



**ONGC TRIPURA POWER COMPANY LIMITED**

---

**GENERAL CONDITIONS OF CONTRACT (GCC)**

---

**2 X 363.3 MW**

**GAS BASED COMBINED CYCLE POWER PLANT,**

**PALATANA, UDAIPUR, TRIPURA**



Plant: 2X363.3 MW GAS BASED COMBINED CYCLE POWER PLANT

## GENERAL CONDITIONS OF CONTRACT

### TABLE OF CONTENT

<b>Clause No.</b>	<b>Description</b>	<b>Page No.</b>
1.0	Definition of Terms	4
2.0	Scope of Work	4
3.0	Contractor to inform itself fully	5
4.0	Effective Date of Contract	5
5.0	Time for Completion and Extension of Time	5
6.0	Liquidated Damages	6
7.0	Change / Variation Orders	7
8.0	Backcharge	8
9.0	Materials	9
10.0	Labour and Applicable Labour Laws	10
11.0	Discipline of Workmen	11
12.0	Security	12
13.0	Contractor's Area Limits	12
14.0	Contract Price and Price Basis	12
15.0	Taxes, Duties and Levies	13
16.0	Payment	14
17.0	Inspection and Approval	15
18.0	Rejection of Works	16
19.0	Records and Measurement	16
20.0	Defects Liability Period	17
21.0	Insurance	18
22.0	Suspension of Work	20
23.0	Contractor's Default	21
24.0	Force Majeure	23
25.0	Indemnity	24
26.0	Limitation of Liability	26
27.0	Settlement of Disputes	27
28.0	Assignment and Subletting of Contract	29
29.0	Laws and Regulations	30
30.0	Change in Law	30
31.0	Validity of Provision	31
32.0	Survival	31
33.0	Enforcement of Terms	31
34.0	No Waiver of Rights	32
35.0	Certificate Not to Affect Right of The Owner and	32

<b>Clause No.</b>	<b>Description</b>	<b>Page No.</b>
	Liability of Contractor	
36.0	Construction Power and Water	32
37.0	Contract Performance Bank Guarantee	32
Ann-1	Format for Contract Performance Bank Guarantee	34
Ann-2	Format for Advance Bank Guarantee	37

## GENERAL CONDITIONS OF CONTRACT

### 1.0 **DIFINITION OF TERMS**

1.1 "Owner" or "OTPC" shall mean ONGC Tripura Power Company Limited and shall include their legal representative(s), successor(s) and permitted assign(s).

1.2 "Contractor" shall mean the party whose offer has been accepted by the Owner for the award of Works envisaged in Contract documents and shall include such Party's legal representatives, successors and permitted assigns.

1.3 "Works" shall mean and include furnishing of material, labour, tools, plant, equipment and services required for full and entire execution and completion of scope of work.

1.4 "Site" shall mean and include the land and other places on, into or through which the Works envisaged under the Contract is to be carried out including any adjacent land, path, street or reservoir which may be allocated or used by the Owner or the Contractor in the performance of the Contract.

1.5 "Letter of Award" shall mean official notice issued by the Owner notifying the Contractor that his offer has been accepted.

1.6 Words imparting the singular only shall also include the plural and vice-versa where the context so requires.

1.7 Word imparting "Person" shall include firms, companies, corporations and associations of bodies of individuals, whether incorporated or not.

### 2.0 **SCOPE OF WORK**

2.1 The scope of work shall be as defined in Annexure I alongwith with the special terms and conditions of contract.

2.2 The scope of work to be carried out under the Contract shall, except otherwise provided in Technical Specifications and these conditions, include all labour, materials, tools, plants, equipment and transport which may be required for full and entire execution and completion of the work. The descriptions given in Schedule of Quantities and elsewhere shall, unless otherwise stated, include waste on materials, carriage & cartage, carrying in return empties, hoisting, setting, fitting and fixing in position and all other

labour necessary for the full and entire execution and completion as aforesaid in accordance with good engineering practice and recognized principles.

2.3 Scope of work shall also include all such items which may not have been specifically brought out in the bidding / enquiry documents but which may be necessary for the successful fulfilment of Contractor's obligation under the Contract as per good engineering practice and recognized principles.

3.0 **CONTRACTOR TO INFORM ITSELF FULLY**

3.1 Contractor shall be deemed to have carefully examined the Contract Documents including documentation, drawings and specifications for the Works and fully acquainted itself with site conditions and all other conditions relevant to the Works, and its surroundings. Contractor shall be deemed to have assumed the risk of such conditions and will, regardless of such conditions, expenses, and difficulty of performing the Works, or negligence of the Owner, if any, fully complete the Works for the stated Contract Price without further recourse to the Owner. Information on the site of the Works and local conditions at such site furnished by the Owner in specifications, drawings or otherwise is not guaranteed by the Owner and is furnished only for the convenience of Contractor.

4.0 **EFFECTIVE DATE OF CONTRACT**

4.1 The Contract shall be considered as having come into force from the date of Letter of Award, unless otherwise provided in such Letter of Award.

5.0 **TIME FOR COMPLETION AND EXTENSION OF TIME**

5.1 Time for completion of Works defined in clause 2.0 above shall be as defined in Letter of Award.

5.2 It is clearly understood and agreed by Contractor that time for completion of Works is the essence of this Contract and shall be strictly adhered to by the Contractor.

5.3 If the completion of scope of work is delayed due to either force majeure or delay on the part of other contractors or tradesmen engaged by Owner in executing work not forming part of the Contract or non-availability of materials which are to be supplied by Owner, or any other cause which, in the absolute discretion of the Owner, is beyond the Contractor's control; then upon the happening of any such event causing delay, the Contractor

shall immediately give notice thereof in writing to the Owner but shall nevertheless use constantly his best endeavors to prevent or make good the delay and shall do all that may be reasonably required to the satisfaction of the Owner to proceed with the Works.

- 5.4 Request for extension of time, to be eligible for consideration, shall be made by the Contractor in writing within three days of the happening of the event causing delay. The Contractor may also, if practicable, indicate in such a request the period for which extension is desired.
- 5.5 In any such case the Owner may give a fair and reasonable extension of time for completion of the Works. Such extension of time or rejection of request for time extension shall be communicated to the Contractor by the Owner in writing, within one month from the date of receipt of such request by the Owner.
- 6.0 **LIQUIDATED DAMAGES(Not applicable) Penalty provisions shall be as per SCC**
- 6.1 Contractor guarantees that the time for completion of Works as mentioned in clause 5.0 is firm and final for completion of Works to be performed by Contractor hereunder. It is agreed that the actual damages and loss which Owner would incur as a result of Contractor's failure to complete Works within such time period would be impracticable and infeasible to determine and that the sum of 1% (one percent) of Contract Price per week is a reasonable and fair estimate of the damages and loss which Owner would suffer for each such week by which Contractor is late in completing the said Works.
- 6.2 It is therefore agreed that in the event of such failure by Contractor, Contractor shall pay to the Owner, as Liquidated Damages (and not as penalty) a sum of 1% (one percent) of the Contract Price for a delay of each week or part thereof subject to a ceiling of 10% of the Contract Price.
- 6.3 Contractor agrees all sums payable by Contractor to Owner as Liquidated Damages pursuant to this clause may be deducted by Owner from the price to be payable to Contractor hereunder.
- 6.4 Payment or deduction of Liquidated Damages shall in no way relieve the Contractor from completing the Works and discharging it's all other obligations under this Contract

6.5 It is further agreed this clause shall not constitute a waiver of any rights of Owner to damages and/or other remedies of Owner under this Contract or otherwise for Contractor's improper performance or default in performance of any other aspect of this Contract.

7.0 **CHANGE/VARIATION ORDER**

7.1 The Scope of Work shall be subject to change by additions, deletions or revisions thereto by Owner. Contractor will be notified of such changes by receipt of additional and/or revised drawings, specifications, exhibits or other written notification.

7.2 If, upon receipt of any notification, Contractor considers that a change is involved that could affect costs or time schedule for performance of the Works, Contractor is obligated to inform Owner within two (2) working days of Contractor receiving the notification. Unless Contractor notifies Owner in accordance with this clause 7.2, Contractor is obliged to perform the Works in accordance with the change and will have no entitlement to any additional compensation or to any change to the schedule.

