Advance Payment Bank Guarantee**") with one (1) copy of original bank guarantee valid upto Take Over of Plant issued or counter guaranteed/confirmed by any Indian Nationalized Bank or its foreign branch. The charges for counter guarantee/confirmation, if any, shall be to Contractor's account.



- iii) Advance Payment Bank Guarantee for Advance Payment shall be denominated proportionately in currencies of contract or US Dollars.

8.3 Adjustment of Advance Payment

The Advance Payment made shall be adjusted against the progress payments, progressively at the same rate of advance i.e., if 10% advance paid, 10% of the invoice value of the progress payment will be adjusted against making progress payment. Upon each such recovery, the value of the Advance Payment Bank Guarantee shall be reduced progressively by the amount of advance so recovered by Owner from Contractor's progress payments. Apportioning the break-up of other payments shall be as further detailed below. All further payments under the Contract shall be made as stipulated in the Contract Agreement. Reduction of Advance Payment Bank Guarantee shall be permitted every six months i.e. January and July of each year based on records available with GSECL.

8.4 Design Engineering Charges

Design engineering charges component will be paid as per detailed break-up as set forth in the contract after issue of certification of completion of same by Contractor to Owner and acceptance thereof by Owner/Owner's representative in following installments:

- i) 0 to 5% (max 5%) of Design Engineering Charges as Advance Payment on fulfillment of conditions in sub-clauses-8.1 and 8.2
- ii) 75% (cumulative not exceeding 80%) of Design Engineering Charges as progress payment on approval of drawings and document – payable in 36 monthly equated installments.
- iii) 7% (cumulative not exceeding 87%) of Design Engineering Charges on certification of successful completion of Reliability Run of Plant as per specification by Owner.
- iv) 6% (cumulative not exceeding 93%) of Design Engineering Charges on Final Plant Acceptance/Take- Over of Plant and also submission of as built drawings.
- v) 7% (cumulative not exceeding 100%) of Design Engineering Charges on Satisfactory completion of warranty period.

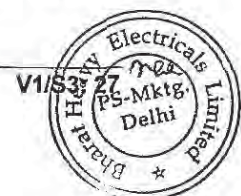
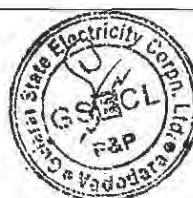
Contractor acknowledges that certification or its acceptance by the Owner's representative shall not, however, relieve or absolve in way or manner the Contractor from the performance of work and other obligations under the Contract including Performance Guarantee and Warranty obligations under the Contract.

8.5 Project Management Charges

Project Management charges component will be paid as per detailed break-up in following installments:

- i) 0-5% (max 5%) of Project Management charges as Advance Payment on fulfillment of conditions in sub-clauses-8.1 and 8.2

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- ii) 75% (cumulative not exceeding 80%) of Project Management charges on equal monthly installments for the Contract Period.
- iii) 7% (cumulative not exceeding 87%) of Project Management Charges on certification of successful completion of Reliability Run of plant as per specification by Owner;
- iv) 6% (cumulative not exceeding 93%) of Project Management charges on Take Over of plant.
- v) 7% (cumulative not exceeding 100%) of Project Management Charges on Satisfactory completion of warranty period and also submission of as built drawings, O & M manuals etc.

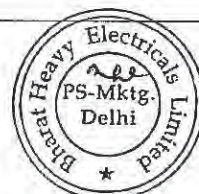
8.6

Supply Price

For Supplies of Equipments, the payments shall be linked with the despatch of materials and shall only be made after production of all despatch documents as specified in Letter of credit (L/C) conditions in case of supplies of non Indian origin and / or in the relevant contract conditions which will, inter-alia, include 3 original Bills of Lading in case of CIF supplies and the equipment Material Despatch Clearance Certificate issued by the Owner/Owner's representative after inspection if applicable.

- i) Supply price component will be paid as per break-up below:

Item No.	Time of Payment	% Component FOB/Ex-Works Price	Condition to be fulfilled
1.0	Advance Payment	0-5% (max 5%)	As per clauses-8.1 and 8.2 of this General Condition.
2.0	Advance Payment against placement of orders for major equipments.		
a)	Evidence of order placement of all major equipment/system	0-5% (cumulative not exceed 10%)	Evidence of order placement for all major Items to be ordered within first 6 months from zero date as per L1 schedule shall be considered.
b)	Despatch of Equipment/system from Manufacturer's Works	55% (cumulative not exceeding 65%)	Production of invoices and satisfactory evidence of shipment for major orders and submission of Material Despatch Clearance Certificate and Inspection Certificate as per quality assurance program.



Item No.	Time of Payment	% Component FOB/Ex-Works Price	Condition to be fulfilled
3.0	Receipt of equipment /system	15% (cumulative not exceeding 80%)	Verification and certification by the Owner / Owner's representative of the equipment / system received and stored at 'Site'
4.0	Successful Completion of Reliability Run	7% (cumulative not exceeding 87%)	Certification of successful completion of Reliability Run of plant as per contract by Owner.
5.0	Successful completion of Performance tests	6% (cumulative not exceeding 93%)	Take Over of Plant
6.0	Warranty Charges	2% 7% (cumulative not exceeding 100%)	Satisfactory completion of Warranty Period and Extended Defects Correction Period, as evidenced by issuance of Defects Liability Certificate, and also submission of O & M manuals, As built drawings etc.

- ii) The Ocean Freight and Marine Insurance Charges and the in-land transportation and Marine insurance charges shall be paid to Contractor on pro-rata basis to the FOB price of component shipped on evidence of activities having been carried out. The aggregate of all such pro-rata payment shall not exceed the total amount identified in contract price provided, however, wherever equipment wise above mentioned charges have been identified in contract the payment of such charges shall be based on such charges identified in contract against evidence of activity having been carried out.

8.7

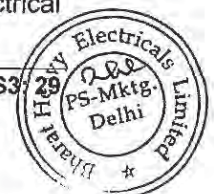
Erection, testing and Commissioning Price (Excluding civil & architectural works)

In case of erection, progress payments shall only be made after the issue of Certificates by the Owner / Owner's representative, as detailed under:

- i) 0-5% (max 5%) of total erection, testing and commissioning price as Advance Payment and fulfillment of conditions in sub-clauses -8.1 and 8.2 above and on establishment of site office by the Contractor at site.
- ii) 75%(cumulative not exceeding 80%) of the erection, testing and commissioning price will be made as progressive payments against progressive erection on tonnage basis for mechanical and electrical

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items and successful completion of quality check points. Separate basis for cabling and instrumentation, which will be finalized between Owner and Contractor prior to contract award. Progress payments shall only be made after the issue of Certificates by the Owner/Owner's representative, one for the quantum of work completed and the other by the Field Quality Surveillance representative for the successful completion of quality check points involved in the quantum of work billed.

- iii) 7% (cumulative not exceeding 87%) of the erection, testing and commissioning price on successful completion of Reliability Run of Plant as per contract.
- iv) 6% (cumulative not exceeding 93%) of the erection, testing and commissioning price on Take Over of plant.
- v) 7% (cumulative not exceeding 100%) of the erection, testing and commissioning price on satisfactory completion of warranty period.

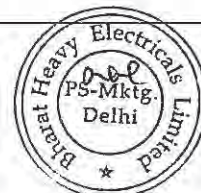
Further break-up of erection activities of the above identified equipment for progressive payments shall be as setforth in Milestone payment schedule.

8.8 Civil, Structural and Architectural Price

- i) 0-5% (max .5%) of total civil, structural & architectural price as Advance Payment and fulfillment of conditions in sub-clauses 8.1 and 8.2 above and on establishment of site office by the Contractor at site.
- ii) 75% (cumulative not exceeding 80%) progressive payment on certification by the Owner/Owner's representative on the basis of the work performed of total civil, structural and architectural price of the package as per the payment stages as setforth in Milestone Payment Schedule.
- iii) 7% (cumulative not exceeding 87%) of total civil, structural and architectural price component on successful completion of Reliability Run as per contract.
- iv) 6% (cumulative not exceeding 93%) of total civil, structural and architectural price component on Taking Over.
- v) 7% (cumulative not exceeding 100%) of the total civil, structural and architectural price component on satisfactory completion of warranty period.

8.9 Mandatory Spare Price

- i) The FOB Ex-works including packing and forwarding charges price component of Mandatory Spares shall be paid as indicated below:
 - a) 75% of price component for Mandatory Spares after submission of material despatch clearance and inspection certificate, despatch to Site and submission of requisite shipping documents. An indicative list of the shipping documents is given under Clause 9.3 of these GCC.



- b) 25% of price component for Mandatory Spares on receipt and storage at Site and physical verification by the Owner/Owner's Representative.
- ii) The ocean freight and marine insurance charges and the inland transportation and insurance charges shall be paid to the Contractor pro-rata to the value of Mandatory Spares received at Site on production of invoices by the Contractor.
- iii) Tools and tackles Prices: This shall form part of Supply Price and shall be claimed under supply payment.

Quantity variation in spares: The Purchaser may vary the quantity of mandatory spares to be ordered provided the ordered quantity results in a "whole number" or a "complete set". Order for spares with quantity expressed as a fraction will not be made. Variation in quantities, indicated in percentage or LOT will not be made. However, complete deletion of any item can be made.

8.10 Not Used

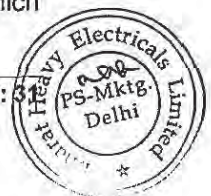
8.11 Schedule of Payments

Based on the terms of payment in clauses mentioned above and work schedule payment of Contract Price component linked with achievement of Milestones shall be paid in accordance with Milestone Payment Schedule. The Milestone payment schedule specifies the installments of Contract Price, and the Milestones to be achieved and the payment thereunder shall be subject to the following:

- i) The installments quoted in the Milestone payment Schedule may be modified by Owner / Owner's representative if progress is not as scheduled.
- ii) Payment shall be made on the date which is the later of (i) accomplishment of a milestone and (ii) the date fixed for accomplishment of such a milestone as set out in the Milestone Payment Schedule.
- iii) Submission of documentation/data to Owner/Owner's representative for approval.
- iv) Submission of monthly progress reports and updated Network Schedule

8.12 Application for Interim Payment Certificates and Claim for Payments

8.12.1 The Contractor shall submit a statement (the **Interim Payment Certificate**"), in six copies to the Owner/Owner's representative after the end of each month before the tenth day of the next month, in a form approved by the Owner/ Owner's representative, showing the amounts to which the Contractor considers himself to be entitled, together with supporting documents which



shall include the detailed report on the progress during the month. In order to be eligible for payment, the Interim Payment Certificate shall include the following items, as applicable, which shall be expressed in the currencies in which the contract price is payable, in the sequence listed:

- i) The estimated contract value of the Design and construction documents produced and the Works executed up to the end of the month (including variations but excluding items described in subparagraphs (iv) to (vii) below);
- ii) Certification from Owner/Owner's representative that the applicable Work has been performed and that the quality of Work described in the Interim Payment Certificate is in line with contract;
- iii) If there is any pending or threatened dispute, regarding Work covered by such request or payment as a result of which Contractor intends to withhold payment from such sub-Contractor, a report detailing such dispute and circumstances thereof;
- iv) Any amounts to be added and deducted for which Change Order has been issued;
- v) Any amounts to be added and deducted for the Advance Payments and repayments in accordance with clause 8.3 above;
- vi) Any other additions or deductions which may have become due in accordance with the Contract including, without limitation, deduction on account of liquidated damages.
- vii) The deduction of the amounts certified in all previous Interim Payment Certificates.
- viii) Any other information that the Owner/Owner's representative may reasonable request.

