



NATIONAL TEXTILE CORPORATION LIMITED
(A Government of India Undertaking)
Core IV, SCOPE Complex,
7, Lodi Road, NEW DELHI-110003
(CIN – U74899DL1968GOI004866)

TENDER (RATE CONTRACT) FOR AUTOMATIC CONE WINDING MACHINES

(International Competitive Bidding)

International Competitive Sealed Bids are invited on behalf of the National Textile Corporation Limited from reputed manufacturers/ suppliers for entering into an annual rate contract for procurement / supply, transportation, erection, testing & commissioning of Automatic Cone Winding Machines (ACW) required for up-gradation/replacement of old conventional machinery in NTC Mills spread all over India.

Detailed Tender Documents containing all terms & conditions can be obtained from the office of NTC Ltd or downloaded from NTC's web-site: www.ntcltd.org

Last date of the submission of bid is 17.07.2017.

Chief General Manager (Technical), NTC Ltd. New Delhi
Cont.: 011-24363276

NOTICE INVITING BIDS (NIB)

(International Competitive Bidding)

Notice No: 2017/M-2

Dated: 08.06.2017

International Competitive Sealed Bids are invited on behalf of the National Textile Corporation Limited, hereinafter referred to as ("the Owner") from reputed manufacturers/suppliers for entering into an annual rate contract for procurement/ Supply, transportation, erection, testing & commissioning of **Automatic Cone Winding Machines (ACW)** required for up-gradation/replacement of old conventional machinery in NTC Mills spread all over India.

The Manufacturer/Supplier meeting the following - **Qualification Requirements** may obtain the document personally from the Office of NTC or download it from NTC's web-site. Bidder will pay the cost of tender documents at the time of submission of bids by demand draft in the name of NTC Ltd, payable at Delhi and enclosed in the envelope comprising the technical bid. -

- a) For Indigenous bidder - INR 5000
- b) For foreign bidder - INR equivalent to USD 150

Fee of tender at the time of receipt from bidders will be accepted in any of the 5 currencies as INR, US \$, EURO, YEN and CHF. The conversion rate for the submission of fee of tender will be taken as 30 days before the press release i.e. 08.05.2017.

1. **Qualification Requirements:**

The qualification will be subject to Bidder's fulfilment of the Qualification Criteria stipulated hereunder, substantiated by authentic and relevant information and details as prescribed in formats (**Appendix-B to ITB**). Additional information in support of their claims of achievements may be furnished in any form of their device and design.

a. Manufacturing Capacity

The manufacturer/ supplier should have at least supplied 50 Auto Cone Winding Machines in India annually during the last three years. This shall be duly certified by an Independent Chartered Accountant. (CPA in case of foreign bidder)

b. Capacity to Deliver

The manufacturer/ supplier should have the capacity to deliver and commission 100 numbers of ACW machines in a span of 6 months.

c. Turnover

Three years average annual turnover of the manufacturing company (Principal) should not be less than INR.500 Million or equivalent (balance sheets for the last 3 years to be submitted).

d. Net Worth

The Bidder/ Manufactures/ Suppliers shall have positive net worth in last 3 years in Audited balance sheet.

e. Current Ratio

The Bidder shall have minimum Current Ratio of 1.25 at the close of each of the three (3) preceding financial years

f. Service Centers

Should have accredited and established service centers in India for after sales service, training facility to skilled workmen as per the requirement of hi-tech machines.

g. Bidder to Quote Directly

NTC insists machinery manufacturers to quote directly. Only those machinery manufacturers, who sell their machines only through their sole selling/regional authorized sale agents, may nominate a single agent for all NTC mills irrespective of its location. Such manufacturers are required to give a "Certificate stating that they are not selling their machine to any industry in India directly but only through its agents".

h. No second hand machinery

Suppliers of second hand machinery from India and abroad will not be considered.

i. Spare part availability

The Bidder/ Manufactures/ Suppliers should provide the necessary spare part support for next 10 years.

2. Completion Period

For foreign bidders, work completion will be 4 months ex-factory delivery from the date of opening of L/C and for one month for commissioning after machine reaches the site subject to clearance/readiness at site. In case of domestic supplier, delivery will be completed within 4 months from the date of making 10% advance.

3. Clarifications required by the Bidders

The Bidders requiring any clarification on the Bidding documents may notify the Owner in writing, which will be clarified in the pre-bid meeting. The Owner shall respond to such requests for clarification, which he receives by **20.06.2017**.

4. Pre-Bid Conference

A Pre-Bid meeting open to all Bidders to whom the Bid documents have been issued/downloaded by them will be held on **27.06.2017 at 1100 Hrs** in the Office of Owner at Core IV, SCOPE COMPLEX, 7 Lodhi Road, New Delhi, wherein the Bidders shall be given an opportunity to obtain clarifications, if any, regarding the work and Bid conditions.

5. Submission of Bids

Sealed Bids superscribed "Bid for entering into an annual rate contract for procurement/ supply, transportation, erection, testing & commissioning of **Automatic Cone Winding Machines (ACW)**" shall be submitted in two sealed envelopes - Envelope No.1 containing Technical Bid with EMD and Envelope No.2 containing Financial Bid. Bid must reach in the office of the Chief General Manager (Technical), National Textile Corporation Ltd; SCOPE Complex, Core-IV, (6th Floor), 7, Lodi Road, New Delhi-110003. by **17.07.2017, at 14:00 hours**.

If the due date of receipt of Bid as aforesaid is declared as holiday, Bids would be received up to 14:00 Hrs. on the next working day.

Bids received late on account of any reason whatsoever and telegraphic/fax Bids & incomplete Bids will not be entertained.

6. Bid Security/ Earnest Money Deposit

The Bid Security/EMD of INR 250,000 or its equivalent must accompany the Technical Bid. The Bid not accompanied by the Bid Security/EMD shall be rejected as non-responsive. Bid Security/EMD will be accepted in any of the 5 currencies as INR, US \$, EURO, YEN and CHF. The conversion rate for the bid security will be taken as 30 days before the press release i.e. 08.05.2017.

7. Opening of Bid

Envelope No.1 i.e. Technical Bid with EMD will be opened by the authorised representative of NTC Limited on **17.07.2017 at 1500 Hrs.** in the presence of authorised representative(s) of the Bidders who choose to remain present.

If the due date of opening of Bids as aforesaid is declared holiday, Bids would be opened at **1500 Hrs.** on the next working day.

The date of opening of Envelope No.2 i.e. Price Bids shall be notified separately to all the bidders whose offers are found technically suitable for the subject work.

8. Bid Validity Period

Bid shall be valid for a period of 120 days from the date of opening of Bids (Envelope No.1- Technical Bid).

9. Personnel to be Contacted

For any further information on the Bid, the Bidders may contact the office of the Chief General Manager (Technical), NTC Limited.

The Owner shall have the right to reject all or any of the Bids and shall not be bound to accept the lowest or any other Bid or to give any reason for such decision.

Sd/-

For & on behalf of NTC Limited.

TABLE OF CONTENTS

	PAGE NO.
A GENERAL.....	1
1. Scope of Bid.....	1
2. Cost of Bidding.....	1
3. Eligible Bidders	1
4. Eligible Plant, Equipment and Services	1
B THE BIDDING DOCUMENTS.....	3
5. Content of Bidding Documents.....	3
6. Clarification of Bidding Documents.....	4
7. Amendment of Bidding Documents	5
C PREPARATION OF BIDS	6
8. Language of Bid	6
9. Documents Comprising the Bid	6
10. Bid Form and Price Schedules	9
11. Bid Prices.....	9
12. Bid Currencies	12
13. Bid Security.....	12
14. Period of Bid Validity	14
15. Format and Signing of Bid.....	14
D SUBMISSION OF BIDS.....	16
16. Sealing and Marking of Bids.....	16
17. Deadline for Submission of Bids.....	16
18. Late Bids.....	17
19. Modification and Withdrawal of Bids.....	17
E BID OPENING AND EVALUATION	19
20. Opening of Bids by Owner	19
21. Clarification of Bids	19

22.	Preliminary Examination of Bids.....	19
23.	Conversion to Single Currency.....	21
24.	Technical Evaluation	22
25.	Commercial Evaluation	22
26.	Purchase Preference	
27.	Contacting the Owner	25
F	AWARD OF CONTRACT	26
28.	Qualification	26
29.	Award Criteria	26
230.	Owner’s Right to accept any Bid and to Reject any or all Bids.....	29
31.	Notification of Award	29
32.	Signing the Contract Agreement	29
33.	Performance Security.....	29
34.	Integrity Pact	Error! Bookmark not defined.
35.	Corrupt or Fraudulent Practices	30

A GENERAL

1. Scope of Bid

- 1.1 The NTC Limited, hereinafter referred to as "the Owner", intends to receive Bids for entering into an annual rate contract for procurement/ supply, transportation, erection, testing & commissioning of **Automatic Cone Winding Machines (ACW)** by NTC Mills spread all over India.
- 1.2 For foreign bidders, work completion will be 4 months ex-factory delivery from the date of opening of L/C and for one month for commissioning after machine reaches the site subject to clearance/readiness at site. In case of domestic supplier, delivery will be completed within 4 months from the date of making 10% advance.

2. Cost of Bidding

- 2.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Owner will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.

3. Eligible Bidders

- 3.1 This invitation to bid is open to all Bidders from any country or any area who meet the Qualification criteria as a whole appended with this ITB as **Appendix-A**.
- 3.2 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices by the Owner, any Government institution or Public Sector Undertaking in India in accordance with Sub-clause 35.1 or otherwise

4. Eligible Plant, Equipment and Services

- 4.1 For the purposes of these bidding documents, the word "Facilities" means the plant and equipment to be supplied and installed, together with the services to be carried out by the contractor under the contract including design and manufacturing. The words "plant and equipment," "installation services," etc., shall be construed in

accordance with the respective definitions given to them in the General Conditions of Contract.

- 4.2 The materials, plant or Contractor's equipment, other supplies, and services to be provided under the contract, shall have their origin in eligible source countries, defined under the Government of India Guidelines, and all expenditures made under the contract will be limited to such materials, Plant or Contractor's equipment, other supplies, and services.
- 4.3 For purposes of Sub-clause 4.2 above, origin means the place where the materials, plant, equipment, and other supplies are produced, or manufactured, and from which the services are supplied.

B THE BIDDING DOCUMENTS

5. Content of Bidding Documents

5.1 The Facilities required, bidding procedures, contract terms and technical requirements are prescribed in the bidding documents. The bidding documents include the following sections:

- Vol.1 Notice Inviting Bids (NIB)
Instructions to Bidders (ITB)
- Vol.2 General Conditions of Contract (GCC)
- Vol.3 Technical Specifications
- Vol.4 Forms and Procedures (FP)
 - 1. Bid Form and Price Schedules
 - 2. Form for supply of Plant and Equipment
 - 3. Form of Contract Agreement
 - 4. Performance Security Form
 - 5. Bank Guarantee Form for Advance Payment
 - 6. Form of Completion Certificate
 - 7. Form of Operational Acceptance Certificate
 - 8. Form of Trust Receipt
 - 9. Form of Indemnity Bonds
 - 10. Form of Authorisation Letter
- Vol. 5 Bill of Quantities
Integrity Pact

5.2 The Bidder is expected to examine all instructions, forms, terms, technical specifications and other information in the bidding documents. Failure to furnish all information required by the bidding documents or submission of a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in rejection of its bid.

6. Clarification of Bidding Documents

- 6.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Owner in writing or by e-mail and/or fax at the Owner's address indicated in the Notice Inviting Bids. Similarly, if a Bidder feels that any important provision in the documents, such as those listed in ITB Sub-Clause 22.5, will be unacceptable, such an issue should be raised at this stage. The Owner will respond during Pre-bid Conference to any request for clarification or modification of the bidding documents.
- 6.2 The Bidder is advised to visit and examine the site where the Facilities are to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for supply and installation of the Facilities. The costs of visiting the site shall be at the Bidder's own expense.
- 6.3 The Bidder and any of its personnel or agents will be granted permission by the Owner to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the Bidder, its personnel and agents will release and indemnify the Owner and its personnel and agents from and against all liability in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.
- 6.4 **Pre-Bid conference**

The Bidder or his authorized representatives is invited to attend Pre-bid Conference which will take place at the address given below:

National Textile Corporation Ltd.
Core IV, Scope Complex, 7 Lodhi Road,
New Delhi - 110003

The pre-bid conference shall be held at the venue mentioned above on 27.06.2017 at 11:00 Hrs.

The purpose of the conference will be to clarify any issues regarding the Bidding

Documents.

The Bidder is requested to submit questions in writing or by cable to reach the Owner at the address indicated above, not later than five (5) days before the pre-bid conference. Any modifications of the Bidding Documents, which may become necessary as a result of the pre-bid conference, shall be made by the Owner exclusively through an amendment pursuant to ITB Clause 7.

Non-attendance at the pre-bid conference will not be a cause for disqualification of a bidder.

The decision taken by the Pre-bid Committee of NTC will be loaded on the site.

7. Amendment of Bidding Documents

- 7.1 At any time prior to the deadline for submission of bids, the Owner may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective Bidder, amend the bidding documents.
- 7.2 The amendment will be notified in writing or by cable to all prospective Bidders that have received the bidding documents and will be binding on them. Bidders are required to acknowledge the receipt of any such amendment within specified days, failing which it will be presumed that the amendment has been accepted and the information contained therein have been taken into account by the Bidder in its bid. The Owner shall not be responsible for any postal delay or loss in receipt of amendments sent by the Owner.
- 7.3 In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their bid, the Owner may, at its discretion, suitably extend the deadline for the submission of bids.

C PREPARATION OF BIDS

8. Language of Bid

8.1 The bid prepared by the Bidder and all correspondence and documents related to the bid exchanged by the Bidder and the Owner shall be written in English language, provided that any printed literature furnished by the Bidder may be written in another language, as long as such literature is accompanied by a translation of its pertinent passages in English language, in which case, for purposes of interpretation of the bid, the translation in English shall govern.

9. Documents Comprising the Bid

9.1 The bid submitted by the Bidder shall comprise the following documents:

- a. Bid Form duly completed and signed by the Bidder, together with all Attachments identified in ITB Sub-Clause 9.2 below.
- b. Price Schedules duly completed by the Bidder.

9.2 Each Bidder shall submit with its bid the following attachments:

- a) Attachment 1: Bid Security

A bid security furnished in accordance with ITB Clause 13.

- b) Attachment 2: Power of Attorney

A power of attorney, duly authenticated by a Notary Public, indicating that the person(s) signing the bid has the authority to sign the bid and thus that the bid is binding upon the Bidder during the full period of its validity in accordance with ITB Clause 14.

- c) Attachment 3 : Bidders Eligibility and Qualifications

The bidder has to meet the qualification criteria appended with this ITB as Appendix-A and has to submit duly completed Forms as appended with this ITB as Appendix-B

- d) Attachment 4: Eligibility and Conformity of the Facilities and Bidding

Documents

Documentary evidence established in accordance with ITB Clause 4 that the Facilities offered by the Bidder in its bid are eligible and conform to the bidding documents.

The documentary evidence of the eligibility of the Facilities shall consist of a statement on the country of origin of the plant and equipment offered, which shall be confirmed by a certificate of origin issued at the time of shipment.

The documentary evidence of the conformity of the Facilities to the Bidding Documents may be in the form of literature, drawings & data, and shall furnish:

- (i) all the Bidding Documents as per ITB Clause 5.1 duly signed and stamped on each page as a proof of its acceptance except the variation/deviations mentioned in Attachment-6 (without cost of withdrawal) and Attachment-6A (with cost of withdrawal).
- (ii) all detail technical information and Tentative Technical data as per requirement of tender document and
- (iii) a list giving full particulars, including available sources, of all spare parts, mandatory & recommended tools, & tackles etc., necessary for the proper and continuous functioning of the Facilities throughout their life, following completion of Facilities in accordance with provisions of contract.

Bidders shall note that standards for workmanship, materials and equipment designated by the Owner in the bidding documents are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalogue numbers in its bid, provided that it demonstrates to the Owner's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Technical Specifications.

e) Attachment 5: Deviations

Deviations, if any, from the terms and conditions or Technical Specifications shall be listed ONLY in Attachment 5 to the bid without mentioning its cost of withdrawal.

However, all such deviations shall also be mentioned in Attachment 5A alongwith its cost of withdrawal. The attention of the Bidders is drawn to the provisions of ITB Sub-Clause 22.4 regarding the rejection of bids that are not substantially responsive to the requirements of the bidding documents.

Bidder's attention is also drawn to the provisions of ITB Sub-Clause 22.5 which requires the bidders to indicate the cost of withdrawal for deviations proposed, if any, failing which cost of withdrawal of such deviations shall be treated as 'NIL'.

Bidders may further note that except for the deviations listed in Attachment 5 and further in Attachment 5A, the bid shall be deemed to comply with all the requirements in the bidding documents and the bidders shall be required to comply with all such requirements of bidding documents and Technical Specifications without any extra cost to the Owner irrespective of any mention to the contrary, anywhere else in the bid.

f) Attachment 6 : Local Representation

If a foreign bidder has engaged an Indian agent, it will be required to give the following details in its bid

- (i) The name and address of the local agent;
- (ii) What Service the agent renders; and
- (iii) The fixed amount of remuneration for the agent included in the offer;
- (iv) The agency commission shall be indicated in the space provided for in the Price Schedule and will be paid to the bidder's agent in India in Indian Rupees using the Telegraphic Transfer buying market rate of exchange ruling on the date of award of contract and shall not be subject to any escalation or any further exchange variation.

g) Attachment-7: Details of bought out items under Direct Transaction and its Value

Details of bought out items under Direct Transaction and its value for the purpose of issue of Sales Tax declaration Form pursuant to GCC clause 14.2.

10. Bid Form and Price Schedules

- 10.1 The Bidder shall complete the Bid Form and the appropriate Price Schedules furnished in the bidding documents as indicated therein and in the Subsection “Bid Form and Price Schedules” of the bidding documents, following the requirements of ITB Clauses 11 and 12.

11. Bid Prices

- 11.1 Bidders shall quote for the entire Facilities on a “single responsibility” basis such that the total bid price covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the bidding documents in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, installation, and completion of the Facilities including supply of Mandatory Spares, Mandatory tools & tackles and recommended spares, if any. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the Facilities and, where so required by the bidding documents, the acquisition of all permits, approvals and licenses, etc.; the training services and such other items and services as may be specified in the bidding documents, all in accordance with the requirements of the General Conditions of Contract (GCC).
- 11.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding documents. If a Bidder wishes to make a deviation, such deviation shall be listed in **Attachment 5** of its bid. The Bidder shall also provide the price, if any, for withdrawal of such deviations in **Attachment 5A**.
- 11.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules.

Separate numbered Schedules shall be used for each of the following elements. The total amount from each Schedule (1 to 4) shall be summarized in a Grand Summary (Schedule 5) giving the total bid price(s) to be entered in the Bid Form.

Schedule No. 1 Plant and Equipment (including Specified Mandatory Spares Parts and Mandatory Tools & Tackles Instruments) Supplied

from Abroad

- Schedule No. 2 Plant and Equipment (including Specified Mandatory Spares Parts and Mandatory Tools & Tackles) Supplied from within the Owner's Country
- Schedule No. 3 Local Transportation including Port Clearance & Port Charges and Inland Insurance
- Schedule No. 4 Installation Services
- Schedule No. 5 Grand Summary (Schedules Nos. 1 to 4)
- Schedule No. 6 Recommended Spare Parts and Recommended Tools & Tackles
- Schedule No. 7 Taxes and Duties

Bidders shall note that the plant and equipment included in Schedules Nos. 1 and 2 above exclude materials used for civil, building and other construction works. All materials including consumables required for site storage, erection, testing, pre-commissioning and commissioning activities shall be included and priced under Schedule No. 4, Installation Services.

11.4 In the Schedules, Bidders shall give the required details and a breakdown of their prices as follows:

- a) Plant and equipment including Mandatory spares and Mandatory Tools & Instruments to be supplied from abroad (Schedule No. 1) shall be quoted on a CIF port-of-entry, CIP border point basis or CIP-named place. In addition, the FOB price (or the FCA price, as the case may be) shall also be indicated.
- b) Plant and equipment including Mandatory spares and Mandatory Tools & Tackles manufactured or fabricated within the Owner's country (Schedule No. 2) shall be quoted on an EXW (ex factory, ex works, ex warehouse or off-the-shelf, as applicable) basis, and shall be inclusive of all costs as well as duties and taxes paid or payable on components and raw materials incorporated or to be incorporated in the Facilities.

- c) Port clearance and port charges, local transportation, inland insurance and other local costs incidental to delivery of the Plant and equipment including Mandatory spares and Mandatory Tools & Tackles shall be quoted separately (Schedule No. 3): Rates quoted in this Schedule shall be inclusive of all taxes, duties, levies and charges payable including Works/Service Tax etc., if applicable, in Owner's country as of thirty (30) days prior to deadline for submission of Price bids. The Owner, as an importer, shall furnish promptly necessary certifications and documents as may be required to be furnished by the importer for the purpose of customs clearance.
- d) Installation Services shall be quoted separately (Schedule No. 4) and shall include rates or prices for all labour, contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the bidding documents, as necessary for the proper execution of the Installation Services, including all taxes, duties, levies and charges payable including Works/Service Tax etc., if applicable, in the Owner's country as of thirty (30) days prior to the deadline for submission of Financial Bids.
- e) Recommended Spare Parts and Recommended Tools & Tackles, shall be quoted separately (Schedule 6) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare and tools.
- f) All applicable taxes, duties, other levies and charges etc. on Schedule-1, Schedule-2 and Schedule-3, prevailing at the date thirty (30) days prior to the date of bid submission in respect of direct transaction between the Owner and the Contractor shall not be included in Ex-Works/FOB/CIF prices but shall be quoted separately in Schedule No. 7 only. The Bidders are advised to ascertain the applicability of such taxes, duties, other levies and charges etc. at their own level.

11.5 The terms EXW, CIF, CIP etc., shall be governed by the rules prescribed in the current edition of *Incoterms*, published by the International Chamber of Commerce, 38 Cours Albert 1^{er}, 75008 Paris, France.

11.6 The prices shall be firm without any adjustment during performance of the contract.

12. Bid Currencies

12.1 Prices shall be quoted in the following currencies:

- a) Plant and equipment including Mandatory spares and Mandatory Tools & Tackles covered under ITB Sub-Clause 11.4 (a) and recommended spare parts covered under ITB sub-clause 11.4(e) to be supplied from abroad shall be quoted in the international trading currencies. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly, but use no more than two foreign currencies.
- b) Plant and equipment including Mandatory spares and Mandatory Tools & Tackles covered under ITB sub-clause 11.4 (b) and recommended spare parts covered under ITB Sub clause 11.4 (e) to be supplied from within the Owner's country shall be quoted in the currency of the Owner's country or in international trading currencies subject to adherence of the guidelines of Reserve Bank of India by the Contractor regarding Foreign Exchange regulation.
- c) Local transportation, insurance and other local costs incidental to delivery of the plant and equipment covered under ITB sub-clause 11.4 (c) and installation services covered under ITB sub-clause 11.4 (d) shall be quoted in local currency. However, foreign component, if any, of installation services or insurance may be quoted in foreign currency.

13. Bid Security/EMD

13.1 The Bidder shall furnish, as part of its bid, a bid security of INR 250,000 or its equivalent. In foreign currency

State Bank of India Bills selling exchange rate prevailing as on 30 days prior to the last date of submission of bids shall be used for arriving at the amount of bid security.

13.2 The bid security shall, at the Bidder's option, be in the form of a crossed Demand Draft in favor of the National Textile Corporation Ltd., payable at New Delhi, India or a bank guarantee from any Indian nationalized bank / scheduled bank for the Bid Security. Bank guarantee in currencies other than Indian Rupees shall be

acceptable if it is issued by an international Bank of repute situated outside India or by an authorized Dealer in India issued as per extant guidelines of Reserve Bank of India. The format of the bank guarantee shall be in accordance with the form of bid security included in the bidding documents. Bid security shall remain valid for a period of ninety (90) days beyond the original bid validity period, and beyond any extension subsequently requested under ITB Sub-Clause 14.2. In case bid security is submitted in the shape of Demand Draft in foreign currency, Exchange Variation at the time of return of bid security by the Owner, shall be to the Bidder's account.

- 13.3 The bidder whose security deposit is lying with NTC is also required to submit a fresh EMD. Any earlier EMD lying with NTC or its offices/Mills may be got refunded as per the terms of those tender(s).
- 13.4 Any bid not accompanied by an acceptable bid security shall be rejected by the Owner as being non responsive. The bid security of a joint venture must be in the name of all the partners in the joint venture submitting the bid.
- 13.5 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than ninety (90) days after the expiration of the bid validity period or authorized extension thereto.
- 13.6 The bid security of the successful bidder will be returned when the bidder has signed the Contract Agreement, pursuant to ITB Clause 32, and has furnished the required performance security, pursuant to ITB Clause 33.
- 13.7 The bid security may be forfeited
- a) if the Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Bid Form or
 - b) If the bidder does not accept the correction of its Bid Price pursuant to ITB Sub-Clause 22.2 or
 - c) in the case of a successful Bidder, if the Bidder fails within the specified time limit
 - (i) To sign the Contract Agreement, in accordance with ITB Clause 32, or

- (ii) To furnish the required performance security, in accordance with ITB Clause 33.

14. Period of Bid Validity

- 14.1 Bids shall remain valid for a period of 120 days after the closing date prescribed by the Owner for the receipt of bids, pursuant to ITB Sub-Clause 17.1.
- 14.2 In exceptional circumstances, the Owner may solicit the Bidders' consent to an extension of the bid validity period. The request and responses thereto shall be made in writing or by cable. If a Bidder accepts to prolong the period of validity, the bid security shall also be suitably extended. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request will not be required nor permitted to modify its bid.

15. Format and Signing of Bid

- 15.1 Two envelope Bid procedure shall be adopted for preparation, submission and evaluation of the bids. The Bidder shall accordingly prepare and submit the bid in two separate sealed envelopes containing the following documents:

Sealed Envelope – I

This envelope shall be superscribed as "Envelope – I: Technical Bid with Bid Security/EMD". This envelope shall contain the Bid security/EMD as per ITB clause 13 and all Bid Documents as specified against ITB clause 9, 10, and 11. This envelope, however, shall not contain any price information. As such, the Bid Form along with Schedule 1 to 7, Attachment 5 duly filled in and signed by the authorized signatory of the Bidder on each page and submitted with this Technical Bid, shall not contain the quoted rates / prices and any financial implications thereto.

Sealed Envelope – II

This envelope shall be superscribed as "Envelope – II : Financial Bid". This envelope shall contain only the Bid Form along with Schedules 1 to 7, and Attachment 5 A duly signed by the authorized signatory of the Bidder on each page with full particulars of

the respective quoted rates and prices. Except for the quoted rates / prices, the Bid Form along with Schedules and Attachments shall be unconditional and exactly same as those contained in Sealed Envelope-I.

- 15.2 The sealed envelope – I & II shall together constitute the complete Bid and shall be enclosed in another envelope superscribed “Bid for annual rate contract for procurement/ supply, transportation erection testing & Commissioning of **Automatic Cone Winding Machines (ACW)** for NTC Mills spread all over India.”
- 15.3 The Bidder shall prepare an original and 2 copies / sets of the bid, clearly marking each one as “Original Bid,” “Copy NO. 1”, “Copy NO. 2”. In the event of any discrepancy between them, the original shall govern.
- 15.4 The original and all copies of the bid, each consisting of the documents listed in ITB Sub-Clause 9.1, shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. Such authorization shall be indicated by written power of attorney accompanying the bid and submitted as Attachment 2 to the Bid under ITB Sub-Clause 9.3. All pages of the bid, except for unamended printed literature, shall be initialed by the person or persons signing the bid.
- 15.5 Any interlineations, erasures or overwriting shall only be valid if they are initialed by the signatory (ies) to the bid.
- 15.6 The Bidder shall furnish information as described in the relevant paragraph of the Bid Form on Commissions or gratitude, if any, paid or to be paid to agents relating to the Bid, and to Contract execution if the Bidder is awarded the Contract.