7.3 Contractor shall submit to Owner within ten (10) working days after submission of the notification from Contractor required under clause 7.2 above a detailed takeoff with supporting calculations and pricing for the change, together with any requested adjustments in the schedule. The pricing shall be itemized as required by Owner and shall be in sufficient detail to permit an analysis of all labour, material and equipment and shall cover all work involved in the change, whether such work was deleted, added or modified. Amounts related to subcontracts shall be supported in similar detail. Any adjustments to the time schedule must be accompanied by a revised version of the detailed time schedule, demonstrating that any proposed changes to the time schedule have been caused by the change and have affected a critical path on such previously agreed detailed schedule.

7.4 Contractor shall not perform changes in the Works in accordance with clause 7.1 until Owner has approved in writing the pricing for the change and any adjustment in the time schedule for performance of the Works, except as set forth in clause 7.5 and 7.6. Upon receiving such written approval from Owner, Contractor shall diligently perform the change in strict accordance with this Contract.

7.5 Notwithstanding clause 7.4, Owner may expressly authorize Contractor in writing to perform the change prior to such approval by Owner. Contractor shall not suspend performance of this Contract during the review and

negotiation of any change, except as may be directed by Owner pursuant to Clause 25.0, Suspension of Work.

7.6 Contractor shall not comply with oral changes in the Works. If Contractor believes that any oral notice or instruction received from Owner will involve a change in the cost, time to perform or integrity of the Works, it shall require that the notice or instruction be given in writing. Any costs incurred by Contractor to perform oral changes shall be to Contractor's account, and Contractor waives any and all rights to claim from Owner for such costs or additional time to perform the Works as a result of compliance by Contractor with such oral changes.

#### 8.0 **BACKCHARGE**

8.1 A backcharge is a cost sustained by Owner and chargeable to Contractor for the Owner's performance of work that is the responsibility of Contractor.

8.2 Without limitation and by way of example only, backcharge may result from:

8.2.1 Services performed by the Owner, at Contractor's request, for work which is within Contractor's scope of work under this Contract.

8.2.2 Costs sustained by the Owner as a result of Contractor's non-compliance with the provisions of this Contract or Contractor's act of omission or negligence.

8.2.3 Costs incurred by the Owner to fix all defects, deficiencies or errors that may appear in the Works during the warranty period.

8.3 Upon identification by the Owner of an actual or anticipated backcharge, the Owner shall issue a backcharge notice to Contractor. This notice shall describe the backcharge work to be performed, the schedule period for performance, the cost to be charged by the Owner to Contractor for the backcharge and other terms.

8.4 The backcharge cost shall consist of:

8.4.1 Labor: at actual cost plus fifty-five percent (55%) to cover payroll additives;

8.4.2 Materials: at actual supplier and freight invoice cost delivered to jobsite;

8.4.3 Construction Equipment: at actual third party rental cost or at Company's equipment rental rates, whichever may be applicable;



- 8.4.4 Subcontracts: At actual cost;
- 8.4.5 All taxes, levies, duties and assessments attributable to the backcharge work;
- 8.4.6 Twenty-five percent (25%) shall be added to the foregoing for indirect costs, overhead, supervision and administration
- 8.5 Within twenty-four (24) hours after receipt of the backcharge notice, Contractor shall fax back to the Owner a signed copy of the backcharge notice, indicating either acceptance of the backcharge or agreement to perform the described backcharge work within the indicated schedule period for performance, utilizing Contractor supplied labor, material and equipment, as applicable.
- 8.6 Contractor will be required to sign the backcharge notice before commencement of the backcharge work by the Owner or others. In the event Contractor refuses to sign, Owner shall, at its option, proceed with the backcharge work and charge the backcharge cost to Contractor's account. Thirty (30) calendar days after commencement of the backcharge work or on completion of the backcharge work, whichever occurs sooner, Owner will invoice Contractor for the incurred backcharge cost.
- 9.0 **MATERIALS**
- 9.1 Contractor shall at his own expense, provide all materials required for the Works. No materials shall be provided by Owner.
- 9.2 All materials to be provided by the Contractor shall be in conformity with the Technical Specifications and the Contractor shall, if requested by the Owner, furnish proof to the satisfaction of Owner that the materials so comply.
- 9.3 Contractor shall, at his own expense and without delay, supply to the Owner samples of materials proposed to be used in the Works. The Owner shall, within seven days of receipt of samples or within such further period as he may require, intimate to the Contractor in writing, whether samples are approved by him or not. If samples are not approved, the Contractor shall forthwith arrange to supply to the Owner for his approval fresh samples complying with the specifications laid down in the Contract.
- 9.4 The Owner shall have full powers to require removal of any or all of the materials brought to site by the Contractor which are not in accordance with

the Contract specifications or do not conform in character or qualify to samples approved by him. In case of default on the part of the Contractor in removing rejected materials the Owner shall have full powers to procure other proper materials to be substituted for rejected materials and in the event of the Contractor refusing to comply, he may cause the same to be supplied by other means. All costs, which may accrue upon such removal and/or substitution, shall be borne by the Contractor.

- 9.5 Materials required for the Works, brought by the Contractor, shall be stored by the Contractor only at places approved by the Owner. Storage and safe custody of material shall be the responsibility of the Contractor.

**10.0 LABOUR AND APPLICABLE LABOUR LAWS**

- 10.1 The Contractor shall employ labour in sufficient numbers to maintain the required rate of progress and workmanship of the degree specified in the Contract and to the satisfaction of the Owner. The Contractor shall not employ in connection with the Works any person who has not completed eighteen years of age.

- 10.2 Contractor shall comply with all the rules and regulations under the Applicable Law during the performance of the Works under this Contract.

- 10.3 Contractor shall *inter alia* comply with the provision of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employees Liability Act, 1938, Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Contract Labour (Regulation and Abolition) Act, 1970, Inter State Migrant Labour Act, 1979 and Employees State Insurance Act, 1948 or any modification thereof or any other law relating thereto and rules made there under from time to time.

- 10.4 Contractor shall obtain all Permits required under Applicable Law in connection with the Contractor Staff employed by it for performing the Works including but not limited to licenses required under Contract Labour (Regulation and Abolition) Act, 1970 and rules made there under; the registration under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and obtaining the Employee Provident Fund (EPF) Code. All registration and statutory inspection costs and expenses (including payment of fees), if any, in respect of the performance of the Works pursuant to this Contract shall be to the account of the Contractor.

- 10.5 The Contractor shall pay to the labour, employed by it, either directly or through Subcontractors, wages in accordance with the provisions of the Minimum Wages Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 as prevalent in Tripura.
- 10.6 Contractor shall cover contract labourers to be engaged by them during the Term for the purpose of provident fund benefits as per rules under the Contract Labour (Regulation and Abolition) Act, 1970 and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- 10.7 Contractor shall submit to the Owner on the 10<sup>th</sup> (tenth) day of every month a return on the prescribed form for the payment of wages under the provisions of the Minimum Wages Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 as prevalent in Tripura. Failure of the Contractor to submit such a form shall be considered as breach of this Contract.
- 10.8 If Owner as "Principal Employer" is held liable to pay contribution, etc. under any Applicable Law or court decision in respect of any Contractor Staff, then Contractor would reimburse the amount of contribution so paid by the Owner and in addition the Contractor shall keep the Owner fully indemnified in this regard.
- 10.9 In the event of the Contractor committing a default or breach of any of the provisions of the Applicable Law as mentioned in this Article 10.0, as amended from time to time, or in furnishing any information or submitting or filling any form, register/slip under the provisions of such Applicable Law, the Owner shall be at liberty to take recourse to any action it may deem fit, under the circumstances, to protect its own interest. Further, all amounts as may become due for payment to the concerned authorities/agencies on account of such defaults or breach shall be settled by the Owner after recovering the same from the Contractor. The Owner shall be entitled to deduct such amounts from the Contract Price payable to the Contractor under this Contract.
- 11.0 **DISCIPLINE OF WORKMEN**
- 11.1 The Contractor shall adhere to the disciplinary procedure set by the Owner in respect of its employees and workmen at Site. The Owner shall be at liberty to object to the presence of any representative or employee of the Contractor at the Site if, in the opinion of the Owner, such employee has misconducted himself or is incompetent or negligent or otherwise

undesirable and the Contractor shall remove such person, objected to, and provides a competent replacement acceptable to the Owner.