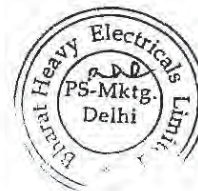
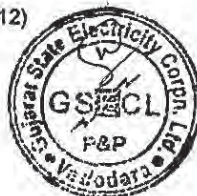
8.12.2 Contractor shall raise its consolidated invoices/bills only once a month.

8.13 Mode of Payment

8.13.1 For supply of Equipment and Mandatory Spares:

The mode of payment by Owner to the Contractor shall be mutually agreed before finalization of Contract. The same may be by way of establishing an irrevocable Letter of Credit (L/C) in favour of the Contractor through a bank in case of supplies of Non-Indian origin directly to Owner and through a nationalized bank to be nominated by the Contractor in case of Indian Supplies only for payments due on despatch of equipment or by way of direct disbursement of loans. The payment will be made through usance L/C as per credit period of payment specified in the specification. The L/C format will be mutually decided during finalization of Contract.

The value of L/C will be as per payment schedule for each quarter and valid for a quarter. It will be the responsibility of the Contractor to utilize the L/C to the fullest extent. In case L/C has been established by the Owner and not utilized by the Contractor, all reinstatement charges for the L/C for further period necessitated due to non-utilization of L/C will be to the account of the



Contractor.

All L/C charges shall be to Owner's account except L/C charges for confirmation by Contractor's bank which will be borne by the Contractor. For non-Indian supplies, Contractor shall be responsible for all permits, licenses and the like from respective authorities necessary for export of equipment from the respective countries to the Owner.

8.13.2 For Other Payments

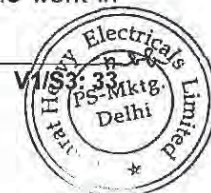
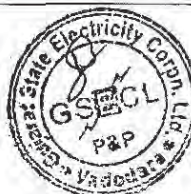
The payment of advance(s), price adjustment, any other supply payment, ocean freight, marine insurance, Taxes (wherever admissible), inland transportation (including port handling), insurance, civil and architectural works and for the erection portion of the Works shall be made direct to the Contractor by the Owner.

8.13.3 Unless otherwise agreed by the parties, payments by Owner to Contractor, shall be made in currencies as per Schedule of Prices by cheque to an account or accounts designated by Contractor and maintained by Contractor or by such other person or entity at a bank or banker in Vadodara, Gujarat, India in writing. Extra Work shall be paid in accordance with the applicable Change Order as part of the work under the Contract. Once all acts necessary to initiate the relevant wire transfer have been completed within the time specified for such payments, any delays within the international or domestic banking system in the transfer of such payments to Contractor's account or accounts as aforesaid shall not give rise to a claim that Owner has breached its payment obligations hereunder.

Payment will be made in the respective currencies quoted by the bidder for onshore supply for import content of raw material of onshore supply. Bidder shall have to provide the drawdown schedule in respective currencies & to include in price bid accordingly.

8.13.4 The Owner shall pay the amount certified in each Interim Payment Certificate within 30 days from the date on which the Owner/Owner's representative received the Contractor's statement and supporting documents and the Owner shall pay the amount certified in the Final Payment certificate within 120 days from the date of issue of the Take Over certificate.

8.13.5 Pursuant to this clause-8.0, if the commercial banks are closed due to a public holiday, period as above shall be extended to the first business day after the end of the period concerned. In addition, unless the parties otherwise agree, Owner shall not be obligated to pay, in respect of any request for payment, any amount in excess of 100% of the cumulative amount anticipated to be paid for work completed to such date, as set forth in the projected payment schedule as per Schedule of Prices. If any request for payment does not comply in all material respects with the Contract, Owner shall inform Contractor about the same within 15 days following the receipt of such request for payment, and Contractor shall re-submit such request for payment. If less than the full amount is paid, Owner shall state in writing the reasons for paying such lesser sum. Any dispute regarding Owner's payment of a lesser sum than that set forth in a request for payment must be raised by Contractor within 30 days of receipt of such payment, or Contractor's right to dispute such payment is waived. During the pendency of any such Dispute and the resolution thereof, Contractor shall continue to perform the work in



accordance with the provisions set forth herein.

8.14 Payments Withheld

8.14.1 Owner shall have the right to withhold from any payment due to Contractor, including the final payment, such amounts as Owner reasonably deems necessary or appropriate to protect it because of any one or more of the following reasons:

- i) Defects in any work, which might affect Owner's ability to operate Unit or Plant as contemplated herein, whether or not payment has been made therefor;
- ii) The filing of a any vendor/tradesman's lien or similar encumbrance in respect of the work or the plant (or any portion thereof);
- iii) A dispute as to the accuracy or completeness of any request for payment received by Owner pursuant to this clause-8.0 within 90 days of receipt thereof or payment made thereunder;
- iv) Contractor's failure to deliver any Performance Securities and additional performance to Owner as in the Contract;
- v) Any requirement in accordance with Applicable Laws to withhold any Taxes payable by Contractor in respect of the work or any part thereof; and
- vi) Contractor's failure to make payments to sub-Contractors or workers for work, including amounts withheld by Contractor because of disputes between Contractor and such Persons.

8.14.2 In addition to the provisions of this clause-8.0 which relates to the recovery by the Owner of any amounts that the Owner may have paid, for which the Contractor is liable under the contract, the Owner shall also be entitled to recover all the dues in terms of the contract including liquidated damages for delay, liquidated damages for the shortfall in the guaranteed performance parameters, etc by way of deductions from the payments due to the Contractor or that may become due to the Contractor in future or from any securities/guarantees under the contract and/or otherwise.

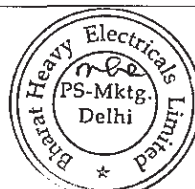
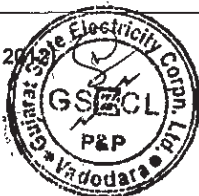
8.14.3 Notwithstanding any dispute that Contractor may have, and regardless of the basis thereof or grounds there for, Contractor agrees that it will, for so long as the Contract has not been terminated diligently prosecute the Work up to Take over of Plant, all in accordance with the terms of the Contract.

9.0 SHIPPING PARTICULARS

9.1 The Contractor shall be responsible for the correct appraisal of freight rates, weights and volumes of structural's or machinery as the case may be. The Owner shall not be liable to pay any warehouse or wharf age charges due to the necessity of storing Goods awaiting shipment.

9.2 All consignments shall be addressed to and the bill of lading and other shipping documents shall be made in the name of the Consignee.

9.3 After shipment is effected, the following documents shall be forwarded to the



Consignee by registered air mail/courier services.

- | | | |
|------|--|---|
| i) | The original bill of lading in duplicate and four (4) non-negotiable copies of the same. | |
| ii) | F.O.B. invoices | Six (6) copies including one (1) original |
| iii) | Freight invoice & freight details | Six (6) copies including one (1) original |
| iv) | Insurance premium receipts or certificates | - Ditto - |
| v) | Packing list | - Ditto - |
| vi) | Certificate of origin | Six (6) copies including one (1) original |

10.0 DELIVERY TERMS

10.1 When the Goods are ready for shipment, the Owner should be notified by the Contractor through fax or email. Notification of dispatch and delivery in regard to each and every consignment shall be made to the Owner immediately after dispatch and delivery in case of delivery at either the Site or at the port of entry as applicable at least forty-eight (48) hours ahead of actual delivery. The Contractor shall further supply to the Consignee an invoice and packing list of all Goods dispatched or delivered by him and other shipping particulars. All packages, containers, bundles and loose materials forming part of each and every consignment shall be described fully in the packing list, and full details of the contents of packages and quantity of goods shall be submitted to the Owner.

10.2 For the Goods imported by the Contractor, the Contractor shall deliver the Goods at CIF price. The Contractor shall also make all arrangements to deliver the Goods to the location specified in Technical Specifications.

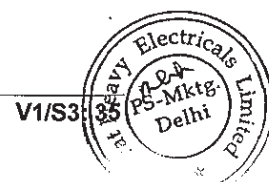
11.0 LIQUIDATED DAMAGES

11.1 Delay

Scheduled dates for Commissioning will be as specified in Schedule [insert] of the Contract. If the Contractor fails to achieve Commissioning within the time fixed thereof, he shall be liable to pay liquidated damages for the delay at the rate of half percent (½%) of the total Contract Price per week of delay. The total amount of liquidated damage on account of delay shall not exceed 10% of the Total Contract Price considering all types of Contracts including supply and erection.

11.2 Failure to meet Performance Guarantees

The liquidated damage for non fulfillment of Performance Guarantees will be as indicated below.



Sl. No.	Item	Value
1.	For increase in each Kcal/KWh of weighted average plant overall heat rate.	Rs. 7.5 Crores
2.	For every KW shortfall in gross power output at generator terminal	Rs. 100,000
3.	For increase in Auxiliary Power Consumption per KW	Rs. 200,000
4.	For every m³/hr increase in DM water consumption	Rs. 1 Crore

The total amount of liquidated damage for non fulfillment of Performance Guarantee shall be maximum 10% of the Contract Price considering all types of Contracts including supply and erection.

- 11.3 The total amount of liquidated damages on account of delay in Commissioning and non-fulfillment of Performance Guarantees shall not in any case exceed fifteen percent (15%) of the total Contract Price. The Owner shall deduct the amount of such liquidated damage from any money due or which may become due to the Contractor under the Contract, and/or recover such liquidated damage from the Performance Guarantee of the Contractor. To be entitled to impose the liquidated damage, the Owner will not be required to prove that he has incurred such amount as actual damages.

Liquidated damages to be paid in currency of the Contract Price on Pro-rata basis.

- 11.4 Rejection

If the total aggregate liquidated damages for short fall in Performance Guarantees of all parameters (shortfall in HR, power output, DM water consumption, Auxiliary Power Consumption) will be higher than 10% of the Contract Price then the Owner may at its option, either,

(a) Reject the Equipment/plant and recover the payments already made

Or

(b) Terminate the Contract pursuant to GCC 24.0 and recover the payments already made,

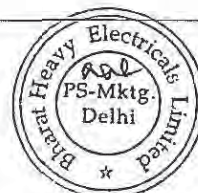
Or

© Accept the equipment after levy of liquidated damages in accordance with the provisions specified in GCC 11.0 of Contract Agreement.

12.0 SHOP ASSEMBLY AND INSPECTION

12.1 Shop Assembly

Shop Assembly to the largest extent feasible shall be performed by the Contractor to assure proper fitting of the various parts, and for checking the correctness of clearances and dimensions. Parts thus assembled shall be match-marked for reassembly at the Site, prior to dismantling for shipment. A detailed description of the intended shop assemblies shall be submitted along with a quality assurance plan.



12.2 Inspection before Shipment

No Goods shall be shipped before all tests and inspections have been carried out according to the Approved quality assurance plan unless otherwise instructed by the Owner.

