

SECTION – GCC

GENERAL TERMS AND CONDITIONS OF CONTRACT

1.0 DEFINITION OF TERMS:

- 1.1 ‘The contract’ means the agreement entered into between owner and contractor as per the contract agreement signed by the parties, including all attachment and appendices thereto and all documents incorporated by reference therein.
- 1.2 ‘Owner’ shall mean the Meghalaya Energy Corporation Ltd., Shillong and shall include their legal representatives, successors and assigns.
- 1.3 ‘Contractor’ or ‘firm’ or ‘supplier’ shall mean the bidder whose bid will be accepted by the owner for the award of the works and shall include such successful bidder’s legal representatives, successors and permitted assigns.
- 1.4 ‘Sub-contractor’ shall mean the person named in the contract for any part of the works or any person to whom any part of the contract has been sublet by the contractor with the consent in writing of the engineer and will include the legal representatives, successors and permitted assigns of such person.
- 1.5 ‘Engineer’/ ‘engineer-in-charge’ shall mean the officer appointed in writing by the owner to act as Engineer from time to time for the purpose of the contract.
- 1.6 ‘Consulting engineer’/ ‘consultant’ shall mean any firm or person duly appointed as such from time to time by the owner.
- 1.7 The terms ‘equipment’, ‘stores’, and ‘materials’ shall mean and include plant, stores and materials to be provided by the contractor under the contract.
- 1.8 ‘Works’ shall mean and include the supply of plant, equipment, labour, services as per the technical specifications and complete fitting, carrying out tests, including all transportation, handling, unloading, storage at site and any other items not specifically written but essential to complete the entire activity defined in the contract.
- 1.9 ‘Specifications’ shall mean the technical specifications and bidding document forming a part of the contract and such other schedules as may be mutually agreed upon.
- 1.10 ‘Site’ shall mean and include the place which may be allocated or used by the owner or contractor in the performance of the contract including delivery of goods/ materials.

- 1.11 The term ‘contract price’ shall mean the lump sum price quoted by the contractor in his bid with additions and / or deletions as may be agreed and incorporated in the letter of award for the entire scope of the works.
- 1.12 ‘Notice of award of the contract’ / ‘letter of award’ / ‘telex of award’ shall mean the official notice issued by the owner notifying the contractor that his bid has been accepted.
- 1.13 ‘Date of contract’ shall mean the date on which notice of award of contract / letter of award has been issued.
- 1.14 ‘Month’ shall mean the calendar month. ‘Day’ or ‘days’ unless herein otherwise expressly defined shall mean calendar day or days of 24 hours each. A ‘week’ shall mean continuous period of 7 (seven) days.
- 1.15 ‘Writing’ shall include any manuscript, type written or printed statement, under or over signature and / or seal as the case may be.
- 1.16 When the words ‘approved’, ‘subject to approval’, ‘satisfactory’, ‘equal to’, ‘proper’, ‘requested’, ‘as directed’, ‘where directed’, ‘when directed’, ‘determined by’, ‘accepted’, ‘permitted’, or words and phrases of like importance are used the approval, judgement, direction etc. is understood to be a function of the owner / engineer.
- 1.17 Test on completion shall mean such tests as prescribed in the contract to be performed by the contractor before the work is taken over by the owner.
- 1.18 ‘Guarantee period’ / ‘warranty period’ shall mean the period during which the contractor shall remain liable for repair or replacement of any defective portion of the works performed under the contract without any financial implication on the part of the owner.
- 1.19 ‘Latent defects’ shall mean such defects caused by faulty material or workmanship which surface after the warranty period and which could not be detected during normal checks prior to the end of the warranty period and which hinder/endanger the normal operation of the equipment.
- 1.20 ‘Drawings’, ‘plans’ shall mean all:
- (a) Drawings furnished by the owner/consultant as a basis for bid/proposal.
 - (b) Supplementary drawings furnished by the owner/consultant to clarify and to define in greater detail the intent of the contract.
 - (c) Drawings submitted by the contractor with his bid provided such drawings are acceptable to the owner/consultant.
 - (d) Drawings furnished by the owner/consultant to the contractor during the progress of the work, and