D SUBMISSION OF BIDS

16. Sealing and Marking of Bids

16.1 The Bidder shall seal the original and each copy of the Technical Bid with EMD (Envelope-I) and Financial Bid (Envelope-II) in separate envelopes, duly marking the envelopes as “**ORIGINAL BID**” and “**COPY NO. [number]**”. The envelopes shall then be sealed in an outer envelope.

16.2 The inner and outer envelopes shall

- a) Be addressed to the Owner at the address given in the Notice Inviting Bids.
- b) Bear the title and number indicated in the Notice Inviting Bids and the statement “DO NOT OPEN BEFORE [date]”, to be completed within the time and date specified in the Notice Inviting Bids, pursuant to ITB Sub-Clause 17.1.

16.3 The inner envelopes shall indicate the name and address of the Bidder so that the bid can be returned unopened in case it is declared “late.”

16.4 If the outer envelope is not sealed and marked as required by ITB Sub-Clause 16.2 above, the Owner will assume no responsibility for the bid’s misplacement or premature opening. If the outer envelope discloses the Bidder’s identity, the Owner will not guarantee the anonymity of the bid submission, but this disclosure will not constitute grounds for bid rejection.

17. Deadline for Submission of Bids

17.1 Bids must be received by the Owner at the address specified under ITB Sub-Clause 16.2 not later than the time and date stated in the Notice Inviting Bids. In the event of the specified date for submission of bids being declared a holiday for the Owner, the bids will be received upto the appointed time on next working day.

17.2 The Owner may, at its discretion, extend this deadline for submission of bids by amending the bidding documents in accordance with ITB Sub-Clause 7.3, in which

case all rights and obligations of Owner and Bidders will thereafter be subject to the deadline as extended.

18. Late Bids

18.1 Any bid received by the Owner after the bid submission deadline prescribed by the Owner, pursuant to ITB Clause 17, will be rejected and returned unopened to the Bidder.

19. Modification and Withdrawal of Bids

19.1 The Bidder may modify or withdraw its bid after submission, provided that written notice of the modification or withdrawal is received by the Owner prior to the deadline prescribed for bid submission.

19.2 The Bidder's modifications shall be prepared, sealed, marked and dispatched as follows:

- a) The Bidders shall provide an original and the 2 copies of any modifications to its bid, clearly identified as such, in two inner envelopes duly marked "Bid Modifications - Original" and "Bid Modifications - 2 Copies." The inner envelopes shall be sealed in an outer envelope, which shall be duly marked "Bid Modifications."
- b) Other provisions concerning the marking and dispatch of bid modifications shall be in accordance with ITB Sub-Clauses 16.2, 16.3 and 16.4.

19.3 A Bidder wishing to withdraw its bid shall notify the Owner in writing prior to the deadline prescribed for bid submission. A withdrawal notice may also be sent by cable, but it must be followed by a signed confirmation copy, postmarked not later than the deadline for submission of bids. The notice of withdrawal shall

- a) Be addressed to the Owner at the address named in the Notice Inviting Bids.
- b) Bear the contract name, the Notice Inviting Bids number, and the words "Bid Withdrawal Notice." Bid withdrawal notices received after the bid submission deadline will be ignored, and the submitted bid will be deemed to be a validly

submitted bid.

- 19.4 No bid may be withdrawn in the interval between the bid submission deadline and the expiration of the bid validity period specified in ITB Clause 14. Withdrawal of a bid during this interval may result in the Bidder's forfeiture of its bid security, pursuant to ITB Sub-Clause 13.6.

E BID OPENING AND EVALUATION

20. Opening of Bids by Owner

20.1 The Owner will open all bids in the presence of bidder's representatives who choose to attend the opening at the time, on the date and at the place specified in the Notice Inviting Bids or as per amendment thereto notified by the Owner. Bidder's representatives shall sign a register as proof of their attendance.

In the event of the specified date of bid opening declared a holiday for the Owner, the bids shall be opened at the appointed time and location on the next working day.

20.2 Bidders' names, bid modifications or withdrawals, bid prices, discounts, the presence of any alternative bid, the presence or absence of requisite bid security and other such details as the Owner, at its discretion, may consider appropriate, will be announced at the opening. No bid will be rejected at bid opening except for late bids, which will be returned unopened to the bidder, pursuant to **ITB Clause 18**.

20.3 Bids (and modifications sent pursuant to **ITB Sub-Clause 19.2**) that are not opened and read out at bid opening will not be considered for further evaluation, regardless of the circumstances.

21. Clarification of Bids

21.1 During bid evaluation, the Owner may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the price or substance of the bid shall be sought, offered or permitted except to confirm the correction of arithmetical errors discovered by the Owner in the evaluation of the bids, in accordance with ITB Clause 22.2.

22. Preliminary Examination of Bids

22.1 The Owner will examine the bids to determine whether they are complete, whether any computational errors have been made, whether required securities have been

furnished, whether the documents have been properly signed, and whether the bids are generally in order.

- 22.2 Notwithstanding any other provisions in the Bidding Document, arithmetical errors will be rectified on the following basis:

If there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity, or between subtotals and the total price, the unit or subtotal price shall prevail, and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. Confirmation in respect of correction of errors will be sought from all the bidders. If the Bidder does not accept the correction of errors as above, its bid will be rejected and the bid security will be forfeited in accordance with ITB sub-clause 13.6(b).

- 22.3 The Owner may waive any minor informality, nonconformity or irregularity in a bid that does not constitute a material deviation, whether or not identified by the Bidder in Attachment 5 to its bid, and that does not prejudice or affect the relative ranking of any Bidder as a result of the technical and commercial evaluation, pursuant to ITB Clauses 24 and 25.

- 22.4 Prior to the detailed evaluation, the Owner will determine whether each bid is of acceptable quality, is generally complete and is substantially responsive to the bidding documents. For purposes of this determination, a substantially responsive bid is one that conforms to all the terms, conditions and specifications of the bidding documents without material deviations, objections, conditionalities or reservations. A material deviation, objection, conditionality or reservation is one (i) that affects in any substantial way the scope, quality or performance of the contract; (ii) that limits in any substantial way, inconsistent with the bidding documents, the Owner's rights or the successful Bidder's obligations under the contract; or (iii) whose rectification would unfairly affect the competitive position of other Bidders who are presenting substantially responsive bids.

- 22.5 Bids containing deviations from critical provisions relating to GCC Clause 5 (Governing Law), 6 (Settlement of Disputes), 12 (Terms of Payment), 13.3 (Performance Security), 14 (Taxes and duties), 26.2 (Completion Time Guarantee), 27 (Defect Liability), 29 (Patent Indemnity) and 30 (Limitation of Liability)

will be considered as non-responsive. However, the bidders wishing to propose deviations to any of the provisions other than those mentioned above, must provide in the Attachment-5 without cost of withdrawal and in Attachment 5A of the bid with cost of withdrawal of such deviations. If such deviations are not priced, cost of withdrawal of such deviations shall be treated as 'NIL'. The evaluated cost of the bid shall include, in addition to the costs described in ITB Clause 25, the cost of withdrawal of the deviations from the above provisions to make the bid fully compliant with these provisions.

At the time of Award of Contract, if so desired by the Owner, the bidder shall withdraw these deviations listed in Attachment 5 and Attachment 5A at the cost of withdrawal stated by him in the bid. In case the bidder does not withdraw the deviations proposed by him, if any, at the cost of withdrawal stated by him in the bid, his bid will be rejected and his bid security forfeited.

The Owner's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.

- 22.6 If a bid is not substantially responsive, it will be rejected by the Owner, and may not subsequently be made responsive by the Bidder by correction of the nonconformity.
- 22.7 The Bid shall also be examined / evaluated on National defence & Security considerations of the country where the Site is located. The Owner reserves the right to set aside / reject the Bid on these considerations.

23. Conversion to Single Currency

- 23.1 To facilitate evaluation and comparison, the Owner will convert all bid prices expressed in the amounts in various currencies in which the bid price is payable to the currency of the Owner's country at the Bills selling exchange rate established for similar transactions by the State Bank of India in the Owner's country as per prevailing on the day of opening of financial bids.
- 23.2 The currency selected for converting bid prices to a common base for the purpose of evaluation, is Indian currency and the source of exchange rate is Bills selling

exchange rate established by State Bank of India. The date of exchange rate is date of opening of Financial Bids.

24. Technical Evaluation

24.1 The Owner will carry out a detailed evaluation of the bids previously determined to be substantially responsive in order to determine whether the technical aspects are in accordance with the requirements set forth in the bidding documents. In order to reach such a determination, the Owner will examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account the

- a) Overall completeness and compliance with the Technical Specifications and Drawings; deviations from the Technical Specifications as identified in **Attachment 5**; (Forms & Procedures, Volume – 5) to the bid; suitability of the Facilities offered and quality, function and operation of any process control concept included in the bid. The bid that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected for non-responsiveness.
- b) Achievement of specified performance criteria by the Facilities
- c) Type, quantity and long-term availability Mandatory and Recommended spare parts and maintenance services.
- d) Any other relevant factors, if any, listed in the Bid Document or that the Owner deems necessary or prudent to take into consideration.

25. Commercial Evaluation

25.1 Commercial evaluation shall be done on the basis of the evaluated prices of the facilities offered by each Bidder. Such evaluated prices shall include the Ex-works / CIF prices of Plant & Equipment including Mandatory spares, and Mandatory Tools & Tackles, cost of transportation upto Mill Site Including Port clearance, Port charges & Insurance, all installation and other services required under the Contract and as mentioned in Price Schedules after taking into account the correction of arithmetical errors (as per ITB Clause 22.2). The evaluated comparative prices will

also include the costs resulting from application of the evaluation procedures described in ITB Sub-Clause 25.3.

25.2 The Owner's evaluation of a bid will take into account, in addition to the bid prices indicated in Price Schedules Nos. 1 to 5, the following costs and factors that will be added to each Bidder's bid price in the evaluation using pricing information available to the Owner, in the manner and to the extent indicated in ITB Sub-Clause 25.3 and in the Technical Specifications:

- a) The cost of all quantifiable deviations and omissions from the contractual and commercial conditions and the Technical Specifications as identified in Attachment 5A to the bid.
- b) The extra cost of work, services, Facilities etc., required to be provided by the Owner or third parties.
- c) Taxes and Duties, as contained in Schedule 7.

25.3 Pursuant to ITB Sub-Clause 25.2, the following evaluation methods will be followed:

a) **Contractual and commercial deviations**

The evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all commercial, contractual and technical obligations under this bidding document. In arriving at the evaluated cost, the price for withdrawal of deviations shown in Attachment 5A of the bid will be used.

b) **Time schedule (program of performance)**

The plant and equipment covered by this bidding are required to be shipped and installed, and the Facilities shall have the commissioning completed within the period named in the Appendix 3 to the General Conditions of Contract after the effective date specified therein. **Bidders are required to base their prices on the time schedule proposed by them in Appendix 3 to the GCC (Time Schedule), to meet the Completion of the Facilities within the period stipulated under GCC Clause 8.** No credit will be given for earlier completion. Bids offering a completion date beyond the maximum designated period shall be rejected.

c) **Recommended Spare parts, Tools & Tackles**

The price of recommended spare parts, tools & tackles quoted in Price Schedule No. 6 shall not be considered for evaluation.

d) **Work, services, Facilities etc., to be provided by the Owner**

Where bids include the undertaking of work or the provision of services or Facilities by the Owner in excess of the provisions allowed for in the bidding documents, the Owner shall assess the costs of such additional work, services and/or Facilities during the currency of the contract. Such costs shall be added to the bid price for evaluation.

e) **Taxes and Duties**

All applicable taxes & duties including custom duty, excise duty, sales tax/VAT, other levies and charges etc. on all items of Supply Contract(s) (i.e. Price Schedule No.1 and Price Schedule No.2) as mentioned in column 8 of Schedule No. 7 shall only be considered for the purpose of evaluation, comparison of bids & regulation of payments thereto in the resultant Contract.

25.4 Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by Bidders shall remain unaltered.

26. Purchase Preference

26.1 Purchase Preference for Product & Services shall be extended to the Bidders who are Central Public Sector Enterprises as per extant Policy of Govt. of India notified vide Office Memorandum No. DPE/13(19)/91-Fin dt. 13.01.1992 and renewed from time to time with latest Office Memorandum No. DPE/13(12)/2003-Fin. Vol.-II dt. 18.07.2005

26.2 As per aforesaid Purchase Preference Policy of the Govt. of India, if the evaluated price of an Indian Central Public Sector Enterprise for Products and Services is within ten (10) percent of the Lowest Evaluated valid Bid Price, other things being equal,

Purchase Preference shall be granted to the Central Public Sector Enterprises concerned at the lowest evaluated valid Bid Price

27. Contacting the Owner

27.1 Subject to ITB Clause 21, no Bidder shall contact the Owner on any matter relating to its bid, from the time of the opening of bids to the time the contract is awarded.

27.2 Any effort by a Bidder to influence the Owner in the Owner's bid evaluation, bid comparison or contract award decisions may result in rejection of the Bidder's bid.

F AWARD OF CONTRACT

28. Qualification

28.1 The Qualification of a bidder will be subject to their fulfilment of the Qualification Criteria set forth in Appendix-A substantiated by authentic relevant information and details in the prescribed formats in Appendix-B

28.1 The capabilities of the vendors and subsuppliers proposed to be deployed by the lowest evaluated Bidder will also be evaluated for acceptability. Should a vendor or subsupplier be determined to be unacceptable, the bid will not be rejected, but the Bidder will be required to substitute an acceptable vendor or subsupplier without any change to the bid price.

29. Award Criteria

29.1 Subject to ITB Clause 30, the Owner will award the contract to the Bidder whose bid has been determined to be substantially responsive to the tender requirement and to be the lowest evaluated bid, provided that the Bidder is determined to be qualified to perform the contract satisfactorily. The Owner may request the substantially responsive lowest evaluated Bidder to attend the Pre-award discussions/ Post Tender Negotiation (PTN), if required.

29.2 The Owner may request the Bidder to withdraw any of the deviations listed in Attachment 5 to the winning bid, at the price shown for the deviation in Attachment 5A to the bid. Bidder would be required to comply with all other requirements of the Bidding Documents except for those deviations which are accepted by the Owner.

29.3 The Owner reserves the right to vary the quantity of any of the spares and/or delete any items of spares altogether at the time of Award of Contract.

29.4 The mode of contracting with the successful bidder will be as per stipulation outlined in relevant Clause of GCC and briefly indicated below:

29.5 In the case of successful Indian Bidder, the award shall be made as follows:

- (i) The prices of the goods quoted ex-factory, ex-warehouse (Including packing & forwarding) as applicable, specifying excise and any other duties and sales and other taxes (VAT where ever applicable) already paid or payable separately.
- (ii) Packing and forwarding to be included in the price itself. No separate packing and forwarding charges to be quoted.
- (iii) Charges of insurance and other local incidental costs to delivery of the goods to their final destination
- (iv) The cost of incidental services like erection, testing and commissioning on the actual basis but bidder should indicate the tentative prices.

In case of successful Foreign Bidder, the award shall be made as follows:

- (i) The price of goods quoted must be on CIF basis at JLN Mumbai port and Kochi of entry in India
- (ii) NTC will arrange the port clearance, insurance from port to site, transportation services and other incidental work and deliver the goods at site at its own expenses. Bidders should indicate the tentative price for evaluation.
- (iii) The cost of incidental services like erection, testing and commissioning on the actual basis but bidder should indicate the tentative prices for evaluation.

The Foreign Bidder, however, has the option, to exercise as a part of his bid, to propose an Assignee to execute the Second Contract and/or Third Contract. For the scope of work envisaged by the Foreign Bidder to be executed by the assignee, the assignee should have relevant/required capacity and experience of executing similar job. The bidder shall substantiate with relevant/required documents in the bid to establish capacity and experience of assignee.

Above contracts will contain a cross fall breach clause specifying that breach of one will constitute a breach of the other Contract(s) which will confer a right on the Owner to terminate the other Contract(s) also at the risk and the cost of the Contractor.

If the foreign bidder has proposed an Assignee in its bid to execute the Second Contract and/or the Third Contract and has also furnished written unequivocal consent of the proposed Assignee to work as an independent Contractor on the terms and conditions offered by the bidder and if the Owner is satisfied with the capacity and experience of the Assignee proposed in the bid, the Owner will enter into the Second Contract and/or the Third Contract with the Assignee. However, if the Owner in its judgment does not find acceptance of the Assignee proposed in the bid as its Contractor, then on the request of the Owner, the bidder shall have option to propose an alternate Assignee on the same terms and conditions and cost as offered in its bid. It is expressly understood and agreed that in case the option is not exercised by the Bidder or if the Assignee fails to enter into Contract(s) with the Owner or if the Owner in its judgment does not find acceptance of the Assignee as its Contractor, then the foreign bidder shall be obliged to enter into and execute all the three Contracts with the Owner covering the entire scope of work envisaged in the bidding documents on the same terms and conditions and cost as offered in its bid.

However, for the above purpose, only one Assignee shall be permitted for both Second Contract and Third Contract.

In case of Joint Venture bidders, if the lead partner is an Indian bidder, the Joint Venture shall be treated as Indian bidder and if the lead partner is a Foreign bidder, the Joint Venture shall be treated as Foreign bidder.

It is understood that as per extant provision, Indian Income Tax is not payable on sale of goods, if the Contract is on Principal-to-Principal basis and the title of goods passes to the Owner outside India as in the proposed First Contract. The Bidders are, however, advised to check the position from their own sources.

In case of two / three Contracts entered into as above or where the Owner hands over his equipment to the Contractor for executing the Contract, then the Contractor shall, at the time of taking delivery of the equipment through Bill of Lading or other dispatch documents, furnish Trust Receipt for Plant, Equipment and Materials and also execute an Indemnity Bond in favour of the Owner in the form acceptable to the Owner for keeping the equipment in safe custody and to utilize the same exclusively for the purpose of the said Contract. Samples of proforma for the Trust Receipt and

Indemnity Bond are enclosed under Volume 5 (Forms and Procedures). The Owner shall also issue a separate Authorisation Letter to the Contractor to enable him to take physical delivery of plant, equipment and materials from the Owner as per proforma enclosed under Volume 5 (Forms and Procedures). The Contractor shall submit an indemnity Bond to the Owner in the Form 9d indemnifying against all omissions and commissions committed by the Contractor or its failure to abide by or violating the terms & conditions relating to the customs clearance as per GCC Clause 21.4 of Bid Documents or any provisions of Custom Tariff Act 1975, whatsoever.

30. Owner's Right to accept any Bid and to Reject any or all Bids

30.1 The Owner reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to award of contract, without thereby incurring any liability to the affected Bidder or bidders or any obligation to inform the affected Bidder or bidders of the grounds for the Owner's action.

31. Notification of Award

31.1 Prior to the expiration of the period of bid validity, the Owner will notify the successful Bidder in writing by registered letter or by cable, to be confirmed in writing by registered letter, that its bid has been accepted. The notification of award will constitute the formation of the contract.

31.2 Upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 32, the Owner will promptly return/discharge the Bid Security to each unsuccessful Bidder, pursuant to ITB Sub-Clause 13.4.

32. Signing the Contract Agreement

32.1 At the same time, as the Owner notifies the successful Bidder that its bid has been accepted, the Owner and the successful Bidder shall sign the Contract Agreement provided in the bidding documents within a period of 28 days, incorporating all agreements between the parties.

33. Performance Security

- 33.1 Within twenty-eight (28) days after receipt of the notification of award, the successful Bidder shall furnish the performance security for an amount equivalent to 10 % of the Contract Price and in the form provided in the section "Forms and Procedures" of the bidding documents or in any other form acceptable to the Owner.
- 33.2 Failure of the successful Bidder to comply with the requirements of ITB shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security in which event the Owner may call for bids from the remaining bidders or call for new bids.
- 33.3 Performance security will be required for 6 months from date of commissioning or one year from the date of lading, whichever is later.

34. Integrity Pact –

- 34.1 NTC entered integrity pact MOU with Transparency International. The bidders have to submit duly signed enclosed proforma of Integrity Pact. Only those venders, who commit themselves to integrity pact will be consider to competent for participating in bidding process.
- 34.2 The tendering is being monitored by Independent External Monitor Sh Kalyan Chand , Rtd IRS (Cont No +91 99680095320) . If any party is aggrieved, they are free to approach the said IEM in terms of integrity pact.

35. Corrupt or Fraudulent Practices

- 35.1 It is expected from the Bidders / suppliers / contractors that they will observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy:
- a) for the purposes of this provision, the terms set forth below shall mean as under:
- (i) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Owner, and includes collusive practice among

Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition;

- b) A Bid may be rejected by the Owner if it is determined at any stage that the respective Bidder has engaged in corrupt or fraudulent practices in competing for the contract in question.
- c) The Owner may declare a firm ineligible, either indefinitely or for a stated period of time, if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract.

35.2 Furthermore, Bidders shall be aware of and take into consideration the provision stated in Sub-Clause 42.2 of the General Conditions of Contract.

Appendix - A

Qualification Requirements:

The qualification will be subject to Bidder's fulfilment of the Qualification Criteria stipulated hereunder, substantiated by authentic & relevant information and details as prescribed in formats **(Appendix-B to this ITB)**. Additional information in support of their claims of achievements may be furnished in any form of their device and design

a. Manufacturing Capacity

The manufacturer/ supplier should have at least supplied 50 Auto Cone Winding Machines in India annually during the last three years. This shall be duly certified by an Independent Chartered Accountant. (CPA in case of foreign bidder)

b. Capacity to Deliver

The manufacturer/ supplier should have the capacity to deliver and commission 100 numbers of ACW machines in a span of 6 months.

c. Turnover

Three years average annual turnover of the manufacturing company (Principal) should not be less than Rs.500 Million or equivalent (balance sheets for the last 3 years to be submitted).

d. Net Worth

The Bidder shall have Minimum Positive Net Worth and should not be less than the amount of Equity including Share premium in at least two (2) out of three (3) preceding years

e. Current Ratio

The Bidder shall have minimum Current Ratio of 1.25 at the close of each of the three (3) preceding financial years

f. Service Centers

Should have accredited and established service centers in India for after sales service, training facility to skilled workmen as per the requirement of hi-tech machines.

g. Bidder to Quote Directly

NTC insists machinery manufacturers to quote directly. Only those machinery manufacturers, who sell their machines only through their sole selling/regional authorized sale agents, may nominate a single agent for all NTC mills irrespective of its location. Such manufacturers are required to give a "Certificate (Form-7) stating that they are not selling their machine to any industry in India directly but only through its agents".

h. No second hand machinery

Suppliers of second hand machinery from India and abroad will not be considered.

i. Spare part availability

The bidder/manufacturer/supplier should provide the necessary spare part support for next 10 years.

Appendix- B

QUALIFICATION FORMS

FORM -1

PAGE 1 OF 1 PAGE

General Information

All individual firms are requested to complete the information in this form.

1.	Name of firm:	
2.	Head Office address:	Country:
3	Telephone Fax Email	Contract Person (s) Name Title/Position
4.	Place of incorporation/registration Date	
5.	Legal status of firm	Field of specialty in business
6.	Nationality of majority of owners or share-holders	Number of management executives ----- Persons
7.	Number of present permanent employees: Name of Country Home country Overseas branch 1 Overseas branch 2 All other branches	(Unit: persons) Engineers Non- Engineering Executives Factory Workers
8	Name of place of major factories	
9	Quality assurance system in major factories	Certified by:
10	Agent or representative in India (if exists) Name Address Telephone Fax Email	

Date 2017

Signature:.....

FORM -2

PAGE 1 OF 3 PAGES

General Experience Record

Name of Bidder

Bidders are requested to complete the information in this form.

1. Machine manufacturing and supply Experience**a. Manufacturing Capacity**

Experience of ACW Machine manufacturing and supply, testing and commissioning in the last three (3) years to demonstrate the Bidder's business experience and should be listed in the following table (Bidders are to list all the related works executed / ongoing in the last three (3) years :

Details of drums head supplied in India for last three years

No	Year	Name of Clients	No. of drum supplied
1			
2			
3			
4			
5			

b. Capacity to Deliver

Capacity to deliver number of Similar drums Supplied all over world during the last three years:

Year	Country	Number of Drum	Remarks if any
2015			
2014			
2013			
Capacity to supply in 6 months			

2. Financial Strength

a. Annual Turnover (for related business)

The information supplied should be the annual turnover in related business of the Bidder, in terms of the amounts billed to clients for each year in the last three (3) years, converted to U.S. dollars at the rate of exchange at the end of the period reported. Unless specifically asked for, Bidders need not to enclose testimonials, certificates, and publicity material with their Bids, they will not be taken into account in the evaluation of qualifications.

Fiscal year	Turnover (in Bidder's Home Currency)	US\$ equivalent
1.		
2.		
3.		

Fiscal year begins on in each calendar year.

Date 2017

Signature:

FORM 3

PAGE 1 OF 2 PAGES

Financial Data

Name of Bidder

Bidders, should provide financial information to demonstrate that they meet the qualification requirements stated in the Instructions to Bidders. If necessary, use separate sheets to provide complete banker information. A copy of the audited balance sheets should be attached.

<i>Banker</i>	Name of banker	
	Address of banker	
	Telephone	Contact name and title
	Fax	

1) Summarise actual assets and liabilities in US\$ equivalent (at the rates of exchange current at the end of each year) for the previous five years. Based upon the known commitments, summarise projected assets and liabilities in US dollar equivalent for the next two years.

<i>Financial information in US\$ equivalent</i>	Actual :		
	Previous three years		
	1	2	3
<i>Exchange rate</i>			
1. <i>Total assets</i>			
2. <i>Current assets</i>			
3. <i>Total liabilities</i>			
4. <i>Current liabilities</i>			
5. <i>Profits before taxes</i>			
6. <i>Profits after taxes</i>			

2) Specify proposed sources of financing to meet the cash flow demands of the project, net of current commitments

<i>Source of financing</i>	<i>Amount (US\$ equivalent)</i>
1.	
2.	

3.	
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PAGE 2 OF 2 PAGES

- 3) The bidder shall attach the following documents:
- i) Financial statement (i.e. Balance sheet, Profit & loss A/c etc. alongwith Annual reports) for the last five years. Firms owned by individuals, and partnerships may submit their balance sheets certified by a registered accountant, and supported by copies of tax returns, if audits are not required by the laws of their countries of origin.
 - ii) Certificate to the effect that the bidder has not defaulted at any stage in the repayment / Debt servicing with any financial institution.
 - iii) Copy of documentary evidence in support of source of Financing.

Date _____ 2017

Signature _____

FORM 4

PAGE 1 OF 1 PAGE

Quality Assurance and Other Details

Name of Bidder

Quality Assurance and Organisation Setup

Bidder should provide the information on quality assurance system and a typical set up of his organisation.