**12.0 SECURITY**

12.1 The Contractor shall be fully responsible for all equipment and materials in its custody, stores, loose, semi-assembled and/or erected by it at Site. The Contractor shall make suitable security arrangements including employment of security personnel to ensure the protection of all materials, equipment and Works from theft, fire, pilferage and any other damage and loss. All materials of the Contractor shall enter and leave the project site only with the written permission of the Owner.

**13.0 CONTRACTOR'S AREA LIMITS**

13.1 The Owner shall mark-out the boundary limits of access roads, parking spaces, storage and construction areas for the Contractor and the Contractor shall not trespass the areas not so marked out for him. The Contractor shall be responsible to ensure that none of its personnel move out of the areas marked out for its operations. In case of a need for the Contractor's personnel to work in areas other than those marked out for it, written permission of the Owner shall be obtained before proceeding to work in such areas.

**14.0 CONTRACT PRICE AND PRICE BASIS**

14.1 Contract Price is full compensation to Contractor for full and complete performance by Contractor of Works, compliance with all terms and conditions of this Contract, and for Contractor's payment of all obligations incurred in, or applicable to the performance of the Works,

14.2 Contract Price, pricing for change, and all other prices and rates set forth in the Contract shall remain fixed and firm and shall not be subject to any change whatsoever during the currency of the Contract.

14.3 Contract Price shall include all Contractor's costs, expenses, overhead and profit for complete performance of the Works.

14.4 The Contract Price shall include mobilization, demobilization and site establishment charge which shall not be subject to adjustment based upon any additions or deletions to the Contract Price.

- 14.5 The Contract Price shall apply regardless of when the Works is performed, be it day or night or a holiday.
- 14.6 Contract Price shall include all costs associated with and relating to, performing Services in accordance with all Applicable Laws as well as Owner's HES Policy and security regulations.
- 14.7 Contract Price shall be inclusive of all applicable taxes, duties and levies including but not limited to service tax, sales tax, VAT, works contract tax, excise duties, customs duties, etc. Tax payable on income or profession of the Contractor shall be the sole responsibility of the Contractor and the Owner shall have no obligation regarding the same.
- 14.8 Failure by Contractor to assess fully the scope of work, as required and described in the Contract shall not be accepted as a basis for variations to the lump sum, unit pricing, and time and material rates for changes.
- 15.0 **TAXES, DUTIES & LEVIES**
- 15.1 Prices shall be inclusive of all levies such as CGST,SGST/IGST etc unless otherwise agreed to in writing. In the event of Purchaser having agreed to pay these levies extra, the same shall be paid/reimbursed (as the case may be) at actual against documentary evidence. Any upward variation in levies after expiry of delivery period shall be to the Supplier's account. # Any cost increase/ benefit of cost reduction, on account of GST, shall be to the account of the Buyer. # In case any credit, refund or other benefit is denied or delayed to the Buyer due to any non-compliance by the Seller (such as failure to upload the details of supply on GSTN portal, failure to pay GST to the Government) or due to non-furnishing or furnishing of incorrect or incomplete documents/ details/ information by the Seller, the Seller would reimburse the Buyer the loss to Buyer including, but not limited to, the tax loss, interest and penalty. # If tax is liable to be charged/ paid at the time of advances under the current indirect regime or on introduction of GST, the Seller would issue appropriate document (i.e. Receipt Voucher mentioning GST component applicable on advance) to the Buyer and also deposit the applicable taxes as per statutory timelines. Further, the Seller would furnish details of such Receipt Voucher on the GST portal within statutory timelines. Taxes & Duties: Prices shall be inclusive of all levies such as Custom Duty, Excise Duty, Sales Tax, Octroi, Income Tax etc unless otherwise agreed to in writing. In the event of Purchaser having agreed to pay these levies extra, the same shall be paid/reimbursed (as the case may be) at actual against documentary evidence. Any upward variation in levies after expiry of delivery period shall be to the Supplier's account.

- 15.2 In the event that the Owner is required to pay the income tax/withholding tax applicable on performance of Works provided whether outside India or within India, the Owner shall deduct such taxes from the gross value of the Contractor's invoice and remit the net amount taking into account such deductions. However, the Owner shall furnish a TDS certificate to this effect in favour of the Contractor so as to enable it to take the tax credit.
- 15.3 All taxes, duties and levies applicable outside India for the performance of Works to be provided outside India or within India under this Contract shall be included in the Contract Price and Owner shall have no liability whatsoever in this regard.
- 15.4 The rate of all taxes, duties, levies etc payable shall be as prevalent on the Effective Date. Any statutory variation (upward or downward) in these taxes, duties, etc within contractual delivery period shall be to the account of the Owner. The Contractor shall submit documentary evidence of above variation along with his invoice.
- 15.5 Imposition of new taxes, duties, levies etc or withdrawal of existing taxes, duties, levies etc by the Central or State government within the contractual delivery period shall be to the Owner's account.
- 15.6 Any increase in the rates of taxes, duties, levies etc or imposition of new taxes, duties, levies etc beyond the contractual delivery date shall be to the Contractor's account.
- 15.7 As regards, income tax, surcharge on income tax and other corporate tax, if any, the Owner shall not bear any liability whatsoever and the same shall be the responsibility of the Contractor alone.
- 16.0 **PAYMENT**
- 16.1 The payment to the Contractor for the performance of the Works under the Contract shall be made by the Owner as per the guidelines and conditions specified herein. All payments made during the Contract shall be on-account payments only. The final payment shall be made on completion of all the Works and on fulfillment by the Contractor of all its liabilities under the contract including those in respect of guarantees etc. Payments to be made hereunder are subject to any adjustment/deductions as per Contract.
- 16.2 The Contract Price shall be paid in Indian Rupees only.

- 16.3 The Contractor shall prepare and submit to the Owner for his approval, a break-up of the Contract Price as Billing Break-up. The Contract Price break-up shall be interlinked with the agreed detailed PERT network of the Contractor setting forth his starting and completion dates for the various key phases of Works. All payment under the Contract excluding advance payment shall be made only after the Contractor's Payment Schedule is approved by the Owner. The aggregate sum of the Contractor's price break-up in Billing Break-up shall be equal to the Contract Price. A price break-up over valuing those items of services which shall be executed first shall not be accepted.
- 16.4 10% of the Contract Price shall be released as mobilization advance within 30 days of receipt of Invoice and supporting document and on fulfilment of the following condition:
- 16.4.1 On establishing of the Contractor's office at Site preparatory to mobilization of its construction establishment.
- 16.4.2 Submission of an unconditional Bank Guarantee for an equivalent amount, which shall be initially kept valid till expiry of **ninety (90) days** after the time for completion of Works. Format of bank guarantee shall be as per Annexure-2 to GCC.
- 16.4.3 Submission of a Contract Performance Bank Guarantee for 10% of Contract Price which shall be initially kept valid till expiry of **One (01) Year after the defect liability period**. Format of bank guarantee shall be as per Annexure-1 to GCC.
- 16.5 **90% Payment Including all applicable taxes and duties shall be paid against monthly bills (induplicate) submitted within the first week (i.e upto 7th day) of each month for the preceeding month and the payment shall be released within 10 days (17th day) from the date submission of Bills. Balance 10% payment shall be released against submssion of PBG & completion certificate issued by Owner's representative at Site inter-alia including the quantum of work completed and the successful completion of quality check points involved in quantum of work billed, and other supporting documents.**

**In case of non submission of PBG, 10% payments which was retained from the each monthly bill shall only be released after successful completion of defect liability period.**

16.6 Applicable income tax / withholding tax shall be deducted while making payment and necessary certificate as per government regulation shall be issued in due course of time.

17.0 **INSPECTION AND APPROVAL**

17.1 All work embracing more than one process shall be subject to examination and approval at each stage thereof and the Contractor shall give due notice to the Owner when each stage is ready.