The acceptance of any Goods prior to shipment shall in no way relieve the Contractor of any of his responsibilities for meeting all the requirements of the Specification and shall not prevent subsequent rejection if such Goods are found to be defective.

In case inspection of Equipment/Goods needs visiting foreign countries, cost of 10 man visits shall be considered in the contract..All expenditure including that for travel shall be borne by bidder.

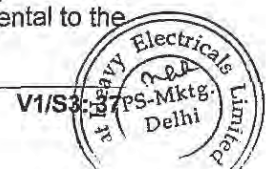
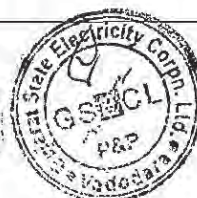
13.0 **CONTRACTOR'S DRAWINGS AND DATA**

- 13.1
- a) The Contractor shall be responsible for developing detailed Drawings to adopt equipment and materials to be supplied to the requirements indicated in the Specification and shall submit a list of such Drawings and a programme for submission of these Drawings and documents within ninety (90) days from the date of receipt of the Notice to Proceed.
 - b) The Contractor shall also provide the Owner with the following Drawings and documents in the number of copies mentioned in Technical Specifications as per agreed schedule.
 - i) Technical particulars conforming to the Specifications.
 - ii) Outline drawings of major equipment together with weights and sufficient overall dimensions.
 - iii) Other drawings and documents as indicated in the Technical Specifications.
 - c) The Contractor shall, prior to submitting the Drawings and documents, submit to the Owner two copies of the Codes and Standards other than Indian Standards and Codes which shall govern the Works.

- 13.2 Copyright in the Owner's requirements and other documents issued by the Owner or the Owner's Representative to the Contractor shall (as between the parties) remain the property of the Owner.

The copyright in all drawings, documents and other materials containing data and information furnished to the Owner by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Owner directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party. The Owner shall however be free to reproduce all drawings, documents and other material furnished to the Owner for the purpose of the Contract including, if required, for operation and maintenance of the Facility

- 13.3 The Contractor shall indemnify the Owner in case of breach of this clause by the Contractor. If these documents are received by a third party from the Contractor and the third party makes use of these documents detrimental to the



Owner or use these documents for their personal gain, the Contractor shall compensate the Owner for the loss suffered as well as for the value of gain derived by third party.

14.0 MISTAKES IN DRAWINGS

The Contractor shall be responsible for and shall pay for any alterations of the Work due to any discrepancies, errors or omissions in the Drawings or other particulars supplied by him whether such Drawings or particulars have been Approved by the Engineer or not.

15.0 MATERIALS AND WORKMANSHIP FOR MANUFACTURER

All Goods to be supplied and all Works to be done by the Contractor under the Contract shall be manufactured and executed in the manner stipulated in the Specifications.

The Contractor shall use the best available materials for the Works. These materials shall be of recent manufacture, free from defects and imperfections and unused.

The highest standards of safety shall be adhered to during execution of the Works.

16.0 COMPLETENESS OF EQUIPMENT

The equipment supplied shall be complete in all respects. The Contractor shall not be eligible for any extra payment in respect of such mountings, fittings, fixtures and accessories if required for the safe and reliable operation of the equipment.

Parts of all similar equipment supplied shall be interchangeable with one another.

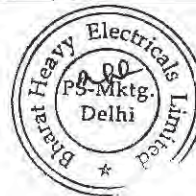
17.0 CERTIFICATE OF THE OWNER

Every application to the Owner for a certificate must be accompanied by a detailed invoice (in quadruplicate) setting forth in order of the schedule of quantities and prices as per Approved billing breakdowns of the Works executed and/or Goods ready for dispatch up to the date of claim. The certificate relating to such Goods and Work as in the reasonable opinion of the Engineer in accordance with the Specifications shall be issued within thirty (30) days of receipt of the application.

The Owner may, with any certificate, make any corrections or modifications to any previous certificates issued by him. The payments to be made against invoices under certification will be regulated and adjusted accordingly.

18.0 OWNER'S DECISION

In respect of all matters which are left to the decision of the Owner, including the granting or withholding of certificates; the Owner shall, if required to do so by the Contractor, give in writing a decision thereon and his reasons for taking such decision. If in the opinion of the Contractor, a decision made by the Owner



is not in acceptance with the meaning and intent of the Contract, the Contractor may file with the Owner within fifteen (15) days after receipt of the decision, a written objection to the decision. Failure to file such an objection within the allotted time will be considered to be acceptance of the Owner's decision and the decision shall become final and binding.

The Owner's decision and the filing of the written objection of the Contractor thereto shall be a condition precedent to the right to request for arbitration. It is the intent of the Contract Agreement that there shall be no delay in the execution of the Work in such cases and the decision of the Owner as given shall be promptly observed.

19.0 CERTIFICATE NOT TO AFFECT THE RIGHT OF THE OWNER OR THE CONTRACTOR

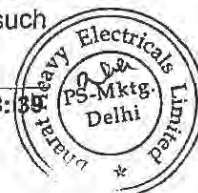
No certificate of the Engineer on account, nor any sum paid on account by the Owner, nor any extension of time for the execution of the Work by the Contractor under the powers granted by item "Certificate of the Owner" shall affect or prejudice the rights of the Owner against the Contractor, or relieve the Contractor of his obligations for the due performance of the Contract or be interpreted as Approval of the Work done or of the Goods supplied. No certificate shall create the liability for the Owner to pay for alterations, amendments, variations or additional work not ordered in writing by the Owner, or discharge the liability of the Contractor for payment of damages, whether due, ascertained or certified or not or of any sum against the payment of which he is bound to indemnify the Owner, nor shall any such certificate nor the acceptance by him or any sum paid on account or otherwise, affect or prejudice the rights of the Owner against the Contractor.

20.0 OWNER ACCEPTANCE AND TAKE OVER CERTIFICATE

In order to achieve Owner acceptance, Contractor must certify to the satisfaction of Owner/Owner's representative that:

- i) Reliability Run Test and Performance Guarantee Test have been completed to the satisfaction of Owner.
- ii) All punch list and pending issues have been completed in accordance with the contract;
- iii) All the Contractor's and sub-Contractor's personnel, supplies, unused materials, waste, rubbish and temporary facilities located at or near such plant have been removed from such location,
- iv) All other provisions of and all items required by the Contract have been performed or delivered, as the case may be, in accordance with the Contract and in a manner satisfactory to Owner.
- v) Contractor has delivered to Owner a Project Completion certificate certifying satisfactory completion of each of the conditions set forth in sub-clauses -20(i) to 20(iv) above.

Upon certification by Contractor of satisfactory completion of sub-clauses -20 (i) through 20(iv), Owner shall issue a Take over Certificate certifying such



matters within 60 (Sixty) days

21.0 **WARRANTY**

21.1 The Contractor hereby provides following Warranty in respect of the Equipment to be furnished by the Contractor:

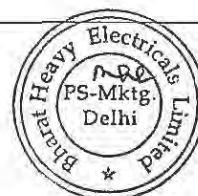
- a) All Equipment shall be new and in accordance with the Contract and shall be fit for the intended purposes,
- b) All Equipment shall be free from any defect due to faulty design, materials and/or workmanship.
- c) The Equipment shall perform satisfactorily and the performance and efficiencies of the specified Equipment shall not be less than the respective guaranteed values.
- d) The efficiencies, temperature rise and other performance data of all other Equipment shall be as per the Contract.
- e) All other Works including civil, structural and architectural works shall be in accordance with the Contract and free from any defect and omission.
- f) The Work will be designed so that the Plant is capable of being operated in a safe, reliable, economic and efficient manner, in accordance with the requirements of the Contract.

The Contractor undertakes to reaffirm the above Warranty, if so required by the Owner, in such forms as prescribed by the Owner and shall be signed by the Contractor and, if so required by the Owner, by Sub-contractor(s) of the Contractor.

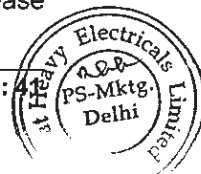
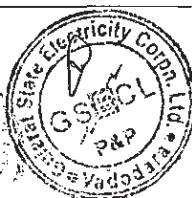
If the Contractor finds, after his Tender is accepted, that a variation in work, construction technique or the quality of materials is necessary to fulfill the Warranty called for, such variations may be made with the approval of the Owner, provided the request for changes is made during execution of the contract Agreement and the changes are to be made without any increase in the price.

21.2 The Warranty shall be valid for a period of twelve (12) calendar months commencing from the date of Taking Over of the fully completed Plant at the discretion of the Owner. This period of the Warranty shall be referred to as the "**Warranty Period**".

21.3 During the Warranty Period, the Contractor's liability shall be limited to the replacement of any defective parts that may develop in Plant, of his own manufacture or those of his associate(s) and Sub-contractor(s) under the conditions provided for by the Contract under proper use and arising from faulty design, materials or workmanship. All such replacements of defective parts mentioned above shall be made free of cost at Site by the Contractor and the return of the defective parts to the Contractor's works shall be the Contractor's responsibility and shall be made at his expense. In the case of these defective parts which are not repairable at Site but are essential, in the Owner's opinion, for the commercial operation of the Plant or the Equipment, the Contractor shall replace at the Site, free of cost of the Owner the said defective parts before the



- defective parts are removed to his Works in such a manner which will minimize interruption in the operation of the Plant and/or the Equipment. Provided always that such defective parts as are not repairable at Site, and are not essential in the meantime in the commercial use of the Plant, may be taken by the Contractor to the Contractor's works for repairs unless otherwise arranged. The decision to replace/repair the defective items shall be discussed and mutually agreed at appropriate stage.
- 21.4 The cost of any special or, general overhaul rendered necessary during Warranty Period due to defects in the Plant or defective Work shall be borne by the Contractor. The Owner will, however, render such assistance in this matter as will expedite the same.
- 21.5 If for rectification or replacement of any part of equipment or work due to defective materials, manufacture or design or workmanship, the services of the Contractor's personnel are requisitioned within the Warranty Period, these services shall be made available free of any cost to the Owner.
- 21.6 If it becomes necessary for the Contractor to replace or renew any defective portions of the Plant under this Clause, the provisions of this Clause will apply to the portions of the Plant so replaced or renewed until the expiration of **Extended Defects Correction Period**. Further, the Contractor shall ensure that the Performance Bank Guarantee shall remain outstanding or a replacement on-demand bank guarantee is delivered to the Owner in an amount equal to one hundred percent (100%) of the estimated value of each such item until the Extended Defects Correction Period applicable thereto has expired.
- 21.7 If any defect be not remedied within a reasonable time, the Owner may proceed to do the work at the Contractor's risk and expenses but without prejudice to any other rights which the Owner may have against the Contractor in respect of such defects.
- 21.8 If the replacements or renewals are of such character as may affect the efficiency of the Plant, the Owner shall have the right to give to the Contractor within one (1) month of such replacement or renewal, notice in writing that "tests on completion" be made, in which case such tests shall be carried out as provided in Clause on Tests on completion and Trial Run at the Site" in the Technical Specifications. Should such tests show that the Plant sustains the guarantee given in the Contract; the cost of the test shall be borne by the Owner. Should the guarantee be not sustained, the cost of the test shall be borne by the Contractor. Further, all necessary works will be carried out by the Contractor to achieve guarantee given in the contracts and perform tests to prove the same at his own cost.
- 21.9 Until the final certificate has been issued, the Contractor shall have the right of entry at his own risk and expenses by himself or his duly authorised representatives whose names shall previously have been communicated in writing to the Owner at all reasonable working hours of the Plant and taking notes there from and, if he desires, at his own expenses making any tests, subject to the approval of the Owner that will not be unreasonably withheld.
- 21.10 The issue of the Taking over Certificate shall in no way exempt the Contractor from the provisions of this Clause 21.
- 21.11 At the end of the Warranty Period, the liability of the Contractor shall cease



other than in respect of items which are subject to an Extended Defects Correction Period.