- (e) Engineering data and drawings submitted by the contractor during the progress of the work provided such drawings are acceptable to the engineer/owner.
- 1.21 'Codes' shall mean the following including the latest amendments, and / or replacement, if any;
- (a) Indian electricity act, 2003, and rules and regulations made thereunder.
 - (b) Indian factory act, 1948, and rules and regulations made thereunder.
 - (c) Indian electricity rules, 1956.
 - (d) All relevant standards of the Indian standard institution.
 - (e) Any other act/ code/ standard published by the government of India/ other agencies and institutions having a bearing over the performance of the contract.
- 1.22 Words imparting the singular only shall also include the plural and vice-versa where the context so required.
- 1.23 Words imparting 'person' shall also include firms, companies, owners and associations or bodies of individuals, whether incorporated or not.
- 1.24 Terms and expressions not herein defined shall have the same meanings as are assigned to them in the Indian sale of goods act (1930), failing that in the Indian contract act (1872) and failing that in the general clauses act (1897) including amendments thereof, if any.
- 1.25 In addition to the above the following definitions shall also apply,
- (a) 'All equipment and materials' to be supplied shall also mean 'goods'.
 - (b) 'Contract performance guarantee' shall also mean 'contract performance security'.
 - (c) 'Government' shall mean the government of India or any state government as the case may be.
 - (d) 'Labourer' shall mean categories of labour engaged by the contractor, his sub-contractors and his piece workers in connection with the execution of the civil works covered by the specifications. All these labourers will be deemed to be employed primarily by the contractor.
 - (e) 'Owner's store' shall mean the stores owned by the owner at the project site.
- 1.27 'Owner's representative' shall mean any person, persons or consulting firm appointed and remunerated by the owner to supervise the work, inspect and examine workmanship and test materials/ equipment to be supplied.

- 1.28 'System' shall mean 220KV Misa- Killing line of the owner including all equipments, materials etc. after 220KV Misa bay, used/ utilized for supplying/drawing electrical power from Misa 220KV substation of Power Grid.
- 1.29 'Rated voltage' shall mean the manufacture's design voltage at which the system is designed to operate or such lower voltage at which the system is charged, in consultation with the owner.

2.0 LANGUAGE AND MEASURES:

All documents pertaining to the contract including specifications, schedules, notices, correspondences, operating and maintenance instructions, drawings or any other writing shall be written in English language. The metric system of measurement shall be used exclusively in the contract.

3.0 CONTRACT DOCUMENTS:

- 3.1 The term contract documents shall mean and include the following which shall be deemed to form an integral part of the contract;
- (a) Invitation to bid including letter forwarding the bidding documents, instructions to bidders, general terms and conditions of contract, special conditions of contract and all other documents under volume – I, IA & IB.
 - (b) Specifications of the equipment furnished under the contract as brought out in the accompanying technical specifications under volume – II.
 - (c) Schedule of maintenance under the contract as brought out in the accompanying maintenance schedule under volume - III
 - (d) Contractor's bid proposal and the documents attached thereto including the letters of clarifications thereto between the contractor and the owner prior to the award of contract except to the extent of repugnancy.
 - (e) All the materials, literature, data and information of any sort given by the contractor along with his bid, subject to the approval of the owner.
 - (f) Letter of award and any agreed variations of the conditions of the documents, if any.
- 3.2 In the event of any conflict between the above mentioned documents, the matter shall be referred to the engineer whose decision shall be considered as final and binding upon the parties.

4.0 USE OF CONTRACT DOCUMENTS AND INFORMATION:

- 4.1 The contractor shall not, without the owner's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information

furnished by or on behalf of the owner in connection therewith, to any person other than a person employed by the contractor in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purpose of such performance.