17.2 No work shall be covered up or put out of view without the approval of the Owner and the Contractor shall afford full opportunity for examination and measurement of any work which is about to be covered up or put out of view and for examination of foundations before permanent work is placed thereon. The Contractor shall give due notice to the Owner whenever any such work or foundation is ready for examination and the Owner shall, without unreasonable delay, attend the examination and measurement of such work. In the event of failure of the Contractor to give such notice he shall, if required by the Owner, uncover such work at his own expense.

17.3 The Owner shall have powers at any time to inspect and examine any part of the Works and the Contractor shall give such facilities as may be required for such inspection and examination.

18.0 **REJECTION OF WORKS**

18.1 If the completed Works or any portion thereof before it is finally accepted is found to be defective or fails to fulfill the Minimum Acceptance Criteria, the Owner shall give the Contractor notice setting forth particulars of such defects or failure and the Contractor shall forthwith make the defective plant good, or make it comply with the Minimum Acceptance Criteria. Should they fail to do so within a period of time as deemed reasonable by the Owner and stated in the said notice, the Owner at its discretion shall have the right to either (a) accept the Facility subject to reduction in Contract Price as may be mutually agreed between the Parties or, (b) in the event the Parties fail to reach such agreement under (a) within 30 (thirty) days, Owner shall be entitled to 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 fulfil the Minimum Acceptance Criteria of the Contract. However, such rejection/replacement by the Owner shall not absolve the Contractor of any of their responsibilities under this Contract.



18.2 In the event of such rejection, Owner shall be entitled to the use of the Works in a reasonable and proper manner for a time reasonably sufficient to enable him to obtain other replacement Works.

18.3 The maximum liability on account of such rejection shall not exceed total amount of the Contract Price.

#### 19.0 **RECORDS AND MEASUREMENT**

19.1 The Owner shall, except as otherwise stated, ascertain and determine by measurement the value of the work done in accordance with Contract.

19.2 All items having a financial value shall be entered in Measurement Book, level book, etc. prescribed by the Owner so that a complete record is obtained of all work performed under the Contract.

19.3 Measurements shall be taken jointly by the Owner and by the Contractor. It is the responsibility of the Contractor to provide equipments, labour and other things necessary for measurements.

19.4 Measurements record shall be signed by both parties immediately after completion of measurement.

#### 20.0 **DEFECTS LIABILITY PERIOD**

20.1 The Contractor hereby warrants to the Owner that the Works shall be performed in a manner consistent with the terms of this Contract, all specifications, drawings and standards referred to in this Contract (including under the Technical Specifications) or thereafter furnished by Owner, in accordance with Applicable Law (the "**Defect Liability**"):

20.1.1 using the skill, care and diligence to be expected of appropriately qualified and experienced professional engineers with experience in performing work of a type, nature and complexity similar to the Works;

20.1.2 using the standards of all workmanship and fabrication which conform in all respects to the standards specified under the Technical Specifications;

20.1.3 shall be first-class in every particular aspect and free from defects and deficiencies in workmanship; and

20.1.4 using means, methods and techniques required for the performance of the Works which are appropriate for the conditions and materials involved.

- 20.2 Contractor shall be liable for defects in material and workmanship of the Works provided by it for a period of **Ten (10) Years** from the date of completion of Works (the "**Defect Liability Period**").
- 20.3 Without limitation of any other rights or remedies of the Owner, if any defect in the Works provided under this Contract in violation of the foregoing defect liabilities arises within the Defect Liability Period, Contractor shall, upon receipt of written notice of such defect, at no cost to the Owner, promptly re-perform such non-conforming portion of the Works and/or promptly furnish design and engineering, labour, equipment and materials necessary to correct such defect and cause the Works to comply fully with the foregoing defect liabilities.
- 20.4 If any replacement, repair or modification is of such a character which may affect the subsequent performance of the Works or any part thereof, Owner may within 30 (thirty) days after such replacement, repair or modification give to the Contractor notice requiring that such further tests be conducted in respect of the relevant part as may be necessary to demonstrate the adequacy and efficacy of the replacement, repair or modification.
- 20.5 In case of a re-performance of Works and/or furnishing of labor, equipment and materials by the Contractor pursuant to Clause 20.3 to correct defects, then such re-performance shall be warranted by Contractor in accordance with the warranties set forth in Clause 20.1 for a period of 12 (twelve) months from the date of re-performance of such Works or date of completion of the correction.
- 20.6 In the event Contractor shall have been notified of any defects in the Works in violation of Contractor's foregoing defect liabilities and shall fail to promptly and adequately correct such defects, Owner shall have the right to correct or to have such defects corrected at the account of Contractor, and Contractor shall promptly pay to the Owner the costs incurred in correcting such defects.
- 20.7 Contractor shall include, as a minimum, the foregoing Defect Liability requirements in any Subcontract that it places.
- 20.8 The Contractor shall be responsible for payment of all costs, taxes (including all indirect taxes) and duties incurred in the course of performance of its obligations under this Article 20.0.
- 21.0 **INSURANCE**

21.1 Without prejudice to its obligations under this Contract or otherwise under Applicable Law, the Contractor, at its cost, shall arrange, secure and maintain all such insurance as may be required in connection with the performance of the Works and obligatory in terms of Applicable Law to protect its interest and interests of the Owner against all perils relating to performance of the Works. The Contractor shall *inter alia* arrange, secure and maintain the following insurance policies:

21.2 **Workmen's Compensation Insurance**

21.2.1 This insurance shall protect the Contractor against all claims applicable under the Workmen's Compensation Act, 1923. This policy shall also cover the Contractor against claims for injury, disability, disease or death of its (and/or its Sub-Contractor's) employees, which, for any reason, are not covered under the Workmen's Compensation Act, 1923. This insurance policy shall cover liability for such minimum amounts which shall not be less than:

21.2.1.1 Workmen's Compensation As per statutory provisions

21.2.1.2 Employee's liability As per statutory provisions

21.3 **Comprehensive Automobile Insurance**

21.3.1 This insurance shall be in such a form to protect the Contractor against all claims for injuries, disability, disease and death to members of public including the employees of the Owner and damage to the property of others arising from the use of motor vehicles during, on or off the Site operations, irrespective of the ownership of such vehicles. This insurance policy shall cover liability for the following minimum amounts subject to the Motor Vehicles Act, 1988:

21.3.1.1 Fatal Injury Rs 1,000,000 (Rupees one million) each person & Rs 10,000,000 (Rupees ten million) each occurrence

21.3.1.2 Property Damage Rs. 10,000,000 (Rupees ten million) each occurrence

21.4 **Comprehensive General Liability Insurance**

- 21.4.1 This insurance shall protect the Contractor against all claims arising from injuries, disabilities, disease or death of members of public or damage to property of others, due to any act or omission on the part of the Contractor, its agents, its employees, its representatives and Sub-Contractors or from riots, strikes and civil commotion. This insurance shall also cover all the liabilities of the Contractor arising out of the Clause 25.0 entitled Indemnity. This insurance policy shall cover liability for a minimum amount for [Any one accident: Any one year: Rs. 100,000,000 (Rupees Hundred Million Only): Rs. 100,000,000 (Rupees Hundred Million Only)].
- 21.5 **Group Personnel Accident Policy**
- 21.5.1 This insurance policy shall protect the Contractor against all claims arising from injuries, disabilities, disease or death of any of its and its Subcontractor's employees, due to any accident. This insurance policy shall cover liability for a minimum amount for [Any one accident: Any one year: Rs. 100,000,000 (Rupees Hundred Million Only): Rs. 100,000,000 (Rupees Hundred Million Only)]. The Policy excesses (normal/testing periods) should apply for third party liability property damage claims also. For third party liability claims arising out of Acts of God perils, the excess applicable to AOG should also apply.
- 21.6 The hazards to be covered shall pertain to all the Services and the areas where the Contractor and the Contractor Staff have to perform Services pursuant to this Contract.
- 21.7 Any deductibles or claims under recovery from the insurance providers shall also be to the account of the Contractor.
- 21.8 The above are only illustrative list of insurance covers normally required and it will be the responsibility of the Contractor to maintain all necessary insurance coverage to the extent both in time and amount to take care of all its liabilities either direct or indirect, in pursuance of the Contract.
- 21.9 The insurance covers to be taken by Contractor shall be in the joint names of Owner, and Contractor. Contractor shall, however, be authorized to deal directly with insurance company or companies and shall be responsible in regard to maintenance of all insurance covers. All insurer's right of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.
- 21.10 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and

obligations under this Contract and in particular from the Contractor's obligation to hold the Owner harmless in accordance with any indemnity provisions contained in this Contract.