- A. Description on Bidder's Quality Assurance System

- B. Organisation Chart (*indicate positions of key personnel proposed*)
 - Base Office (Design Office)
 - Site

- C. Narrative Description of Organisation Chart

- D. Description of Relationship between Base Office and Site Management

- E. Details of Accredited and Established Service Centers for after sales service

- F. Details of Training Facilities available for Owner's Skilled workmen

Date _____ 2017

Signature _____

FORM 5

PAGE 1 OF 1 PAGE

MANUFACTURER'S AUTHORIZATION FORM

To

Dear Sir,

We, _____ who are established and reputed manufacturers of _____ having factories at _____ and _____ hereby inform that we are not supplying these machines/equipments directly to any company/ mill in India but only through our authorized agents and we authorize M/s _____ (Name and address of Agents) to bid, negotiate and conclude the Contract with you against IFB dated _____ for the above goods manufactured by us.

No company or firm or individual other than M/s _____ are authorized to bid, negotiate and conclude the contract in regard to this business against this specific IFB dated _____.

We, _____ also certify that we do not sell any of the above-mentioned products/ machines direct to any mill(s) in India but only through authorized dealers only.

We hereby extend our full guarantee and warranty as per Clause 15 of the General Conditions of Contract for the goods offered for supply against this invitation for bid by the above firm.

Yours faithfully,

(Name)

for and on behalf of M/s _____
(Name of manufacturers)

Note: This letter of authority should be on the letterhead of the manufacturing concern and should be signed by a person competent and having the power of attorney to bind the manufacturer.

FORM 6

FORM OF DECLARATION OF REASONABLE PRICING

REF. NO. :

DATE :

To

Dear sir,

“We.....manufacturer of ACW machines/ or authorized agent of, on the behalf of our Principal undertake that quoted price are lowest for the same make of machine supplied in India in last 6 months. In case of any otherwise finding at later stage, NTC will have full right to recover the difference cost of supply with 100% as penalty amount.”

(Signature of Competent Authority)

(Designation):

Date

FORM 7

PAGE 1 OF 1 PAGE

List of Application Forms

Name of Bidder

Indicate total number of pages for each Application Form submitted with Application.

Form No.	Title	Nos. of Pages
	Letter of Application	
1	General Information	
2	General Experience Record	
3	Summary - Completed Contracts of Similar Nature and Complexity	
3A	Details of Completed Contracts of Similar Nature and Complexity	
4	Current Contract Commitments/Works in Progress	
5	Financial Data	
6	Quality Assurance	
7	Manufacturer Authorisation Letter	
8	List of Forms	

Date _____ 2017

Signature _____

TABLE OF CONTENTS

	PAGE NO.
A. CONTRACT AND INTERPRETATION.....	1
1. DEFINITIONS.....	1
2. CONTRACT DOCUMENTS.....	5
3. INTERPRETATION	5
4. NOTICES	9
5. GOVERNING LAW.....	11
6. SETTLEMENT OF DISPUTES	11
B. SUBJECT MATTER OF CONTRACT	13
7. SCOPE OF FACILITIES.....	13
8. TIME FOR COMMENCEMENT AND COMPLETION	16
9. CONTRACTOR'S RESPONSIBILITIES.....	16
10. OWNER'S RESPONSIBILITIES.....	17
C. PAYMENT	19
11. CONTRACT PRICE.....	19
12. TERMS OF PAYMENT.....	21
13. SECURITIES	22
14. TAXES AND DUTIES.....	24
D. INTELLECTUAL PROPERTY	29
15. COPYRIGHT	29
16. CONFIDENTIAL INFORMATION	29

E.	WORK EXECUTION	31
17.	REPRESENTATIVES	31
18.	WORK PROGRAM.....	35
19.	REFER CLAUSE 43.....	36
20.	DESIGN AND ENGINEERING	36
21.	PROCUREMENT	36
22.	INSTALLATION	40
23.	TEST AND INSPECTION	44
24.	COMPLETION OF THE FACILITIES.....	46
25.	COMMISSIONING AND OPERATIONAL ACCEPTANCE	47
F.	GUARANTEES AND LIABILITIES.....	50
26.	COMPLETION TIME GUARANTEE	50
27.	DEFECT LIABILITY	51
28.	NOT USED.....	54
29.	PATENT INDEMNITY	54
30.	LIMITATION OF LIABILITY	56
G.	RISK DISTRIBUTION.....	57
31.	TRANSFER OF OWNERSHIP	57
32.	CARE OF FACILITIES	57
33.	LOSS OF OR DAMAGE TO PROPERTY, ACCIDENT OR INJURY TO WORKERS; INDEMNIFICATION.....	59
34.	INSURANCE	60

35.	UNFORESEEN CONDITIONS	64
36.	CHANGE IN LAWS AND REGULATIONS.....	65
37.	FORCE MAJEURE.....	66
38.	WAR & NUCLEAR RISKS	67
39.	NOT USED.....	69
40.	EXTENSION OF TIME FOR COMPLETION.....	69
41.	SUSPENSION	70
42.	TERMINATION.....	73
43.	ASSIGNMENT	81
44.	SUB- CONTRACT.....	81
	APPENDIX 1 TERMS AND PROCEDURES OF PAYMENT.....	84
	APPENDIX 2 INSURANCE REQUIREMENTS	92
	APPENDIX 3 TIME SCHEDULE.....	95
	APPENDIX 4 SCOPE OF EXECUTION OF CIVIL WORKS AT SITE BY THE OWNER.....	97
	APPENDIX 5 LIST OF DOCUMENTS FOR APPROVAL OR REVIEW	98

A. CONTRACT AND INTERPRETATION

1. DEFINITIONS

1.1 The following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

“Approved” means approved in writing, including subsequent written confirmation of previous verbal approval and “approval” means approval in writing, including as aforesaid.

“Commissioning” means successful operation of the Facilities by the Contractor, which operation is to be carried out by the Contractor as provided in GCC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Commissioning Test(s).

“Completion” means that the Facilities have been completed operationally and structurally and put in a tight and clean condition, and that all work in respect of Pre-commissioning of the Facilities has been completed and commissioning has been attained.

“Contract Documents” means the documents listed in GCC Clause 2.1 (Contract Documents).

“Contract Price” means the sum specified in GCC Clause 11 (Contract Price)

“Contract” means the Contract Agreement entered into between the Owner and the Contractor, together with the Contract Documents referred to therein, including those specified in Clause 2 herein after; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.

“Contractor’s Equipment” means all plant, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for transportation, installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant and Equipment, or other things intended to form or forming part of the Facilities.

“Contractor” means the person(s), firm or company, group of firms or joint Venture, whose bid to perform the Contract has been accepted by the Owner and is named as

such in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.

“Contractor’s Representative” means any person nominated by the Contractor and approved by the Owner in the manner provided in GCC Sub-Clause 17.2 (Contractor’s Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.

“Day” means a calendar day from midnight to midnight.

"Defect" means:

- (i) Any error, omission, deficiency, insufficiency or defect in or to the Facilities;
and
- (ii) Any damage to the Facilities to the extent that such damage is caused directly or indirectly by any error, omission, deficiency, insufficiency or defect in or to the Facilities, and includes any Latent Defect.

“Defect Liability Period” means the period of validity of the warranties given by the Contractor commencing at Taking Over of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof.

“Effective Date” means the date of issue of Letter of Acceptance by the Owner.

“Owner” means National Textile Corporation Limited and includes the legal successors or assigns of the Owner.

“Engineer In-Charge” means the person appointed from time to time by the Owner in the manner provided in GCC Sub-Clause 17.1 (Engineer-In-Charge) hereof and named as such in the GCC to perform the duties delegated by the Owner.

"Engineer In-charge’s Representative" means a person appointed from time to time by the Engineer Incharge under Sub-Clause 17.1.

“Facilities” means the Plant and Equipment to be supplied and installed, as well as all the Installation Services including design, manufacture, supply, transportation, erection, testing, commissioning, including carrying out of all incidental and necessary works, and services, whether permanent or temporary, under the

Contract,

“**GCC**” means the General Conditions of Contract hereof.

“**Gol**” means Government of India.

“**Installation Services**” means all those services ancillary to the supply of the Plant and Equipment for the Facilities, to be provided by the Contractor under the Contract; e.g., transportation and provision of marine or other similar insurance, inspection, expediting, Site preparation works (including the provision and use of Contractor’s Equipment and installation, testing, Pre-commissioning, commissioning, the provision of operations and maintenance manuals, training, etc.

“**I.S.**” means Indian Standard specifications with latest amendments or revisions as currently in force at the time of execution of the Facilities.

“**Letter or Acceptance**” means the letter from the Owner conveying acceptance of the bid subject to such reservations as may have been stated therein.

“**Milestone**” means an intermediate event or landmark identified in the Contract, which is critical for Completion of Facilities within Time for Completion.

“**Month**” means from the beginning of a given date of a calendar month to the end of the preceding date of the next calendar month.

“**Operational Acceptance**” means the acceptance by the Owner of the Facilities, which certifies the Contractor’s fulfillment of the Contract in respect of Commissioning Tests of the Facilities in accordance with the provisions of Contract and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.

“**Party**” means the Owner or the Contractor, as the case and context may require, and “**Parties**” means the Owner and the Contractor collectively.

“**Plant and Equipment**” means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GCC Sub-Clause 7.3 hereof), but does not include Contractor’s Equipment.

“Pre-commissioning” means the testing, checking and other requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Clause 24 (Completion of the Facilities) hereof.

“Manager” means the Manager incharge of the Facilities or his successor and to whom the Engineer-in-charge reports.

“Site” means the named ‘Mill’ where the Facilities are to be installed.

“Subcontractor,” including vendors, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant and Equipment, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.

“Taking-Over Certificate” means the certificate to be issued by the Owner / Engineer In-Charge to the Contractor upon completion of Trial Run Period and field acceptance tests..

“Tax”/ “Taxes” means any and all taxes, duties, cess, surcharges, including taxes on gross receipts, sales, turn-over, value added, use, manufacture, consumption, property, income, franchise, capital, occupational, license, excise and documentary stamps taxes, octroi, customs and other duties, assessments, or fees, levied or assessed by any country, government, subdivision thereof or any other taxing authority, including all sales tax, value added tax, works contract tax, service tax, import or customs duty, excise duty, municipal taxes, entry tax and other taxes and contributions imposed or measured by any taxing authority upon the sale, purchase or use of materials, supplies, equipment, services or labor furnished as well as taxes payable by any Subcontractor or any of their employees.

“Temporary Works” means all temporary works of every kind required for the carrying out and completion of the Facilities including remedying of any defects therein, but not as a permanent part of the Facilities.

“Time for Completion” means the time within which Completion of the Facilities as a whole is to be attained in accordance with the stipulations in the relevant provisions of the Contract.

‘Trial Run Period’ means a period commencing immediately after issuance of

Completion Certificate during which the machines will be on trial run for a period of 30 (thirty) days.

2. CONTRACT DOCUMENTS

2.1 The following documents shall constitute the Contract between the Owner and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (a) The Contract Agreement
- (b) Letter of Acceptance
- (c) Technical Specifications,
- (d) Price Schedules.
- (e) General Conditions of Contract and the Appendices
- (f) Procedures (as listed under Forms and Procedures)

All documents listed above are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

In the event of any ambiguity or conflict among the documents listed above, the order of precedence shall be the order in which the documents have been listed above; the first one at serial no. (a) being at the highest order of precedence.

The Contract will be signed in two originals and the Contractor shall be provided with one signed original and the other will be retained by the Owner.

2.2 The Contractor shall provide free of cost to the Owner all the engineering data, drawing and descriptive materials etc. submitted with the bid, in two (2) copies to form a part of the Contract immediately after Letter of Acceptance.

2.3 Subsequent to signing of the Contract, the Contractor at his own cost shall provide the Owner with five (5) true copies of Contract within thirty (30) days after signing of the Contract.

3. INTERPRETATION

3.1 Language

3.1.1 All correspondence and communications to be given, and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with that language.

3.1.2 If any of the Contract Documents, correspondence or communications are prepared in any language other than the English language, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.

3.2 Singular and Plural

The singular shall include the plural and the plural the singular, except where the context otherwise requires.

3.3 Headings

The headings and marginal notes in the General Conditions of Contract are included for ease of reference, and shall neither constitute a part of the Contract nor affect its interpretation.

3.4 Persons

Words importing persons or parties shall include firms, corporations and government entities.

3.5 Incoterms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be the same as prescribed by '*Incoterms-2010*'.

Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

3.6 Construction of the Contract

3.6.1 The Contracts to be entered into between the Owner and the successful bidder shall be as under:

For Foreign Bidder

- i. First Contract: For CIF/CIP supply of all offshore equipments and materials including Mandatory spares and Tools & Instruments.
- ii. Second Contract: For Ex-Works supply of all equipment and materials of Indian origin including Mandatory spares and Tools & Instruments.
- iii. Third Contract: for providing all on shore services in respect of all equipment supplied under both first & second contracts and any other services specified in the contract documents.

Above contracts will contain a crossfall breach clause specifying that breach of one will constitute a breach of the other Contract(s) which will confer a right on the Owner to terminate the other Contract(s) also at the risk and the cost of the Contractor.

If the Foreign Bidder has proposed an Assignee in its bid to execute the Second Contract and/or the Third Contract and has also furnished written unequivocal consent of the proposed Assignee to work as an independent Contractor on the terms and conditions offered by the bidder and if the Owner is satisfied with the capacity and experience of the Assignee proposed in the bid, the Owner will enter into the Second Contract and/or the Third Contract with the Assignee.

In case no Assignee has been proposed by the foreign bidder in its bid or if the Assignee fails to enter into the Second Contract and/or Third Contract with the Owner or if the Owner in its judgment does not find acceptance of the proposed Assignee as its Contractor, then the foreign bidder shall be obliged to enter into and execute all the three Contracts with the Owner.

It is understood that as per extant provision, Indian Income Tax is not payable on sale of goods, if the Contract is on Principal-to-Principal basis and the title of goods passes to the Owner outside India as in the proposed First Contract. The Bidders are, however, advised to check the position from their own sources.

For Indian Bidder

- i. First Contract: For Ex-works supply and CIF/CIP supply, if any, of all equipments and materials including Mandatory spares and Tools & Instruments identifying separately the CIF/CIP and EX-Works components of the Supply.
- ii. Second Contract: For providing all services i.e. inland transportation for delivery at Site, unloading, storage, handling at Site, installation, testing and commissioning including performance testing in respect of all the equipments supplied under the "First Contract" and any other services specified in the Contract Documents.

Both contracts will contain a crossfall breach clause specifying that breach of one will constitute breach of the other.

3.6.2 The award of separate Contracts shall not in any way dilute the responsibility of the Contractor for the successful completion of the Facilities as per Contract Documents and a breach of the other Contract(s) which will confer a right on the Owner to terminate the other Contract(s) also at the risk and cost of the Contractor.

3.7 Entire Agreement

The Contract shall constitute the entire agreement between the Owner and the Contractor with respect to the subject matter of the Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

3.8 Amendment

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party hereto.

3.9 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.

Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Owner, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Owner.

3.10 Not Used

3.11 Non-Waiver

3.11.1 Subject to GCC Sub-Clause 3.11.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.11.2 Any waiver of a party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

3.12 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

3.13 Country of Origin

"Origin" means the place where the materials, equipment and other supplies for the Facilities are produced or manufactured, and from which the services are provided.

4. NOTICES

- 4.1** Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile or Electronic Data Interchange (EDI) to the address of the relevant party, with the following provisions.
- 4.1.1** Any notice sent by cable, telegraph, telex, facsimile or EDI shall be confirmed within two (2) days after dispatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract.
- 4.1.2** Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier.
- 4.1.3** Any notice delivered personally or sent by cable, telegraph, telex, facsimile or EDI shall be deemed to have been delivered on date of its dispatch.
- 4.1.4** Either party may change its postal, cable, telex, facsimile or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party in writing.
- 4.2** Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.

4.3 Owner's address for notice purposes:

National Textile Corporation Ltd,
Core IV, SCOPE COMPLEX,
7 Lodi Road, New Delhi-110003

• **Contractor's Address for notice purposes:**

(Address, telephone no, fax no. etc.)

5. GOVERNING LAW

5.1 The Contract shall be governed by and interpreted in accordance with laws of India.

6. SETTLEMENT OF DISPUTES

6.1 Amicable Settlement

6.1.1 If any dispute arises between the Owner and the Contractor in connection with, or arising out of, the Contract or the execution of the Facilities, whether during the execution of the Facilities or after their completion and whether before or after the repudiation or after termination of Contract, including any disagreement by either party with any action, inaction, opinion, instruction, determination, certificate or valuation of the Engineer-in-Charge, an attempt shall be made to resolve the matter in dispute amicably, through mutual consultations.

6.2 Arbitration

6.2.1 Any dispute, in respect of which the Owner and the Contractor have failed to reach at an amicable settlement pursuant to Sub-Clause 6.1 within 60 days of commencement of the said mutual consultations, shall be referred to and settled by arbitration as set forth below. The arbitral tribunal shall have full power to open-up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer-in-Incharge.

6.2.2 All disputes referred to arbitration in accordance with Clause 6.2.1 shall be finally settled by arbitration in accordance with the Arbitration & Conciliation Act, 1996, or any statutory amendment thereof. The arbitral tribunal shall consist of 3 arbitrators, one each to be appointed by the Owner and the Contractor. The third Arbitrator shall

be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding arbitrator.

6.2.3 The reference to arbitration may proceed notwithstanding that the Facilities shall not then be or be alleged to be complete, provided always that the obligations of the Owner, and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Facilities. The Contractor shall not be entitled to suspend the Work or any part thereof notwithstanding the pendency of disputes between the parties. The payment due to the Contractor and not disputed by the Owner, shall be continued to be made in terms of the Contract.

6.2.4 Arbitration proceedings shall be held at New Delhi, India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English and the courts at New Delhi, India shall have exclusive jurisdiction.

6.2.5 The decision of the majority of arbitrators shall be final and binding upon both parties.

6.2.6 The cost of the arbitration as fixed by the arbitrators shall be borne equally by the parties unless otherwise ordered by the Arbitrator at the time of award. However, the expenses incurred by each party in connection with the preparation, presentation etc. of its cases prior to, during and after the arbitration proceedings shall be borne by each party itself.

6.2.7 All awards of arbitration shall be in writing.

6.3 Notwithstanding any reference to the arbitration herein,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree,
- (b) the Owner shall pay the Contractor any moneys due to the Contractor and not disputed by the Owner.

B. SUBJECT MATTER OF CONTRACT

7. SCOPE OF FACILITIES

7.1 Unless otherwise expressly limited elsewhere in the Contract the Contractor's obligations cover the provision of all Plant and Equipment and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, installation, Pre-commissioning and delivery) of the Plant and Equipment and the installation, completion, commissioning and performance testing of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Contract. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts (as specified in GCC Sub-Clause 7.3 below) and accessories; Contractor's Equipment; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for execution of civil works at Site by the Owner, as set forth in **Appendix 4** (Scope of execution of civil works at Site by the Owner).

7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.

The Plant and Equipment shall be new, unused, not reconditioned and free from defects, suitable for their intended use and of satisfactory and merchantable quality and shall meet the requirements specified in the Technical Specifications.

7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for a period of 5 (five) years from the Commencement of Commercial Operations. The price of such spare parts shall be that given in Schedule No. 6, which shall be added to the Contract Price after the Contractor provides a justification in support of reasonableness of the quoted prices of such spares to the satisfaction of the Owner. The price of such spare parts so agreed shall be deemed to include the purchase price thereof and all other costs and expenses (including the

Contractor's fees) relating to the supply of spare parts. The terms and conditions relating to the supply thereof shall be same as applicable to this Contract.

The Contractor may use any of the Mandatory and/or the recommended spares, in support of its commissioning and testing obligations and its obligations during Defects Liability Period, provided that all such parts so consumed are replaced at the Contractor's cost and expense and provided that the Owner shall be under no obligation to make available such parts.

- 7.3.1** All the spares for the equipment under the Contract will strictly conform to the Specification and other relevant documents and will be identical to the corresponding main equipment / components supplied under the Contract and shall be fully interchangeable. The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant and Equipment. Other spare parts and components shall be supplied as promptly as possible, but in any case within six (6) months of the Owner placing the order unless otherwise mutually agreed,
- 7.3.2** All the Mandatory spares covered under the Contract shall be produced alongwith the main equipment as a continuous operation and the delivery of the spares will be effected along with the main equipment . In case of recommended spares, the above will be applicable provided the order for the recommended spares has been placed with the Contractor prior to commencement of manufacture of the main equipment.
- 7.3.3** The quality plan and the inspection requirement finalised for the main equipment will also be applicable to the corresponding spares.
- 7.3.4** The Contractor shall provide the Owner with the non-proprietary manufacturer's drawings, catalogues, assembly drawings and any other document required by the Owner so as to enable the Owner to identify the recommended spares. Such details will be furnished to the Owner as soon as they are prepared but in any case not later than two (2) months prior to commencement of manufacture of the corresponding main equipment.
- 7.3.5** The Contractor will provide the Owner with all the addresses and particulars of his sub-suppliers while placing the order on vendors for items/components/ equipments covered under the Contract and will further ensure with his vendors that the Owner, if so desires, will have the right to place order for spares directly on them on mutually agreed terms based on offers of such vendors.

7.3.6 Defect Liability of Spares

The Contractor shall warrant that all spares supplied will be new and in accordance with the Contract Documents and will be free from defects in design, material and workmanship and shall further guarantee as under:

7.3.6.1 A) For any item of spares ordered or to be ordered by the Owner for 5 years operational requirement of the plant which are manufactured as a continuous operation together with the corresponding main equipment/ component, the defects liability period will be 6 months from the actual date of replacement/ installation of spare part(s). In case of any failure in the original component/equipments due to faulty designs, materials and workmanship, the corresponding spare parts, if any, supplied will be replaced without any extra cost to the Owner unless a joint examination and analysis by the Owner and the Contractor of such spare parts prove that the breakdown was a result of gross misuse of the equipment by the Owner. Such replaced spare parts will have the same defect liability as applicable to the replacement made for the defective original part/ component provided that such replacement for the original equipment and the spare replaced are again manufactured together. The discarded spare parts will become the property of the Contractor as soon as they have been replaced by the Contractor.

B) For the item of spares ordered or to be ordered by the Owner for 5 years operational requirement of the plant, which with the written approval of the Owner, are not manufactured as a continuous operation together with the manufacture of the corresponding main equipment/component, will be warranted for trouble free operation if used within a period of 6 months (reckoned from the date of delivery at Site). However, if such spare parts are put to use after 24 months of the delivery at Site then the guarantee of such spares will stand valid till the expiry of 36 months from the scheduled date of the completion of Commissioning of equipment/plant of trouble free operation after such spares are put in service.

7.3.6.2 The defect liability of spares that are not used within 24 months from the respective dates of the delivery at Site covered in para 7.3.6.1(B) above will, however, be subject to condition that all such spares being stored/maintained/preserved in

accordance with Contractor's standard recommended practice, if any, and the same has been furnished to the Owner.

7.3.7 In the event of termination of the production of spare parts, advance notification will be made to the Owner of the pending termination, with twelve (12) months time to permit the Owner to procure the needed requirement. The same provision will also be applicable to Sub-Contractors. Further, following such termination, the Contractor and/or his Sub-Contractors will provide at no cost to the Owner, with full non-proprietary manufacturing drawings, material specifications and technical information including information on alternative equivalent makes required by the Owner for the purpose of manufacture/procurement of such items.

8. TIME FOR COMMENCEMENT AND COMPLETION

8.1 The Contractor shall proceed with the Facilities in accordance with the time schedule specified in **Appendix 3** (Time Schedule). The time for completion of the Facilities shall be reckoned from the Effective Date of Contract.

8.2 For foreign bidders, work completion will be 4 months ex-factory delivery from the date of opening of L/C and for one month for commissioning after machine reaches the site subject to clearance/readiness at site. In case of domestic supplier, delivery will be completed within 4 months from the date of making 10% advance.

9. CONTRACTOR'S RESPONSIBILITIES

9.1 The Contractor shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities with due care and diligence in accordance with the Contract.

9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities provided by the Owner, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site (if access thereto was available) and of other data readily available to it relating to the Facilities as at the date twenty-eight (28) days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and

information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.

- 9.3** The Contractor shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located that are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Owner under GCC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.
- 9.4** The Contractor shall comply with all laws in force in the country where the Facilities are installed and where the Installation Services are carried out.
- 9.5** The Contractor shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities and shall perform all work and services of whatsoever nature required by him to properly carry out pre-commissioning, commissioning tests.

10. OWNER'S RESPONSIBILITIES

- 10.1** The Owner shall endeavour to ensure the accuracy of all information and/or data to be supplied by the Owner. It shall be the responsibility of the Contractor to independently verify the same and the Owner shall bear no risk or responsibility in respect of the information so provided. .
- 10.2** The Owner shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite right of ways. The Owner shall give possession of and accord rights of access thereto for Facilities as per the Time Schedule agreed by the Owner or actual requirement, whichever is later.
- 10.3** The Owner shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the is located, which such authorities or undertakings require the Owner to obtain them in the Owner's name, are necessary for the execution of the

Contract (they include those required for the performance by both the Contractor and the Owner of their respective obligations under the Contract), including those specified in **Appendix 4** (Scope of execution of civil works at Site by the Owner) .

- 10.4** If requested by the Contractor, the Owner shall cooperate with and assist the Contractor, by signing necessary letters or representations as may be reasonably necessary, in obtaining permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
- 10.5** Unless otherwise specified in the Contract or agreed upon by the Owner and the Contractor, the Owner shall provide sufficient, properly qualified operating and maintenance personnel to enable the Contractor to properly carry out Pre-commissioning, Commissioning and Commissioning Tests, and shall perform all Work and Services of whatsoever nature including those required by the Contractor, all in accordance with the provisions of **Appendix 4** (Scope of execution of civil works at Site by the Owner) and in the manner thereupon specified or as otherwise agreed upon by the Owner and the Contractor.
- 10.6** The Owner shall be responsible for the continued operation of the Facilities after Completion and shall be responsible for facilitating the Commissioning Test(s) for the Facilities.
- 10.7** All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Owner, save those to be incurred by the Contractor with respect to the performance of Commissioning Tests.

C. PAYMENT

11. CONTRACT PRICE

11.1 Subject to the other terms and conditions, the Contract Price shall be the amounts in different currencies as specified in the Contract Agreement/Letter of Acceptance.

11.1.1 Without prejudice to sub-clause 11.1 above, the Contract Price includes the elements set out in Bill of Quantities (Volume 6).

11.2 Changes in Contract Price

11.2.1 Subject to Sub-clause 11.2.2, the Contract Price shall be adjusted only for the following reasons:

- (i) Unforeseen conditions in accordance with GCC Clause 35,
- (ii) Change in Laws and Regulations in accordance with GCC Clause 36,
- (iii) An event of Force Majeure in accordance with GCC Clause 37,
- (iv) Any other reasons for which adjustment of Contract Price is admissible in accordance with the specific provisions of this Contract,

11.2.2 Notwithstanding anything contained in Sub-clause 11.2.1, the Contract Price shall not be increased and the Contractor shall not be entitled to claim such increase or additional costs:

- (i) to the extent that the circumstances giving rise to the increase in costs to the Contractor have occurred by reason of any delay, act, omission, default or negligence of the Contractor and/or any Subcontractor;
- (ii) except for Sub-clause 11.2.1 (i), if the Contractor has failed to notify the Owner of the circumstances giving rise to such increase in costs within the time frame stipulated under the respective sub-clauses or within thirty (30) days of the occurrence of such circumstances or of the date upon which the Contractor ought reasonably to have known of such occurrence (if later); and has failed even after fifteen (15) days of the dispatch of a notice by the Owner to give him the detailed particulars of the amount of such increase, where after the Contractor shall be deemed to have waived or abandoned any such claim ;

- (iii) to the extent the Contractor has failed to use reasonable endeavors to minimize the increase in costs.