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

4.3 The contractor shall not communicate or use in advertising, publicity or in any other medium, photographs or other reproduction of the works under this contract, or descriptions of the site, dimensions, quantity, quality or other information, concerning the works unless prior written permission has been obtained from the owner.

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

5.0 CONSTRUCTION OF THE CONTRACT:

5.1 Notwithstanding anything stated elsewhere in the bid documents, the contract to be entered into will be on the basis of maintenance contract as defined in the bid documents.

5.2 The contract shall in all respects be construed and governed according to Indian laws.

6.0 JURISDICTION OF CONTRACT:

The laws applicable to the contract shall be the laws in force in India. The courts of Shillong shall have exclusively jurisdiction in all matters arising under this contract.

7.0 MANNER OF EXECUTION OF CONTRACT:

7.1 The contractor, after the receipt of the letter of award of the contract from the owner, will sign a contract agreement with the owner.

7.2 The agreement, unless otherwise agreed to, shall be signed within 30(thirty) days of the acceptance of the letter of award, at the office of the owner at Shillong on a date and time to be mutually agreed. The contractor shall provide for the signing of the contract, performance guarantee in three copies, appropriate power of attorney and other requisite materials. In case the contract is to be signed beyond the stipulated time, the bid security submitted with the proposal will have to be extended accordingly.

7.3 The agreement will be signed in six originals and the contractor shall be provided with one signed original and rest will be retained by the owner.

8.0 ENFORCEMENT OF TERMS:

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

9.0 COMPLETION OF CONTRACT:

Unless otherwise terminated under the provisions of any relevant clause, this contract shall be deemed to have been completed on the expiry of the contract period.

10.0 TIME – THE ESSENCE OF CONTRACT:

Time is the essence of the contract and time given for various activities under clause No. 18 of this specification shall be strictly adhered to.

11.0 BREACH OF CONTRACT:

11.1 In case of breach of any terms and conditions of the contract by the contractor/firm the owner shall have the full power to rescind, cancel or terminate the whole or a part of the contract and get it done through any other agency at the risk and cost of the contractor and without prejudice to any other right of the owner provided in the contract. The decision of the owner in this regard shall be final and binding.

11.2 In case of breach of contract, damage/loss of owner's properties, expenditure incurred by owner due to contractor's activities etc. the contract performance guarantee to be submitted by the successful contractor shall be forfeited by the owner unless the loss is compensated by the contractor.

12.0 EFFECTIVENESS OF CONTRACT:

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

13.0 CONTRACT PERIOD:

The contract period for this work shall be 3(three) years with effect from the date of handing over the work/sites to the contractor. However, the contract period may be extended by the owner after expiry of 3(three) years contract period as per requirement. The contract price variation for the extended period if any shall be furnished by the contractor with full justification for owner's review and acceptance.

14.0 LIMITATIONS OF LIABILITIES:

The final payment by the owner in pursuance of the contract shall mean the release of the contractor from all his liabilities under the contract. Such final payment shall be made only when the work is completed or on expiry of the contract period in all respect and accepted and shall include the adjustment of all claims against the contractor.

15.0 ENGINEER'S DECISION:

- 15.1 In respect of all matters which are left to the decision of the engineer including the granting or with loading of the certificates, the engineer shall, if required to do so by the contractor, give in writing a decision thereon.
- 15.2 If in the opinion of the contractor, a decision made by the engineer is not in accordance with the meaning and intent of the contract, the contractor may file with the engineer, within 15(fifteen) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the engineer's decision and the decision shall become final and binding.
- 15.3 The engineer's decision and filing of the written objection thereto shall be a condition precedent to the right to request arbitration. It is the intent of the agreement that there shall be no delay in the execution of the works and decision of the engineer as render shall be promptly observed.