**22.0 SUSPENSION OF WORK**

22.1 Owner reserves the right to suspend and reinstate execution of the whole or any part of the Works without invalidating the provisions of the Contract. Orders for suspension or reinstatement of the Works will be issued to the Contractor in writing. The time for completion of the Works will be extended for a period equal to duration of the suspension provided the suspension is not due to some default on the part of the Contractor or its sub-contractor.

22.2 Upon receiving any such notice of suspension, Contractor shall promptly suspend further performance of the Works to the extent specified, and during the period of such suspension shall properly care for and protect all Works in progress and materials, supplies, and equipment Contractor has on hand for performance of the Works. Upon the request of Owner, Contractor shall promptly deliver to the Owner copies of outstanding subcontracts of Contractor and shall take such action relative to such subcontracts as may be directed by the Owner. Contractor shall use its best efforts to utilize its material, labor and equipment in such a manner as to mitigate costs associated with suspension. Owner may, at any time, withdraw the suspension of performance of the Works as to all or part of the suspended Works by written notice to Contractor specifying the effective date and scope of withdrawal, and Contractor shall resume diligent performance of the Works for which the suspension is withdrawn on the specified effective date of withdrawal.

22.3 If Contractor believes that any such suspension or withdrawal of suspension justifies modification of the Contract Price, Contractor shall submit his claim to the Owner within 7 days of receipt of notice of suspension / withdrawal of suspension. Contractor's claim for modification of the Contract Price shall substantiate Contractor's increased costs for such suspension or withdrawal of suspension, with documents satisfactory to the Owner. Upon the Owner's verification and approval of such additional costs, Contractor and the Owner shall agree upon an adjustment in the Contract Price, based upon such verified and approved additional costs as full settlement to Contractor for the suspension or withdrawal of suspension. Contractor shall not be entitled to any prospective profits or any damages because of such suspensions or withdrawals of suspension.

22.4 If such suspension continues for more than 180 (one hundred and eighty) days, at the end of the period, Contractor shall be, by a further 30 (thirty) days prior notice, entitled to terminate the Contract and Owner shall pay to Contractor 105% (one hundred and five percent) of the cost incurred by the Contractor till the date of termination as compensation after adjusting payments already made till the termination.

23.0 **CONTRACTOR'S DEFAULT**

23.1 If the Contractor:

23.1.1 shall have voluntarily commenced winding-up, bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or is unable to pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of its creditors;

23.1.2 has insolvency, receivership, reorganization or bankruptcy proceedings brought against it and the petition commencing such proceedings is not controverted and the proceedings dismissed or effectively stayed within 60 (sixty) days of such commencement;

23.1.3 has abandoned the Contract;

23.1.4 despite previous notices in writing from the Owner has wrongfully refused or has materially failed or neglected at any time to execute the Contract or is failing to proceed with the Contract with due diligence or is neglecting to carry out its other obligations under the Contract in each case so as to affect materially and adversely the execution of the Contract;

23.1.5 has failed to achieve completion of Works within 180 (one hundred and eighty) days of the Completion Schedule in accordance with the Contract,

then, the Owner may by giving notice to the Contractor and without prejudice to any other remedy under the Contract terminate the Contract and enter the Site and expel the Contractor there from but without thereby releasing the Contractor from any of its obligations or liabilities which have accrued as at the date of termination of the Contract and without affecting the rights and powers conferred by the Contract on the Owner. Upon such termination the Owner may itself complete the Works or may employ any other Contractor to complete the Works at the risk and cost of the Supplier.

23.2 The Owner's right to terminate the Contract following the occurrence of the events or circumstances described in paragraphs 18.1.4 and 18.1.5 shall be

subject to the Owner having first given the Contractor 30 days prior notice of its intention to terminate the Contract, during which period Contractor shall have failed:

23.2.1 in the case of Clause 18.1.4, to remedy or to take all reasonable steps to commence the remedy of the default; or

23.2.2 in the case of Clause 18.1.5, to achieve completion of Works.

23.3 Payment after Termination: Owner shall not be liable to make any further payments to the Contractor until the costs of execution and all other expenses incurred by the Owner in completing the Works have been ascertained (herein called the "Cost of Completion"). If the Cost of Completion when added to the total amounts already paid to Contractor as at the date of termination exceeds the total amount which would have been payable to the Contractor for the execution of the Works, the Contractor shall upon demand, pay to the Owner the amount of such excess. Any such excess shall be deemed a debt due by the Contractor to the Owner and shall be recoverable accordingly. If there is no such excess the Contractor shall be entitled to be paid the difference (if any) between the value of the Works ascertained and the total of all payments received by the Contractor as on the date of termination

#### 24.0 **FORCE MAJEURE**

24.1 Force Majeure is herein defined as any cause which is beyond the reasonable 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, which could not have been prevented or overcome by the affected Party through the exercise of reasonable skill or care and which substantially affects the performance of the Contract, such as:

24.1.1 natural phenomena, including but not limited to floods, droughts, earthquakes, epidemics, cyclone, lightning, storm, plague;

24.1.2 legal strikes and legal lockouts and other generalized labour action occurring within India (excluding such events which are site specific and attributable to Contractor)

24.1.3 act of terrorism or sabotage, act of any Government, including but not limited to war, declared or undeclared, priorities, quarantines, embargoes, in each case occurring inside India or directly involving India.

- 24.1.4 Radioactive contamination or ionising radiation or chemical contamination originating from a source in India or resulting from another Force Majeure Event;
- 24.1.5 fire or explosion, except as may be attributable to the Supplier;
- 24.1.6 air crash or shipwreck;
- 24.1.7 an act of God.

provided either party shall within seven (7) days from the occurrence of such a cause notify the other in writing of such causes.

- 24.2 For avoidance of doubt, it is clarified that lack of funds shall not be construed as an event of Force Majeure.
- 24.3 Upon the occurrence of any circumstances of Force Majeure Contractor shall use all reasonable endeavors to continue to perform its obligations under the Contract and to minimize the adverse effects of such circumstances.
- 24.4 In the event of Force Majeure preventing the Contractor from performing its obligations under the Contract, for a continuous period of less than 6 (six) months from the beginning of Force Majeure Event or an aggregate period of not more than 9 (nine) months till completion of Works, Contractor shall be entitled to extension of time for the period during which such Force Majeure Event had occurred for fulfillment of its obligations under the Contract and Contractor shall not be entitled to terminate the Contract or abandon the project during such above mentioned period.
- 24.5 If Force Majeure Event continues beyond the period of 6 (six) months from the beginning of the Force Majeure Event or prevent Contractor from performing its obligations under the Contract for an aggregate period of more than 9 (nine) months till completion of Works, the Parties shall mutually decide further course of action. If mutual settlement cannot be arrived at within 30 (thirty) days, either Party shall have the right to terminate the Contract. In the event of such termination, the Owner shall be liable to make payment for all Works done by the Contractor till the time such Force Majeure had commenced and Contractor shall be liable to hand over all Works completed pursuant to the Contract till the date of termination due to Force Majeure.
- 24.6 Contractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of delays of any nature, and extension of



time shall constitute the sole liability of the Owner and Contractor's sole remedy for delays under this clause.

24.7 Neither Party shall be considered to have defaulted in the performance of any of its obligations under this Contract, when and to the extent such failure of performance shall be due to a Force Majeure event.