21.12 The Contractor shall provide, at the Site, at least one (1) control and instrumentation engineer, one (1) electrical engineer, one (1) mechanical engineer and one (1) operation expert during the Warranty Period without additional cost to the Owner.

21.13 The Contractor agrees that any item of Equipment replaced or rectified during the Warranty Period shall conform to the Technical Specifications of the corresponding original Equipment and if required by the Owner, the Contractor shall demonstrate such conformance through suitable means (to be decided by the Contractor at its sole discretion) including inspection by the Owner, shop testing or operation of the Equipment of which the replaced equipment/material constitutes a part.

21.14 WARRANTY FOR SPARES

In addition to the foregoing, the Contractor warrants that all spares supplied will be new and in accordance with the Contract and will be free from defects in design, material and workmanship and further guarantee as under:

For mandatory spares and two (2) years recommended spares:

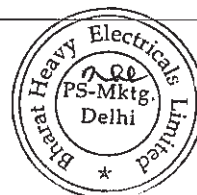
For item of spares ordered or to be ordered by the Owner for two (2) years operational requirement of the Plant which are manufactured as a continuous operation together with the corresponding main equipment/ component, the Warranty will be twelve (12) months from the Taking Over of the Plant under the Contract. In case of any failure in the original Equipment due to faulty designs, materials and workmanship, the corresponding spare parts if any, supplied shall be replaced without any extra cost to the Owner unless a joint examination and analysis by the Owner and the Contractor of such spare parts prove that the defect found in the original part that failed can safely be assured not to be present in spare parts. Such replaced spare parts will have the same Warranty as applicable to the replacement made for the defective original part/component.

21.15 Latent Defects:

Notwithstanding the issue of the Take Over Certificate, the Contractor shall be responsible for making good with all possible speed any Latent Defect in any Works /equipment of the plant which appears at any time before the expiry of defect liability period. And shall remedy such defect at its own cost and expense. The latent defect liability period shall be a minimum of 5 years from the end of defect liability period. The defects to which this applies are defects in design, materials or workmanship or defects arising from any act or omission of the Contractor done or omitted prior to Take-over of the portion of the Plant affected by the defects or during the Warranty Period which a reasonable examination at the end of the Warranty Period would not have disclosed.

22.0 DEFAULT OF CONTRACTOR

Termination upon Contractor's bankruptcy or default:



- 22.1 In the event the Contractor:
- (i) Contractor is adjudged a bankrupt or insolvent, or
 - (ii) Contractor makes a general assignment for the benefit of its creditors, or
 - (iii) A trustee or receiver is appointed for Contractor or for any of its property, or
 - (iv) Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or
 - (v) Contractor fails to supply sufficient skilled workers or suitable materials or Equipment, or fails to commence the Work or abandons the Work or part thereof or fails to rectify any Work done that has been objected or rejected to by the Owner or if it fails to make prompt payments when due to Subcontractors or for labour, materials or equipment, or
 - (vi) Contractor otherwise commits a material breach of any of the terms of the Contract,

Then Owner may, without prejudice to any other right or remedy Owner may have hereunder or at law or in equity, at any time terminate the Contract upon 30 days' notice to Contractor, provided such event or breach is not remedied within such 30 days period or, if the breach or default cannot reasonably be cured within 30 days, such longer period (not to exceed 90 days) as may be reasonably necessary to cure such breach or default. Owner may terminate the Contract immediately upon notice to Contractor if Contractor disregards a material provision of any Applicable Law. Owner may terminate the Contract, upon 30 days' notice, if Contractor disregards any other provision of Applicable Law, provided any such failure is not remedied within such 30 days period. Contractor shall receive no Termination Payment or other cancellation payments in the event of a termination under this clause, but Contractor shall be entitled to any part of the Contract Price then due and payable for the Works already performed.

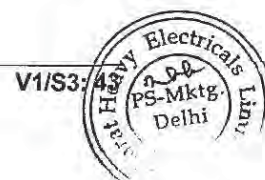
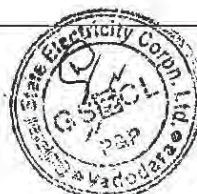
23. Not used

24. FORECLOSURE OF CONTRACT

Termination for Owner's Convenience:

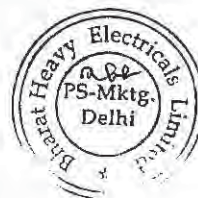
Owner may at will for its convenience at any time and without cause, terminate the Contract upon 30 days prior written notice to the Contractor.

Immediately upon receipt of such notice, Contractor shall stop performance of the Works, stop all further sub-contracting or purchasing activity, and terminate Sub-contracts; handover all Documents, equipment, materials and spares relating to the Works prepared by the Contractor or procured from other sources up to the date of termination for which the Contractor has received payment equivalent to the value thereof and shall immediately order & commence demobilization and remove all Contractor's Equipment, which is on Site and repatriate all his staff and labour from the Site.



Consequences of Termination.

- 24.1 Termination for Contractor's bankruptcy or default under Clause 22
- 24.1.1 In the case of termination by Owner for default or bankruptcy under the circumstances contemplated by Clause 22, Contractor shall not, pending settlement of Owner's claims by reason of such termination, be entitled to receive any further payment and shall protect, defend, indemnify and hold Owner harmless from and against all Losses arising directly or indirectly from or incurred by reason of such termination and, in any event, Owner shall not be liable to Contractor for any amount of the Contract Price in excess of the percentage of Work actually completed by the termination date multiplied by the Contract Price ("**Work Value**").
- 24.1.2 In addition, should the aggregate amount of the Contract Price actually paid prior to termination exceed the Work Value, Contractor shall pay to Owner an amount equal to such excess within thirty (30) days after receipt of an invoice from Owner therefor.
- 24.1.3 Accrued or actual or potential liabilities of Contractor under the Contract, for acts and omissions with respect to Work partially or fully completed at the time of termination shall not be affected by any such termination.
- 24.1.4 In furtherance of the foregoing, Owner shall have the right (either with or without the use of Contractor's Equipment) to finish the Work itself or with the assistance of third parties and Contractor shall be liable for the excess of the total cost of the Work actually incurred by Owner to all parties, persons or entities over the price for the Work originally contracted for hereunder.
- 24.1.5 In particular, to complete the Work, Owner shall have the right to take possession of and use, or to permit any third party to use, all Contractor's Equipment on or about the Site which are the property of Contractor. Rent for use of equipment by Owner and indemnification thereof shall be provided by GSECL.
- 24.1.6 Upon completion of the Work, all such Contractor's Equipment shall be returned to Contractor, subject to the right of Owner (which shall constitute a lien on such Contractor's Equipment) to sell the same and apply the proceeds to any claim which Owner may then have against Contractor.
- 24.1.7 Owner shall have the right at its sole discretion to select third parties to assist in or undertake such completion of the Work, such selection to be based upon such criteria as Owner shall determine.
- 24.2 Termination for Owner's Convenience under Clause 24
- Upon termination of the Agreement under Clause 24 (for Owner's Convenience), Contractor shall be entitled to be paid:
- (a) all actual documented costs incurred by Contractor, as audited and accepted by an independent certified public accounting firm of national reputation selected by Owner and acceptable to Contractor, incurred or that could not be avoided in connection with performance by Contractor



of Works as of the date of the Termination which were not previously paid for by Owner, and

- (b) all actual documented costs incurred by Contractor, if such cost is part of the Contract Price, in connection with the items procured/facilities executed by Contractor in connection with the services for which Contractor has not been paid, provided that such items are delivered to Owner at the Project Site together with all documents necessary to transfer title thereto to Owner (the 'Termination Payment').

As a condition precedent to receiving the Termination Payment, Contractor shall execute and deliver all such papers and take all such steps, including the legal assignment of Contractor's contractual rights, as Owner may require for the purpose of fully vesting in Owner all rights, title and interests of Contractor in and to all subcontracts, purchase orders, warranties, guarantees and other agreements.

All claims by such contractors and Subcontractors to be due and owing for Services and other work performed prior to such date shall constitute debts between Contractor and Subcontractors, and Owner shall in no way be liable for such sums. Contractor shall include in all agreements and contracts entered into with contractors and Subcontractors a provision providing for the foregoing.

- 24.3 Upon any termination aforesaid, Owner may at its option elect to (a) assume responsibility for and take title (to the extent title has not previously passed to Owner) to and possession of the Plant and any or all work, materials or equipment remaining at the Facility Site, and (b) succeed automatically, without the necessity of any further action by Contractor, to the interests of Contractor in any or all contracts and Subcontracts entered into by Contractor with respect to the Plant

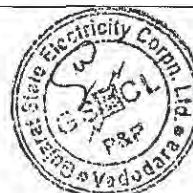
- 24.4 Surviving Obligations:

Termination of the Contract (a) shall not relieve either Party of its obligations with respect to the confidentiality of Proprietary Information as set forth elsewhere (b) shall not relieve either Party of any obligation hereunder which expressly or by implication survives termination and (c) except as otherwise provided in any provision of the Contract expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination and shall not relieve Contractor of its obligations as to portions of the Works already performed or of obligations assumed by Contractor prior to the date of termination.

- 24.5 Verification of the Termination:

Contractor shall, within 90 days of any such termination of the Agreement submit to Owner all invoices and other documentation as is sufficient to enable Owner to verify the performance of the Works and Contractor's costs associated therewith and to determine the amount of the Termination Payment. Termination Payment shall not include the costs of future anticipated profit or restocking charges.

Payment and Limitation of the Termination Payment. Owner shall pay the



Termination Payment to Contractor within 90 days of Owner's receipt of the documentation required under the clause: Verification of the Termination.

24.6 Limitation of Liability:

24.6.1 Payment of the Termination Payment shall be sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of the Contract pursuant to above clauses. In no event shall Owner have any further liability to Contractor in any such event for Consequential Damages.

24.6.2 It is clarified here that except in cases of criminal negligence or wilful misconduct,
(a) the Contractor shall not be liable to the Owner, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Owner; and

(b) the aggregate liability of the Contractor to the Owner, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Owner with respect to patent infringement.

For the avoidance of doubt it is hereby clarified that the Contractor's liability to pay the amounts pursuant to Clause 24.1.2 and/or Clause 24.1.4 shall not be excluded, or interpreted in any manner to be excluded under Clause 24.6.2(a) above, however such sums shall be considered towards the threshold for limitation of liability under Clause 24.6.2(b)

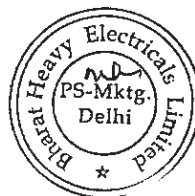
24.7 The Contract shall not be liable to be terminated except in accordance with the express provisions of the Contract.