16.0 CHANGE OF QUANTITY:

- 16.1 During the execution of the contract, the owner reserves the right to increase or decrease the quantities of items under the contract but without any change in unit price or other terms and conditions. Such variations unless otherwise specified in the accompanying technical specifications, shall not be subjected to any limitations for the individual items but the total variations in all items under the contract shall be limited to a percentage of the contract price.
- 16.2 The contract price shall accordingly be adjusted based on the unit rates available in the contract for the change in quantities as above. The base unit rates, as identify in the contract shall however remain constant during the currency of the contract. In case the unit rates are not available for the change in quantity, the same shall be subject to mutual agreement.

17.0 CONTRACT PERFORMANCE GUARANTEE:

- 17.1 As a contract performance security, the successful bidder, to whom the work is awarded, shall be required to furnish a performance guarantee from (a) a public sector bank or (b) a scheduled Indian bank having paid up capital (net of any accumulated losses) of Rs. 100 crores or above (the latest annual report of the bank should support compliances of capital

adequacy ratio requirement) in favour of the owner. The guarantee amount shall be equal to 15% (fifteen percent) of the total contract price and it shall guarantee the faithful performance of the contract in accordance with the terms and conditions specified in these documents and specifications. The guarantee shall be valid up to 90(ninety) days after the end the period of contract.

- 17.2 The contractor shall furnish contract performance guarantee(s) for the proper fulfillment of the contract in the prescribe form within 30(thirty) days from the date of issue of the letter of award of contract as per annexure –II, Vol. - I.
- 17.3 The performance guarantee shall cover additionally the following to the owner
- (a) The successful bidder guarantees the successful and satisfactory operation and maintenance of the system under the contract, as per the specifications and documents.
 - (b) The successful bidder further guarantees that the materials/equipments/workmanship provided and or erected/constructed by him shall be free from all defects in design, material and workmanship and shall upon written notice from the owner fully remedy free of expenses to the owner such defects as developed.
- 17.4 The contract performance guarantee is intended to secure the performance of the entire contract. However, it is not to be construed as limiting the damages stipulated in other clauses in the bid conditions.
- 17.5 The bid security shall be kept valid by the successful bidder till the contract performance guarantee is accepted by the owner
- 17.6 The performance guarantee will be returned to the contractor without any interest at the end of the contract period.
- 17.7 The contractor on receipt of written instruction from the owner shall at his cost get the validity period of the performance guarantee extended if situation arises.

18.0 TAKING OVER:

- 18.1 Within 15(fifteen) days of issue of the letter of award, the contractor shall mobilize.
- 18.2 Within 30(thirty) days from the date of issue of the letter of award and on acceptance of the same a contract agreement shall be signed.
- 18.3 Within 45(forty five) days of placement of letter of award; the successful contractor shall perform joint verification of 220KV tower for any missing member/earthing, conductors, insulators, equipments, materials etc. as applicable shall be done. Any rectification need to

be done as observed during joint verification/inspection shall be got done before handing over to the contractor.

- 18.4 Subject to fulfilling of the above, immediately the transmission lines under this scope of contract shall be handed over to the contractor & they shall take over accordingly.
- 18.5 Before handing over, the owner shall handover the concerned drawings, catalogues, manuals of respective equipment to the contractor.
- 18.6 Similarly, in the event of lapse of contract period/termination of the contract, the contractor shall handover the line to owner after joint inspection. Owner shall take over the same subject to the position at which the lines & substation were handed over to the contractor.
- 18.7 The contract period for billing purpose will start from the date of taking over.

19.0 AVAILABILITY :

Availability of the system under jurisdiction of the contractor/firm for a given period means the time in hours during that period the electricity power will be available at its rated voltage at 220KV at the receiving end. The same shall be calculated in percentage of total hours in a given period for 220KV. However, outage time of the system caused due to force majeure conditions and outage caused by grid incident/ disturbances (i.e. faults in other agency/interconnected grid system for which power is not available at Misa 220 KV substation of PGCIL including fault in 220KV Misa Substation of PGCIL from which power is supplied /drawn/transformed to the system) not attributable to the contractor/firm of the said maintenance contract shall be excluded. The onus of satisfying owner in respect of outage time due to aforesaid events shall rest on contractor/firm.