## 25.0 INDEMNITY

25.1 Contractor agrees to defend, indemnify and hold harmless the Owner, its Affiliates, and all of their directors, officers, employees, agents and representatives ("**Owner Indemnified Party**"), from and against any and all Losses arising:

25.1.1 By reason of Contractor's actual or asserted failure to comply with any Applicable Law or any provision of this Contract. If the Contractor fails to comply with the requirements mentioned above and as a result fines, penalties or other assessments are imposed upon either the Contractor or the Owner by any Government Agency under any Applicable Law, then the Contractor shall be liable to pay all such fines, penalties or other assessments;

25.1.2 From actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use of materials, equipment, methods, processes, designs or information furnished by Contractor or its Subcontractors in performance of the Works. Should any part of the Works provided by Contractor become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Contractor shall, at the Owner's option, either procure for the Owner the right to continue using such part of Works, replace same with equivalent, non-infringing Works, or modify the Works so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance as provided by the infringing part of Works;

25.1.3 From injury to or death of any Person (including employees of the Owner, Contractor and Contractor's Subcontractors or any third party) or from damage to or loss of property (including the property of the Owner or a third party) arising directly or indirectly out of this Contract or out of any acts of omission or commissions of Contractor or its Subcontractors. Contractor's indemnity obligations hereunder include claims and damages arising from non-delegable duties of the Owner or arising from use by Contractor of

Plant, equipments, tools, scaffolding or facilities furnished to Contractor by the Owner; or

- 25.1.4 From present or future Environmental Claims directly or indirectly related to or arising out of the actual or alleged existence, generation, use, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of Hazardous Material at the Plant and/or adjacent areas solely to the extent arising out of the gross negligence or Wilful Misconduct of the Contractor, its Subcontractors or sub-vendors in the performance of the Works under this Contract; provided, however, that nothing contained herein shall be construed as requiring Contractor to take any corrective action with respect to any Hazardous Material in existence prior to the Effective Date.
- 25.2 Contractor's indemnity obligations shall apply regardless of whether the Owner Indemnified Party was concurrently negligent, whether actively or passively, excepting only where the Losses are caused solely by the negligence or Willful Misconduct of, or by defects in design furnished by the Owner Indemnified Party. Contractor's defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by the Owner Indemnified Party for legal action to enforce Contractor's indemnity obligations.
- 25.3 With respect to claims by employees of Contractor or its Subcontractors on the Owner Indemnified Party, the indemnity obligations created under this Clause 25.0 shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for Contractor, its Subcontractors or suppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Contractor waives any limitation of liability or immunity arising from workers' compensation or such other acts or regulations.
- 25.4 The Owner shall be entitled to retain from payments otherwise due to Contractor such amounts as shall reasonably be considered necessary to satisfy any claims, suits or liens for damages that fall within Contractor's indemnity obligations under this Clause 25.0, until such claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to the Owner.
- 25.5 Contractor acknowledges that specific payment has been incorporated into the Contract Price as legal consideration for Contractor's indemnity obligations as may be provided in this Contract.

25.6 Owner agrees to defend, indemnify and hold harmless the Contractor, its Affiliates, and all of their directors, officers, employees, agents and representatives ("**Contractor Indemnified Parties**") from and against any and all Losses arising out of or resulting from claims of third parties for any damage to or destruction of property of, or death of or bodily injury to, any Person due to any gross negligence or Wilful Misconduct of the Owner in the course of performance of its obligations under this Contract; provided that the foregoing obligations shall not apply to the extent the Contractor Indemnified Parties are negligent or to the extent such Losses are caused by the acts of omission or commissions of the Contractor Indemnified Parties.

26.0 **LIMITATION OF LIABILITY**

26.1 Contractor understands and agrees that there shall be absolutely no personal liability on the part of any of the members, shareholders, officers, employees, directors, agents, authorized representatives or Affiliates of the Owner for the payment of any amounts due hereunder, or performance of any obligations hereunder.

26.2 With the exception of those provisions of this Contract providing for the payment of liquidated damages, neither the Contractor nor the Owner shall be liable to the other as a result of any action or inaction under this Contract or otherwise for any special, indirect, incidental or consequential losses such as but not limited to loss of profit, loss of revenue, loss of use of the Plant, loss of power, loss of opportunity, loss of goodwill, loss of contracts or cost of capital. It is hereby agreed that this limitation of liability shall not apply in respect of claims for which either Party is indemnified under Article 25.0 (Indemnification) or covered by the insurance under Article 21.0 (Insurance). Nothing in this Article 26.0 shall reduce the Contractor's liability for liquidated damages in accordance with the provisions of this Contract.

26.3 The aggregate liability of the Contractor with respect to all claims arising out of or in connection with performance or non-performance of this Contract whether in contract, warranty, tort or otherwise shall not exceed the Contract Price, provided that this limitation shall not apply in case of negligence, Wilful Misconduct or liabilities arising out of indemnity provisions in this Contract.

26.4 The provisions of this Contract constitute Contractor's and Owner's exclusive liability, respectively, to each other, and Contractor's and Owner's exclusive remedy, respectively, to each other, with respect to the obligations under this Contract.

27.0 **SETTLEMENT OF DISPUTES**

27.1 The Parties hereto agree that any dispute or difference arising out of or in connection with this Contract shall, to the extent possible, be settled promptly and amicably between the Parties. Parties further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such disputes.

27.2 All unsettled disputes or differences arising out of or in connection with this Contract which cannot be amicably resolved by the Parties shall in the first instance be decided by the Owner in accordance with provisions of Clause 27.3 below.

27.3 **Owner's Decision**

27.3.1 If any dispute or difference of any kind whatsoever shall arise between the Owner and the Contractor, arising out of this Contract whether during the performance of the Services or after its completion or whether before or after the termination, Abandonment or breach of this Contract, such dispute or difference cannot be amicably settled by the Parties in accordance with Clause 27.1, it shall, in the first place, be referred to and settled by the Managing Director of the Owner, who, within a period of 30 (thirty) days after being requested to do so, shall give written notice of its decision to the Contractor.

27.3.2 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 entire Services under this Contract and shall forthwith be given effect to by the Parties who shall comply with all such decisions, with all due diligence, whether it requires arbitration, as hereinafter provided or not.

27.3.3 If after the Owner has given written notice of its decision to the Contractor and no notice to arbitration has been communicated to it by the Contractor within 30 (thirty) days from the receipt of such notice, the said decision shall become final and binding on the Parties.

27.3.4 The Owner's decision (or the failure of the Owner to give decision within the time specified in Clause 27.3.1) and issuance of a written notice for arbitration pursuant to Clause 27.3.3 shall be a condition precedent to the right to request arbitration. It is the intent of this Contract that there shall be no delay in the execution of the Works and the decision of the Owner, as rendered, shall be promptly observed.

27.3.5 In the event of the Owner failing to notify its decision, as aforesaid, within 30 (thirty) days after being requested, or in the event of a Party being dissatisfied with any such decision, either Party may require that the matters in dispute be referred to arbitration as provided in Clause 27.4.

#### 27.4 **Arbitration**

27.4.1 All disputes or differences in respect of which the decision, if any, of the Owner has not become final or binding as aforesaid, shall be settled by arbitration, under and in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**") or any statutory modification, in the manner hereinafter provided. The venue of arbitration shall be New Delhi, India.

27.4.2 The arbitration shall be conducted in accordance with the Arbitration Act by 3 (three) arbitrators, (1) one each to be nominated by the Contractor and the Owner and the third to be nominated by the 2 (two) arbitrators nominated by the Parties at the commencement of arbitration proceedings. The 3<sup>rd</sup> (third) arbitrator so appointed shall act as the presiding arbitrator.

27.4.3 If one Party fails to appoint its arbitrator within 30 (thirty) days after the other Party has named its arbitrator, the Party which has named an arbitrator may request the President of the Institution of Engineers to appoint the second arbitrator on behalf of such Party. If the two arbitrators appointed by both Parties do not succeed in appointing a third arbitrator within 30 (thirty) days after the latter of the two arbitrators has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the Chairman of OTPC.

27.4.4 The decision of the majority of the arbitrators ("**Arbitral Award**") shall be final and binding upon the Parties. The expense of the arbitration shall be paid as may be determined by the arbitrators. The arbitrators may, from time to time, with the consent of both the Parties increase 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.