25.0 **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 fifteen (15) days of the receipt of the corresponding bills and if not paid by the Contractor within the said period, the Owner may then deduct the amount, from any money due or becoming due by him to the Contractor under the Contract or may be recovered by actions of Law or otherwise, if the Contractor fails to satisfy the Owner of such claims.

26.0 **ASSIGNMENT OF CONTRACT**

The Contractor shall not assign its rights or obligations under the Contract without prior approval of the Owner. Any assignment in violation of this Clause shall be null and void. Further, such assignment, if approved by Owner, shall not relieve the Contractor from any obligations, duty, or responsibility under the Contract.



27.0 **SUBCONTRACTING**

27.1 Equipment

The Contractor may, after informing the Owner and getting his Approval, assign or subcontract any part of the Contract other than for raw materials, to manufacturers which are identified in Schedule [insert] of the Contract. Sub-contractor(s) not identified in Schedule [insert] of the Contract or any change in the identified sub-contractor(s) shall be subject to approval by the Owner. Provided that subcontracting shall not relieve the Contractor from any obligation, duty or responsibility under the Contract. Provided further that subcontracting to any subcontractor other than those identified in Schedule [insert] without prior approval of the Owner shall be null and void.

27.2 Erection Work

When the job of erection/construction is entrusted with the sub-contractor(s) the name/names of such sub-contractor(s) shall be approved by the Owner as elaborated above. Such subcontracting shall not relieve the Contractor from any obligation, duty or responsibility under the Contract.

27.3 Notwithstanding anything to the contrary contained herein, the Contractor shall remain solely responsible for and shall obtain all permits, licenses, approvals and authorisation as may be required under all applicable laws and regulations in India in respect of any award or performance of any transfer, sub-contract, sub-letting or assignment pursuant hereto.

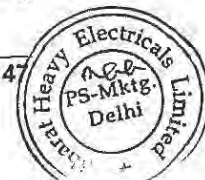
27.4 Notwithstanding any transfer, assignment or sub-letting with the approval of the Owner as aforesaid, the Contractor shall be and shall remain solely responsible and liable to the Owner for the quality, proper and expeditious execution and performance of the Works and for due performance and observance of all the conditions of the Contract in all respects, as if such transfer, assignment or sub-letting has not taken place and as if the Work so transferred, assigned or sub-let has been done directly by the Contractor.

28.0 **FORCE MAJEURE**

"Force Majeure Event" shall mean any event or circumstance or combination of events or circumstances referred to below that wholly or substantially prevents or unavoidably delays any Party in the performance of its obligations under the Contract, but only if and to the extent that such events and circumstances are not within the reasonable control, directly or indirectly, of the affected Party and could not have been avoided if the affected Party had taken reasonable care.

(a) Any cause which is beyond the control of Contractor or Owner, as the case may be (b) natural phenomenon including but not limited to weather conditions, floods, drought, earthquakes and epidemic (c) acts of any Governmental authority (domestic), including but not limited to war (declared or undeclared), revolution, quarantine, embargoes, licensing control or production or distribution restrictions (d) sabotage, riots and civil commotion (e) Nation wide or wide spread strikes or labour disputes extending beyond the Project site. (f) failure or delay in Contractor's source of supply due to force majeure causes enumerated at (a) to (e), provided that the Contractor proves to the satisfaction of the Owner that the supply from the alternate sources were not possible.

Any force majeure event which affects the Contractor's joint venture



partners/collaborators/joint venture company, who have executed the JDU, and which event satisfies the requirements of Clause 28 shall be treated as a "Force Majeure Event"

The following events are explicitly excluded from Force Majeure Events and are solely the responsibility of the affected party:

- i) any strike, work-to-rule action, go-slow, or similar labour difficulty which is not specifically, enumerated in the above clauses (a) to (f);
- ii) late delivery, of plant, machinery, equipment, materials, spare parts or Consumables for the Plant;
- iii) a delay in the performance of any contractor;
- iv) economic hardship;
- v) changes in Applicable Laws;
- vi) Force Majeure events which occur outside India and do not directly involve India comprising: (x) act of war (whether declared or undeclared), invasion armed conflict or act of foreign enemy blockade, embargo, resolution, riot, insurrection, civil commotion, act of terrorism, or politically motivated sabotage or kidnapping or (y) any event or circumstance of a nature analogous to any of the foregoing.

If the Contract is delayed or impeded in the execution of the work by circumstances of Force Majeure as herein defined, then the Contractor/Owner as the case may be, shall, within one week, give notice in writing to the Owner/ Contractor, of the existence of circumstances of Force Majeure, together with the evidence relied upon.

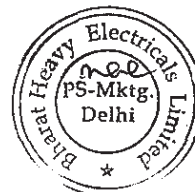
Burden of Proof: In the event that the Parties are unable in good faith to agree that a Force Majeure Event has occurred, the Parties shall submit the dispute to arbitration, provided that the burden of proof as to whether a force Majeure event has occurred shall be upon the Party claiming a Force Majeure Event.

Effect of Force Majeure : Neither party shall be considered to be in default or in breach of his obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of Force Majeure which arise after the Commencement Date.

In the event that Force Majeure circumstances continue for a period of more than one month, both the parties may discuss and mutually agree upon the future course of action which may include termination of Contract.

The Contractor shall request for extension of Time for Completion due to delay caused by Force Majeure. The Owner may agree to give extension in time as may be justified. However the Owner will not bear any additional cost whatsoever in connection with Force Majeure.

Performance to Continue : Upon the occurrence of any circumstances of any Force Majeure the Contractor shall endeavor to continue to perform his obligations under the Contract so far as reasonably practicable. The Contractor shall notify the Engineer of the steps he proposes to take including any reasonable alternative means for performance which is not prevented by Force Majeure. The Contractor shall not take any such steps unless directed so to do by the Engineer.



29.0 **PROGRESS REPORTS AND PHOTOGRAPHS**

The Contractor shall furnish three (3) prints each of monthly Progress Reports with photographs of the Works done in his shop . Photographs shall be taken when and where requested by the Owner. Adequate number of photographs shall be submitted indicating various stages of manufacture. Each photograph shall contain the date, the name of the Contractor and the title of the view taken.

Monthly Progress Report shall be submitted by the Contractor. These shall detail the status of design, drawings, procurement of raw materials and manufacture of the equipment and delivery of the equipment. The Owner shall advise the Contractor about the number of copies of progress schedule and photographs he has to submit each month together with the names and addresses of persons to whom they are to be sent. The Contractor shall also furnish actual progress against Works schedule and such other information as the Owner may require to satisfy himself about the timely manufacture and delivery of equipment and timely construction and erection works to suit the commissioning date.

30.0 **CONFIDENTIALITY AND PATENT RIGHTS**

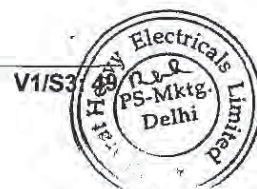
30.1 The Owner and the Contractor shall not, without the written consent of the other Party hereto, divulge to any third party any Confidential Information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such Confidential Information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Sub-contractor(s) such Confidential Information that it receives from the Owner to the extent required for the Sub-contractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Sub-contractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause 30.1.

Notwithstanding the above, the Owner may furnish any Confidential Information and other information it receives from the Contractor, to its lenders, other financing parties and to its professional advisors to the extent the same is required directly in relation to the Project or financing of the Project, in which event the Owner shall obtain from such lenders, other financing parties and professional advisors, an undertaking of confidentiality similar to that imposed on the Owner under this Clause 30.1

30.2 Save as provided above, the Owner shall not use the Confidential Information received from the Contractor for any purpose other than the operation and maintenance of the Plant. Similarly, the Contractor shall not use the Confidential Information received from the Owner for any purpose other than the design and procurement of the Plant and Equipment, construction and commissioning of the Facility and provision of other services required for the performance of the Contract

30.3 The obligation of a Party under sub-Clauses 30.1 and 30.2 above, however, shall not apply to the Confidential Information which:

(a) now or hereafter enters the public domain through no fault of that Party



(b) can be proven to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party hereto

(c) otherwise lawfully becomes available to that Party from a third party that has no obligation of confidentiality

30.4 The provisions of this Clause 30 shall not in any way modify any undertaking of confidentiality given by either Party prior to the date of the Contract in respect of the Facility or any part thereof

30.5 The Contractor shall indemnify and hold harmless the Owner and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Owner may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facility by the Contractor or the use of the Facility in India; and (b) the sale of the power produced by the Facility in India.

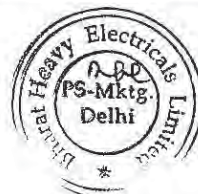
Such indemnity shall not cover: (i) any use of the Facility or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract; and (ii) any infringement resulting from the use of the Facility or any part thereof, or the power produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract

30.6 If any proceedings are brought or any claim is made against the Owner arising out of the matters referred to in sub-Clause 30.5, the Owner shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Owner's name conduct such proceedings or claim and enter into any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Owner within twenty-eight (28) days after receipt of such notice from the Owner that it intends to conduct any such proceedings or claim, then the Owner shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Owner within the twenty-eight (28) day period, the Owner shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Owner shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

30.7 The Owner shall indemnify and hold harmless the Contractor and its employees, officers and Sub-contractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or



alleged infringement of any patent (excluding any infringement or alleged infringement of any patent under Clause 30.5), utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Owner (other than by the Contractor).

Such indemnity shall not cover: (i) any use of the design, data, drawing, specification, or other documents or materials or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract; and (ii) any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials or any part thereof in association or combination with any other design, data, drawing, specification, or other documents or materials not supplied by the Owner, pursuant to the Contract.

30.8 The provisions of this Clause 30 shall survive termination, for whatever reason, of the Contract

31.0 **BANKRUPTCY, ETC.**

If the Contractor commits any act of bankruptcy or goes into liquidation (except for reconstruction purposes) or carries on its business under a receiver, the executors, successors, or other representatives in law of the estate of the Contractor or any such receiver, liquidator, or any person in whom the Contract may become vested, shall forthwith give notice thereof in writing to the Owner and shall for one month, during which he shall take all reasonable steps to prevent a stoppage of the work, have the option of carrying out the Contract subject to his or their providing such guarantee as may be required by the Owner but not exceeding the value of Works for the time being remaining unexecuted, provided however that nothing above said shall be deemed to relieve the Contractor or its successor of its obligation under the Contract under any circumstance. In the event of stoppage of the Works the Period of the option under this clause shall be fourteen (14) days only, provided that, should the above option be not exercised, the Contract may be terminated by the Owner by notice in writing to the Contractor, and the same power and provision reserved to the Owner by the item Default of Contractor shall apply.

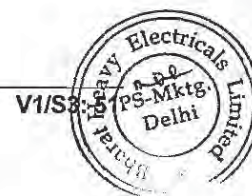
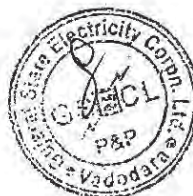
32.0 **INDEMNIFICATION OF THE OWNER**

32.1 The Contractor shall indemnify the Owner of all liabilities incurred by the Owner due to any act or omission on the part of Contractor, his agent, representative, or sub-contractor(s) and causes harm/damage to other Contractor/representatives of the Owner or all or anybody rendering service to the Owner or is connected with the Owner's work in any manner whatsoever. The Contractor shall necessarily indemnify the Owner in all these respects.