11.2.3 Granting by the Owner of any Extension of Time for Completion under Clause 40 shall not by itself entitle the Contractor to any increase in Contract Price.

11.2.4 Procedure for claiming change in Contract Price

11.2.4.1 Within fifteen (15) days after notifying the Owner pursuant to Sub-clause 11.2.2, the Contractor shall submit to the Owner detailed particulars of its claim for an increase in the Contract Price including details of costs (to the extent the Contractor has complied with its obligations under Sub-clause 11.2.5 below).

11.2.4.2 The Contractor shall promptly submit such further particulars as the Owner may reasonably require to assess the validity of the claim or any item of it but the Contractor shall, in any event, submit details of all costs reasonably and properly incurred.

11.2.4.3 The Contractor shall keep detailed contemporary records of the costs it incurs in relation to matter in question and such records shall be open to inspection by the Engineer-in-charge at all reasonable times.

11.2.5 Assessment

When the Owner has received detailed particulars of the Contractor's claim in accordance with Sub-clause 11.2.4, it shall after due consultation with the Contractor take a decision as to whether the Contractor is entitled to an increase in Contract Price or not and if the Parties cannot agree on the admissibility or the amount of any increase in Contract Price or on the timing for payment, the matter shall be resolved under Sub-clause 6.2 (Arbitration).

11.2.6 Decrease in Contract Price

Where the Owner considers there should be a decrease in the Contract Price under Sub-clause, 11.2.1, it shall as soon as practicable notify the Contractor of the amount of the decrease to which it considers itself to be entitled and shall promptly provide to the Contractor such particulars of its claim for a decrease in the Contract Price as may have been reasonably required by the Contractor whereupon, if the Contractor so agrees, the Contract Price will be reduced accordingly and if the Parties cannot

agree on whether there should a decrease in the Contract Price or on the amount of any adjustment to the Contract Price or the manner that such reduction is allocated to the remaining payments to the Contract Price, the matter shall be resolved under Sub-clause 6.2 (Arbitration).

11.2.7 Amendments to the Contract

All adjustments to the Contract Price requiring amendment to the Contract shall be effected by a Change Order issued as per the Form 11- Change Order Procedure (Forms and Procedures)

11.3 Subject to GCC Sub-Clauses 9.2, 10.1 and 35 (Unforeseen Conditions) hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall cover all its obligations under the Contract. The items of equipment, Mandatory spares, Mandatory Tools and Tackles, and Recommended spares and Recommended Tools and Tackles under the Contract shall be as given in the Bill of Quantities (Volume 6). The further breakdowns are given in the respective Price Schedules (Forms and Procedures).

12. TERMS OF PAYMENT

12.1 The Contract Price shall be paid in the manner as specified in Appendix-1 (Terms and Procedures of Payment). The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix-1. The Mobilization Advance equivalent to 10 % of the Contract Price shall be released within 14 days of acceptance of Advance Payment Security, provided that Performance Security has already been accepted by the Owner (also refer GCC sub clause 13.2.1).

12.2 No payment made by the Owner herein shall be deemed to constitute acceptance by the Owner of the Facilities or any part(s) thereof. All the payments made till the final bill shall be considered as running advance payment and adjustable for any omissions, commissions and errors detected any time against any amount due to the Contractor.

12.3 In the event that either Party fails to make any payment which has become due by its respective due date or within the period set forth in the Contract, the defaulting party shall pay to the non-defaulting party, interest on the

amount of such delayed payment at the rate(s) shown in Appendix-1 (Terms and Procedures of Payment) for the period of delay until payment has been made in full.

12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in Appendix-1 (Terms and Procedures of Payment), subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's bid.

13. SECURITIES

13.1 Issuance of Securities

The Contractor shall provide the securities specified below in favour of the Owner at the times, and in the amount, manner and form specified below.

13.2 Advance Payment Security

13.2.1 The Contractor shall, within twenty-eight (28) days of the Letter of Acceptance issued by the Owner, provide a security in an amount equal to the 110 % of advance payment in accordance with Appendix-1 (Terms and Procedures of Payment), and in the same currency or currencies, with a validity of up to the date of Completion of the Facilities in accordance with GCC Clause 24.

13.2.2 The security shall be in the form provided in the bidding documents. The security in the form of a Bank Guarantee for amounts expressed in Indian Rupee shall be acceptable if the same is issued by any Indian Nationalized Bank / Scheduled Bank or a foreign Bank notified as Scheduled Bank under the provisions of "Reserve Bank of India Act" through any of its branches in India. Guarantees for amounts in currencies other than that of India, shall be acceptable if these are issued by an international Bank of repute situated outside India (to be confirmed by their branch in India or by any Scheduled Bank in India) or by an authorised dealer in India as per guidelines of RBI from time to time. The amount of the security shall be reduced as per the procedure specified below:

The Advance Payment Security shall be allowed to be reduced every three (3) months, in proportion to the value of Invoice raised by the Contractor as per 'Terms of

Payment' and accepted by the Owner. The Security in the form of a Bank Guarantee shall be returned by the Owner upon recovery of the entire Advance Payment.

It should be clearly understood that reduction in the value of security for advance shall not in any way dilute the Contractor's responsibility and liabilities under the Contract including in respect of the Facilities for which reduction in the value of security is allowed.

13.3 Performance Security

13.3.1 The Contractor shall, within twenty-eight (28) days of the issue of Letter of Acceptance, provide a Performance Security for the due performance of the Contract for an amount equivalent to 10 (ten) percent of the Contract Price in currency of the Bid with a validity up to 6 months from the date of commissioning or one year from date of bill of lading, whichever is later.

13.3.2 The security shall be denominated in the currency or currencies of the Contract and shall be in the form of bank guarantee attached hereto in the section on Forms & Procedures. The security in the form of a Bank Guarantee for amounts in Indian Rupee shall be acceptable if the same is issued by any Indian Nationalized Bank/Scheduled Bank or a foreign Bank notified as Scheduled Bank under the provisions of "Reserve Bank of India Act" through any of its branches in India. Guarantees for amounts in currencies other than that of India, shall be acceptable if these are issued by an international Bank of repute situated outside India (to be confirmed by their branch in India or by any Scheduled Bank in India) or by an authorized dealer in India as per guidelines of RBI from time to time.

13.3.3 The Performance Security shall be refunded/ returned within sixty (60) days of receiving a request from the Contractor to this effect after the completion of Defect Liability Period (including any extension thereto for whatsoever reason pursuant to Clause 27 of GCC) for the complete Facilities. If the Defects Liability Period has been extended pursuant to GCC Sub-Clause 27.8 hereof, the Contractor shall extend the validity of the Performance Security till the extended date of Defect Liability Period, if applicable to entire Facilities and in the case of part Facilities, submit a new Performance Security in an amount proportionate to the Contract Price of that part valid till the extended date of Defect Liability Period.

13.4 Security Expiry

If any of the Security specified in clauses 13.2 or 13.3 shall fall due to expire prior to the date any such Security are permitted to expire pursuant to the provisions of these clauses (as the case may be), the Contractor shall ensure that a replacement Security is issued by the issuer thereof and delivered to the Owner by not later than [thirty (30)] days prior to the stated expiry date of such Security and, if the Owner shall not have received such replacement Security, the Owner shall be entitled to draw the full amount of the Security then available for drawing and retain the same by way of security for the performance by the Contractor of its obligations under the Contract until such time as the Owner shall receive such a replacement Security whereupon, subject to the terms of the Contract, the Owner shall refund to the Contractor any balance of the proceeds of drawing then remaining. The Owner shall return each Security to the issuer thereof for cancellation promptly upon receipt of any replacement thereof.

13.5 Claims under Security

The Owner shall be permitted to claim under any security specified in clauses 13.2 and/or 13.3 and appropriate the proceeds if any of the following occur:

- 13.5.1** Dissolution of the Contractor pursuant to GCC Clause 42.2.1(a), results in the Owner terminating this Contract;
- 13.5.2** Any event referred to in GCC clauses 42.2.1 and 42.2.2
- 13.5.3** Failure by the Contractor to fulfill any of its obligations under this Contract; and/or
- 13.5.4** Without prejudice to clause 13.5.3, the Contractor fails to extend any security in accordance with the terms and conditions of this Contract.
- 13.5.5** The Owner and the Contractor have agreed that the amount demanded is payable to the Owner and the amount has not been paid within 45 days thereafter.
- 13.5.6** The Owner has obtained an award in arbitration and the amount awarded has not been paid by the Contractor within 45 days thereafter.

14. TAXES AND DUTIES

- 14.1** a) Except as otherwise specifically provided in the Contract, the Contractor shall administer, bear and pay all Taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside India.
- b) For all expatriate personnel of the Contractor and Subcontractors, and all local personnel directly employed by the Contractor, and Subcontractors in India in connection with the Facilities, personal income tax obligations shall be the responsibility of the Contractor.
- c) The Contractor shall be liable to indemnify, protect, defend and hold harmless the Owner for any failure by it or any Subcontractors to calculate and collect the income tax specified in this sub-clause and pay it directly to the applicable authorities in India.
- 14.2** Notwithstanding GCC Sub-Clause 14.1 above and GCC Sub-clause 21.4, the Owner shall bear and promptly pay all customs and import duties, payable on the Plant and Equipment and Mandatory Spares and Tools & Devices specified in Schedule No.1 and Schedule No. 2 and that are to be incorporated into the Facilities, subject to furnishing of the requisite documents by the Contractor. The Owner shall also reimburse the Contractor, Entry Tax, if any, on items specified in Schedule No.1.

The Owner shall reimburse to the Contractor, Excise Duty, Sales Tax/VAT, Local tax, Entry Tax and Octroi in respect of direct transaction between the Owner and the Contractor as elaborated hereinafter, imposed on the Plant and Equipment and Mandatory Spare Parts and Tools & devices specified in Schedule No. 2 to be incorporated into the Facilities.

However, the Prices in Schedule No. 3 & 4 shall be inclusive of all Taxes, Duties, Levies & Charges, Octroi, Works/Service Tax etc.

The above payment / reimbursement of all applicable taxes, duties, other levies and charges etc. shall be restricted to the extent of total amount mentioned in Schedule No. 7 (Volume- 4, F&P) subject to GCC Clause 14.4 & 36. The differential amount in the customs duty element arising due to exchange rate as adopted in Schedule 7

(Volume- 4, F&P) and the assessed value of customs duty shall be to the account of the Owner.

Except above, no other taxes or duties shall be reimbursed.

14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the Owner's country, the Owner shall use its best endeavours to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in GCC Clause 11 is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in the Owner's country. If any rate of Tax is increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be, in accordance with GCC Clause 36 (Change in Laws and Regulations) hereof provided the Contractor becomes legally liable to additional liability there under and actually pays the same for bonafide use on the works contracted, then the Contractor shall immediately inform the Engineer-in-Charge in this regard and on being satisfied, the Owner will reimburse the same to the Contractor on production of satisfactory proof of payment.

However, these adjustments would be restricted to indirect taxes/duties/levies on direct transactions between the Owner and the Contractor and not on procurement of raw materials, manpower, construction plants and equipment, intermediary components etc. by the Contractor and also shall not be applicable on the bought out items dispatched directly from sub-vendor's works to site.

- 14.5**
- a) The Contractor shall be responsible for all social security taxes, contributions to compulsory savings funds and any other contributions relating to social security in connection with its personnel and the personnel of its Sub-contractors in India.
 - b) The Contractor shall be liable to indemnify, protect, defend and hold harmless the Owner for any failure by it or any Subcontractor to pay any social security taxes,

contributions to compulsory savings funds and any other contributions relating to social security to the applicable authorities in India in a timely manner or at all.

14.6 a) The Contractor shall be liable for and shall be liable to indemnify, protect, defend and hold harmless the Owner against any taxes, withholding tax, rates, duties, stamp duty, levies, charges, and/or fees assessed in connection with:

i. The importation, sale or disposition of Contractor's Equipment, the Contractor's other assets, or the construction plant or assets of any Subcontractor,; and

ii. The failure to export previously imported Contractor's Equipment, the Contractor's other assets, or the Contractor's Equipment or assets of any Subcontractor following the conclusion of the Facilities hereunder.

b) The Owner shall not be liable and the Owner shall not reimburse the Contractor for any third party fees or charges in connection with importation or exportation.

14.7 a) Without prejudice to the generality of clause 14.1, the Contractor shall be responsible for and be liable to indemnify, protect, defend and hold the Owner harmless from the reporting, filing and payment of any Taxes (wherever arising) including taxes on income, profit or turnover, duties, charges or fees imposed directly or indirectly on the Contractor or its Subcontractors or their respective agents as a result of the Contractor's performance of this Contract.

b) The Contractor shall be liable to indemnify, protect, defend and hold harmless the Owner against any and all costs including fines, interest penalties and legal Costs suffered or incurred by the Owner and resulting from the Contractor's failure to comply with relevant taxation and duty requirements.

c) The Contractor shall indemnify and hold harmless the Owner from and against any delay and losses arising out of or in connection with the clearance of the imported materials due to any discrepancies in the list of goods furnished, faulty documentation or mis-declaration or any reason attributable to the Contractor.

d) If the Owner receives notification or assessment of any Taxes (whether as an agent, or in substitution of the Contractor, its Subcontractors or their servants, agents or otherwise) in respect of the performance of the Contractor's obligations

under this Contract, the Owner shall forthwith notify the Contractor upon which the Contractor shall take prompt and all necessary action for settlement and/or any other lawful disposal of such notification or assessment.

- e) The Contractor shall pay forthwith on demand to the Owner all costs including fines and penalties, which the Owner may incur as a result of:
- i. The Owner having been required by any Indian Governmental Instrumentality to pay any Taxes which the Contractor is obligated to bear hereunder; or
 - ii. Any cost actually sustained by the Owner for failure by the Contractor to pay any Taxes levied on it and for which it is responsible under this Contract.

14.8 The Owner may withhold from sums otherwise due to the Contractor under this Contract any taxes or amounts required by applicable Law to be withheld from the Contractor and paid to the appropriate taxing authorities, and the Owner shall provide the Contractor with all receipts evidencing payment to such authorities of the taxes or amounts withheld. Any such withholding of Tax by the Owner shall have no effect on the Contract Price, and the Contract Price shall not be liable to increase because of any withholding of Tax. No Tax shall be withheld if a Tax exemption certificate (that is in full force and effect) from the relevant Indian Government Instrumentality is provided by the Contractor to the Owner.

D. INTELLECTUAL PROPERTY

15. COPYRIGHT

15.1 The copyright in All drawings, documents and other materials containing data and information furnished to the Owner by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Owner directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

15.2 The Owner shall, however, be free to reproduce all drawings, documents and other material furnished to the Owner for the purpose of the Contract including, if required, for operation and maintenance.

16. CONFIDENTIAL INFORMATION

16.1 The Owner and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Owner to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.

16.2 The Owner shall not use such documents, data and other information received from the Contractor for any purpose other than the operation, maintenance and repairs of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Owner for any purpose other than the design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.

16.3 The obligation of a party under GCC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which:

- (a) Now or hereafter enters the public domain through no fault of that party

- (b) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto
- (c) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.

16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Contract, for a period of two years of such termination.

E. WORK EXECUTION

17. REPRESENTATIVES

17.1 Engineer In-Charge

If the Engineer In-Charge is not named in the Contract, then within fourteen (14) days of the Effective Date, the Owner shall appoint and notify the Contractor in writing of the name of the Engineer In-Charge. The Owner may from time to time appoint some other person as the Engineer In-Charge in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. The Owner shall take all reasonable care to see that no such appointment is made at such a time or in such a manner as to impede the progress of work on the Facilities. The Engineer In-Charge shall represent and act for the Owner at all times during the currency of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Engineer In-Charge.

All notices, instructions, information and other communications given by the Contractor to the Owner under the Contract shall be given to the Engineer In-Charge, except as herein otherwise provided.

17.1.1 Engineer In-charge's Representative

The Engineer's Representative shall be appointed by and be responsible to the Engineer In-charge and shall carry out such duties and exercise such authority as may be delegated to him by the Engineer In-charge under intimation to the Contractor.

Any communication given by the Engineer In-charge's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer In-charge.

17.2 Contractor's Representative & Manager

17.2.1 If the Contractor's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Owner in writing to approve the person so appointed. If the Owner makes no objection to the appointment within

fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Owner objects to the appointment within fourteen (14) days giving the reason therefor, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 17.2.1 shall apply thereto.

17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the currency of the Contract and shall give to the Engineer In-Charge all the Contractor's notices, instructions, information and all other communications under the Contract.

All notices, instructions, information and all other communications given by the Owner or the Engineer In-Charge to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without the Owner's prior written consent, which shall not be unreasonably withheld. If the Owner consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Sub-Clause 17.2.1.

17.2.3 The Contractor's Representative may, subject to the approval of the Owner (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Owner and the Engineer In-Charge.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

17.2.3.1 Notwithstanding anything stated in GCC Sub-Clause 17.1 and 17.2.1 above, for the purpose of execution of Contract, the Owner and the Contractor shall finalise

and agree to a Contract Co-ordination Procedure and all the communication under the Contract shall be in accordance with such Contract Coordination Procedure.

17.2.4 From the commencement of installation of the Facilities at the Site until operational acceptance, the Contractor's Representative shall appoint a suitable person as the manager (hereinafter referred to as "the Manager"). The Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

17.2.5 The Owner may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Owner, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 22.3. The Owner shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

17.2.6 If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 17.2.5, the Contractor shall promptly appoint a replacement.

17.3 Disputing Decisions, Instructions and Orders

17.3.1 If the Contractor disputes any decision, instruction or order of the Engineer In-Charge or the Owner which is effective under clause 17.1 on the basis that it is not in accordance with this Contract or the Law or is contrary to good engineering practice, the Contractor shall, within [twelve (12) business Days] after receiving the decision, order or instruction in writing or written confirmation thereof, notify the Owner giving its reasons for so doing and require the Owner to confirm, reverse or vary such decision, instruction or order pursuant to this clause 17.3.

17.3.2 The Owner, shall within a period of [twelve (12) business Days] of receiving notice pursuant to clause 17.3.1, by notice to the Contractor confirm, reverse or vary such decision, instruction or order and if the Contractor is not satisfied with such confirmed, reversed or varied decision, instruction or order, the matter shall be determined pursuant to clause 6.

17.3.3 Subject to clause 17.3.4, the Contractor shall, notwithstanding any Dispute arising under clause 17.3.2, carry out the decision, instruction or order as confirmed, reversed or varied by the Owner pursuant to clause 17.3.2 provided, however, the Contractor shall not be liable for the consequences of such compliance to the extent that the Parties agree or it is finally determined pursuant to clause 6 that the decision, instruction or order (as confirmed, reversed or varied by the Owner under clause 17.3.2) was not in accordance with this Contract or Law or was contrary to good engineering practice.

17.3.4 The Owner shall, to the extent that the Parties agree, or it is finally determined pursuant to clause 6, that the decision, instruction or order (as confirmed, reversed or varied by the Owner pursuant to clause 17.3.2) was not in accordance with this Contract or the Law or was contrary to good engineering practice, compensate the Contractor, within [thirty (30)] days of receipt by the Owner of an invoice therefor, for the extra Costs incurred by the Contractor in complying with such decision, instruction or order of the Owner and any extra Costs incurred by the Contractor as a result of the agreement reached by the Parties or the determination made pursuant to clause 6, as applicable, that such decision, instruction or order was not in accordance with this Contract or the Law or was contrary to good engineering practice and the Contractor shall be entitled to claim an extension of time, in accordance with clause 40.1, to any milestone date or overall Time for Completion to the extent it has been delayed as a result of such compliance or as a result of any dismantling or remediation works required by such agreement reached by the Parties or such determination pursuant to clause 6, as applicable.

18. WORK PROGRAM

18.1 Contractor's Organization

The Contractor shall supply to the Owner and the Engineer In-Charge a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed within twenty-one (21) days of the Effective Date. The Contractor shall promptly inform the Owner and the Engineer In-Charge in writing of any revision or alteration of such an organization chart.

18.2 Program of Performance

Within thirty (30) days of the Effective Date, the Contractor shall prepare and submit to the Engineer In-Charge a detailed program of performance of the Contract. The program so submitted by the Contractor shall be in accordance with the Time Schedule more fully described in **Appendix 3** (Time Schedule) and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Engineer In-Charge, but without modification in the Times for Completion given and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Engineer In-Charge.

18.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 18.2 (Program of Performance) above, and supply a progress report to the Engineer In-Charge every month.

18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 18.2 (Program of Performance), or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Owner or the Engineer In-Charge, prepare and submit to the Engineer In-Charge a revised program, taking into account the prevailing circumstances, and shall notify the Engineer In-Charge of the steps being taken to expedite progress so as to attain Completion of the Facilities

within the Time for Completion under GCC Sub-Clause 8.2 (Time for Commencement and Completion), any extension thereof entitled under GCC Sub-Clause 40.1 (Extension of Time for Completion), or any extended period as may otherwise be agreed upon between the Owner and the Contractor.

18.5 Work Procedures

The Contract shall be executed in accordance with the Contract Documents and the procedures given in the section on Forms and Procedures of the Contract Documents.

19. Refer Clause 43

20. DESIGN AND ENGINEERING

20.1 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Owner and shall be treated in accordance with GCC Clause 39 (Changes Originating from Contractor) without any cost adjustment/ implication to the Owner.

21. PROCUREMENT

21.1 Plant and Equipment

Subject to GCC Sub-Clause 14.2, the Contractor shall manufacture or procure and transport all the Plant and Equipment in an expeditious and orderly manner to the Site.

21.2 Owner-Executed Work

If **Appendix 4** (Scope of execution of civil works at Site by the Owner) provides that the Owner shall execute any work, the following provisions shall apply:

- 21.2.1** The Owner shall, execute the civil construction work at Site as agreed upon by the parties and make such work available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Sub-Clause 18.2 (Program of Performance), unless otherwise mutually agreed.
- 21.2.2** Upon completion of such work, the Contractor shall inspect the same visually and notify the Engineer In-Charge of any detected defect or default. The Owner shall immediately remedy any defect or default, or the Contractor shall, if practicable and possible, at the request of the Owner, remedy such defect or default at the Owner's cost and expense. After inspection, such work shall fall under the care, custody and control of the Contractor.
- 21.2.3** The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Owner of liability for any undetected defect or default, nor place the Contractor under any liability for any such defect or default whether under GCC Clause 27 (Defect Liability) or under any other provision of Contract.

21.3 Transportation

- 21.3.1** The Contractor shall at its own risk and expense transport all the Plant and Equipment and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.

21.3.2 Marine Transport

- (i) The Contractor shall check the capacity and availability of the loading / unloading facilities, which will be utilized in connection with the transport operation.
- (ii) The shipment of all the consignment relating to equipment, materials and machinery of the Plant will be arranged by the Contractor, through shipping lines / ship/vessel approved by the Owner.
- (iii) The Contractor will also ensure that the consignments are shipped by vessel, including but not limited the following classifications :

Lloyd's Register : 100A 1 or B.S.

Bureau Verties : 1 3/3 E+

Germanischer Lloyd	:	+ 100 A+
Nippon Kaiji Kyokai	:	NS*
Norske Veritas	:	+1A1
Registro Italiano	:	*100 A 1.1 Nav. L
Polish Register of Shipping	:	*KM
Korean Register of Shipping	:	KRS 1
American Bureau of shipping	:	+ A1
Indian Register of Shipping	:	+ A1

Provided such vessels are:

a) not over 15 years of age

OR

b) Over 15 years of age but not over 25 years of age and have established and maintained a regular pattern of trading on an advertised schedule to load and unload at specified ports.

(iv) The Contractor shall arrange shipment of all imported material and equipment from the Port of Export to any Indian Port with prior written consent of the Owner.

21.3.3 Upon dispatch of each shipment of the Plant and Equipment and the Contractor's Equipment, the Contractor shall notify the Owner by telex, cable, facsimile or Electronic Data Interchange (EDI) of the description of the Plant and Equipment and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Owner with relevant shipping documents to be agreed upon between the parties.

21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Plant and Equipment and the Contractor's Equipment to the Site. The Owner shall use its best endeavours in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Owner from and against any claim for damage to roads, bridges or any other traffic facilities that

may be caused by the transport of the Plant and Equipment and the Contractor's Equipment to the Site.

21.3.5 The Contractor shall be fully responsible for the routing for delivery of heavy or large loads to the Site.

21.3.6 Material shall be supplied by the Contractor properly packed to avoid any Transit damage to the materials. However, Contractor shall be the owner of all such packing materials/containers etc. used for despatch of equipments etc.

21.4 Customs Clearance

The Contractor shall, at its own expense, handle all imported Plant and Equipment and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance including liability for port charges, if any, subject to the Owner's obligations under GCC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Owner, the Owner shall take all necessary steps to comply with such laws or regulations. The Contractor shall, as an integral part of the Facilities, provide and be responsible for all Indian customs and import clearance and completing all clearance formalities including all documentation and handling services for all imported Plant and Equipment, although the Owner will be named importer of such Plant and Equipment.

21.4.1 The Contractor shall be responsible for the timely importation of all imported Plant and Equipment (including spares) and the making of timely and proper application for clearance of all such Plant and Equipment through customs in India, and for preparing all necessary documentation and attending to the procedural matters associated therewith and payment of all customs and import duties for such Plant and Equipment pursuant to clause 14, and notwithstanding whether title to such Plant and Equipment has passed to the Owner pursuant to clause 31, or not, for the purposes of such payment, the Owner shall be named as "importer" of all such Plant and Equipment, which are meant for direct supply to the Site in the appropriate receipts evidencing payment.

21.4.2 Subject to the provision of clause 14, at the request of the Contractor, and upon presentation by the Contractor to the Owner of the relevant bills of entry showing the assessment of duty, the Owner shall pay to the relevant customs authorities, the

amount of such customs duty limited to the assessable value of the off-shore supply consignment. The Owner shall provide the initial Security and deposit required to be provided to the customs authorities in relation to the importation of all imported Plant and Equipment (including spares) pursuant to this Contract.

However, the obligation of the Owner to pay the customs duties would be limited to the duty being payable at the rate applicable for such imports and limited to an assessable C.I.F. value under the Contract. Any wrong assessment, imposition of higher rate of duty or assessment of a higher duty amount due to any non-performance, inadequate performance, delay in performance, negligence or omission of the Contractor will be to the account of the Contractor.

All import fees (including all port, docking, landing or pilotage dues) shall be to the Contractor's account.

21.4.3 The Contractor shall be responsible for reconciling the final customs duty payable on completion of the importation of the imported Plant and Equipment with the provisional duty paid, and shall be responsible for, any penalty, interest or additional customs duty paid or imposed upon the Owner by the customs authorities due to any non-performance, inadequate performance, delay in performance, negligence or omission of the Contractor.

21.4.4 The Contractor shall indemnify and hold the Owner harmless for any penalty or late payment charges levied by the relevant customs authorities and for any additional costs of maintaining any Security pursuant to clause 21.4.2 and shall be responsible for any delay in clearance of the imported Plant and Equipment due to any reason.

22. INSTALLATION

22.1 Setting Out/Supervision/Labour

22.1.1 Bench Mark: The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Owner.

If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Engineer In-Charge of such error and, at its own expense,

immediately rectify such error to the reasonable satisfaction of the Engineer In-Charge. If such error is based on incorrect data provided in writing by or on behalf of the Owner, the expense of rectifying the same shall be borne by the Owner.