27.4.5 The arbitrators shall have full powers to review and/or revise any decision, opinion, directions, certification or valuation of the Owner in consonance with this 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.

27.4.6 No decision given by the Owner in accordance with the foregoing provisions shall disqualify it from giving evidence before the arbitrators on any matter whatsoever relevant to the dispute or difference referred to the arbitrators as aforesaid.

27.5 During settlement of disputes including arbitration proceedings, both Parties shall be obliged to carry out their respective obligations under this Contract.

27.6 Parties agree that neither Party to this Contract shall be entitled for any interest on the amount of award.

27.7 The provisions of this Article 27.0 shall survive termination of this Contract.

#### 28.0 **ASSIGNMENT AND SUBLETTING OF CONTRACT**

28.1 Contractor shall not assign this Contract wholly or in part, voluntarily, by operation of law, or otherwise, without first obtaining the written consent of Owner. Any assignment of this Contract in violation of the foregoing shall be, at the option of Owner, void. Subject to the foregoing, the provisions of this Contract shall extend to the benefit of and be binding upon the successors and assigns of the parties hereto.

28.2 Owner reserves the right, at its sole option, to assign this Contract to any of its successors, permitted assigns, any of its designated agents, or to affiliated company.

#### 29.0 **LAWS AND REGULATIONS**

29.1 This Contract shall be governed by the Indian Laws and rules as amended from time to time.

29.2 The Courts of Delhi shall have exclusive jurisdiction in all matters arising under this Contract, including execution of arbitration awards under Clause 27.0 of this General Conditions of Contract.

29.3 The United Nations Convention on Contracts for the international Sale of Goods does not apply to this Contract.

- 29.4 Contractor shall comply strictly with local, municipal, state, federal and governmental laws, orders, rules and regulations applicable to Contractor's operations in the performance of the Works hereunder.
- 29.5 Contractor shall not, under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution laws or regulations relating to this Contract, or to the performance thereof, without Owner's prior written approval.
- 29.6 Contractor shall not, under any circumstances, cause or permit, in connection with the Work to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any applicable laws, rules or regulations which are now or hereafter promulgated by any governmental authorities having jurisdiction over the Works. Contractor shall comply with all legal regulatory requirements applicable to the Works performed under this Contract and shall be responsible for compliance with all hazardous waste, health and safety, notice, training, and environmental protection laws, rules, regulations and requirements.
- 30.0 **CHANGE IN LAW**
- 30.1 If after the Effective Date there is a Change in Law or a Change in Permit which is expected to result in the increase or decrease in the Contract Price by an amount of Rs. 500,000 (Rupees Five Lakh Only) or more, then either Party may request the other for a revision of the Contract Price in accordance with Clause 30.2, to reflect any such increase or decrease in costs. Such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the Contract Price.
- For the avoidance of doubt, it is clarified that any revision to the Contract Price would be restricted to direct transactions between the Parties.
- 30.2 In case of a Change in Law or a Change in Permit affecting the Contract Price, the Contractor or the Owner, as the case may be, shall provide notice to the other, of such request, setting forth the proposed amount of, and the relevant details and calculations relating to, such increase or decrease in the Contract Price. Promptly upon, and in any event within 7 (seven) days of, the Contractor or the Owner, as the case may be, receiving such request (such date of receipt the "**Change in Law Request Date**"), the Parties shall discuss such proposed increase or decrease, in good faith and within 60 (sixty) days

of the Change in Law Request Date, mutually agree upon a revised Contract Price.

**31.0 VALIDITY OF PROVISION**

31.1 In the event any section, or any part or portion of any section of this Contract shall be held to be invalid, void or otherwise unenforceable, such decision shall not affect the remaining part or portions of that section, or any other section hereof.

**32.0 SURVIVAL**

32.1 The provisions of this Contract which by their nature are intended to survive the termination, cancellation, completion or expiration of this Contract shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

**33.0 ENFORCEMENT OF TERMS**

33.1 The failure of either party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either 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 there under.

**34.0 NO WAIVER OF RIGHTS**

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

**35.0 CERTIFICATE NOT TO AFFECT RIGHT OF THE OWNER AND LIABILITY OF CONTRACTOR**

35.1 No interim payment certificate of the Owner nor any sum paid on account by the Owner nor any extension of time for execution of the Works granted



by the Owner shall affect or prejudice the rights of the Owner against the Contractor or relieve the Contractor of his obligations for the due performance of the Contract or be interpreted as approval of the Works done. No certificate shall create liability for the Owner to pay for alterations, amendments, variations or additional Works not ordered, in writing, by the Owner or discharge the liability of the Contractor for the payment of damages whether due, ascertained, or certified or not or any sum against the payment of which it is bound to indemnify the Owner nor shall any such certificate nor the acceptance by him of any sum paid on account or otherwise affect or prejudice the rights of the Owner against the Contractor.

**36.0 CONSTRUCTION POWER AND WATER**

36.1 Contractor shall make his own arrangement of water and electricity at his own cost and price for the same is included in Contract Price.

**37.0 CONTRACT PERFORMANCE BANK GUARANTEE**

37.1 The Contractor shall, within 15 (fifteen) days of the Effective Date, provide to the Owner an unconditional and irrevocable performance bank guarantee of an amount equivalent to 10% (ten percent) of the Contract Price for due performance of its obligations under this Contract, with an initial validity of up to 90 (ninety) Days beyond the Defect Liability Period, a format of which is attached with this GCC.

37.2 If, at the time of discharge of Performance Bank Guarantee, the Defect Liability Period has been extended on any part of the Works, pursuant to Clause 20.0 or if a dispute has been referred for resolution pursuant to Article 27.0 (Settlement of Disputes), the Contractor shall, on or before 21 (twenty one) days before the expiry of the Contract Performance Bank Guarantee, issue an extension of the existing Contract Performance Bank Guarantee or issue a separate security in the form of an unconditional and irrevocable bank guarantee for an amount proportionate to the Contract Price for such part, valid till the extended Defect Liability Period pursuant to Clause 20.0 or until final resolution of the dispute and payment of any amount due as a result thereof, as the case may be.

37.3 The Contract Performance Bank Guarantee to be submitted by Contractor shall be from an Acceptable Bank and in the form acceptable to the Owner and as per format attached with this GCC.

- 37.4 The Contractor acknowledges and agrees that the Contract Performance Bank Guarantee shall be held by the Owner as security for the satisfactory completion of the obligations of the Contractor in accordance with this Contract, including recovery of any amounts due to the Owner from the Contractor. The Owner shall have the unconditional option under the Contract Performance Bank Guarantee to invoke and encash the same and shall be entitled to recover from the Contract Performance Bank Guarantee, any amounts which may become due to the Owner from the Contractor.

**Annexure-1****FORMAT FOR CONTRACT PERFORMANCE BANK GUARANTEE***(To be stamped in accordance with Stamp Act)*

Bank Guarantee No. \_\_\_\_\_

Date \_\_\_\_\_

To,  
**ONGC Tripura Power Company Limited,**  
**6th Floor, A –Wing, IFCI Tower**  
**61, Nehru Place**  
**New Delhi - 110019**  
**Ph: +91-11-26402100**  
**Fax:+91-1126227532**

Dear Sirs,

At the request and for the account of our client \_\_\_\_\_ having its registered office at \_\_\_\_\_ (hereinafter referred to as the "**Contractor**", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns), and in consideration of ONGC Tripura Power Company Ltd having its registered office at **ONGC Tripura Assets, Badarghat Complex, Agartala, Tripura – 799014** (India) (hereinafter referred to as the "Owner", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) having awarded the work for \_\_\_\_\_ for 2x363.3 MW Combined Cycle Power Plant at Palatana, Tripura, India under reference no. \_\_\_\_\_ dated \_\_\_\_\_ to the Contractor (as amended, supplemented or modified from time to time in accordance with the terms thereof, hereinafter referred to as the "**Contract**") and the Contractor having agreed to provide a contract performance guarantee to the Owner for the full and faithful performance of each of Contractor's payment and other obligations under the Contract in an amount equal to **Rs \_\_\_\_\_** [Rupees \_\_\_\_\_] (as such, amount may change pursuant to terms of the Contract, hereinafter "**Aggregate Maximum Amount**"),

we, \_\_\_\_\_, having our head office at \_\_\_\_\_ (hereinafter referred to as the "**Bank**", which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay to the Owner, immediately on receipt of written demand, any and all monies which the Owner certifies that it is entitled to draw hereunder pursuant to the terms and conditions of the Contract to the extent of the Aggregate Maximum Amount for the claim (s) arising up to the End Date (as defined below) without any demur, reservation, contest, recourse or protest and without any reference to the Contractor. Any such demand made by the Owner on the Bank under this Guarantee shall be (a) conclusive evidence that the Owner is entitled to demand payment thereof from the

Bank pursuant to the terms and conditions of the Contract and (b) binding on the Bank, in each case notwithstanding any difference between the Owner and the Contractor or any dispute pending before any court, tribunal, arbitrator or any other authority

Multiple drawings may be made under this Guarantee. The Aggregate Maximum Amount under this Guarantee shall be automatically reduced by the amount paid to the Owner against demands for payment under this Guarantee.