The indemnity under this clause shall include all costs, charges, expenses on account of any claims, demands, actions and proceedings against the Owner in respect of such injuries, loss or damage.

32.2 Indemnification of the Contractor

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The Owner shall fully indemnify, save harmless and defend the Contractor from and against any and all costs, charges, expenses on account of any claims, demands, actions and proceedings arising out of or resulting from claims by any third parties arising out of or related to the performance of Owner's obligations pursuant to this Contract to the extent caused by any act or omission on the part of the Owner, his agent, representative, or sub-contractor(s), provided that the foregoing obligation shall not apply to the extent such liabilities are caused by the acts or omissions of the Contractor, its agent, representative, or sub-contractor(s)

33.0 CORRESPONDENCE

The correspondence procedure will be developed mutually by the Owner and Contractor after award of Contract.

34.0 CONTRACT AGREEMENT

- a) The Successful Bidder will be called for Contract negotiations. A signed provisional Contract Agreement will be forwarded by the Bidder which shall be mutually discussed. The acceptable provisional agreement will be concluded within thirty (30) days. On receipt of this, the Owner will issue Notice to Proceed to Bidder. The final Agreement in six (6) originals shall be produced by the Contractor at his cost for signing within sixty (60) days.

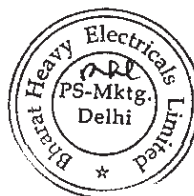
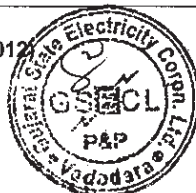
The Agreement will be signed in six (6) originals and the Contractor shall be provided with one (1) signed original and the rest will be retained by the Owner. The Contractor shall provide free of cost to the Owner all the engineering data, drawings and descriptive materials submitted with the Tender, complete set of his Tender and Tender Documents, copies of all the correspondences with the Owner, etc. in six (6) copies to form a part of the Contract Documents.

b) Contract Documents

These Contract Conditions together with the Specification, Tender drawings and guaranteed technical particulars, Tender data with subsequent agreed modification thereof, Tender, all correspondences with the Owner and Signed Agreement and other supporting documents shall constitute the Contract Document(s). No variation or modification or terms and conditions of the Contract Documents or waiver of any of these terms and conditions shall be deemed valid unless agreed in writing and signed by the Owner and the Contractor.

c) Endorsement of Terms

The failure of either party to endorse at any time any of the provisions of the Contract or any rights in respect thereto or to an option herein provided shall in no way be construed to be a waiver of such provisions, rights or option or in any way to affect the validity of the Contract. The exercise by either party of any of his rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have hereunder.



35.0 NOTICE TO PROCEED AND EFFECTIVE DATE

35.1 Contractor shall commence Performance of Work on the date which the Owner specifies in Notice to Proceed (NTP) delivered for Commencement of the work (the "Commencement Date") which shall not be earlier than the date of issue of the Notice to Proceed. The Contractor shall perform its obligation in a manner that would ensure that the Commercial Operation of the Plant occurs within the Guaranteed Commercial Operation Date.

Before issue of NTP following conditions are to be complied with.

- (i) Signing of the Contract.
- (ii) Release of Advance payment.
- (iii) Unhindered & unencumbered access to the site as is where is basis

GSECL will issue LOA after ensuring issuance of NTP within 60 (sixty) days

35.2 The Contract shall come into force on the date of Notice to Proceed.

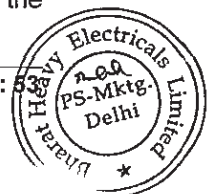
36.0 USE OF THE PLANT PRIOR TO OWNER ACCEPTANCE

Owner reserves the right to take possession of and use for any intended purpose, any portion or all of any delivered but as yet unaccepted Plant. The taking of possession at any time or use of any of such portion of Plant shall not be deemed to be an acknowledgement of Owner acceptance of Unit or the Plant, and shall not be exclusive with respect to Contractor until Owner acceptance of the Plant, has occurred. Owner shall provide Contractor with reasonable and timely access to complete its obligations hereunder. It is the expectation of the parties that any such modifications or repairs will be accomplished by Contractor with minimal interference with operation of the Plant.

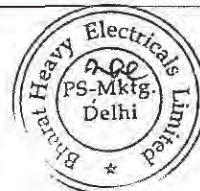
37.0 INSURANCE

37.1 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. MCE (Marine cum Erection comprehensive) insurance for the plant and equipment under contractor's scope shall be effective from the date of mobilization of site by the contractor. The form and the limit of such insurance as defined herein together with the underwriter in each case shall be as acceptable to the Owner. However, irrespective of such acceptance the responsibility to maintain adequate insurance coverage up to commercial Operation date shall be the Contractor's full responsibility. The Contractor's failure in this regard shall not relieve him of any of his contractual responsibilities and obligations. The insurance policies to be taken by the Contractor shall be in a joint name of the Owner and the Contractor. The Contractor shall, however, be authorised to deal directly with Insurance Company or Companies and shall be responsible in regard to maintenance of all insurance covers.

37.2 Any loss or damage to the equipment during handling, transportation, storage, erection, putting into satisfactory operation and all activities to be performed till such time the Plant is finally accepted by the Owner shall be to the account of the Contractor. The Contractor shall be responsible for raising of all claims and make good for the damage or loss by way of repairs and/or replacement of the Works, damaged or lost. The transfer of title shall not in any way relieve the



- Contractor of the above responsibilities during the period of the 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 expiry/cancellation and/or change in any of such documents and ensure revalidation, renewal, etc. as may be necessary well in time.
- 37.3 Licenses/port clearances in respect of supplies to be made by the international Contractor from outside India required for purpose of replacement of equipment lost in transit and/or during storage shall be obtained by the Contractor on behalf of the Owner. The Contractor shall, however, be required to follow the procedure as may be laid down to facilitate arranging such licenses/clearances.
- 37.4 The perils required to be covered under the insurance shall include, but not limited to fire and allied risks, miscellaneous accidents (erection risks), workmen compensation risks, loss or damage in transit, theft, pilferage, riot and strike and malicious damages, civil commotion, weather conditions, accidents of all kinds, war risks (during ocean transportation only), Terrorism etc. Further insurance cover towards contamination from nuclear fuel/waste and ionizing radiations/radioactive is not envisaged. The scope of insurance shall be equivalent to the CIF value of equipment plus ten percent (10%) for all risks up to and including delivery of the equipment on CIF basis and for CIF value plus custom duty (as applicable on the cost of replacement) and additional ten percent (10%) of CIF value for all risks subsequent to delivery of goods on CIF Indian port basis. In case of indigenous supply, the scope of insurance shall be equivalent to FOR Site price inclusive of all Taxes plus ten percent (10%) for all risks. For the risks during the erection, the insurance cover to be taken shall be of appropriate value adequate to take care of all costs incurred till the erection. The insurance policies to be taken should be on replacement value basis including the Taxes (as applicable) on the replacement value. Notwithstanding the extent of insurance cover and the amount of claim available from the underwriters, the Contractor shall be liable to make good the full replacement/rectification value of all equipment and materials and to ensure their availability as per project requirements.
- 37.5 All costs on account of insurance liabilities covered under the contract will be included in Contract Price. However, the Owner may from time to time, during the pendency of the Contract, ask the Contractor in writing to limit the insurance coverage, risks and in such a case, the parties to the Contract will agree for a mutual settlement, for reduction in Contract Price to the extent of reduced 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 Plant.
- 37.6 The Contractors shall ensure that for all activities to be performed in India viz. inland transportation, storage, erection, testing, commissioning, theft, pilferage, etc. till the equipment/plant is taken over by the Owner, the insurance cover shall only be taken from Indian Insurance Companies.
- 37.7 The clause entitled "Insurance" under the Section 4 of this Volume, covers the Additional insurance requirements for the portion of the Works to be performed at the Site.
- 37.8 In respect of insurance proceeds/claim settlements relating to claims raised/referred by the Contractor, the Owner shall give, from time to time, written



authorisation to the underwriter(s) to directly pay such proceeds/settlements to the Contractor as are in accordance with the provisions hereunder:

- i) Wherever total damage/loss of equipment/materials would occur, the Contractor will be entitled to payments received from the underwriters except the following amounts :
 - a) The amount paid to the Contractor under the Contract in respect of equipment/material damaged/lost (excluding the prorata Advance Payment).
 - b) Taxes which have already been paid by the Owner.

Subsequent payments, if any, due under the Contract shall be regulated by the relevant terms of payment, provided the claim money settled by the underwriter is more than the total of the amount as per (a) and (b) above. In the event of the claim money settled is less than the total of the amount in (a) and (b) above, the entire claim money settled will be retained by the Owner and the Contractor will forthwith pay the Owner the shortfall amount between the claim money and the total amounts as per (a) and (b) mentioned above.

- ii) In case of damage to any equipment/material during any stage, the Contractor upon rectification of the damaged equipment to the satisfaction of the Owner shall be paid to the extent of full claims settled by the underwriters. Subsequent payments, if any, due under the Contract shall be regulated by the relevant terms of payment.

37.9 The Contractor shall be responsible for making good any loss or damage at his own cost in a prompt manner, irrespective of the extent of settlement of claims by the insurers/underwriters or the time taken in settlement of such claims.

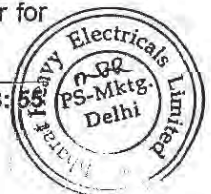
37.10 The Contractor shall ensure adequacy of the value of insurance covers irrespective of the coverage indicated under this clause.

38.0 CONTRACTOR'S CARE OF THE WORKS

38.1 The Contractor shall take full responsibility for the care of the Works from the Notice to Proceed until the date of issue of the Take Over Certificate when responsibility shall pass to the Owner. If the Owner's representative issues a Take Over Certificate for part of the Works, the Contractor shall cease to be responsible for the care of that part from the date of issue of such certificate of Take Over when responsibility shall pass to the Owner.

38.2 The Contractor shall take responsibility for the care of any outstanding Work which is required to be completed prior to the expiry of the Contract Period, until the Owner's representative confirms in writing that such outstanding work has been completed.

38.3 If any loss or damage happens to the Plant, during the period for which the Contractor is responsible, the Contractor shall rectify such loss or damage, at his cost, so that the Works conform with the Contract. Without prejudice to any other obligation of the Contractor under the Contract, the Contractor shall also be liable for any loss or damage to the Works caused by operations carried out by the Contractor prior to the expiry of the Contract Period in so far as such loss or damage is not covered under Insurance to be taken by the Owner for



operation of Plant.