Availability of power at 220KV shall be worked out as per the following formula:

Availability : -

(a) For 220KV System

$$\frac{\text{Maximum time in hrs. availability of power at Killing at 220KV} \times 100\%}{\text{Total time in hrs.}}$$

The availability of the 220KV feeder to be maintained by the successful contractor shall be minimum 98%.

When 98% availability during a month is achieved for the 220KV feeder(i.e. availability calculated based on the total hours of the corresponding month as per the above formula) the contractor shall entitle to receive hundred percent(100%) value of bill for a given month i.e. total contract value for a year divided by the 12(twelve) months in the given month against 98%, the bill shall be reduced on pro-rata basis depending upon the availability of the

system achieved during the given month concerned. At zero availability of the system for the month concerned, no monthly bill shall be payable to the contractor.

20.0 PRICE BASIS:

20.1 The bidder shall quote item wise prices as per the 'schedule prices' in the section – BPS, volume - IB.

20.2 Applicable rates of taxes and duties shall be indicated in the bid.

20.3 All prices shall remain firm during the entire contract period.

21.0 TERMS OF PAYMENT

21.1 Subject to any deduction or adjustment which the owner is authorised to make under the contract the contractor shall be entitled to payments as follows:

21.2 Modalities for payment to the contractor:

21.2.1 Payments to the contractor against the works specified in clause No. 1.1, 1.2 of Vol.-II of this bid documents shall be made strictly on performance basis as given below:

21.2.2 Daily availability record shall be maintained at end of 220KV side at Killing receiving end by computing the numbers of hours for which power was available during the month(s).

21.2.3 Monthly progressive bills shall be raised by the contractor which is the O&M charges of 220KV Misa- Killing line as quoted and as per the order/agreement to be detailed in schedule of prices per year to be converted to monthly amount.

21.2.4 The bills so raised shall be payable to the contractor against establishment of system availability as detailed in clause No. 19 (availability) above.

21.2.5 For computation of penalty if any, cumulative achievement of availability in each month-end shall be considered for each year of the contract period. That is percentage availability of previous month(s) shall be considered in the present month in cumulative way to compute the overall availability upto the present month and so on. Penalty if any, arising out of availability so calculated shall be adjusted/payable in respect of the previous month(s) in the present month of billing and so on.

21.2.6 Payments due to major works as detailed in clause no. 1.2, Vol.-II shall be paid as per clause No. 36(extra work) of this specification. In this case monthly running account bills shall be raised by the contractor on the completed work. Final bill shall be raised on completion of entire work to the satisfaction of the owner.

21.2.7 Payment of bill shall be made subject to production of following documents along with the bill:

- (a) Detailed bill in triplicate
- (b) Certification by site engineers against availability of manpower/T&P as per contract during the period of billing.
- (c) Certification by site engineers against periodic maintenance work done by the contractor as per the contract.
- (d) Certification by site engineers against availability of line/substation & tripping details during the month of billing.

21.2.8 At zero availability of the system for the month concerned, no monthly bill shall be payable to the contractor/firm except under force majeure conditions.

21.3 Taxes as applicable as per the central & state govt. directive shall be deducted at source from the bill of the contractor by the owner. Claim for exemption if any, shall be supported by necessary exemption certificates by the contractor well before time.

21.4 All bank charges shall be to the contractor's account.

21.5 All payments made during the contract shall be on-account payments only.

21.6 All payments under the contract shall be in Indian rupees only.

22.0 DEDUCTIONS FROM CONTRACT PRICE

1 All costs, damages or expenses incurred by the owner for which the contractor is liable, under the contract, will be deducted by the owner from the contract price.

23.0 INSURANCE

23.1 The owner will arrange insurance for all the properties of the owner against this work. However, it will be the responsibility of the contractor to arrange insurance for all his manpower.

23.2 In case of damage of any property of the owner, immediate intimation be given by the contractor to engineer for insurance purposes. If no such intimation is received in due time and claim becomes time barred. The owner will recover such damages from the bills of the contractor.