This Guarantee may be amended to extend the then-current End Date upon the written request of the Contractor, but this Guarantee shall not otherwise be amended, and the Aggregate Maximum Amount shall not be reduced without the prior written consent of the Owner.

The Owner shall have the fullest liberty, without affecting in any way the liability of the Bank under this Guarantee, from time to time to extend the time for performance of the Contract by the Contractor. The Owner shall have the fullest liberty, without affecting the liability of the Bank under this Guarantee, to postpone from time to time the exercise of any powers vested in the Owner or of any right which the Owner might have against the Contractor, to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants in the Contract or any other course or remedy or security available to the Owner. The Bank shall not be released of its obligations under this Guarantee by any exercise by the Owner of its liberty with reference to the matters aforesaid or any of them or by reason of any other act of forbearance or other acts of omission or commission on the part of the Owner or any other indulgence shown by the Owner or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank from such obligations.

The Bank also agrees that the Owner, at its option, shall be entitled to enforce this Guarantee against the Bank as a principal debtor in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee the Owner may have in relation to the Contractor's liabilities.

The Bank's liability under this Guarantee is limited to the Aggregate Maximum Amount and it shall remain in force up to and including \_\_\_\_\_, 201\_ (such date as may be extended, the "**End Date**"). The End Date shall be extended from time to time for such period as may be desired by the Owner and accepted by the Contractor on whose behalf this Guarantee has been issued. The Bank hereby agrees to notify the Owner in writing by registered mail not less than 30 (thirty) days prior to any expiration or other cancellation of this Guarantee if for any reason this Guarantee will expire according to its terms or will otherwise be cancelled and the validity of this Guarantee has not been extended beyond the then current End Date. This Guarantee shall expire on the End Date whether returned to us or not, but, Owner may raise a claim occurred on or prior

to End Date on Bank within 2 (two) months of End Date of this Guarantee and Bank will honour such claim(s), and no claims will be honoured thereafter.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_

WITNESS

(Signature) \_\_\_\_\_  
\_\_\_\_\_

(Signature)

(Name) -----

(Name) -----

(Official Address)

(Designation with Bank stamp)

Attorney as per Power of Attorney

No.

Dated

*Note: Currency of this Bank Guarantee shall be INR (Indian Rupees). This Bank guarantee shall be provided under a cover letter from the bank which is duly signed by 2 (two) authorized officers of such bank.*

**Annexure-2****FORMAT FOR ADVANCE BANK GUARANTEE**  
(To be stamped in accordance with Stamp Act)

Bank Guarantee No. \_\_\_\_\_

Date \_\_\_\_\_

To,  
**ONGC Tripura Power Company Limited,**  
**6th Floor, A –Wing, IFCI Tower**  
**61, Nehru Place**  
**New Delhi - 110019**  
**Ph: +91-11-26402100**  
**Fax:+91-1126227532**

Dear Sirs,

At the request and for the account of our client ..... having its registered office ..... (hereinafter referred to as the **“Contractor”**, which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns), and in consideration of ONGC Tripura Power Company Ltd having its registered office at **ONGC Tripura Assets, Badarghat Complex, Agartala, Tripura – 799014** (India) (hereinafter referred to as the **“Owner”**, which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) having awarded the work for \_\_\_\_\_ for 2x363.3 MW Combined Cycle Power Plant at Palatana, Tripura, India under reference no. \_\_\_\_\_ dated \_\_\_\_\_, to the Contractor (as amended, supplemented or modified from time to time in accordance with the terms thereof, hereinafter referred to as the **“Contract”**) and the Owner having agreed to make advance payments to the Contractor as provided therein in an amount not to exceed **Rs \_\_\_\_\_ (Rupees \_\_\_\_\_)** (as such amount may change pursuant to conditions of the Contract, hereinafter **“Aggregate Maximum Amount”**),

we, \_\_\_\_\_, having our head office at \_\_\_\_\_ (hereinafter referred to as the **“Bank”**, which expression shall, unless inconsistent with the context or meaning thereof, include its successors and assigns) do hereby irrevocably and unconditionally guarantee and undertake to pay to the Owner, immediately on receipt of written demand, any and all monies which the Owner certifies that it is entitled to draw hereunder pursuant to the terms and conditions of the Contract to the extent of the Aggregate Maximum Amount for claim(s) arising up to the End Date (as defined below) without any demur, reservation, contest, recourse or protest and without any reference to the Contractor. Any such demand made by the Owner on the Bank under this Guarantee shall be (a) conclusive evidence that the Owner is entitled to demand payment thereof from the Bank pursuant to the terms and conditions of the Contract and (b) binding on the Bank,

in each case notwithstanding any difference between the Owner and the Contractor or any dispute pending before any court, tribunal, arbitrator or any other authority.

This Guarantee may be amended to extend the then-current End Date upon the written request of the Owner with due consent of the Contractor, but this Guarantee shall not otherwise be amended, and the Aggregate Maximum Amount shall not be reduced without the prior written consent of the Owner.

The Owner shall have the fullest liberty, without affecting in any way the liability of the Bank under this Guarantee, from time to time to extend the time for performance of the Contract by the Contractor. The Owner shall have the fullest liberty, without affecting the liability of the Bank under this Guarantee, to postpone from time to time the exercise of any powers vested in the Owner or of any right which the Owner might have against the Contractor, to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants in the Contract or any other course or remedy or security available to the Owner. The Bank shall not be released of its obligations under this Guarantee by any exercise by the Owner of its liberty with reference to the matters aforesaid or any of them or by reason of any other act of forbearance or other acts of omission or commission on the part of the Owner or any other indulgence shown by the Owner or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank from such obligations.

The Bank also agrees that the Owner, at its option, shall be entitled to enforce this Guarantee against the Bank as a principal debtor in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee the Owner may have in relation to the Contractor's liabilities.

The Bank's liability under this Guarantee is limited to the Aggregate Maximum Amount and it shall remain in force up to and including [\_\_\_\_\_, 20\_\_] (such date as may be extended, the "**End Date**"). The End Date shall be extended from time to time for such period (not exceeding one year), as may be desired by the Contractor on whose behalf this Guarantee has been issued. The Bank hereby agrees to notify the Owner in writing by registered mail not less than 30 (thirty) days prior to any expiration or other cancellation of this Guarantee if for any reason this Guarantee will expire according to its terms or will otherwise be cancelled and the validity of this Guarantee has not been extended beyond the then current End Date. This Guarantee shall expire on the End Date whether returned to us or not, but, Owner may raise a claim occurred on or prior to End Date on Bank within two months of End Date of this Guarantee and Bank will honour such claim(s), and no claims will be honoured thereafter.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_

WITNESS

(Signature) \_\_\_\_\_  
\_\_\_\_\_

(Signature)

(Name) -----

(Name) -----

(Official Address)

(Designation with Bank stamp)

Attorney as per Power of Attorney

No.

Dated

*Note: Currency of this Bank Guarantee shall be INR (Indian Rupees). This Bank guarantee shall be provided under a cover letter from the bank which is duly signed by 2 (two) authorized officers of such bank.*