39.0 ARBITRATION AND JURISDICTION

39.1 Arbitration

- a) The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Contract or the breach, interpretation, termination or validity thereof (a "Dispute"); provided, however, that if the Parties are unable to resolve a Dispute within a period of [30] days from the date of first occurrence of the Dispute, such Dispute shall be settled by valid and binding arbitration conducted by three arbitrators in accordance with the UNCITRAL (United Nations Commission on International Trade Law) rules.
- b) If a Dispute is not resolved by the good faith negotiation of the Parties, either Party may serve upon the other a written demand that such matter be resolved through arbitration, which written demand shall include a brief description of the Dispute and shall specify the name and address of an arbitrator selected by it. The other Party shall within 20 days of receipt of the arbitration demand select its arbitrator and provide the name and address of such arbitrator to the demanding Party and its arbitrator. The two selected arbitrators shall within 15 days of the selection of the second arbitrator select the third arbitrator, failing to do so, the arbitrators shall request the President of International Chamber of Commerce (ICC), promptly to appoint the third arbitrator in good standing of its association as the third arbitrator in accordance with ICC Appointing Authority Rules, 2003. Related costs of such appointment shall be borne by the defaulting party for the appointment of its arbitrator.
- c) The place of arbitration shall be Vadodara, Gujarat , India and the law applicable to the arbitration procedure shall be UNCITRAL. The English language shall be used throughout the arbitrage proceedings. Each Party shall bear its own arbitration proceeding expenses, including but not limited to counsel fees, except common expenses of arbitration which shall be shared equally. The Parties and the arbitrators shall proceed with the arbitration expeditiously and shall to the best of their ability conclude all proceedings there under, including any hearings, in order that a decision may be rendered by the arbitrators within 120 days from the filing of the demand for arbitration by the demanding Party.
- d) The decision of any two of the three arbitrators shall be final and binding. The parties agree that the decision and any award rendered by the arbitrators in connection with a Dispute :
 - i) Shall be final and binding on the Parties and may be enforced in any court having jurisdiction over the Party against which enforcement is sought;
 - ii) Shall be the sole and exclusive remedy between the Parties regarding the Dispute and any claims, counterclaim issues or accountings presented or pled to the arbitrators in connection with the arbitration of the Dispute; and
 - iii) In the case of an award, shall be made and promptly paid in



Rupees free of any tax, deduction or offset.

Any costs, fees or taxes incident to enforcing the decision or award shall be charged against the party resisting such enforcement. Any award shall include interest from the date of any damages incurred for breach or other violation of the Agreement, and from the date of the award until paid in full, at a rate to be fixed by the arbitrators.

- e) The provisions of this Clause shall survive the termination or expiration of the Contract. All notices by one Party in connection with an arbitration shall be delivered in accordance with instructions.
- f) The arbitrator shall have full powers to review and/or revise any decision, opinion, directions, certification or valuation of the Owner in consonance with the Contract, and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Owner for the purpose of obtaining the said decision.
- g) No decision given by the Owner in accordance with the foregoing provisions shall disqualify him as being called as a witness or giving evidence before the arbitrators on any matter whatsoever relevant to the dispute of difference referred to the arbitrators as aforesaid.
- h) Performance of the Contract shall continue during arbitration proceeding unless the Owner shall order the suspension thereof or any part thereof and if any such suspension shall be added to the Contract Price. No payments due or payable by the Owner shall be withheld on account or a pending reference to arbitration.

39.2 Subject to Clause 39.1 above, the Courts at [Gujarat] shall have the exclusive jurisdiction on any matter arising out of, under or in relation to the Contract.

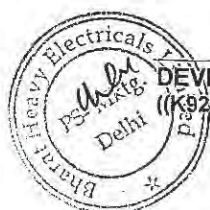
40.0 **SUSPENSION OF WORK**

40.1 Owner's Right to Suspend:

40.1.1 Owner may at any time and from time to time and for any reason, by written notice to the Contractor, suspend furtherance performance of all or any part of the Works hereunder upon 10 days' prior written notice to Contractor (or, in emergency situations, upon such prior notice as circumstances permit) indicating (a) the portion of the Works the completion of which Owner has elected to defer, (b) Owner's estimate of the duration of such suspension, and (c) the effective date of such suspension of the Works.

Upon receipt of and consistent with the effective date of such notice, Contractor shall:

- (a) stop performance of further Works which Owner has elected to defer and shall continue to complete performance of the balance of the Works. During the period of such suspension Contractor shall properly care for and protect all Work in progress and all property of Owner which pursuant to the terms of the Contract is subject to the supervision of Contractor in whatever state of completion;
- (b) place no further subcontracts or purchase orders for materials, services, work or facilities in respect of the Work except to the extent expressly



DEVELOPMENT CONSULTANTS
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requested by Owner; and

- (c) unless otherwise directed by Owner, use all reasonable endeavours to suspend on the most favourable terms available to Contractor all purchase orders, subcontracts and rental and lease agreements to the extent affected by such suspension and otherwise minimise any additional costs associated with such suspension.

40.1.2 Contractor shall promptly deliver to Owner copies of all such Work in progress and all such property as may be requested by Owner & mutually agreed. Owner may at any time terminate the suspension by written notice to Contractor specifying the effective date of termination and Contractor shall use its best efforts to resume performance of its obligations pursuant to the Contract immediately upon receipt of such notice. During the suspension period, the Contractor shall not be allowed to take all such properties outside the plant premises without Owner's permission.

40.1.3 During a suspension, Contractor shall not be entitled to payment of the Contract Price which would have otherwise been ordinarily payable during the relevant period of such suspension, except for such part of the Work which has been completed prior to the date of suspension specified in the notice of suspension.

40.1.4 Upon resumption by Contractor of all activities affected by a suspension, Owner shall resume payments of the Contract Price (it being understood that no interest shall be payable in respect of such resumed payments) with the payment dates therein adjusted to reflect the period during which scheduled payments were not made.

40.2 Consequences of Suspension

40.2.1 Owner's instructions under Clause 40.1 shall be treated as instructions to carry out a change under Clause 4.4, except to the extent that the suspension instructed by Owner is necessary by reason of default, breach, failure or non-performance on the part of Contractor.

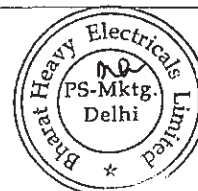
40.2.2 To the extent such instructions are treated as a request for a change under Clause 4.4 in accordance with the immediately preceding Clause 40.2.1, Contractor shall be entitled to submit to Owner a preliminary change order for a determination of an adjustment Guaranteed Commercial Operation Date, the Contract Price, the payment and milestone Schedule, the Project Schedule and the Performance Guarantees, as appropriate. Contractor shall mitigate to the fullest extent reasonably possible any additional expenses to be borne by Owner as a result of suspension of the Works pursuant to this clause.

40.2.3 Except as provided in this Clause 40.2.2 Contractor shall have no claim against Owner.

40.3 Contractor's Right to Suspend.

The Contractor shall have the right to suspend the relevant Works, for the reasons mentioned below, by giving twenty one (21) days' notice to the Owner upon occurrence of the following reasons:

- (a) If the Owner has failed to pay the Contractor, without reasonable cause, any



sum due to the Contractor under the Contract within thirty (30) days after the expiry of time within which payment of such amount was required to be made under the Contract;

- (b) If the Contractor is unable to carry out any of its obligations under the Contract for reasons solely attributable to the Owner, including but not limited to the Owner's failure to provide access to Site or failure to obtain any Applicable Permit necessary for the execution and/or completion of the Facility which the Owner is required to obtain as per the provisions of the Contract or as per Applicable Laws,

If the Contractor's suspends performance of the Works or the rate of progress is reduced pursuant to this Clause 40.3, then the Time for Completion shall be extended, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction in the rate of progress shall be paid by the Owner to the Contractor in addition to the Contract upon resumption of Works, except where the suspension of the Works or reduction in the rate of progress is attributable to the Contractor's default or breach of Contract.

41.0 TRAINING OF OWNER'S PERSONNEL

The Contractor shall furnish all manuals, documentation and train Owner's Engineers/Personnel free of cost for safe, successful and reliable operation of the plant (for minimum 60 people).

The Contractor shall undertake to train free of charge, Engineering personnel selected and sent by the Owner at the works of the Contractor (not less than 60 man month duration). The period and the nature of training for the individual personnel shall be agreed upon mutually between the Contractor and the Owner. These engineering personnel shall be given special training in the shops, where the equipment will be manufactured and/or in their Collaborator's works and in any other plants where equipment manufactured by the Contractor or his Collaborator is under installation/operation or testing to enable those personnel to become familiar with the equipment being furnished by the Contractor.

All traveling expenses for the engineering personnel to be trained during the total period of training will be borne by the Owner. However, the Contractor shall provide necessary accommodation and local transport for such personnel.

The Contractor shall also train Owner's Operation & Maintenance personnel to become proficient in operating the equipments and for routine maintenance/repair/replacement, lubrication, overhauling, adjustments, testing etc. of the plant and equipments.

42.0 AS-BUILT DRAWINGS

The Contractor shall furnish drawings and document in as-built condition as stipulated in the Specification.

On completion of the project, contractor should submit Three Sets of As commissioned drawings, Three Sets of as Installed Bill of Materials and Three Sets of As Commissioned Data/ Specification /Parameter Sheets Duly Signed



by the Competent Authority. (Note: This was earlier at definition of drg sr no (f) CI 2.1)

43.0 REJECTION OF DEFECTIVE PLANT

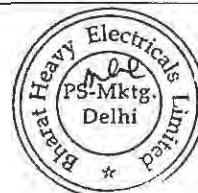
43.1 Without prejudice to the rights of the Owner elsewhere in the Contract, if the completed Plant or any portion thereof, before it is Taken Over under Clause "Taking Over" or during the Warranty Period, is found defective or fails to fulfill the requirements of the Contract, the Engineer shall give the Contractor notice setting forth particulars of such defects or failure, and the Contractor shall forthwith make the defective Plant good or alter the same to make it comply with the requirements of the Contract. Should he fail to do so within seven (7) days, the Owner after giving seven (7) days written notice may reject and replace at the cost of the Contractor the whole or any portion of the Plant, as the case may be, which is defective or fails to fulfill the requirements of the Contract.

43.2 In the event of such rejection, the Owner shall have the right to operate any and all Equipment and/or Plant as long as it is in operating conditions, whether or not, such Equipment has been accepted as complete and satisfactory, to enable him to obtain necessary replacement except that this shall not be construed to permit operation of any equipment which may become damaged by such operation before any required alterations or repairs and/or replacements have been made. All repairs or alterations or replacement required of the Contractor shall be made by the Contractor at such times as directed and in such a manner as will cause the minimum interruption in the use of the equipment by the Owner. Should the Contractor not so replace the rejected plant within the time frame as directed by the Engineer, up to the requirements of the Specification, the Contractor's full and extreme liability under this Clause will be satisfied by the repayment of all money paid by the Owner to him in respect of such plant plus dismantling, site clearance and disposal costs or should be replacement cost whichever is higher.

43.3 Nothing in this Clause shall be deemed to deprive the Owner or, effect any right under the Contract which he may otherwise have in respect of such defects or deficiencies or in any way relieve the Contractor of his obligation under the Contractor. Further, this Clause shall be in addition to and not in derogation of any other right of the Owner under the Contract.

44.0 MOST FAVOURED CUSTOMER

The Contractor agrees that Owner is and throughout the implementation of the Works will be "the most favoured customer" of the Contractor and all it's Associates. As such, Contractor confirms and agrees that no other customer of the Contractor or it's Associates will receive greater priority including provision of project personnel, resources and systems than Owner and Contractor hereby assures Owner that the successful, efficient and effective implementation of the Works is and will be the most important customer activity of Contractor and all its affiliates and associates. Contractor and all its affiliates shall not undertake any other project anywhere in the world if to do so, reasonably could be expected to have an adverse effect on the implementation of the Works.