24.0 PENALTY

24.1 The objective of awarding the maintenance of the transmission lines is to obtain uninterrupted service of the lines and therefore the contractor has to undertake to provide

dedicated and serious service in maintaining the line therefore, the contractor is to make all efforts to achieve maximum availability of the system.

24.2 Penalty shall be applicable in case of non-achievement of a system availability of 98% (ninety eight percent) as detailed in the clause No. 21.0(terms of payment).

25.0 FORCE MAJEURE

25.1 Force majeure is herein defined as any cause which is beyond the control of the contractor or the owner as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affect the performance of the contract, such as:

- (a) Natural phenomena, including but not limited to floods, droughts, earthquakes and epidemics;
- (b) Acts of any government, domestic or foreign, including but not limited to war, declared or undeclared, priorities, guarantees, and embargoes.

25.2 If either contractor/firm or owner is temporarily unable by reason of force majeure or the laws or regulations of India to meet any of its obligations under the order/agreement and if such party gives to the other party written notice of the event within 15(fifteen) days after its occurrence such obligations of the party as it is unable to perform by reason of the event shall be suspended for as long as the force majeure condition continues.

25.3 The owner or his authorized representative on receipt of notification shall ascertain the facts and extent of the delays and suitably extend the time for completing the work or stage of work where, in his judgement the findings of facts justify such an extension. The period of extension of time shall be determined by the owner or his authorized representative after taking into consideration the nature of the work delayed and practicability of its execution during the period of extension.

25.4 Although the time for completion of a work shall be suitably extended, such extension shall not result in any financial claim of the contractor against the owner on any account whatsoever.

25.5 The terms 'force majeure', as employed herein shall mean acts of god, acts of public enemy, war, insurrection, riots, epidemics, landslides, ad any other similar events beyond the control of either party and which by exercise of due diligence neither party is able to overcome.

25.6 Neither party shall be liable to the other party for loss or damage sustained by the other party arising from any event referred to in clause or delays arising from such event.

25.7 If by virtue of clause referred above, either party shall be exempted from the performance or punctual performance of any obligation for continuous period of 6(six) months, then the parties shall consult together with a view to agreeing what action should in the circumstances be taken and what amendments to the terms of this contract ought to be made.

26.0 SUSPENSION OF WORK

26.1 The owner reserves the right to suspend and reinstate execution of the whole or any part of the works without invalidating the provision of the contract. Order for suspension or reinstatement of the works will be issued by the engineer to the contractor in writing. The time for completion of the works will be extended for a period equal to duration of the suspension.

26.2 Any necessary and demonstrable cost incurred by the contractor as a result of such suspension of the works will be paid by the owner, provided such costs are substantiated to the satisfaction of the engineer. The owner shall not be responsible for any liabilities if suspension or delay is due to some default on the part of the contractor or his sub-contractor.

27.0 CONTRACTOR'S DEFAULT

27.1 If the contractor shall neglect to execute the works with due diligence and expedition or shall refuse or neglect to comply with any reasonable orders given to him, in writing, by the Engineer in connection with the works or shall contravene the provisions of the contract, the owner may give notice in writing to the contractor to make good the failure, neglect or contravention complained of. Should the contractor fail to comply with the notice within 10 (ten) days from the date of service thereof, then in such a case the owner shall be at liberty to employ other workmen and forthwith execute such part of the works as the contractor may have neglected to do or if the owner shall think fit it shall be lawful for him, without prejudice to any other right he may have under the contract, to take the works wholly or in part out of the contractor's hand and re-contract with any other person or persons to complete the works or any part thereof and in that event the owner shall have free use of all the contractor's equipment that may have been at the time on the site in connection with the works without being responsible to the contractor for fair wear and tear thereof and to the exclusion of any right of the contractor over the same and the owner shall be entitled to retain and apply any balance which may otherwise be due under the contract by him to the contractor, or such part thereof as may be necessary, to the payment of the cost of executing the said part of the works or of completing the works as the case may be. If the cost of completing the works or executing a part thereof as aforesaid shall exceed the balance due to the contractor, the contractor shall pay such excess amount. The same shall also be recovered from the contract performance guarantee.