22.1.2 Contractor's Supervision: The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

22.1.3 Labour

- a. The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract.
- b. Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith. The Contractor shall observe all environmental norms and ensure compliance thereof by its staff and labour and shall indemnify and keep indemnified the Owner from any and all claims, action, costs and expenses, including attorney's fees, court fees etc. in this regard.
- c. The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labour and personnel to be employed on the Site into the country where the Site is located.
- d. The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Owner may provide the same to such personnel and recover the cost of doing so from the Contractor.

- e. The Contractor shall at all times during the progress of the Contract use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Subcontractors.
- f. The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.
- g. The Contractor shall comply with all laws, rules, orders, circulars relating to the payment, compensation, facilities and safety of the labour and all other persons at site and shall indemnify and keep indemnified the Owner from any and all claims, action, costs and expenses, including attorney's fees, court fees etc. relating thereto.

22.2 Contractor's Equipment

22.2.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract and the Owner shall have a lien on such Contractor's Equipment brought by the Contractor or his sub-contractor onto the Site. The Contractor shall not remove the same from the Site without the Engineer In-Charge's written consent.

22.2.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

22.2.3 The Owner will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.3 Site Regulations and Safety

22.3.1 The Owner and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Owner, with a copy to the Engineer

In-Charge, proposed Site regulations for the Owner's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care and fire prevention.

22.3.2 The Contractor shall in the execution of the Facilities and the carrying out of its other obligations under or in connection with this Contract, take all reasonable precautions to ensure that no loss and damage to persons or property is caused by the Contractor or any Subcontractors.

22.3.3 The Contractor shall appoint a safety officer at the Site and a deputy who shall both be approved by the Owner (such approval not to be unreasonably withheld or delayed) and who shall be responsible for all safety at the Site and either such officer or deputy shall be present at all times when works are being carried out on or adjacent to the Site and the Contractor shall implement safety procedures at the Site in accordance with all applicable Laws of India.

22.3.4 If the Contractor fails to take any reasonable measures in relation to Site safety required pursuant to the foregoing provisions of this clause 22.3, the Owner (or another person engaged by or on behalf of the Owner) may upon notice to the Contractor enter upon the Site and take such measures and the Costs incurred by the Owner in taking any such measures shall be deducted from the Contract Price.

22.3.5 The Contractor shall provide first aid facilities at the Site.

22.4 Site Clearance

22.4.1 Site Clearance in Course of Performance: In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

22.4.2 Clearance of Site after Completion: After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities clean and safe.

22.5 Watching and Lighting

The Contractor shall provide and maintain at its own expense all lighting, guards, warning signs, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the Owners and occupiers of adjacent property and for the safety of the public.

22.6 Work at Night and on Holidays

22.6.1 Unless otherwise provided in the Contract, no work shall be carried out during the night and on public holidays of the country where the Site is located without prior written consent of the Owner, except where work is necessary or required to ensure safety of the Facilities or for the protection of life, or to prevent loss or damage to property, when the Contractor shall immediately advise the Engineer In-Charge, provided that provisions of this GCC Sub-Clause 22.6.1 shall not apply to any work which is customarily carried out by rotary or double-shifts.

22.6.2 Notwithstanding GCC Sub-Clauses 22.6.1 or 22.1.3, if and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Owner's consent thereto, the Owner shall not unreasonably withhold such consent.

23. TEST AND INSPECTION

23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and Equipment and any part of the Facilities as are specified in the Contract. Pre-despatch inspection shall be carried out and no such items shall be despatched without prior despatch clearance by the Owner or his authorised representative which shall not be unreasonably withheld.

23.2 The Owner and the Engineer In-Charge or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Owner shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.

23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a (three) 3 weeks advance notice of such test and/or inspection

and of the place and time thereof to the Engineer In-Charge. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Owner and the Engineer In-Charge (or their designated representatives) to attend the test and/or inspection.

- 23.4** The Contractor shall provide the Engineer In-Charge with a certified report of the results of any such test and/or inspection.

If the Owner or Engineer In-Charge (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Engineer In-Charge with a certified report of the results thereof.

- 23.5** The Engineer In-Charge may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

- 23.6** If any Plant and Equipment or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant and Equipment or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.

- 23.7** If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant and Equipment or part of the Facilities the same shall be dealt as per the provisions of GCC Sub-Clause 17.3.

- 23.8** The Contractor shall afford the Owner and the Engineer In-Charge, at the Owner's expense, access at any reasonable time to any place where the Plant and Equipment are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Engineer In-Charge shall give the Contractor a reasonable prior notice.

23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant and Equipment or any part of the Facilities, nor the attendance by the Owner or the Engineer In-Charge, nor the issue of any test certificate pursuant to GCC Sub-Clause 23.4, shall release the Contractor from any other responsibilities under the Contract.

24. COMPLETION OF THE FACILITIES

24.1 As soon as the Facilities has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Owner in writing.

24.2 Not Used

24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Owner in accordance with GCC Sub-Clause 24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning.

24.4 As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall commence commissioning, and as soon as commissioning is satisfactorily completed, the Contractor shall so notify the Engineer In-Charge in writing.

24.5 The Engineer In-Charge shall, within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Forms and Procedures section in the bidding documents, stating that the Facilities or that part thereof have reached Completion as at the date of the Contractor's notice under GCC Sub-Clause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.

If the Engineer In-Charge notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Sub-Clause 24.4.

If the Engineer In-Charge is satisfied that the Facilities or that part thereof have reached Completion, the Engineer In-Charge shall, within seven (7) days after receipt

of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as at the date of the Contractor's repeated notice.

If the Engineer In-Charge is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

24.6 If the Engineer In-Charge fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4 or within seven (7) days after receipt of the Contractor's repeated notice under GCC Sub-Clause 24.5, or if the Owner makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice or as of the Owner's use of the Facilities, as the case may be. The certified date of completion mentioned in the Completion Certificate shall determine the Contractor's liability under the GCC Clause 26, 'Completion Time Guarantee'.

24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Owner will undertake such completion and deduct the costs thereof from any moneys owing to the Contractor.

25. COMMISSIONING AND OPERATIONAL ACCEPTANCE

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be completed by the Contractor.

The Owner shall also associate his operating and maintenance personnel during commissioning. All raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other materials required for Commissioning shall be provided by the Contractor.

25.2 Not Used

25.3 Operational Acceptance

25.3.1 Subject to GCC Sub-Clause 25.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when

- (a) The Commissioning Test has been successfully completed; or
- (b) The Commissioning Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period mutually agreed upon but successful completion of the facilities has been achieved; and
- (c) Any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

25.3.2 At any time after any of the events set out in GCC Sub-Clause 25.3.1 have occurred, the Contractor may give a notice to the Engineer In-Charge requesting the issue of an Operational Acceptance Certificate.

25.3.3 The Engineer In-Charge shall, within seven (7) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 If within seven (7) days after receipt of the Contractor's notice, the Engineer In-Charge fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Engineer In-Charge has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as at the date of the Contractor's said notice.

25.4 Before the Operational Acceptance Certificate is issued, in accordance with Clause 25.3.3 of GCC, the Contractor shall supply operation and maintenance manuals (5 copies) together with drawings of the Facilities as built. These shall be in such detail as will enable the Owner/Engineer In-Charge to operate, maintain, adjust and repair all parts of the Facilities. Unless otherwise stated in the Technical Specifications, the manuals and drawings shall be in English language, and in such form and number as stated in the Contract. three (3) copies of drawings alongwith one (1) reproducible shall be furnished by the Contractor. The operation and maintenance manuals, final drawings and as built drawings shall also be furnished in soft copy in CD in auto cad (or 3D model as applicable) and PDF format.

- 25.5** Unless otherwise agreed, the Facilities shall not be considered to be completed for the purposes of taking over until such manuals and drawings have been supplied to the Owner.

F. GUARANTEES AND LIABILITIES

26. COMPLETION TIME GUARANTEE

26.1 The Contractor guarantees that it shall attain Completion of the Facilities within the Time for Completion specified in the Contract pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 (Extension of Time for Completion) hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GCC Clause 40 (Extension of Time for Completion), the Contractor shall pay to the Owner liquidated damages in the amount computed @ zero point zero four percent (0.04%) of the Contract price per day. The aggregate amount of such liquidated damages shall in no event exceed the ten (10 %) of the Contract price. Once the "Maximum" is reached, the Owner may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.

Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 40 (Extension of Time for Completion). The Contractor shall have no further liability whatsoever to the Owner in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.

26.4 Trial Operation Period

The Trial Operation Period shall commence immediately after the Completion Certificate has been issued. Commissioning Tests shall be carried out during this period, in accordance with the specifications and as requested by the Owner under the sole responsibility of the Contractor.

The duration of the Trial Run Period shall be 30 days.

After successful completion of the Commissioning tests and Trial Operation Period, the Engineer In-Charge shall issue a Taking-Over Certificate to the Contractor.

The Owner and/or Engineer In-Charge reserve the right to delay the issuance of Taking-Over Certificate until such time he is satisfied that defects enlisted in the Test Certificate / Completion Certificate and other defects, if any, during the Trial Operation Period are rectified.

26.5 The Facilities or part thereof shall be taken over by the Owner when they have been completed in accordance with the contract, except in minor respects that do not affect the use of the Facilities or part thereof for their intended purpose, the activities of pre-commissioning, commissioning and trial Operations have been accomplished successfully and have passed all the tests (including Commissioning Tests) in accordance with the contract and a Taking-Over Certificate has been issued or deemed to have been issued in accordance with the Sub-Clause 26.6 herein.

26.6 The Contractor may apply by notice to the Engineer In-Charge for a Taking-Over Certificate not earlier than 7 days before the Facilities or part thereof will in the Contractor's opinion be complete and ready for taking over as per the provisions of the sub-clause 26.4 above.

The Engineer In-Charge shall within 7 days after the receipt of the Contractor's application either:

- (a) Issue the Taking-Over Certificate to the Contractor stating the date on which the Facilities were complete and ready for taking over, or
- (b) Reject the application giving his reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued.
- (c) If the Engineer In-Charge fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days he shall be deemed to have issued the Taking-Over Certificate on the last day of that period.

Issue of the Taking-Over Certificate will mark the beginning of the Defects Liability Period stipulated under GCC Clause 27.

27. DEFECT LIABILITY

27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant and Equipment supplied and of the work executed.

27.2 The Defect Liability Period shall be six (6) months from the date of issue of Taking-Over Certificate of the Facilities (or any part thereof), unless specified otherwise in the Contract.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant and Equipment supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Owner regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the Facilities by the Owner
- (b) operation of the Facilities outside specifications provided in the Contract
- (c) normal wear and tear.

27.3 The Contractor's obligations under this GCC Clause 27 shall not apply to

- (a) any work executed by or on behalf of the Owner, except for the work executed by the Owner under GCC Sub-Clause 27.7.

27.4 The Owner shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Owner shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5 The Owner shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27. The Contractor may, with the consent of the Owner, remove from the Site any Plant and Equipment or any part of the Facilities that are defective if the nature of the

defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

- 27.6** If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Owner may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests. The tests in Character shall in any case be not less than what has already been agreed by the Owner and the Contractor for the original equipment / part of the Facilities.

- 27.7** If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be more than seven (7) days), the Owner may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Owner in connection therewith shall be paid to the Owner by the Contractor or may be deducted by the Owner from any moneys due the Contractor or claimed under the Performance Security.

- 27.8** If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Owner because of any of the aforesaid reasons.

Upon correction of the defects in the Facilities or any part thereof by repair/replacement, such repair/replacement shall have the Defect Liability Period extended by a period of twenty-four (24) months from the time such replacement/repair of the Facilities or any part thereof or upto forty eight (48) months from the date of Taking over of the Facilities (or any part thereof) whichever is earlier.

- 27.8.1** At the end of the Defect Liability Period, the Contractor's liability ceases..

27.9 Except as provided in GCC Clauses 27 and 33 (Loss of or Damage to Property / Accident or Injury to Workers/ Indemnification), the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant and Equipment, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or willful action of the Contractor.

27.10 Contractor's warrantee and liability for own software included in the facilities shall be limited solely to the elimination of reproducible errors and malfunction thereof, provided the software is installed on hardware supplied or authorised by the contractor, the Contractor is granted sufficient access by the Owner and is provided with all documentation and information to trace the error. Instead of eliminating errors in the supplied version of software, the contractor shall have the right to establish an error free later version and supply the same at no additional cost to the Owner, The newer version so implemented, shall be compatible with the existing hardware supplied or authorised by the Contractor. With respect to standard software (e.g. UNIX, DOS, Words, Excel etc.,) licensed from others, the Contractor's warranty and liability shall be limited solely to the warranties and liabilities by the licenses of such software.

28. NOT USED.

29. PATENT INDEMNITY

29.1 The Contractor shall not infringe the Patent, Trademarks, Copyright or other intellectual property of third parties for or in connection with the performance of this Contract and shall indemnify and hold harmless the Owner and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Owner may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the

Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract whereby such use amounts to infringement of any patent, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.

- 29.2** If any proceedings are brought or any claim is made against the Owner arising out of the matters referred to in GCC Sub-Clause 29.1, the Owner shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Owner's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

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

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

- 29.3** Nothing contained in this Contract shall be deemed to authorize the Contractor to use the trademarks, copyright or other intellectual property of the Owner, without the express consent of the Owner in writing.
- 29.4** The Owner shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right

registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Owner.

30. LIMITATION OF LIABILITY

30.1 Except in cases of criminal negligence or willful misconduct,

- (a) Neither Party shall be liable, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Owner and
- (b) the aggregate liability of the Contractor to the Owner, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Owner with respect to patent infringement.

G. RISK DISTRIBUTION

31. TRANSFER OF OWNERSHIP

31.1 Ownership of the Plant and Equipment (including spare parts) to be imported into the country where the Site is located shall be transferred to the Owner upon loading on to the mode of transport to be used to convey the Plant and Equipment from the country of origin to that country and upon endorsement of the dispatch documents in favour of the Owner.

31.2 Ownership of the Plant and Equipment (including spare parts) procured in the country where the Site is located shall be transferred to the Owner when the Plant and Equipment are loaded on to the mode of transport to be used to convey the plant and equipment from the works to the site and upon endorsement of dispatch documents in favour of the Owner.

31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.

31.4 Ownership of any Plant and Equipment in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Owner and the Contractor agree that the Plant and Equipment in question are no longer required for the Facilities provided quantity of any plant or equipment specifically stipulated in the Contract shall be the property of the Owner whether or not incorporated in the Facilities.

31.5 Notwithstanding the transfer of ownership of the Plant and Equipment, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Taking Over of the Facilities or the part thereof in which such Plant and Equipment are incorporated.

32. CARE OF FACILITIES

32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Taking Over of the Facilities by the Owner pursuant to GCC Clause 26.6 or, where the Contract provides for Completion of the Facilities in

parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities during the Defects Liability Periods, extended warranty, for any damage to the Facilities, as the case may be, which occurs during such period as a result of a Defect for which the Contractor is responsible under clause 27 and for the care of any outstanding work which it has undertaken to carry out during the relevant Defects Liability Period and or the extended warranty and any goods or materials to be used in connection therewith until such outstanding work is complete. The Contractor shall be responsible to the Owner, in the event of termination of the Contract, for the care of the Facilities until the expiry of the period of the notice of termination, irrespective of whether notice of termination is given by the Owner or by the Contractor.

Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) & (c) of GCC Sub-Clause 32.2.

32.2 If any loss or damage occurs to the Facilities or any part thereof by reason of

- (a) (Insofar as they relate to the country where the Site is located) ionising, radiations or contamination by radio activity from any nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly, pressure waves caused by aerial devices traveling at supersonic speeds, or that the contractor could not insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks, taken out under GCC Clause 34 (Insurance) hereof,
- (b) Any use or occupation by the Owner or any third party (other than a Subcontractor) authorized by the Owner of any part of the Facilities,

32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, Temporary Works or any other property of the Contractor used or intended to be used for purposes of the Facilities.

32.4 Subject to Sub-Clause 32.2 above, if any part of the Facilities suffers loss or damage whilst the Contractor has responsibility therefor:

- i) then prior to Take Over the loss or damage [(other than to the extent that any such loss or damage is caused by (a) the use or occupation by the Owner or any person (other than the Contractor or any Subcontractor) authorised by the Owner of any of the Facilities or (b) the Wilful Misconduct, fraud, unlawful act of Owner's personnel], shall promptly be made good by the Contractor at its own cost and expense so that at Take Over, Facilities shall be complete and in accordance with this Contract; and
- ii) during the relevant Defects Liability Period, and/or the Extended Warranty, then the Contractor shall make good at its own cost and expense any loss or damage to the Facilities occasioned by it in the course of carrying out any obligations during such period (including where such loss or damage is caused by the negligence, Wilful Misconduct, breach of contract or breach of statutory duty of the Contractor, any Subcontractor or their respective agents).

33. LOSS OF OR DAMAGE TO PROPERTY, ACCIDENT OR INJURY TO WORKERS; INDEMNIFICATION

33.1 Subject to GCC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Owner and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Owner, its contractors, employees, officers or agents.

33.2 If any proceedings are brought or any claim is made against the Owner that might subject the Contractor to liability under GCC Sub-Clause 33.1, the Owner shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Owner's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Owner within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Owner shall be free to conduct the same on its own behalf. Unless the Contractor has so

failed to notify the Owner within the twenty-eight (28) day period, the Owner shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

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

33.3 The Owner shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Owner, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34 (Insurances), provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

33.4 The party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

34. INSURANCE

34.1 Insurance of Facility

Without limiting any of its obligations and responsibilities under this Contract, the Contractor shall, subscribe and maintain in place at its own expense, the insurance cover for all risks/causes for which insurance is available, generally set out in **Appendix 2**.

34.2 General Insurance Requirements

34.2.1 The terms of all insurance policies, required to be maintained by the Contractor hereunder including the identity of the underwriter, the amount insured and the deductible applicable shall be in accordance with GCC Clause 34 and **Appendix 2** and otherwise subject to mutual discussion and approval by the Owner.

34.2.2 The insurance covers to be taken by the Contractor shall be effective beginning no later than the 28th working day after the Effective Date.

34.2.3 All insurance policies shall be taken on replacement cost basis and it shall be the responsibility of the Contractor to lodge and settle all insurance claims, which may arise. The responsibility and liability of making good losses shall rest with the Contractor irrespective of the status of settlement of claims and the Owner shall not be liable for any additional cost on this account.

34.2.4 The Contractor shall comply and shall cause its Subcontractors and its or their respective servants and agents to comply with all the terms of the policy or policies of insurance referred to in this GCC Clause 34 and shall not do or omit to do anything which might render voidable such policy or policies of insurance or entitle insurers to avoid liability there under. The Contractor shall bear, at its expense, the consequences of any failure to do so.

34.2.5 The deductibles under the insurances to be taken out by the Contractor shall be no greater than the minimum deductibles offered by the insurer in this regard. Any deductibles or excesses not insured by the Contractor as permitted under the terms of the Sub-clause 34.2 and any amounts not recovered from insurers notwithstanding compliance by the Contractor with its obligations in respect of insurance shall be borne by the Contractor.

34.2.6 Each insurance cover required to be maintained by the Contractor shall provide that the insurance will not, as against one named party to the insurance, be invalidated by any act, breach, omission, neglect or failure of another party.

If the policy is to be cancelled, or to be allowed to lapse or suspended for any reason, or any change is to be made in the cover which would adversely affect the interest of the Owner (and/ or any others named as a party to the insurance), the cancellation, lapse or suspension will not be effective as against the Owner (and those others) for 10 days after receipt by the Owner and those others, of a written notice from the underwriters or insurers of the cancellation, lapse, suspension or change. It is agreed that the requirements of this clause need not be complied with in case the same is not agreed to by the Insurers for incorporation in the insurance policies to be issued.

34.2.7 The Contractor within 84 days of Effective Date provide the insurance policies to the Owner. When providing such policies to the Owner, the Contractor shall notify the Engineer-in Charge of so doing. Such insurance policies shall be consistent with the

Contract. The Contractor shall effect all insurances with insurers, in terms approved by the Owner.

34.2.8 The Contractor shall also provide such information and assistance required by the Owner in relation to the Owner's claims under any insurance policy taken out by the Owner.

34.3 Remedy on Failure to Insure

If the Contractor shall fail to effect and keep in force the insurance for which it is responsible under this GCC Clause 34, the Owner may effect and keep in force any such insurance, and pay such premiums as may be necessary for that purpose, and from time to time, after delivery of a reimbursement request therefor accompanied by relevant supporting documentation, deduct the amount so paid by the Owner from any amounts due or which may become due to the Contractor under this Contract.

34.4 Waiver of Subrogation

Insurance policies supplied by the Contractor wherever relevant shall include a waiver of any right of subrogation of the insurers there under against the Owner, the Lenders, and their respective assigns, subsidiaries, affiliates, parent companies, employees, and of any right of such insurers under such policies to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.

34.5 The Contractor's Waiver

The Contractor further releases, assigns and waives any and all rights of recovery against the Owner, the Lenders, and their respective assigns, subsidiaries, affiliates, parent companies, employees, insurers and underwriters, which the Contractor may otherwise have or acquire in or from or in any way connected with any loss covered by the policies of insurance maintained or required to be maintained by the Contractor pursuant to this Contract or because of deductible clauses in, or inadequacy of limits of, any such policies of insurance.

34.6 Additional Insured

All the insurance coverages referred to in this GCC Clause 34, (except for coverage of (used & old) Contractor's Equipment) shall name the Owner as a co-insured.

34.7 No Limitation of Liability

The required coverages referred to and set forth in this GCC Clause 34 shall in no way affect or limit the Contractor's liability with respect to performance of the Facilities.

34.8 Evidence of Insurance

The Contractor shall furnish such evidence of the terms of each policy of insurance required under this GCC Clause 34 and its continued maintenance, in the form of policy copy or appropriate endorsements or certifications or other evidence of insurance reasonably satisfactory to the Owner. All such insurance documents shall include, but not be limited to, the type of insurance, the limits of insurance, the policy term, the name(s) of the insurance company (or companies), and a list of the applicable endorsements required by this GCC Clause 34.

34.9 Sub Contractor Insurance

Unless the Contractor's insurance covers its Subcontractors, the Contractor shall require all such Subcontractors providing equipment, materials or services to the Contractor to obtain, maintain and keep in force during the time in which they are involved in the performance of the Facilities hereunder coverages consistent with the Contractor's insurance obligations hereunder.

34.10 Descriptions not Limitations

The coverages referred to in this GCC Clause 34 are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete, nor to alter or amend any provision of the actual policies and in matters, if any, in which the said description may be conflicting with such instruments, the provisions of the policies of the insurance mutually agreed by the Parties shall govern; provided, however, that neither the content of any insurance policy or certificate nor the Owner's approval thereof shall relieve the Contractor of any of its obligations under this Contract.

34.11 Risk of Loss or Damage

Notwithstanding anything to the contrary contained in this Contract, except to the extent caused by "Owner's Risks", the Contractor shall bear the risk of physical loss

or destruction of or damage to the Facilities, or any part thereof (including, but not limited to, all materials, equipment, tools, temporary materials, supplies, construction equipment and other items that are purchased for permanent installation in or for use during erection of the Plant and Equipment, regardless of whether the Owner has title thereto or otherwise in connection with the performance of the Facilities) until the date care, custody and control of such item passes to the Owner to the exclusion of the Contractor. In addition, except to the extent caused by the Owner's Risks, the Contractor shall bear the risk of physical loss of or damage to the Facilities or any part thereof for any period during which the Facilities or such part thereof, as the case may be, is shut down or control thereof is delivered to the Contractor for any defect remediation, testing, start up etc. of the Facility or part thereof, after Take Over of the Facilities by the Owner.

The loss or damage to the Plant & Equipment occurring due to Owner's Risks shall be borne by the Owner to the extent of the amount not insurable or not recoverable from the insurers against such Owner's Risks.

34.12 Use of Proceeds

The proceeds of any claims made by the Contractor under the insurance policies to be maintained by the Contractor shall be used for completion of the Facilities.

35. UNFORESEEN CONDITIONS

Unforeseen conditions like earthquake and other natural calamity as defined in insurance rules framed by IRDA.

35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities provided by the Owner, and on the basis of information that it could have obtained from a visual inspection of the Site (if access thereto was available) or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly notify the Engineer-in-charge in writing of:

- (a) The physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen
- (b) The additional work and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions
- (c) The extent of the anticipated delay

On receiving any notice from the Contractor under this GCC Sub-Clause 35.1, the Engineer In-Charge shall promptly decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered.

35.2 No additional cost and expense incurred by the Contractor in following the instructions from the Engineer In-Charge to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1 shall be paid by the Owner to the Contractor.

35.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40 (Extension of Time for Completion).

36. CHANGE IN LAWS AND REGULATIONS

36.1 If, after the date twenty-eight (28) days prior to the date of Price Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law

having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract.

However, these adjustments would be restricted to direct transactions between the Owner and the Contractor and not on procurement of raw materials, manpower, construction plants and equipment, intermediary components etc. by the Contractor and also shall not be applicable on the bought out items dispatched directly from sub-vendor's works to site.

37. FORCE MAJEURE

37.1 "Force Majeure" shall mean:

- a) War, hostilities (whether war be declared or not), invasion, act of foreign enemies, act of public enemies, order, judgment or direction of the Governmental (whether state or central) , judicial or quasi judicial authority.
- b) Ionising, radiations or contamination by radio activity from any nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly.
- c) Pressure waves caused by aerial devices traveling at supersonic speeds.
- d) Riot, commotion or disorder unless solely restricted to employees of the Contractor and arising from the conduct of the Facilities.
- e) Any operation of the forces of nature, against which an experienced Contractor could not reasonably have been expected to take precautions.

37.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

37.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40 (Extension of Time for Completion).

37.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract.

37.5 No delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall

- a) Constitute a default or breach of the Contract
- b) (Subject to GCC Sub-Clauses 32.2, 38.3 and 38.4) give rise to any claim for damages or additional cost or expense occasioned thereby

If and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which the dispute will be resolved in accordance with GCC, Clause 6.

37.7 Notwithstanding GCC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Owner to make payments to the Contractor herein.

38. WAR & NUCLEAR RISKS

38.1 "War Risks" shall mean any act of war, hostilities (whether war be declared or not), invasion, act of foreign enemies, act of public enemies; and "Nuclear Risks" shall mean any act of ionising, radiations or contamination by radio activity from any nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly.

38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to:

- (a) Destruction of or damage to Plant & Equipment, or any part thereof
- (b) Destruction of or damage to property of the Owner or any third party
- (c) Injury or loss of life

if such destruction, damage, injury or loss of life is caused by any War & Nuclear Risks, and the Owner shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

38.3 If any Plant and Equipment other than Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War & Nuclear Risks, the Owner shall pay the Contractor for:

- (a) Any part of the Plant and Equipment so destroyed or damaged (to the extent not already paid for by the Owner)
- (b) Replacing or making good any such destruction or damage to the Plant and Equipment or any part thereof.

If the Owner does not require the Contractor to replace or make good any such destruction or damage to the Plant and Equipment, the Owner shall either request a change in accordance with GCC Clause 39 (Change in the Facilities), excluding the performance of that part of the Plant and Equipment thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC Sub-Clause 42.1 (Termination for Owner's Convenience).