45.0 **CONTRACTOR'S ACCEPTANCE OF THE WORK AND SITE**45.1 **Acceptance of the Work Generally**

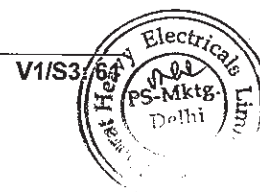
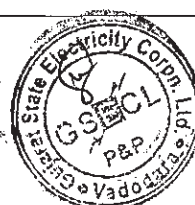
Contractor acknowledges that it has:

- (1) Entered into the Contract for the consideration set forth in the Contract and after due and careful inquiry.
- (2) Satisfied itself in respect of all pertinent matters which may bear upon the performance of the Contract and the Work, including:
 - (a) The nature and magnitude of the Work;
 - (b) The Applicable Laws and all environmental risks, conditions and applicable restrictions;
 - (c) The calculation and sufficiency of the Contract Price;
 - (d) Achievement of the Commercial Operation and Performance Guarantees;
 - (e) Quality and quantity of the Equipment and Contractor's Equipment required for the performance of the Work;
 - (f) Access to the Site;
 - (g) Availability of all labour and personnel;
 - (h) The character and quality of the Work to be performed;
 - (i) General and local conditions;
 - (j) Disposal, handling and storage of materials;
 - (k) All other pertinent, relevant or related matters and conditions.

45.2 **Acceptance of the Site:**

Bidder acknowledges that:

- (1) The Plant shall be designed and engineered for erection and installation and performance in accordance with the Contract at the Site; and
- (2) Bidder has satisfied itself as to all general, local and groundwater conditions at the Site and the areas adjacent thereto, including but not limited to:
 - (a) Sea, river and land transportation and access and right of way to the Site, including the availability and condition of roads and ports and rights-of-way, conditions affecting transportation, access and egress;
 - (b) Handling and storage of materials;
 - (c) Availability and quality of labour, sand, and rock;



- (d) Rainfall and other climatic conditions, tides, currents, soundings and ground water and other hydrological conditions (including the monsoons);
- (e) Topography, ground surface, subsurface
- (f) Equipment required by Bidder prior to and during performance of its obligations hereunder;
- (g) Availability of housing and other relevant social and urban infrastructure;
- (h) Any and all other pertinent, relevant or related matters and conditions.

45.3 No Claim for Actual Conditions

Contractor acknowledges that all appropriate allowances for the matters and conditions referred to in Articles 45.1 and 45.2 and those pertaining to the Work or to the Contract generally have been taken into account in calculating the Contract Price, and the other terms and conditions of the Contract.

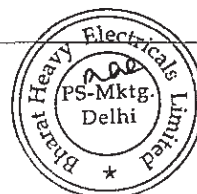
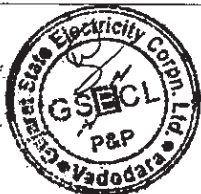
Contractor's failure to acquaint itself and consider any applicable condition, situation, requirement or other matter referred to in Articles 45.1 and 45.2 and those pertaining to the Work or to the Contract generally, will neither relieve it from the responsibility for successfully performing the Contract, nor entitle the Contractor to a Change Order, adjustment of Contract Price or Guaranteed Commercial Operation Date for reasons relatable to such failure.

45.4 Except as otherwise expressly stated in the Contract:

- (1) Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Work;
- (2) Contractor accepts total responsibility for having foreseen all difficulties and costs and expenses of successfully completing the Work; and
- (3) No increase in the Contract Price, or extension of the schedule based in whole or in part upon any discrepancy between the actual conditions encountered by Contractor and those which Contractor anticipated, or any unforeseen difficulties or costs generally, shall be considered by the Owner or effected.

45.5 The Contractor acknowledges that all engineering data and information and data and information relating to hydrological, geo-technical and sub-surface at the Site made available to the Contractor by the Owner in the Specifications, information made available to bidders during the bid process, generally or otherwise, directly and indirectly, are all solely for the convenience of the Contractor. The verification and interpretation of the same shall be at the sole risk and responsibility of Contractor.

Contractor agrees that the Owner shall have no liability for the adequacy, correctness, accuracy or completeness of such data and information. The Owner makes no representation or warranty, express or implied, as to the adequacy, accuracy, correctness or completeness of any such data or information.



Contractor further agrees that it shall protect, indemnify and hold Owner harmless from and against any and all Losses arising directly or indirectly from or incurred by reason of the use of any such data and information by any Person to whom Contractor has supplied such data and information or any portion thereof including the Contractor himself, his Subcontractors, and their respective employees, agents, personnel and consultants.

Furthermore, Contractor hereby waives any claims it may otherwise have against any Person that has prepared, compiled, provided or prepared any such data and information arising due to any reason whatsoever, including without limitation, from the use thereof by Contractor or by other Persons to whom Contractor has supplied such data and information.

Specifically and without limitation, Contractor agrees and warrants that it shall independently and fully verify, check and establish the adequacy, correctness, accuracy and completeness of all data and information which it may require for any purposes related directly or indirectly to the Contract, its obligations hereunder or for any other reasons, at its sole risk and cost.

46.0 **Applicable Permits**

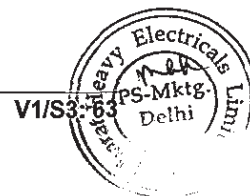
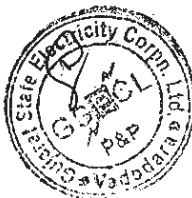
The Owner and the Contractor shall each be responsible for obtaining the Owner Permits and the Contractor Permits respectively. If the Contractor at any time becomes aware, whether as a result of notice from Owner or otherwise, of any Applicable Permit not obtained by the Contractor, the Contractor shall promptly give notice thereof to Owner and the Contractor shall be responsible for obtaining such Applicable Permit.

The Contractor shall be responsible for ensuring compliance with the terms and conditions of all Applicable Permits, whether obtained by the Owner or the Contractor.

The Contractor shall indemnify and hold harmless to the Owner and all Owner indemnified parties from and against any damages arising from and out of the securing of, or failure to secure, the Contractor Permits or failure to maintain the Owner Permits.

With respect to the Owner Permits, the Contractor shall provide support to Owner in obtaining all Owner Permits. Such Contractor support shall include:

- i. Attendance at meetings with Owner and third parties designated by Owner;
- ii. Preparation of permit applications or, as applicable, application to transfer permits to the Owner;
- iii. Assistance in preparation of responses to inquiries by governmental instrumentalities / agencies;
- iv. Assistance in presentations at hearing of governmental instrumentalities / agencies;
- v. Provision of all available information and documents required by Owner in connection with obtaining any Owner Permits; and



- vi. Such other services as Owner may request from time to time required for Owner permits.

47.0 **Law and Language**

The Contract and the respective rights, privileges, duties and obligations of the Owner and the Contractor hereunder shall be governed by the laws of the Republic of India.

48.0 **Stamp Duty**

Costs of stamp duty and other similar charges imposed by law on the Contract or any part thereof shall be borne by the Contractor.

49.0 **TERMINATION BY THE CONTRACTOR.**

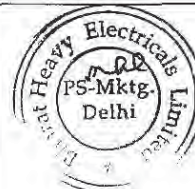
49.1 Upon the occurrence of any one or more of the following events, the Contractor may issue a notice of default to the Owner (the "Contractor's Preliminary Notice"):

- (a) If the Owner has failed to pay the Contractor any sum due to the Contractor under the Contract within sixty (60) days after the expiry of time agreed for payment of the said sum.
- (b) In case of prolonged suspension imposed by the Owner for a continuous period of 120 days that affects the whole of Works.
- (c) In case of prolonged suspension imposed by the Contractor under Clause 40.3 for a continuous period of 90 days that affects the whole of Works.
- (d) If the Owner is adjudged bankrupt or insolvent; or if the Owner makes a general assignment for the benefit of its creditors, or a trustee or a receiver is appointed for all or a substantial part of the Owner's assets, or if the Owner files a petition for reorganization under bankruptcy or other Applicable Laws.

if the Owner has not remedied or cured the default specified in the notice within 30 days of receipt of notice, then the Contractor shall have the right to terminate the Contract forthwith by issue of a notice of termination to the Owner.

Upon such termination the contractor shall be paid as per Clause no.24.2(a) & (b) i.e. Upon termination of the Agreement pursuant to Contractor's right to terminate, the Contractor shall be entitled to be paid :

- (a) all actual documented costs incurred by Contractor, as audited and accepted by an independent certified public accounting firm of national reputation selected by Owner and acceptable to Contractor, incurred or that could not be avoided in connection with performance by Contractor of Works as of the date of the Termination which were not previously paid for by



Owner, and

(b) all actual documented costs incurred by Contractor, if such cost is part of the Contract Price, in connection with the item procured / facilities executed procured by Contractor in connection with the services for which Contractor has not been paid, provided that such items are delivered to Owner at the Project Site together with all documents necessary to transfer title thereto to Owner (the 'Termination Payment'). As a condition precedent to receiving the Termination Payment, Contractor shall execute and deliver all such papers and take all such steps, including the legal assignment of Contractor's contractual rights, as Owner may require for the purpose of fully vesting in Owner all rights, title and interests of Contractor in and to all subcontracts, purchase orders, warranties, guarantees and other agreements.

(c) All claims by such contractors and Subcontractors to be due and owing for Services and other work performed prior to such date shall constitute debts between Contractor and Subcontractors, and Owner shall in no way be liable for such sums. Contractor shall include in all agreements and contracts entered into with contractors and Subcontractors a provision providing for the foregoing.

The Contractor shall send a copy of the Contractor's Preliminary Notice to the Lenders and notwithstanding anything contained in this Clause or in any other Clause of the General Conditions of Contract or elsewhere, the Contractor's right to terminate the Contract shall be subject to the right of the Lenders to step-in and remedy the default or substitute the Owner; provided that the Lenders must exercise their right to remedy the default and/or substitute the Owner within a period of thirty (30) days from the date of receipt of the Contractor's Preliminary Notice, failing which the Contractor shall have the right to terminate the Contract upon the expiry of the said 30 days' period."

50.0 DEEMED COMPLETION

In case the Performance Guarantee Tests cannot be completed within 90 days of Trial Operation for reasons not attributable to Contractor, the Performance Guarantee Tests shall be deemed to be completed successfully and the unit shall be deemed to be Taken Over and payment linked to this activity shall be released to Contractor by Owner. Contractor shall conduct the Performance Guarantee Tests to establish that performance guarantees are met for the unit, using applicable correction curves. Contractor shall be allowed to demobilize its resources on deemed completion of Performance Guarantee Tests and remobilize at the expense of the Owner for carrying out the Performance Guarantee Tests at a later date. In any case, the Performance Guarantee Tests for the unit shall be conducted within 6 months of the Trial Operation of the unit

51.0 DEEMED COMMISSIONING

In case the Initial Operation cannot be completed within 30 days from Scheduled date for reasons not attributable to the Contractor, the Initial Operation shall deemed to be completed and payment linked to successful completion of Reliability Run shall be released to the Contractor by Owner