27.2 In addition, such action by the owner as aforesaid shall not relieve the contractor of his liability to pay penalty for delay.

28.0 TERMINATION OF CONTRACT ON OWNER'S INITIATIVE

28.1 The owner reserve the right to terminate the contract either in part or in full due to reason other than those mentioned on the clause entitled contractor's default. The owner shall in such an event give 15(fifteen) days notice in writing to the contractor of his decision to do so.

28.2 The contractor upon receipt of such notice shall discontinue the work on the date and to the extent specified in the notice, make all reasonable efforts to obtain cancellation of all others and contracts to the extent they are related to the work terminated and terms satisfactory to the owner, stop all further sub-contracting or purchasing activity related to the work terminated, and assist the owner in maintenance, protection, and disposition of the works acquired under the contract by the owner.

29.0 DEATH, BANKRUPTCY ETC:

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

29.2 If the contractor shall die or commit any act of bankruptcy, or being a owner commences to be wound up not being voluntary winding up for the purpose only of amalgamation/reconstruction or carry on its business under a receiver for the benefit of its creditors or any of them, the owner shall have the liberty to:

29.2.1 Terminate the contract forthwith by notice in writing of the liquidator or receiver or to any person in whom the contract may become vested and to act in the manner provided in clause entitled 'contractor's default' as though the last mentioned notice has been the notice

referred to as such clause and the equipment and materials have been taken out of the contractor's hands.

29.2.2 To give such liquidator, receiver or other person the option of carrying out the contract subject to his providing a guarantee from the due and faithful performance of the contract, upto and amount to be determined by the owner.

30.0 REGULATIONS FOR LABOUR, LOCAL AUTHORITIES:

30.1 The contractor shall at his own cost comply with all the provisions of acts, laws, regulations, rules or by-laws of central govt., state govt. and or any local and statutory authority applicable on the matters of the performance of the contract including but not limited to matters in respect of engagement of labour. The contractor shall indemnify the owner against any payment to be made under all such applicable laws/acts.

30.2 Since the work involve deployment of labour it is obligatory for the contractor to abide by the laws related to deployment of labours. In this regards, owner will not bear any expenditure & responsibility & labour license if required to be arranged by the contractor at his cost.

30.3 All risk involved in respect of human life and property is to be borne by the contractor and owner will not entertain any claim in this regard.

30.4 All the safety and precautionary measures are to be taken by the contractor during the execution of the work.

30.5 The contractor shall be responsible for safety of all workmen employed by him from time to time and shall be responsible for payment of any compensation that may arise from time to time as a legal obligation or otherwise whatsoever it may be.

30.6 All damage to the consisting structure and equipment during execution of work and the faulty workmanship, the contractor shall be fully responsible and cost will be recovered from the contractor.

30.7 All responsibility regarding forest royalty and any other risk involved, unless specifically mentioned herein lies on the contractor. Owner shall not bear any expenditure and responsibility in this regard.

31.0 GRAFTS AND COMMISSIONS ETC

Any graft, commission, gift or advantage given, promised or offered by or on behalf of the contractor or his partner, agent officers, director, employee or servant or any one on his or their behalf in relation to the obtaining or to the execution of this or any other contract with the owner, shall in addition to any criminal liability which it may incur, subject the

contractor to the cancellation of this and all other contracts and also to payment of any loss or damage to the owner resulting from any cancellation. The owner shall then be entitled to deduct the amount so payable from any monies otherwise due to contractor under the contract.