- 38.4** Notwithstanding anything contained in the Contract, the Owner shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War & Nuclear Risks, provided that the Contractor shall as soon as practicable notify the Owner in writing of any such increased cost.
- 38.5** If during the performance of the Contract any War & Nuclear Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War & Nuclear Risks, the parties will attempt to develop a mutually satisfactory solution, failing which the dispute will be resolved in accordance with GCC, Clause 6.
- 38.6** In the event of termination pursuant to GCC Sub-Clauses 38.3, the rights and obligations of the Owner and the Contractor shall be as specified in GCC Sub-Clauses 42.1(b) and 42.1 (c), except that the Contractor shall have no entitlement to profit under paragraph (v) of GCC Sub-Clause 42.1(c) in respect of any unexecuted Facilities as on the date of termination.
- 38.7** The Contractor shall himself be responsible for replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged due to War & Nuclear Risks.
- 39. NOT USED**
- 40. EXTENSION OF TIME FOR COMPLETION**
- 40.1** The Time(s) for Completion specified in the Contract shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:
- (a) Any occurrence of Force Majeure as provided in GCC Clause 37 (Force Majeure), unforeseen conditions as provided in GCC Clause 35 (Unforeseen

Conditions), or other occurrence of any of the matters specified in GCC Sub-Clause 32.2

- (b) Any suspension order given by the Owner under GCC Clause 41 (Suspension) hereof or
- (c) Any changes in laws and regulations as provided in GCC Clause 36 (Change in Laws and Regulations) or
- (d) Any default or breach of the Contract by the Owner, specifically including failure to perform the work listed in **Appendix 4** (Scope of execution of civil works by the Owner), or any activity, act or omission of any other contractors employed by the Owner or
- (e) Any other matter specifically mentioned in the Contract; by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Engineer In-Charge a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Owner and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Owner's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to Arbitration in terms of GCC Sub-Clause 6.2. .

40.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

41. SUSPENSION

41.1 The Contractor shall, on the written order of the Engineer-in-Charge, suspend the progress of the Facilities or any part thereof for such time or times and in such manner as the Engineer-in-Charge may consider necessary and shall, during such suspension, properly protect and secure the Facilities, or such part thereof, so far as is necessary in the opinion of the Engineer-in-Charge. The extra cost incurred by the

Contractor in giving effect to the instructions of the Engineer-in-Charge under this Clause shall be borne and paid by the Owner unless such suspension is:

- (a) Otherwise provided for in the Contract, or
- b) Necessary by reason of some default of or breach of Contract by the Contractor, or
- c) Necessary by reasons of climatic conditions on the Site, or
- d) Necessary for the proper execution of the Facilities or for the safety of the Facilities or any part thereof in so far as such necessity does not arise from any act or default by the Engineer-in-Charge or from any of the risks defined in Sub-Clause-37.1 hereof.

Provided that the Contractor shall not be entitled to recover any such extra cost unless he gives written notice of his intention to claim to the Engineer-in-Charge within twenty eight days of the order of the Engineer-in-Charge. The Engineer-in-Charge shall settle and determine such extra payment and/or extension of time under Clause-40 hereof to be made to the Contractor in respect of such claim as shall, in the opinion of the Engineer-in-Charge be fair and reasonable.

41.2 Unless otherwise instructed by the Owner, the Contractor shall during a suspension under clause 41.1,

- (a) Not enter into any Subcontract or issue any purchase order under any Subcontract relating to the parts of the Facilities suspended without the approval of the Owner;
- (b) Use its best endeavours to suspend all Subcontracts and purchase orders to the extent that they relate to the parts of the Facilities suspended unless otherwise instructed by the Owner;
- (c) Without prejudice to clause 41.2 (a) & (b) above, use its best efforts to mitigate and minimise the costs and expenses it incurs as a result of such suspension; and
- (d) Properly protect and secure the Facilities in such manner as the Owner shall reasonably require and maintain its staff and labour on or near the Site ready to proceed with the Facilities upon receipt of the Owner's further instructions.

41.3 The Owner may at any time following a suspension under clause 41.1 give notice to the Contractor to proceed with the Facilities which are the subject of the suspension.

41.4 Upon receipt of notice given pursuant to clause 41.3 above, the Contractor shall examine the Facilities affected by the suspension and make good any deterioration, damage, defect or loss to or of such Facilities that may have occurred during the suspension and thereafter proceed with the execution of such works; and the extent that any remobilization is required by the Contractor, the Contractor shall ensure that such remobilization is achieved within seven (7) days.

41.5 Engineer-in- Charge's Determination following Suspension

(a) If the Contractor's performance is suspended pursuant to this clause 41.1, any Costs incurred by the Contractor as a direct result of such suspension shall, be paid by the Owner to the Contractor within [thirty (30)] days of receipt of an invoice therefor in respect of each month in which such Costs were incurred, except where such suspension is ordered pursuant to clause 41.1 a), b), c) & d), in which circumstances the Contractor shall have no entitlement to claim any such Costs.

(b) In determining the Costs which the Contractor is entitled to recover pursuant to clause 41.5 a), the following shall be included:

- i) The reasonable costs incurred in properly protecting and securing the work and maintaining the staff and labour of the Contractor and its Subcontractors on or near the Site, in accordance with clauses 41.2 ; and
- ii) The reasonable costs incurred in any demobilisation and remobilisation of the staff and labour of the Contractor and its Subcontractors and any reasonable costs incurred in examining and making good any deterioration, damage, defect or loss to or of the Facilities pursuant to clause 41.4.

41.6 Suspension lasting more than 90 days

(a) If the progress of the Facilities or any part thereof is suspended on the written order of the Engineer-in-Charge and if permission to resume work is not given by the Engineer-in-Charge within a period of ninety days from the date of

suspension, then, unless such suspension is within paragraph (a), (b), (c) or (d) of sub-clause 41.1 of this Clause, the Contractor may serve a written notice on the Engineer-in-Charge requiring permission within twenty eight days from the receipt thereof to proceed with the Facilities, or that part thereof in regard to which progress is suspended and, if such permission is not granted within that time, the Contractor by a further written notice so served may, but is not bound to, elect or treat the suspension where it affects part only of the Facilities as an omission of such part or, where it affects the whole Facilities, as an abandonment of the Contract by the Owner.

41.7 During the period of suspension, the Contractor shall not remove from the Site any Plant and Equipment, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Owner which shall not be unreasonably withheld.

42. TERMINATION

42.1 Termination for Owner's Convenience

- (a) The Owner may at any time terminate the Contract for any reason by giving the Contractor not less than [sixty (60)] days notice of termination that refers to this GCC Sub-Clause 42.1.
- (b) Upon receipt of the notice of termination under GCC Sub-Clause 42.1(a), the Contractor shall either immediately or upon the date specified in the notice of termination
 - (i) Cease all further work, except for such work as the Owner may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
 - (ii) Terminate all subcontracts, except those to be assigned to the Owner pursuant to paragraph (iv) b below
 - (iii) Remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove

- from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition
- (iv) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 42.1 (c), shall
- a. Deliver to the Owner the parts of the Facilities executed by the Contractor up to the date of termination
 - b. Assign to the Owner all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as at the date of termination, and, as may be required by the Owner, in any subcontracts concluded between the Contractor and its Subcontractors
 - c. Deliver to the Owner all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.
- (c) In the event of termination of the Contract under GCC Sub-Clause 42.1.1, the Owner shall pay to the Contractor the following amounts:
- (i) The Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination
 - (ii) The costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel
 - (iii) Any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges
 - (iv) Costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (i) of GCC Sub-Clause 42.1 (b)
 - (v) The cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in

connection with the Contract and that are not covered by paragraphs (i) through (iv) above.

42.1.1 The Contractor's right to payment of the amounts specified in clause 42.1 (c) is subject to the condition precedent that all Subcontractors shall have been paid in full for all undisputed amounts owing to them through the date of payment, and the Contractor shall execute and deliver all such papers as the Owner reasonably requires for the purpose of assigning to and vesting in the Owner all rights, title and interests of the Contractor in and to all Subcontracts relating to the Facilities with respect to which payment has been made free of all liens, charges and encumbrances of any sort.

42.2 Termination for Contractor's Default

42.2.1 The Owner, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC Sub-Clause 42.2:

- (a) If the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt and/or
- (b) If the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43 (Assignment) and/or
- (c) If the Contractor, in the judgment of the Owner has engaged in corrupt or fraudulent practices in competing for or in execution the Contract and/or

For the purpose of this Sub-Clause:

"Corrupt Practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

“fraudulent practice“ means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Owner and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Owner of the benefits of free and open competition

- (d) The Contractor has failed to remedy Defects or commence remedial measures and pursue such measures diligently in accordance with the provisions of this Contract to the satisfaction of the Owner within thirty (30) days of receiving a notice in writing from the Owner, or has wrongfully refused or has materially failed or neglected at any time to execute the Facilities in accordance with the Contract, or fails to proceed with the Facilities with due diligence or neglects to carry out its other obligations under this Contract so as to materially and adversely affect execution of the Facilities and/or
- (e) Without prejudice to clause 42.2.1(d), the Contractor fails to demonstrate that sufficient construction, erection, testing and commissioning capability is employed in the execution of the Facilities to achieve completion on or before the Guaranteed Date of Completion and/or
- (f) Save as otherwise provided in this clause 42.2., any breach by the Contractor of any of its material obligations under this Contract, for which remedy is not commenced and pursued diligently to the satisfaction of the Owner within thirty (30) days after notice from the Owner to the Contractor stating that a breach has occurred, identifying the breach in question in reasonable detail and demanding remedy thereof and/or
- (g) The Contractor fails to pay the Owner any undisputed amount due in respect of any payment within sixty (60) days of the due date and/or.
- (h) The Contractor fails to comply with applicable Laws,

42.2.2 If the Contractor

- (a) Has abandoned or repudiated the Contract and/or
- (b) Has without valid reason failed to commence work on the Facilities promptly within [thirty (28)] days of issue of the Letter of Acceptance or has suspended (other than pursuant to GCC Sub-Clause 41.3) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Owner to proceed and/or
- (c) Persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause and/or
- (d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Facilities in the manner specified in the program furnished under GCC Clause 18 (Program of Performance) at rates of progress that give reasonable assurance to the Owner that the Contractor can attain Completion of the Facilities by the Time for Completion as extended and/or
- (e) fails without reasonable cause, to resume the work within [14 days] after cessation of an event of Force Majeure affecting the Contractor, provided however that nothing in this clause shall entitle the Contractor to claim any additional time pursuant to clause 40 of all or any part of such [14 days] and/or
- (f) the Contractor's liability for liquidated damages in respect of delay to the Facilities (or any part) reaches the limit on such liability set out in clause 26.2 and such delay is continuing,

then the Owner may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same in 7 days time, failing which, the Contract shall stand terminated.

42.2.3 Upon receipt of the notice of termination under GCC Sub-Clauses 42.2.1 or 42.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

- (a) cease all further work, except for such work as the Owner may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Owner pursuant to paragraph (d) below
- (c) deliver to the Owner the parts of the Facilities executed by the Contractor up to the date of termination
- (d) assign to the Owner all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as at the date of termination, and, as may be required by the Owner, in any subcontracts concluded between the Contractor and its Subcontractors
- (e) deliver to the Owner all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities
- (f) do all such acts and things as the Owner may, in its absolute discretion, consider expedient to facilitate the Owner's assumption of such responsibility and the taking of title and possession of the Facilities (or part thereof) including procuring entry by the Subcontractors into such agreements as are necessary to give effect to the same.

42.2.4 The Owner may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third party. The Owner may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Owner and with an indemnification by the Owner for all liability including damage or injury to persons arising out of the Owner's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Owner considers expedient for the supply and

installation of the Facilities. In this situation, the Owner shall be entitled to make payment of the fair rental as aforementioned, after completion of the Facilities and the Contractor shall not be entitled to receive any advance payment in this respect.

Upon completion of the Facilities or at such earlier date as the Owner thinks appropriate, the Owner shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

42.2.5 Subject to GCC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as on the date of termination, the value of any unused or partially used Plant and Equipment on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.2.3. Any sums due to the Owner from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

42.2.6 If the Owner completes the Facilities, the cost of completing the Facilities by the Owner shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Owner in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Owner, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Owner shall pay the balance to the Contractor.

The Owner and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

42.3 Termination by Contractor

The Contractor shall not be entitled to terminate the Contract otherwise than as provided herein after:

42.3.1 The Contractor may terminate the Contract forthwith by giving a notice to the Owner to that effect, if the Owner becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Owner takes or suffers any other analogous action in consequence of debt.

42.3.2 If the Contract is terminated under GCC Sub-Clauses 42.3.1, then the Contractor shall immediately

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Owner pursuant to paragraph (d)(ii)
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractor's personnel from the Site
- (d) In addition, the Contractor, subject to the payment specified in GCC Sub-Clause 42.3.4, shall
 - i. deliver to the Owner the parts of the Facilities executed by the Contractor up to the date of termination
 - ii. assign to the Owner all right, title and benefit of the Contractor to the Facilities and to the Plant and Equipment as of the date of termination, and, as may be required by the Owner, in any subcontracts concluded between the Contractor and its Subcontractors
 - iii. deliver to the Owner all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.3.3 If the Contract is terminated under GCC Sub-Clauses 42.3.1, the Owner shall pay to the Contractor all payments specified in GCC Sub-Clause 42.1 (c) and reasonable compensation for all loss or damage sustained by the Contractor arising out of, in

connection with or in consequence of such termination. The Owner shall also promptly return duly discharged Securities in his custody.

42.3.4 Termination by the Contractor pursuant to this GCC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 42.3.

42.4 In this GCC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, any all Plant and Equipment acquired (or subject to a legally binding obligation to purchase) by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GCC Clause 42, in calculating any moneys due from the Owner to the Contractor, account shall be taken of any sum previously paid by the Owner to the Contractor under the Contract, including any advance payment paid pursuant to **Appendix 1** (Terms and Procedures of Payment).

43. ASSIGNMENT

43.1 Assignment by the Contractor

The Contractor shall not assign this Contract or any part thereof or any benefit, interest, right or cause of action arising under this Contract whatsoever without the prior consent of the Owner provided that the Contractor may, without such consent, assign either absolutely or by way of charge, any money which is or may become due to the Contractor under this Contract.

43.2 Assignment of Subcontractors' Warranties

The Contractor shall, if requested by the Owner upon termination of this Contract or upon expiry of each of the Defects Liability Periods, assign any outstanding benefit in respect of any Subcontract or any warranty from any Subcontractor to the Owner or to such other person as the Owner may direct.

44. Sub- Contract

In regard to the foreign manufactures/ suppliers get awards of contract and decides to sublet second and third stage of contract for installation and spare parts purpose, it is

suggested that tripartite agreement between the manufactures/ suppliers, subcontractors and Owner may be entered.

APPENDICES

APPENDIX 1

TERMS AND PROCEDURES OF PAYMENT

In accordance with the provisions of GCC Clause 12 (Terms of Payment), the Owner shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the parties.

TERMS OF PAYMENT

Schedule No. 1. Plant and Equipment Supplied from Abroad

In respect of plant and equipment supplied from abroad, the following payments shall be made:

- i) Payment of foreign currency portion shall be made in the currency specified in the Contract in the following manner:
- ii) NTC will open Letter of Credit (L/C) in favour of the Machine Manufacturers for 100% value for 180 days from the date of issue of work order, encashable on submission of bill of lading, through bank without interest. L/C Confirmation charges relating to foreign bank shall be borne by supplier.
- iii) The party is required to submit a Performance Bank Guarantee equivalent to 10% of the value valid for 12 months from the date of Bill of Lading (shipment).

Note:

- a) Where payments are to be effected through Letter of Credit the same shall be subject to the latest Uniform Customs and Practice for documentary Credits of the International Chamber of Commerce.
- b) If L/C is required to be extended/ reinstated for reasons not attributable to the Purchaser, the charges thereof shall be to the Supplier's account.

Schedule No. 2. Plant and Equipment Supplied from within the Owner's Country

In respect of plant and equipment supplied from within the Owner's country, the following payments shall be made:

- i. 10% of Basic Price as advance against Bank Guarantee of 110% of value.
- ii. Balance 90% of Basic Price plus duties and taxes on 100% Basic Price (i.e. including advance paid) by "Post Dated Cheque" before scheduled deliveries to be drawn against dispatches subject to submission of Performance Bank Guarantee for 10% of Basic Price valid for 12 months from schedule date of dispatches.

Note:

- 1 Parties not accepting the above mentioned payment terms may not be considered.
- 2 All payments for the machinery will be made by NTC Limited-New Delhi after necessary verifications from the mill and procedural formalities.
- 3 In all Bank Guarantees/ Performance Bank Guarantees, where payment is being made by NTC; the beneficiary is to be NTC Limited, New Delhi also indicating mill's name where machine is supplied.
4. The prices of the goods quoted ex-factory, ex-warehouse (Including packing & Forwarding) as applicable, specifying excise and any other duties and other taxes (VAT wherever applicable) already paid or payable separately.
5. Packing & Forwarding to be included in the price itself. No separate Packing & Forwarding charges to be quoted.
6. Charges for insurance and other local costs incidental to delivery of the goods to their final destination should be mentioned

Schedule No. 3. Local Transportation including Port Clearance & Port Charges and Inland Insurance

In respect of local transportation (i.e. including port clearance & port charges and inland insurance) for both the foreign currency (where applicable) and the local currency portions, the following payments shall be made:

- One Hundred percent (100%) of the total or pro rata local transportation (including port clearance & port charges and inland insurance) amount upon delivery to the site.

- The price of goods quoted must be on CIF basis at JLN Mumbai port and Kochi port of entry in India.
- NTC will arrange port clearance, insurance from India's port to site, transportation services and other incidental work and deliver the goods at site at its own expenses. Bidder should indicate the tentative price for evaluation.

Schedule No. 4. Installation Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

- Ninety percent (90%) of the value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Owner's authorization of the Contractor's application, will be made monthly. Five percent (5%) of the total value of installation services performed by the Contractor as evidenced by the Owner's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate.
- Five percent (5%) of the total value of installation services performed by the Contractor as evidenced by the Owner's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate.
- The cost of incidental services like erection, testing and commissioning on actual basis but bidder should indicate the tentative price for evaluation. NTC will pay the charges for incidental services i.e. erection, commissioning and testing on actual basis subject to maximum of 110% of the amount quoted in tender.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:

- 1.0 Unless stipulated otherwise hereunder, all payments shall be released to the Contractor as per Schedule No. 1, 2, 3 and 4 after fulfillment of the requirements specified herein above under Terms of Payment.

- 2.0 Subject to the fulfillment of requirements mentioned at Sl.No.1, all Payments in line with the requirements of Terms of Payment shall be arranged as per following procedure:

The currency or currencies in which payments are made to the Contractor under the Contract shall be the currency or currencies stated in the Contract. All payments in foreign currency shall be arranged by transfer of funds in the Overseas Bank Account of the Contractor (in case of Foreign Bidder) and in case of Indian Bidder, in their Foreign Currency Account in India. The contractor (For Indian Bidder) shall submit a letter from his Bank certifying that the foreign currency account in which the contractor desires to receive payments has been opened/under operation as per RBI Guidelines. All payments in Indian currency shall be paid to the Contractor through Account Payee cheques or through ECS. The Contractor (for Foreign Bidder) shall open a bank account in India in which the contractor desires to receive Indian Currency payments. He shall arrange all permits /permissions etc. to open such account and shall submit a copy of the same to the Owner.

- A.** For each partial shipment (FOB or FCA or EXW) under Schedule 1 & 2 following clean documents in triplicate shall be presented to the Owner.
- i. Original Invoice
 - ii. Clean on board Bill of Lading / AWB (for Off- shore supply) Or RR/LR/GR (for on-shore supply).
 - iii. Insurance Declaration
 - iv. Material Despatch Clearance Certificates.
 - v. Packing list
 - vi. Certificate of Origin of Goods issued by chamber of commerce of that country or any other authorised organization (in case of Foreign Origin).
- B.** For each payment under Schedule 1 to 4 other than **A.** above & 5% initial advance, following clean documents shall be presented to the Owner.
- i. Original Invoice.

- ii. Statement of Performance from the Owner as per Proforma enclosed in **Annexure 1** appended with this Appendix.

3.0 Additional Conditions - (*Payment terms*)

The amount due to the Contractor shall be paid by the Owner to the Contractor no later than 30 days after the Contractor has submitted the required documents as listed in Para 3.0 above and such additional documents that the Engineer-in-Charge at his absolute discretion, may call upon the Contractor to submit, to the Engineer-in-charge for approval. In the event of a dispute in respect of any part of any progress payments, only the disputed portion of the progress payment shall be withheld. The Engineer-in-charge will intimate to the Contractor in writing, the details of dispute within 21 days of receipt of Contractor's invoice. The Contractor will either submit written clarification or submit proof of his claim to the Engineer-in-charge, to Engineer-in-charge's satisfaction. On acceptance of the reply, payment shall be released within 15 days of receipt of reply.

- 4.0 If any undisputed payment is not made within 45 (forty five) days of receipt of invoice alongwith the relevant documents by the Owner the Contractor shall be entitled to receive interest for the delay time beginning on 46th day from receipt of invoice. Such interest is to be paid in currency of the Contract. The rate of interest on delayed payment (as referred in clause no. 12.3 of GCC) shall be 8% per annum. The payment towards interest, if any, shall be settled at the time of making payments of the respective invoices.

The distribution of documents shall be as given below. The Contractor shall submit the Trust Receipt and Indemnity Bond to the duly authorized Liaison Office of the Owner or to the Engineer In-Charge. The contractor shall obtain the Authorization Letter (Form 10) from said Liaison Office in respect of items mentioned in Schedule No.-1 and from Engineer-in-Charge in respect of items mentioned in Schedule No. - 2.

MODEL DISTRIBUTION OF SHIPPING DOCUMENTS

For Schedule No. 1

SL. No.	Shipping Documents	Liaison Office, Port of import	Engineer In- Charge, _____ MILL			Coordinator, Office New Delhi
		Original	Copy No.1	Copy No.2	Copy No.3	Copy No.4
1.	Invoices					
	-Original (for Custom Clearance)	X				
	-Original (for payment)		X			
	-Copies			X	X	X
2.	Bill of Lading					
	-Original	X				
	-Copies		X	X	X	X
3.	Packing List					
	-Original	X				
	-Copies		X	X	X	X
4.	Insurance Declaration	X	X	X	X	X
5.	Despatch Clearance Certificate	X	X	X	X	X
6.	Certificate of origin of goods		X	X	X	X

For Schedule No. 2

SL. No.	Shipping Documents	Engineer- in- Charge ----- MILL				Coordinator, Office New Delhi
		Original	Copy No.1	Copy No.2	Copy No.3	Copy No.4
1.	Invoices					
	-Original	X				
	-Copies		X	X	X	X
2.	LR/RR/GR					
	-Original	X				
	-Copies		X	X	X	X
3.	Packing List					
	-Original	X				
	-Copies		X	X	X	X
4.	Insurance Declaration	X	X	X	X	X
5.	Despatch Clearance Certificate	X	X	X	X	X

'X' - Documents applicable.

ANNEXURE-1

(ON THE LETTER HEAD OF OWNER)

STATEMENT OF PERFORMANCE

Ref:#

Dated.....

To: *[Name and address of Contractor]*

Ref: **ACW Machine** for Mill *[Name of Contract and Contract No.]*

Sir,

I, the undersigned, representing ----- hereby issue Statement of Performance to entitle *[Name of Contractor]* to receive a sum of *(in figures) (in words)* in accordance with the payment terms stipulated in the Contract # *[Name of Contract & Contract No.]* Dated _____ between NTC (Mill) and *[Name of Contractor]*

For NTC (Mill).

(Authorized Signatory)

APPENDIX 2
INSURANCE REQUIREMENTS

1. Contractor’s “All Risks” Insurance

a. A “Erection” All Risks” (“EAR”) insurance policy for the Facilities covering all work at the Site in connection with the services and all plant, materials and equipment at the Site intended for incorporation in the Facilities (including temporary buildings, site huts and offices used for the purpose of the construction of the Facilities) against the risk of physical loss or damage from all insurable causes. The EAR insurance shall be on a ‘replacement value’ basis (including additional customs duties) insuring the total cost of the Facilities and would also provide, inter alia, surrounding property coverage and automatic increase in coverage for price escalation.

b. Statutory Insurance Benefits

All statutory insurance benefits and other insurance required by applicable Law, shall be obtained in connection with performance of the Contractor’s obligations under this Contract.

As a minimum, it shall cover physical loss or damage to the Facilities or part thereof at the site, occurring prior to Taking Over of the Facilities, with an extended maintenance coverage for the Contractor’s liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the site for the purpose of performing its obligations during the defect liability period. The policy shall be extended to cover Work Stoppages clause and Intermittent Testing clause.

Amount	Deductible limits	Parties insured	From-To
i) For Foreign Bidder , Contract Price of First, Second & Third Contract plus 20% of sum (to cover Taxes & duties etc.) of First, Second & Third Contract Price.	As per TAC Norms and in line with GCC sub-clause 34.2.5.	As per GCC clause 34	From commencement of work on Site to End of Defects Liability Period
ii) For Domestic Bidder , Contract Price of First & Second Contract plus 20% of sum (to cover Taxes & duties etc.) of First & Second Contract Price.			

2. Marine Cargo Insurance

For all materials, equipment, machinery, spares and other items for incorporation in the Facilities against all risks of physical loss or damage while in transit by sea, air or the land portion of the journey from country of origin anywhere in the world, including India, to the Site in India, or vice versa, from the time of the insured items leaving warehouse or factory for shipment to the Site in India including during loading, unloading and temporary storage.

The policy shall be at full replacement value (including cost of freight, insurance, custom duties and provision for additional customs duty imposition and price escalation).

The policy shall cover 'ALL RISKS' under and /or on deck as per Institute Cargo Clause 'A'.

Amount	Parties insured	From - To
i) For Foreign Bidder , Contract Price of First Contract + Contract Price of Second Contract + Contract Price of Third Contract excluding installation charges + 20% of sum (to cover Taxes & duties etc.) of First & Second Contract Price. ii) For Domestic Bidder , Contract Price of First Contract + Contract Price of Second Contract excluding installation charges + 20% (to cover Taxes & duties etc.) of First Contract Price.	As per GCC Clause 34	From 1 st shipment to last shipment.

3. The Contractor's or Rented Equipment

All the Contractor's Equipment shall be brought to and kept at the Facilities Site at the sole cost, risk and expense of the Contractor. The Owner shall not be liable for loss or damage thereto until the end of Defect Liability Period. The Contractor, at its sole cost, shall maintain adequate, appropriate and prudent insurance with respect thereto. Any insurance policy carried by the Contractor, any Subcontractor or any third party on the Contractor's Equipment shall provide for a waiver of the underwriter's right to subrogation against the Owner, the Lenders, Power Procurer and their assignees, subsidiaries, parent companies, affiliates, employees, insurers and underwriters. The Contractor shall obtain adequate insurance to cover all equipment, tools and the Constructional Plants rented or leased from third parties. The Contractor shall obtain insurance for all equipments whether at Site as afore mentioned or whether in transit or in storage awaiting shipment to the Site.

4. Third Party Liability Insurance

Insure against liability for damage or death or personal injury against death or personal injury occurring before completion of Defects Liability Period of the Facilities to any person or to any property (other than property forming part of the Facilities) due to or arising out of the performance or non-performance of the services by the Contractor or any Subcontractor or any tier of subcontractor of such Subcontractor or any performance or non-performance by the other contractors under the other contracts. Such insurance shall be endorsed or amended as to be considered primary, and any other insurance maintained by Owner shall be excess and not contributory with this insurance.

Amount	Deductible limits	Parties insured	From - To
INR 10,00,000 (ten lacs) per occurrence, unlimited no. of occurrences	INR 250,000	As per GCC Clause 34	From Commencement of Work on site to End of Defects Liability period

5. Automobile Liability Insurance

Automobile liability insurance covering all leased, owned, non-owned and hired automobiles, trucks and other vehicles used by the Contractor or its Subcontractors or any tier of subcontractor of such Subcontractor or any of the other contractors in connection with the services or performance under the other contracts. The cover in respect of death or injury shall be unlimited and maximum permissible limits would be obtained under the Motor Tariff for property damage.

6. Insurance against Accident, etc., to Workmen; Other Insurance

Insurance as required by Indian and all other applicable Laws for all actions, suits, claims, demands, costs, charges and expenses arising in connection with the death of or injury to any person employed by the Contractor or its Subcontractors or any tier of subcontractor of such Subcontractor for the purpose of the performance of the services.

APPENDIX 3

TIME SCHEDULE

(Time Schedule to be proposed by the bidder meeting the Completion of Facilities within the Time for Completion stipulated under GCC Clause 8.

The Contractor shall furnish a Time Schedule in accordance with the following for inclusion in its Bid Proposal. The Time Schedule will be discussed and modified during pre-award discussions with the successful Bidder, to match with the civil works schedule finalized with the civil contractor(s).

The successful Contractor shall prepare and maintain the Time Schedule, as described below, during the course of the work.

1.0 General

- 1.1 The Contractor shall be responsible for planning and scheduling the work and reporting its progress in a manner, format and level of detail acceptable to Owner. These plans shall be in accordance with the completion dates as specified in the Contract.
- 1.2 The Contractor shall be responsible for reporting progress to Owner on a weekly and monthly basis. The cut-off day and reporting day shall be nominated by Owner at the time of Award of the Contract. Progress reports shall be presented in a clear logical and useful fashion and in the format approved by the Owner in three hard copies duly signed and one soft version in MS Excel or MS Word format.

2.0 Contract Master Barchart (CMB)

The Contract Master Barchart (CMB) shall be a calendarized barchart consisting of approximately 10-15 activities clearly identifying the key milestone dates and Contract completion date and critical activities. The activities shall be definitive, discrete and measurable work elements and shall be selected such that they depict the full scope of the work including project management, engineering, procurement, construction and commissioning and start-up of the facility, illustrating how the work will be executed with the critical path clearly identified. The CMB shall clearly identify key milestone dates and the Project completion date, and shall identify the required input from Owner or other parties (i.e. approvals, vendor date, etc.). The CMB shall be agreed between Owner and Contractor prior to Contract Award and shall become a prime Contract document against

which Owner shall formally assess progress of the work. The CMB shall be revised only with Owner's prior approval through an Approved Change Order.

3.0 **Contract Master Schedule (CMS)**

3.1 Within thirty (30) days of the Effective Date, Contractor shall submit to Owner the Contract Master Schedule (CMS) package for approval. The CMS shall be the working level document demonstrating Contractor's ability and methods of completing the work within the key milestones identified in the CMB.

3.2 The CMS shall be based on a computerized logic network. The level of detail shall be sufficient to break down the work scope into manageable and measurable activities acceptable to Owner. All activities shall have durations in days.

3.3 The Contractor shall provide a detailed activity barchart based on the resource scheduled logic network. The barchart shall contain activity descriptions, planned start and finish dates with the critical path activities clearly identified. The barchart shall be updated weekly to indicate actual progress.

3.4 The CMS shall include the required dates for supply to Contractor of all external input required to execute the plan. In addition the CMS shall clearly show all Sub-contract award dates and Sub-contractor activities.

3.5 In addition Contractor shall furnish percentage - based progress 'S' Curve indicating, the required rate of progress necessary to complete the work according to the CMS. The 'S' Curve shall be updated weekly to plot actual progress against planned.

4.0 **Progress Measurement and Monitoring**

4.1 The Contractor shall measure progress of the work using its own methods and procedures.

2.0 **Reporting**

2.1 The Contractor shall submit weekly progress reports to Owner in the agreed formats submitted in adequate number of signed originals. The report shall include -

- Brief narrative of work performed during the week
- CMS barchart showing progress at activity level

- Updated progress 'S' Curves showing actual progress
- Milestones achieved and new activities started
- Status of critical activities

2.2 The Contractor shall submit monthly progress reports to Owner in the agreed formats submitted in adequate number of signed originals. The report shall include the weekly report content and shall be supplemented with the following:-

- Safety report
- Narrative of work carried out throughout the month- Change order status, if any
- Updated CMB indicating status.

APPENDIX 4

SCOPE OF EXECUTION OF CIVIL WORKS AT SITE BY THE OWNER

The Owner shall execute all necessary civil construction works including making of foundations as per the details and drawings provided by the Contractor.

APPENDIX 5

LIST OF DOCUMENTS FOR APPROVAL OR REVIEW

Pursuant to GCC Sub-Clause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Owner/Engineer in charge in accordance with the requirements of GCC Sub-Clause 18.2 for approval of Owner/Engineer in charge, the following documents for

Sl. No.	Documents	Requirement
1.	Program of Performance	A/I
2.	Design memorandum/ drawings/documents	A/I
3.	Working Schedules	A
4.	Method statements for manufacturing and assembly	I
5.	Quality Assurance Programme for workshop and construction site.	A
6.	Detailed specifications for bought out items.	I
7.	Logistics for heavy, voluminous and critical components	A
8.	Erection, testing and commissioning procedures.	I
9.	Formats for inspections, tests and test results.	I
10.	Operation and maintenance manuals.	A
11.	List of special tools, tackles and testing instruments.	I
12.	Catalogue of bought out items.	I
13.	Progress Reports.	I
14.	Final Inspection Reports at workshop and construction site.	I
15.	Credentials selection for sub-contractors.	A
16.	Workshop test schedules.	I
17.	Site Test Schedules.	I
18.	Spare Parts List.	I
19.	Handling and storage procedure of equipments/materials	A/I
20.	Detailed list of equipments/ materials to be supplied along with their material of construction.	A/I
21.	Any other document desired by the Owner/Engineer in charge within the scope of work	A/I

- A = Approval I = Information

VOLUME 3
TECHNICAL SPECIFICATIONS

1 SCOPE OF WORK

1.1 General

- i) The broad scope of the work shall include the following: Entering into an annual rate contract for design, procurement/manufacturing, Supply, transportation, erection, testing & commissioning of **Automatic Cone Winding Machines (ACW)/Linkconer** required for up-gradation/replacement of old conventional machinery in NTC Mills spread all over India.
- ii) 56 (Fifty six) ACW and 42 (Fourty two) Linkconer machines for following Mills of NTC Ltd are planned to be procured and installed:

Mill Name	ACW	Linkconer
New Minerva Mills, Hassan (Karnataka)	9	
Finlay Mills Achalpur (Maharastra)	10	
Sri Rangavilas Mills, Coimbatore (Tamilnadu)	9	
Burhanpur Tapti Mills, Burhanpur, (Madhya Pradesh)		22
Coim. Spg & Wvg Mills, Kannur (Kerala)	8	
Kaleeswar B Mills, Kariakoil (Tamilnadu)		9
Pioneer Spinners, Paramkudi (Tamilnadu)		11
New Bhopal Textile, Bhopal (Madhya Pradesh)	7	
Rajnagar Textile Mills, Ahmedabad (Gujarat)	9	
Tirupati Cotton Mills, Andhra Pradesh	4	
Total	56	42

The above numbers given are tentative and may be changed. NTC may also take the delivery of Machines to others mills (List given at 1.1 iii)) not indicated in above table.

Note – “NTC reserves the right to reduce the quantity (Number of Linkconer/Autoconers) at the time of actual Award”

iii) List and addresses of 23 working NTC Mills

Sr.NO.	NAME OF THE MILLS	LOCATION
GUJARAT		
1	Rajnar Textile Mills	Opp: Uttar Gujrat Patel Nagar Society, Babupura, Asarwa Civil Hospital Road, Ahmedabad - 380 016
KARNATAKA		
2	NEW MINERVA MILS	KIADB Plot No 51,52 & 53, Hanumanthpura Vill & Post, Textile SEZ, HASAN-573 128
KERALA		
3	ALGAPPA TEXTILE MILLS	ALAGAPPANAGAR, Trichur-680 302
4	CANNANORE SPG.& WVG.MILLS	Kakkad, CANNANORE-670 005
5	KERALA LAXMI MILLS	Pullazi, THRISSUR-680 012
6	VIJAYAMOHINI MILLS	Thirumala Post, TRIVANDRUM - 695 006
MAHE		
7	CANNANORE SPG.& WVG.MILLS	Palloor, MAHE- 673 310
MAHARASHTRA		
8	PODAR MILLS	N M Joshi Marg, MUMBAI -400 011
9	TATA MILLS	Dr Ambedkar oad, Parel, MUMBAI- 400 012
10	INDIA UNITED M ILL NO.5	AG Pawar Lane, Buculla, MUMBAI- 400 027
11	BARSHI TEXTILE MILLS	2553, Bhojare Road, BARSHI, Dist- Solapur (Maharashtra)
12	NEW FINLAY MILLS	Berar, ACHALPUR- 444 001
WEST BENGAL		
13	ARATI COTTON MILLS	DASS NAGAR, Howrah- 711 105
MADHYA PRADESH		
14	BURHANPUR TAPTI MILLS	Lal Bag, BURHANPUR- 450 331
15	NEW BHOPAL TEXTILE MILLS	Chandbad, BHOPAL- 462 010
TAMIL NADU		
16	PIONEER SPINNERS MILLS	KAMUDAKUDI Post, PARAMKUDI- 623 719
17	KALEESWARAR MILLS 'B' UNIT	KALAYARKOIL- 623 551
18	CAMBODIA MILLS	ONDIPUDUR, COIMBATORE- 641 016
19	COIMBATORE MURUGAN MILLS	Mettupalayam Road, COIMBATORE -641 043
20	PANKAJA MILLS	Pankaja Mills Road, COIMBATORE- 641 045
21	SRI RANGAVILAS S.& W. MILLS	Peelamedu Post, COIMBATORE- 641 004
22	COIMBATORE SPG & WVG MILLS	Krishnaswamy Road, COIMBATORE-641001

ANDHRA PRADESH

23 TIRUPATHI COTTON MILLS

RENIGUNTA, Tirupathi-517 520

- iv) NTC may purchase machines at agreed rates for other Mills also during the validity period of the contract

1.2 Scope of Incidental Services

- a. Erection, testing and commissioning of the supplied machines and equipments.
- b. Furnishing of tools required for assembly and maintenance of the supplied machines.
- c. Furnishing of a detailed operations and maintenance manual for each machine supplied.
- d. Attending to Maintenance and/or repair of the Machinery supplied for a period of six months from the date of commissioning of the supplied machines including supply of spare parts. This shall not relieve the supplier/contractor of any warranty obligations under this Contract; and
- e. Training requirement will be 10 Man days per machines i.e. 2 men training for 5 days in India at supplier's expense.

1.3 Civil Works Details

The contractor/supplier will furnish all necessary details/information for civil works contractor to prepare construction drawings and execute the work. This scope in this regard shall include but not be limited to:

- i) Plans showing location of all structures;
- ii) Process flow diagram showing all material flow and energy flow diagram;
- iii) Equipment layout drawings;
- iv) Foundation drawings for each piece of equipment requiring foundation;
- v) Erection drawings for each piece of equipment;

The Contractor shall be responsible for supervision, technical and engineering advice as requested by the Owner.

The information under (i) to (v) will be made available by the Supplier within a period of 30 days from award of Contract or 90 days in advance of dispatch of machinery, whichever is later.

1.4 Contractor to Cover

The Contractor's scope of the work shall also include the following:

- a. The machinery shall be of the latest model available with the manufacturer/supplier
- b. The contractor shall be responsible for ensuring desired speed and the quality of the material processed by the machines
- c. Erection, Testing and Commissioning
 - i. Training requirement will be 10 Man days per machines i.e. 2 men training for 5 days in India at supplier expense.
 - ii. The indigenous Suppliers may also offer training facilities at their works to the Purchaser's personnel. The number of personnel, the duration of training etc. to be mutually agreed upon.

2 TECHNICAL SPECIFICATIONS OF AUTOMATIC CONE WINDING MACHINE

2.1 The machine shall have the following features

For Magazine type Autoconer

2.1.1 Essential features:-

- No. of winding heads - 60
- Winding speed – 2000 mpm and above
- Material – Natural, synthetic and blended staple yarn
- Count range – Ne 10 to 120
- Yarn supply magazine – 9 can magazine
- Centralized setting in PC for splicer
- Electronic anti patterning device
- Winding drum – With 2 or 2.5 turns, 152 mm traverse
- Should have unwinding accelerator
- Package conveyor belt
- Empty tube conveyor belt
- Travelling blower/suction unit (OHTC)

- Centralized pneumatic adjustment
- Individual Air splicer
- PLC controlled splice cycle
- Centralized control tension mechanism
- Inverter controlled drive for each winding head
- Programmable control for different functions
- Digital display of process parameters.
- FFD must be available and price of Poly propylene sensor attachment may be quoted as optional attachment
- Electronic automatic tension control mechanism
- Inverter for yarn-end suction drive with automatic speed adjustment
- Waxing device including wax monitoring
- Snarls preventer
- Electronics yarn cleaning system with on-line monitoring of yarn evenness and classimat faults.
- Automatic balloon breaker system
- Precision electronic yarn length measurement system
- Automatic package doffer and overhead travelling cleaner as attachment
- Package shape - 4'x20' with up to 320 mm package dia.
- Electronic Yarn clearer with Foreign Fiber detection and Poly Propylene Sensor. Latest Version of clearer of USTER/LOEPFE/SCHLAFHORST make should be provided, for which separate rates are mandatory to be provided for these make of clearer. FFD sensor is must be available. PP sensor add-on can be quoted separately.
- Equipped with energy saving features
- Equipped with hard waste reduction mechanism
- Lighting along the machine

2.1.2. Other features:-

- Essential spare parts should be supplied along with machine
- Tools & gauges should be supplied along with the machine
- The supplier should also provide the Machinery Layout and the utilities data related to Power, Water, Compressed Air, Steam, etc.

For Linkconer:-

Apart from above essential, desirable and other features, the Linkconer should be compatible with LMW make ringframe. The machine details are as follow:-

Mill Name	R/F Make	R/F Model	Year	No. of R/F	No. of Spindle Per R/F	No. Of winding drum required per R/F
Kal.B, Unit – II	LMW	LR 9/AX	2012	9	1632	34
Pioneer, Unit - II	LMW	LR 9/AX	2012	11	1632	34
Burhanpur Tapti, Synthetic Plant	LMW	LR 9/AX	2012	22	1296	24

ALL MACHINE GUARDS AND SAFETY EQUIPMENT UP TO OR BETTER THAN THE STANDARDS APPLIED IN THE INDIA, (INDIAN FACTORIES ACT)

1. BID FORM

Date.....

IFB No.

Name of Contract.....

To: (Name and Address of Owner)

Gentlemen and/or Ladies,

1.0 Having examined the Bidding Documents, including Addenda Nos. *(Insert Numbers)*, the receipt of which is hereby acknowledged, we the undersigned, offer to enter into an annual rate contract for design, procurement/manufacturing, Supply, transportation, erection, testing & commissioning of **Automatic Cone Winding Machines (ACW)** for NTC Mills spread all over India under the above-named Contract in full conformity with the said Bidding Documents for the sum of:

.....
(Amount of Foreign Currency in Words)

.....
(Amount in Figures)

and

.....
(Amount of Local Currency in Words)

.....
(Amount in Figures)

or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.0 Attachments to the Bid Form:

In line with the requirement of the Bidding Documents we enclose herewith the following Attachments to the Bid Form:

- (a) Attachment 1 & 1A (Whichever is applicable): Bid Security in the form of..... *(Please fill in the alternative chosen)* for a sum of..... *(Name of currency and amounts in words)*

& figures) valid for a period of one hundred & twenty (120) days from the date set for opening of bids.

- (b) Attachment 2 : A power of attorney duly authenticated by a Notary Public indicating that the person(s) signing the bid have the authority to sign the bid and thus the bid is binding upon us during the full period of its validity in accordance with the ITB Clause 14.
- (c) Attachment 3 : The documentary evidence establishing in accordance with ITB Clause 3 that we are eligible to bid and in terms of ITB Clause 9.3 (c) are qualified to perform the contract if our bid is accepted. The qualification data has been furnished as per your format enclosed with the bidding documents.
- (d) Attachment 4: Documentary evidence establishing in accordance with ITB Clause 4 that the Facilities offered by us are eligible Facilities and conform to the Bidding Documents has been furnished as Attachment 4. Moreover, all the Bidding Documents as per ITB Clause 5.1, duly signed and stamped on each page as a proof of its acceptance except to the variation/deviations mentioned in Attachment-6 (without cost of withdrawal) and Attachment-6A (with Cost of withdrawal) has also been furnished with this Attachment
- (f) Attachment 5: The variation and deviations from the requirements of the Conditions of Contract and other commercial conditions, Technical Specification and Drawings in your format enclosed with the Bidding Documents without indicating cost of withdrawal.
- (g) Attachment 5A: The variation and deviations from the requirements of the Conditions of Contract and other commercial conditions, Technical Specification and Drawings in your format enclosed with the Bidding Documents, indicating, inter alia, the cost of withdrawal of the variation and deviations.
- (i) Attachment 6: The details of local representation as per your format enclosed in the Bidding Documents.

- (j) Attachment 7: Details of bought out items under Direct Transaction and its value.

Details of bought out items under Direct Transaction and its value for the purpose of issue of Sales Tax declaration Form.

#.....

(Any other Attachment, if required, shall be added here)

3.0 Price Schedules:

- 3.1 In line with the requirements of the Bidding Documents, we enclose herewith the following Price Schedules, duly filled-in as per your Proforma:

Schedule No. 1 : Plant and Equipment including Mandatory Spare Parts, Mandatory Tools & Tackles supplied from Abroad.

Schedule No.2 : Plant and Equipment including Mandatory Spare Parts, Mandatory Tools & Tackles supplied from within the Owner's Country.

Schedule No. 3 : Local Transportation including Port Clearances & Port Charges and Inland Insurance

Schedule No. 4 : Installation Services

Schedule No. 5 : Grand Summary (Schedule Nos.1 to 4)

Schedule No. 6 : Recommended Spare Parts and Recommended Special Tools and tackles.

Schedule No. 7 : Taxes and Duties (Not included in Bid Price)

@.....

@ Any other Schedules, if required, shall be added here.

- 3.1.1 We confirm that we have quoted our prices of each individual items listed in the 'Bill of Quantities' as per GCC Clause No. 11.3

- 3.1.2 We certify that the un-priced Schedules submitted in Envelope-I are exactly the same as the priced Schedules submitted in Envelope-II of our Bid excluding the prices (figures or words) and we understand that in case of any discrepancies/deviations, our Bid is liable to be considered as non-responsive.
- 3.2 We are aware that the Price Schedules do not generally give a full description of the work to be performed under each item and we shall be deemed to have read the Technical Specifications and other Bidding Documents and Drawings to ascertain the full scope of work included in each item while filling-in the rates and prices. We agree that the entered rates and prices shall be deemed to include for the full scope as aforesaid, including overheads and profit.
- 3.3 We declare that as specified in the Conditions of Contract, prices quoted by us in the Price Schedules shall be subject to adjustment in accordance with the General Conditions of Contract only.
- 3.4 We understand that in the price schedule, where there are errors between the total of the amounts given under the column for the Price Breakdown i.e. Unit Price & Quantity and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly. We, further understand that where there are discrepancies between amounts stated in figures and amounts stated in words, the amount stated in words shall prevail. Similarly, any discrepancy in the total bid price and that of the summation of Schedule prices (price indicated in a Schedule indicating the total of that schedule), the total bid price shall be corrected to reflect the actual summation of the Schedule prices.
- 3.5 We declare that Price column of sub-items left blank in an item in the Schedules will be deemed to have been included in other sub-items of that item. The TOTAL for each Schedule and the TOTAL of Grand Summary shall be deemed to be the total price for executing the Facilities and sections thereof in complete accordance with the Contract, whether or not each individual sub-item has been priced.
- 4.0 We confirm that except as otherwise specifically provided our Bid Prices include all taxes, duties, levies and charges as may be assessed on us, our Sub-Contractor/Sub-Vendor or their employees by all municipal, state or national government authorities in connection with the Facilities, in and outside of India.

- 4.1 We understand that notwithstanding 4.0 above, you shall bear and promptly pay all applicable custom and import duty imposed on the Plant & Equipment including Mandatory Spare Parts, Mandatory Tools & Tackles specified in Schedule No.1 (and on spare parts to be supplied from abroad and specified in Schedule No.6, when awarded) to be incorporated into the Facilities, by the Indian Laws. However, we understand that if we choose to ship the equipment in Shipper's Containers, then the custom duty levied on the cost of empty Containers shall not be borne by you and shall be payable by us.

100% of applicable Taxes and Duties which are payable by the Owner under the Contract shall be paid/reimbursed by the Owner to the Contractor after despatch of equipments on production of satisfactory documentary evidence by the Contractor subject to upper limit of Rs.....* (Rupees) and restrictions stipulated in GCC Clause No. 14.2.

**(Mention the total amount of Schedule 7)*

- 4.2 We further understand that notwithstanding 4.0 above, you shall also bear and reimburse to us/our Assignee, Excise Duty, VAT/Sales Tax (but not the surcharge in lieu of Sales Tax), local tax, Entry Tax and other levies in respect of direct transaction between you and us/our Assignee, imposed on the Plant & Equipment including Mandatory Spare Parts and Mandatory Tools & Tackles specified in Schedule No.2 (and also on locally supplied spares, tools & tackles quoted in Schedule No. 6, when awarded) to be incorporated in to the Facilities by the Indian Laws subject to restrictions stipulated in GCC Clause No. 14.2.

- 4.2.1 100% of applicable Taxes and Duties which are payable by the Owner under the Contract shall be paid/reimbursed by the Owner to the Contractor after despatch of equipments on production of satisfactory documentary evidence by the Contractor subject to upper limit of Rs.....* (Rupees) and restrictions stipulated in GCC Clause No. 14.2.

**(Mention the total amount of Schedule 7)*

- 4.2.2 We confirm that all taxes, duties, levies and charges including works/service tax etc. are included in our quoted prices of Schedule No. 3 & 4 and no additional cost on

account of any taxes/duties/levies/charges etc. shall be payable by you for the items/works/scope specified in Schedule No. 3 & 4 subject to GCC clause no. 14.4 & 36.

4.3 We confirm that we [*or our Assignee (applicable for Foreign Bidders) as per para 5.0 below*] shall also get registered with the concerned Sales Tax Authorities, in the state where the Mill is located.

4.4 We confirm that no Sales Tax in any form shall be payable by you for the bought out items, except those covered under Direct Transactions between the contractor and the Owner as defined in clause no.14.2 of Volume-2 (GCC) which are despatched directly by us/our Assignee under the Second or Third Contract (as referred in para 5.0 and 5.1 below), as the case may be. However, you will issue requisite Sales Tax declaration forms in respect of such bought out items under Direct Transactions, on production of documentary evidence of registration with the concerned Sales Tax Authorities. The minimum value of such items is indicated in Attachment No. 9 and we agree that such issuance of forms from you will always be based on the satisfactory documentary evidence as per law.

5.0 **Construction of the Contract**

5.1 We* (*applicable to foreign bidders only*) declare that we have studied Clause GCC 3 relating to mode of contracting for Foreign Bidders and we are making this proposal with a stipulation that you shall award us three separate Contracts viz. 'First Contract' for CIF/CIP supply of all off-shore equipments and materials including Mandatory spare parts & mandatory tools & tackles and 'Second Contract' for Ex-works supply of all equipment and materials including Mandatory spare parts of Indian origin and 'Third Contract' for providing all services i.e. port handling and clearance for the imported goods, further loading and inland transportation for delivery at site, unloading, storage, handling at site, installation, testing and commissioning in respect of all the equipments supplied under both the contracts and any other services specified in the Contract Documents. We declare that the award of three contracts will not, in any way, dilute our responsibility for successful operation of Plant/ Equipment and fulfillment of all the obligations as per Bidding Documents and that these three Contracts will have a cross-fall breach clause i.e. a breach in one Contract will automatically be classified as a breach of the other two

Contract which will confer on you the right to terminate the other Contract at our risk and cost.

Further, we hereby propose M/s whose capacity, and experience are enclosed with our Bid as our Assignee for the purpose of executing the 'Second Contract' and/or 'Third Contract' and written unequivocal consent of the above-mentioned proposed Assignee to work as your independent Contractor, on the same terms and conditions as offered by us to you in this bid, is also enclosed with the Bid Form.

The above mentioned Assignee shall directly enter into the 'Second Contract' and/or 'Third Contract' with you and both the contracts shall contain the aforesaid cross-fall breach clause.

In case the Assignee, despite his written consent fails to enter into the 'Second Contract' and/or 'Third Contract' with you, or if the Owner in his judgment does not find acceptance of the proposed Assignee as its Contractor, then we undertake to enter into and execute all three Contracts, inter alia, containing the aforesaid cross-fall breach clause. In such an event, the over-all financial liability of the Owner, under the Contract shall, however, not exceed that envisaged in our this bid.

OR

- 5.1 We** (applicable to Domestic Bidders only) declare that we have studied Clause GCC 3 relating to mode of contracting for Domestic Bidders and we are making this proposal with a stipulation that you shall award us two separate Contracts viz. 'First Contract' for ex-works and CIF/CIP (if any) supply of all equipments and materials including Mandatory spare parts and mandatory tools & tackles identifying separately the CIF/CIP and Ex-works components of the supply and 'Second Contract' for providing all the services i.e. inland transportation for delivery at site, unloading, storage, handling at site, installation, testing and commissioning in respect of all the equipments supplied under the 'First Contract' and other services specified in the Contract Documents. We declare that the award of two Contracts will not in any way dilute our responsibility for successful operation of plant/equipment and fulfillment of all the obligations as per Bidding Documents and that both the Contracts will have a cross-fall breach clause i.e. a breach in one contract will automatically be classified

as a breach of other contract which will confer on you the right to terminate the other Contract at our risk and cost.

6.0 We have read the provisions of following clauses and confirm that the specified stipulations of these clauses are acceptable to us:

- | | | |
|-----|----------|---------------------------|
| (a) | GCC 5 | Governing Law |
| (b) | GCC 6 | Settlement of Disputes |
| (c) | GCC 12 | Terms of Payment |
| (d) | GCC 13.3 | Performance Security |
| (e) | GCC 14 | Taxes & Duties |
| (f) | GCC 26.2 | Completion Time Guarantee |
| (g) | GCC 27 | Defect Liability |
| (h) | GCC 29 | Patent Indemnity |
| (i) | GCC 30 | Limitation of Liability |

6.1 We further declare that additional conditions, variations, deviations, if any, found in the proposal other than those listed in Attachment 5 and/or Attachment 5A, save those pertaining to any rebates offered, shall not be given effect to.

7.0 We undertake, if our bid is accepted, to commence the work on Facilities immediately upon your Notification of Award to us, and to achieve Completion within the time stated in the Bidding Documents.

8.0 If our bid is accepted, we undertake to provide an Advance Payment Security and a Performance Security in the form and amounts, and within the times specified in the Bidding Documents.

9.0 We agree to abide by this bid for a period of 120 days from the date fixed for submission of bids as stipulated in the Bidding Documents, and it shall remain binding upon us and may be accepted by you at any time before the expiration of

that period. Further, the prices of recommended spares contained in our Bid shall remain valid for a period of 120 days after the expiry of validity of bid, mentioned above.

10.0 Until a formal Contract is prepared and executed between us, this bid, together with your written acceptance thereof in the form of your Notification of Award shall constitute a binding contract between us.