32.0 SETTLEMENT OF DISPUTES:

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

33.0 ARBITRATION:

- 33.1 All disputes or differences in respect of which the decision, if any, of the engineer has not become final or binding as aforesaid shall be settled by arbitration in the manner as follows:
- 33.2 The arbitration shall be conducted by three arbitrators, one each to be nominated by the contractor and the owner and the third to be appointed as an umpire by both the arbitration in accordance with the Indian arbitration act. If either of the parties fail to appoint its arbitrator within 60(sixty) days after receipt of a notice from the other party invoking the arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.

- 33.3 The arbitration shall be conducted in accordance with the provisions of the Indian arbitration act, 1940 or any statutory modification thereof. The venue of arbitration shall be Shillong.
- 33.4 The decision of the majority of the arbitrators shall be final and binding upon the parties. The arbitrators may, from time to time with the consent of all the parties enlarge the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being unable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.
- 33.5 The arbitrator shall have full powers to review and/or revise, any decision, opinion, direction, certification or valuation of the engineer in accordance with the contract, and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments out before the engineer for the purpose of obtaining the said decision.
- 33.6 No decision given by the engineer 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 or difference referred to the arbitrators as aforesaid.
- 33.7 During settlement of disputes and arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the contract.

34.0 STATUTORY VARIATION:

Any variation thereof due to enactment of new laws after the date of opening of bids in Indian taxes, duties and levies as per law, on transactions between the contractor or his nominee/assignee and the owner shall be borne by the owner.

35.0 ADDRESS OF THE CONTRACTOR:

- 35.1 For all purposes of the contract the address mentioned in the bid shall be considered as the address of contractor until and unless any written intimation from the contractor for change in address and acknowledged by the engineer-in-charge.
- 35.2 Any notice and instructions or communication to be given to the contractor shall be deemed to have delivered/served if it has been delivered to his site office.

36.0 EXTRA WORK:

- 36.1 Extra items of work shall not vitiate the contract. The contractor shall have to execute such items of work, which in the opinion of the engineer is unavoidable for proper execution and for smooth running of the installations, equipments, transmission system etc.

- 36.2 If rates of such work are available in the contract, payment for such work shall be made at those rates. If rates of such works are not available the same shall be worked out as per the following formula:
- (a) Cost of materials including transportation.
 - (b) Cost of labour as per government approved labour rates for skilled, unskilled labourer in the prevailing state.
 - (c) Charges for any plant equipment, machineries to be employed.
 - (d) @12.5% overhead on (a+b+c),
 - (e) @ 10% profit on (a+b+c).
 - (f) Total charges payable = a+b+c+d+e

37.0 OVER PAYMENT AND UNDER PAYMENTS:

- 37.1 Whenever any claim whatsoever for the payment of a sum of money to the owner arises out or under the contract against the contractor, the same may be deducted by the owner from any sum then due or which at any time thereafter may become due to the contractor under the contract and failing that under any contract with the owner or from his security deposit, or he shall pay the claim, or demand within 15(fifteen) days.
- 37.2 The owner reserves the right to carry out payment audit and technical examination of the final bill including all supporting vouchers abstract, etc. The owner further reserves the right to enforce recovery of any over payment when detected notwithstanding the fact that the amount of the bill may be included by one of the parties as an item dispute before and arbitrator appointed as per relevant clause of this specification and notwithstanding the fact that the amount of the final bill figures in the arbitration award.
- 37.3 If as a result of such audit and technical examination any over payment is discovered in respect of any work done by him under the contract it shall be recovered by the owner from the contractor by any or all of the methods prescribed above, and if under-payment is discovered the amount shall be duly paid to the contractor by the owner.
- 37.4 Any sum of money due and payable to the contractor (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the owner in respect of payment of a sum of money arising out of or under any other contract made by the contractor with the owner.
- 37.4.1 If a sum of money withheld or retained under this clause by the owner until his claim arising out of the contract is either mutually settled or determined by the arbitrator, if the contract is governed by arbitration or by the competent court herein mentioned, as the case may be, the contractor shall have no claim for interest or damages whatsoever on the account or any other ground in respect of any sum of money withheld or retained under this clause.

.END OF SECTION - GCC