11.0 We understand that you are not bound to accept the lowest or any bid you may receive.

12.0 Not Used
14.0 We, hereby, declare that only the persons or firms interested in this proposal as principals are named here and that no other persons or firms other than those mentioned herein have any interest in this proposal or in the Contract to be entered into, if the award is made on us, that this proposal is made without any connection with any other person, firm or party likewise submitting a proposal is in all respects for and in good faith, without collusion or fraud.

13.0 Not Used.

14.0 We confirm that our Bid including rates / prices quoted by us in the Schedules & Attachments are unconditional except to the extent mentioned in Attachment-6.

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

Thanking you, we remain,

Yours faithfully,
(Signature)
(Printed Name)
(Designation)
(Common Seal)

Date :
Place :

Business Address:

Country of Incorporation :
(State or Province to be indicated)

Name & Address of the Principal Officer:

* Indian Bidders to strike off this provision.

** Foreign Bidders to strike off this provision.

Note : Bidders may note that no prescribed Proforma has been enclosed for :

- (a) Attachment 2, (Power of Attorney).
- (b) Attachment 3, (For documentary evidence establishing that we are eligible to bid & are qualified to perform the Contract if our bid is accepted.
- (c) Attachment 4, (For documentary evidence establishing that the facilities offered are eligible facility and conform to bidding documents).

For these Attachments 2, 3 & 4 Bidders may use their own Proforma for furnishing the required information with the Bid.

ATTACHMENT – 1

(To be stamped in accordance with Stamp Act if any, of the Country of the issuing Bank)

Bid Security Forms

Bank Guarantee

Date: _____

[Name of Contract]

To: *[Name and address of Owner]*

WHEREAS *[name of Bidder]* (hereinafter called “the Bidder”) has submitted its Bid dated *[date of bid]* for the performance of the above-named Contract (hereinafter called “the Bid”)

KNOW ALL PERSONS by these present that WE *[name of bank]* of *[address of bank]* (hereinafter called “the Bank”), are bound unto *[name of Owner]* (hereinafter called “the Owner”) in the sum of: *[amount]*, for which payment well and truly to be made to the said Owner, the Bank binds itself, its successors and assigns by these presents.

THE CONDITIONS of this obligation are the following:

1. If the Bidder withdraws its Bid during the period of bid validity specified by the Bidder in the Bid Form, or
2. If the Bidder, having been notified of the acceptance of its Bid by the Owner during the period of bid validity
 - a) fails or refuses to sign the Contract Agreement when required, or
 - b) fails or refuses to issue the performance security in accordance with the bidding documents, or
 - c) refuses to accept the arithmetical corrections made in accordance with the bidding documents.

WE undertake to pay to the Owner up to the above amount upon receipt of its first written demand, without the Owner having to substantiate its demand, provided that in its demand the Owner will note that the amount claimed by it is due to it, owing to the occurrence of one

or both of the two above-named conditions, and specifying the occurred condition or conditions.

[#]

This guarantee will remain in full force up to and including *[date 90 days after the period of bid validity]*, and any demand in respect thereof must reach the Bank not later than the above date.

For and on behalf of the Bank

[Signature]

in the capacity of

Common Seal of the Bank

Communication address of the Bank

Name of the contact person

Tel. No.

Fax No.

Email:

The following information should be invariably mentioned on the back side of the bank Guarantee :

- * Vendor's stamp with full details i.e. name of the purchaser in whose favour & purpose for which this stamp paper has been purchased.

[#] The Owner may also present any of his demands at the counters of the -----
----- *(name and branch of the bank in India)* ----- for further relay to us. *(To be inserted in case of a foreign currency bank guarantee issued by an overseas bank outside India).*

ATTACHMENT -5
(Name of the Mill)

List of Deviations without Cost of Withdrawal

(To be furnished by the Bidders)

(Bidder's Name & Address) :

To:.....

(Name of the Owner)

Dear Sir,

Following are the deviations proposed by us as per ITB Clause 22.5.

S.No.	Clause No.	Deviation	Remarks/Justifications
-------	------------	-----------	------------------------

- Note:** 1. We hereby confirm that all the deviations specified as above in Attachment – 6 are the same which have been mentioned in Attachment - 6A alongwith its cost of withdrawal and as placed in Envelope – II.
2. We hereby confirm our acceptance and compliance to the critical provisions of GCC clauses listed in ITB clause 22.5.

Date: (Signature).....

Place : (Printed Name).....

(Designation).....

(Common Seal).....

ATTACHMENT – 5A

(Name of the Mill)

List of Deviations with Cost of Withdrawal

(Bidder's Name & Address) :

To :.....

(Owner's Name & Address)

Dear Sir,

Following are the deviations proposed by us as per ITB Clause 22.5. We are also furnishing below the cost of withdrawal for the deviations proposed by us in Attachment 5. We confirm that we shall withdraw the deviations proposed by us at the cost of withdrawal indicated in this attachment failing which our bid may be rejected and Bid Security forfeited.

Deviations :

<u>S.No.</u>	<u>Clause No.</u>	<u>Deviation</u>	<u>Cost of Withdrawal</u>
1.	2.	3.	4.

In case no specific cost of withdrawal is mentioned against any item in column no. 4, cost of withdrawal of such deviations is 'NIL'.

Date : (Signature).....

Place : (Printed Name).....

(Designation).....

(Common Seal).....

ATTACHMENT - 6

(Name of the Mill)

(Details in respect of Local Agent)

(Bidder's Name & Address) :

To :

(Name of the Owner)

Dear Sir,

We furnish below the following information in respect of our local agent:

(i) Name and address of the local agent

.....
.....
.....
.....

(ii) Services to be rendered by the local agent

.....
.....

(iii) The fixed amount of remuneration for the agent included in the offer

.....
.....

Date : (Signature).....

Place : (Printed Name).....

(Designation).....

(Common Seal).....

.....

ATTACHMENT –7

Details of Bought out items Under Direct Transaction and its value

Sl. No.	Name of Sub-contractor/ Assignee	Description of bought out Items under Direct Transaction as per GCC clause 14.2 and Sl. No. 4.4 of Bid Form	Total Value of bought out items under Direct Transaction
(1)	(2)	(3)	(5)
Total :			

NOTE:-

It is certified that;

- 1) the above value of bought out items under Direct Transaction as per Sl. No. 4.4 of Bid Form is only for the purpose of issue of Sales Tax Declaration Form on production of documentary evidence of registration with the concerned Sales Tax Authorities.
- 2) all applicable taxes & duties on the above items and value are already incorporated in Schedule-7 (Taxes and Duties) of this Bid.

Name of Bidder:	-----
Signature of Bidder:	-----

Schedules of Rates and Prices

**Schedule 1: Plant, equipment, Mandatory spare parts, Mandatory Tools & Tackles
 supplied from abroad**

Item	Description	Unit	Code ₁	Qty. (1)	Unit Price ²		Total Price ² (1 x 3)
					FOB or FCA (2)	CIF or CIP (3)	
TOTAL (to Schedule 5. Grand Summary)							

Local Agent's Commission, if any:
 included in FOB Price above

Code	Country

Name of Bidder:	_____
Signature of Bidder:	_____

¹ Bidders shall enter a code representing the country of origin of all imported plant and equipment

² Specify currency.

Schedule 2: Plant, equipment, Mandatory spare parts, Mandatory Tools & Tackles to be manufactured or fabricated from within the Owner's country

Item	Description	Unit	Qty (1)	EXW Unit Price ¹ (2)	EXW Total Price ¹ (1 x 2)
TOTAL (to Schedule 5: Grand Summary)					

Name of Bidder: _____ Signature of Bidder: _____

¹ Specify currency in accordance with specifications under ITB Sub-Clause 12.1 (b)

**Schedule 3: Local Transportation including Port Clearance & Port Charges and
 Inland Insurance**

Item	Description	Unit	Qty	Unit Price ¹		Total Price ¹
				Local currency Portion	Foreign currency Portion (optional)	
			(1)	(2)		(1 x 2)
	Inclusive of all applicable taxes, such as Service Tax etc.					
TOTAL (to Schedule 5: Grand Summary)						

Name of Bidder:	_____
Signature of Bidder:	_____

¹ Specify currency in accordance with specifications under ITB Sub-Clause 12.1 (b)

Schedule 4: Installation Services

Item	Description	Unit	Qty	Unit Price ¹		Total Price ¹		
				Foreign Currency Portion	Local Currency Portion	Foreign	Local	
			(1)	(2)	(3)	(1 x 2)	(1x3)	
	Inclusive of all applicable taxes, such as Service Tax etc.							
TOTAL (to Schedule 5: Grand Summary)								

Name of Bidder: _____ Signature of Bidder: _____

¹ Specify currency in accordance with specifications under ITB Sub-Clause 12.1 (b)

Schedule 5: Grand Summary

Item	Description	Total Price ¹	
		Foreign	Local
	Total Schedule 1 : Plant, equipment, Mandatory spare parts, Mandatory Tools & Tackles supplies from abroad		
	Total Schedule 2 : Plant, equipment, Mandatory spare parts, Mandatory Tools & Tackles supplied from within the Owner's country		
	Total Schedule 3 : Local transportation including port clearance & port charges and inland insurance		
	Total Schedule 4 : Installation services		
TOTAL (to Bid Form)			

Name of Bidder: _____ Signature of Bidder: _____

¹ Specify currency in accordance with specifications under ITB Sub-Clause 12.1 (b)

Schedule 6: Recommended Spare Parts*

Item	Description	Unit	Qty (1)	Unit Price		Total Price (1 x 2 or 3)	Local Transportation including Port Clearance & Port Charges and Inland Insurance	Applicable taxes & duties
				CIF foreign (2)	EXW local (3)			
TOTAL								

Name of Bidder: _____

Signature of _____
 Bidder:

*This includes Recommended Tools & Tackles

Schedule 7: Taxes and Duties

Item	Description of Taxes/duties/levies etc.	Rate of Taxes/duties/levies applicable	Amount on which Taxes/duties/levies applicable		Amount of Taxes/duties/levies payable		Sub-Total of Taxes/duties/levies payable (6+7)
			Main Eqpt.	Mandatory Spares and Mandatory tools & tackles	Main Eqpt.	Mandatory and Spares Mandatory tools & tackles	
1	2	3	4	5	6	7	8
TOTAL- TAXES AND DUTIES (as applicable on items of Supply Contracts only)							

(Amount in words.....)

Note :

1. All applicable taxes & duties including customs duty, excise duty, other levies and charges such as CST, Entry Tax etc. (prevailing at the date twenty-eight days prior to the date of Bid submission) on all items of Schedule No. 1 & Schedule No. 2 of our Price Bid i.e., on all items of supply Contract(s) only, as defined in GCC clause 3.6, has been mentioned in this Schedule.
2. The payment/reimbursement of taxes & duties by the Owner shall be restricted to the Total amount mentioned in Column 8 of this Schedule subject to GCC Clause no. 14.4 & 36.

Name of Bidder:	_____
Signature of Bidder:	_____

**2a. FORM OF 'NOTIFICATION OF AWARD OF CONTRACT' FOR SUPPLY
OF PLANT AND EQUIPMENT FROM ABROAD**

NOTE : ***INSTRUCTIONS INDICATED IN ITALICS IN THIS NOTIFICATION OF
AWARD ARE TO BE TAKEN CARE OF BY THE ISSUING AUTHORITY.***

Ref. No. :

Date :

.....(Contractor's Name & Address).....
.....
.....
.....

Attn: Mr.....

Sub : Notification of Award of Contract for Supply (off shore equipment)
..... ***(Package Name)*** as per Specification
No.....

Dear Sir,

1.0 This has reference to the following:

- (i) Bidding Documents for the subject package issued to you vide our letter no.
..... dated..... comprising the following:

***.....(List out all the Sections/Volumes of the Bidding
Documents along with Tender Drawings etc. as issued to the
bidder).....***

Errata/Amendment No..... to..... ***(Name of
Section/Volume of the Bidding Documents to which Errata/Amendment
pertains)***..... issued to you vide our letter no.
.....dated.....

***(Applicable only if any Errata/Amendment to the Bidding Documents
has been issued subsequently)***

- (ii) Clarifications furnished to you on the Bidding Documents vide our letter no..... dated based on the query raised by **you/one of the prospective bidders. (Use as applicable)**

(Applicable only if any clarification to the Bidding Documents has been issued subsequently)

(INCLUDE AS FURTHER SUB-PARAGRAPHS ANY OTHER CORRESPONDENCE MADE TO THE BIDDER AFTER ISSUANCE OF BIDDING DOCUMENTS UP TO BID OPENING)

- (iii) Your Proposal for the subject package submitted vide your letter No. dated..... **and its modification vide letter no. dated (Delete if not applicable).**

- (iv) Our Fax message/letter No. dated..... regarding extension of validity of bid and that of the Bank Guarantee towards Bid Security.

(Applicable only if any extension has been sought subsequently)

(INCLUDE AS FURTHER SUB-PARAGRAPHS ANY OTHER CORRESPONDENCE MADE TO OR BY THE BIDDER AFTER BID OPENING)

- (v) Our Fax message/letter No. dated..... inviting you for post bid discussions.

- (vi) Post bid discussions and meetings we had with you from to

- (vii) Clarification/Confirmation furnished by you vide your letter No.dated

- 2.0 We confirm having accepted your proposal submitted vide letter no. dated **and its modification vide letter no..... dated (Delete if not applicable)** read in conjunction with all the specifications, terms & conditions of the Bidding Documents and **Your**

subsequent letters (Use if relevant) referred to in para 1.0 above and award on you the Contract for the work of **(Indicate brief Scope of Work)**..... of **(Name of Package)**for **(Name of MILL)**..... as per Specification No. :..... (hereinafter referred to as the 'First Contract').

3.0 We have also notified you vide our Notification of Award No. dated for award of another Contract on you for the work of **(indicate brief scope of work of the 'Second Contract' and 'Third Contract')** of the equipment/materials to be supplied by you under this 'First Contract' including Performance and Guarantee test for complete**(Name of Package)** for**(Name of Mill)** as per Specification No. (hereinafter referred to as the 'Second Contract'). You shall also be fully responsible for the works to be executed under the 'Second Contract' and 'Third Contract' and it is expressly understood and agreed by you that any breach under the 'Second Contract' and/or 'Third Contract' shall automatically be deemed as a breach of this 'First Contract' and vice-versa and any such breach or occurrence or default giving us a right to terminate the 'Second Contract' and/or 'Third Contract' and/or recover damages thereunder, shall give us an absolute right to terminate this Contract and/or recover damages under this 'First Contract' as well and vice-versa. However, such breach or default or occurrence in the 'Second Contract' and/or 'Third Contract' shall not automatically relieve you of any of your responsibility / obligations under this 'First Contract'. It is also expressly understood and agreed by you that the equipment/materials to be supplied by you under this 'First Contract' and/or 'Second Contract' when installed and commissioned under the 'Third Contract' shall give satisfactory performance in accordance with the provisions of the Contract.

4.0 The total Contract Price for the entire scope of work under the Contract shall be(*Specify the amount and currency*)..... as per the following break up:

(i) **CIF/CIP port of entry price**

for Main Equipment

(ii) **CIF/CIP port of entry price**

for Mandatory Spares

.....

TOTAL (i + ii)

(.....(*Specify the total amount in words*).....)

5.0 You shall prepare and finalize the Contract Documents for signing of the formal Contract Agreement and shall enter into the Contract Agreement with us, as per the Proforma enclosed with the Bidding Documents, on non-judicial stamp paper of appropriate value within 28 days from the date of this Notification of Award.

6.0 This Notification of Award is being issued to you in duplicate. We request you to return its duplicate copy duly signed and stamped on each page including all the enclosed Appendices, by the authorised signatory of your company as a proof of your acknowledgement and confirmation.

Please take the necessary action to commence the work and confirm action.

Yours faithfully,
For and on behalf of

.....(*Name of the Owner*).....

(Authorised Signatory)

Encl. :

2b. FORM OF 'NOTIFICATION OF AWARD OF CONTRACT' FOR SUPPLY OF PLANT AND EQUIPMENT WITHIN OWNER'S COUNTRY

NOTE : *INSTRUCTIONS INDICATED IN ITALICS IN THIS NOTIFICATION OF AWARD ARE TO BE TAKEN CARE OF BY THE ISSUING AUTHORITY.*

Ref. No. :

Date :

.....(Contractor's Name & Address).....

.....

.....

.....

Attn: Mr.....

Sub : Notification of Award of Contract for Supply (Equipment and Material of Indian origin)..... *(Package Name)* as per Specification No.....

Dear Sir,

1.0 This has reference to the following :

- (i) Bidding Documents for the subject package issued to you vide our letter no. dated..... comprising the following :

.....(List out all the Sections/Volumes of the Bidding Documents along with Tender Drawings etc. as issued to the bidder).....

Errata/Amendment No..... to..... *(Name of Section/Volume of the Bidding Documents to which Errata/Amendment pertains)*.....issued to you vide our letter no.dated.....

(Applicable only if any Errata/Amendment to the Bidding Documents has been issued subsequently)

- (ii) Clarifications furnished to you on the Bidding Documents vide our letter no..... dated based on the query raised by **you/one of the prospective bidders. (Use as applicable)**

(Applicable only if any clarification to the Bidding Documents has been issued subsequently)

(INCLUDE AS FURTHER SUB-PARAGRAPHS ANY OTHER CORRESPONDENCE MADE TO THE BIDDER AFTER ISSUANCE OF BIDDING DOCUMENTS UP TO BID OPENING)

- (iii) Your Proposal for the subject package submitted vide your letter No. dated..... **and its modification vide letter no. dated (Delete if not applicable).**

- (iv) Our Fax message/letter No. dated..... regarding extension of validity of bid and that of the Bank Guarantee towards Bid Security.

(Applicable only if any extension has been sought subsequently)

(INCLUDE AS FURTHER SUB-PARAGRAPHS ANY OTHER CORRESPONDENCE MADE TO OR BY THE BIDDER AFTER BID OPENING)

- (v) Our Fax message/letter No..... dated..... inviting you for post bid discussions.

- (vi) Post bid discussions and meetings we had with you from to

- (vii) Clarification/Confirmation furnished by you vide your letter No.dated

- 2.0 We confirm having accepted your proposal submitted vide letter no. dated **and its modification vide letter no..... dated (Delete if not applicable)** read in conjunction with all the specifications, terms & conditions of the Bidding Documents and **Your**

subsequent letters (Use if relevant) referred to in para 1.0 above and award on you the Contract for the work of **(Indicate brief Scope of Work)**..... of **(Name of Package)**for **(Name of Mill)**..... as per Specification No.....(hereinafter referred to as the 'Second Contract').

3.0 We have also notified you vide our Notification of Award No. dated for award of another Contract on you for the work of **(indicate brief scope of work of the 'First Contract' and 'Third Contract')** of the equipment/materials to be supplied by you under this 'Second Contract' including Performance and Guarantee test for complete**(Name of Package)** for**(Name of Mill)** as per Specification No. (herein after referred to as the 'Second Contract'). You shall also be fully responsible for the works to be executed under the 'First Contract' and 'Third Contract' and it is expressly understood and agreed by you that any breach under the 'First Contract' and/or 'Third Contract' shall automatically be deemed as a breach of this 'Second Contract' and vice-versa and any such breach or occurrence or default giving us a right to terminate the 'First Contract' and/or 'Third Contract' and/or recover damages there under, shall give us an absolute right to terminate this Contract and/or recover damages under this 'Second Contract' as well and vice-versa. However, such breach or default or occurrence in the 'First Contract' and/or 'Third Contract' shall not automatically relieve you of any of your responsibility / obligations under this 'Second Contract'. It is also expressly understood and agreed by you that the equipment/materials to be supplied by you under this 'Second Contract' and 'First Contract' when installed and commissioned under the 'Third Contract' shall give satisfactory performance in accordance with the provisions of the Contract.

4.0 The total Contract Price for the entire scope of work under the Contract shall be**(Specify the amount and currency)**..... as per the following break up :

(i) **Ex-manufacturing works**

Price for Main Equipment

(ii) **Ex-manufacturing works**

Price for Mandatory Spares

TOTAL (i + ii)

(.....**(Specify the total amount in words)**.....)

5.0 You shall prepare and finalise the Contract Documents for signing of the formal Contract Agreement and shall enter into the Contract Agreement with us, as per the proforma enclosed with the Bidding Documents, on non-judicial stamp paper of appropriate value within 28 days from the date of this Notification of Award.

6.0 This Notification of Award is being issued to you in duplicate. We request you to return its duplicate copy duly signed and stamped on each page including all the enclosed Appendices, by the authorised signatory of your company as a proof of your acknowledgement and confirmation.

Please take the necessary action to commence the work and confirm action.

Yours faithfully,
for and on behalf of

.....**(Name of the Owner)**.....

(Authorised Signatory)

Encl. :

**2.C. FORM OF 'NOTIFICATION OF AWARD OF CONTRACT' FOR PROVIDING
ALL SERVICES**

NOTE : *INSTRUCTIONS INDICATED IN ITALICS IN THIS NOTIFICATION OF AWARD ARE TO BE TAKEN CARE OF BY THE ISSUING AUTHORITY.*

Ref. No. :

Date :

.....(Contractor's Name & Address).....

.....

.....

.....

Attn: Mr.....

Sub : Notification of Award of Contract for Providing
(Package Name) as per Specification
No.....

Dear Sir,

1.0 This has reference to the following :

- (i) Bidding Documents for the subject package issued to you vide our letter no. dated..... comprising the following :

.....(List out all the Sections/Volumes of the Bidding Documents along with Tender Drawings etc. as issued to the bidder).....

Errata/Amendment No..... to..... **(Name of Section/Volume of the Bidding Documents to which Errata/Amendment pertains).....** issued to you vide our letter no.dated.....

(Applicable only if any Errata/Amendment to the Bidding Documents has been issued subsequently)

- (ii) Clarifications furnished to you on the Bidding Documents vide our letter no..... dated based on the query raised by you/one of the prospective bidders. ***(Use as applicable)***

(Applicable only if any clarification to the Bidding Documents has been issued subsequently)

(INCLUDE AS FURTHER SUB-PARAGRAPHS ANY OTHER CORRESPONDENCE MADE TO THE BIDDER AFTER ISSUANCE OF BIDDING DOCUMENTS UP TO BID OPENING)

- (iii) Your Proposal for the subject package submitted vide your letter No. dated..... **and its modification vide letter no. dated *(Delete if not applicable)*.**

- (iv) Our Fax message/letter No. dated..... regarding extension of validity of bid and that of the Bank Guarantee towards Bid Security.

(Applicable only if any extension has been sought subsequently)

(INCLUDE AS FURTHER SUB-PARAGRAPHS ANY OTHER CORRESPONDENCE MADE TO OR BY THE BIDDER AFTER BID OPENING)

- (v) Our Fax message/letter No..... dated..... inviting you for post bid discussions.

- (vi) Post bid discussions and meetings we had with you from to

- (vii) Clarification/Confirmation furnished by you vide your letter No.dated

2.0 We confirm having accepted your proposal submitted vide letter no. dated **and its modification vide letter**

no..... dated (*Delete if not applicable*) read in conjunction with all the specifications, terms & conditions of the Bidding Documents and **Your subsequent letters (*Use if relevant*)** referred to in para 1.0 above and award on you the Contract for the work of **(*Indicate brief Scope of Work*)**..... of..... **(*Name of Package*)**for **(*Name of Mill*)**..... as per Specification No..... (hereinafter referred to as the 'Third Contract').

3.0 We have also notified you vide our Notification of Award No. dated for award of another Contract on you for the work of **(*indicate brief scope of work of the 'Second Contract' and/or 'First Contract'*)** for complete**(*Name of Package*)** for**(*Name of Mill*)** as per Specification No. You shall also be fully responsible for the works to be executed under the 'Second Contract' and 'First Contract' and it is expressly understood and agreed by you that any breach under the 'Second Contract' and/or 'First Contract' shall automatically be deemed as a breach of this 'Third Contract' and vice-versa and any such breach or occurrence or default giving us a right to terminate the 'Second Contract' and/or 'First Contract' and/or recover damages thereunder, shall give us an absolute right to terminate this Contract and/or recover damages under this 'Third Contract' as well and vice-versa. However, such breach or default or occurrence in the 'Second Contract' and/or 'First Contract' shall not automatically relieve you of any of your responsibility / obligations under this "Third Contract". It is also expressly understood and agreed by you that the equipment/materials to be supplied by you under this 'First Contract' and/or 'Second Contract' when installed and commissioned under this 'Third Contract' shall give satisfactory performance in accordance with the provisions of the Contract.

4.0 The total Contract Price for the entire scope of work under the Contract shall be**(*Specify the amount and currency*)**..... :

5.0 You shall prepare and finalize the Contract Documents for signing of the formal Contract Agreement and shall enter into the Contract Agreement with us, as per the Proforma enclosed with the Bidding Documents, on non-judicial stamp paper of appropriate value within 28 days from the date of this Notification of Award.

- 6.0 This Notification of Award is being issued to you in duplicate. We request you to return its duplicate copy duly signed and stamped on each page including all the enclosed Appendices, by the authorised signatory of your company as a proof of your acknowledgement and confirmation.

Please take the necessary action to commence the work and confirm action.

Yours faithfully,

For and on behalf of

.....(***Name of the Owner***).....

(Authorised Signatory)

Encl. :

3. FORM OF CONTRACT AGREEMENT

(On Non Judicial Stamp paper of appropriate value)

THIS CONTRACT AGREEMENT is made the _____ day of _____, 20____

BETWEEN

NTC LTD., a company incorporated under the laws of India and having its principal place of business at "Corporate Office at New Delhi, India" (hereinafter called "the Owner" which expression shall unless repugnant to the context or meaning thereof include its successors and assigns) of the one part, and *[name of Contractor]*, a company incorporated under the laws of *[country of Contractor]* and having its principal place of business at *[address of Contractor]* (hereinafter called "the Contractor" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) of the other part

WHEREAS the Owner desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz.----- ("the Facilities").

WHEREAS the Contractor had submitted a bid for execution and completion of the Facilities;

AND WHEREAS, subsequent to the submission of the said bid by the Contractor, several discussions, clarifications and negotiations in respect of the said bid have taken place, and the Owner has agreed to award the contract for the execution of the Facilities to the aforesaid Contractor.

AND WHEREAS the Owner has further agreed that the Facilities shall be executed on a coordinated basis inter-alia, through separate contracts to be signed by the Contractor in accordance with the direct responsibility for the supplies and/or the services covered thereby.

AND WHEREAS the present contract as defined below shall be carried out by the Contractor.

NOW THEREFORE THE PARTIES HERETO HEREBY AGREE AND COVENANT AS FOLLOWS:

- 1) The parties hereto hereby covenant, bind and undertake to observe and perform this contract faithfully for the execution of _____(*Offshore/Onshore/Services, as the case may be*) and to execute, perform and do the several and all works and things mentioned and described in the contract and in all other documents annexed hereto, and in accordance with such conditions, specifications and drawings forming part of the contract to the entire satisfaction of the Owner and in all respect perform, observe and fulfill all such terms, conditions and specifications which are expressed or intended to be performed, observed or fulfilled by the Contractor.
- 2) This contract consists of the following documents which are deemed to be integral part of this Agreement as if herein set out verbatim and/or if hereto annexed, viz.:
 - (a) This Contract Agreement
 - (b) Notification of Award
 - (c) General Conditions of Contract and the Appendices
 - (d) Procedures (as listed in Forms and Procedures)
 - (e) Technical Specifications, Drawings and Model Quality Assurance Plan
 - (f) Information for Bidders
 - (g) The Bid and Price Schedules submitted by the Contractor
- 3) The parties hereto hereby agree that for the purpose of invoicing/billing and payments, the respective packages of _____(*Offshore/Onshore/Services*) shall be dealt separately.
- 4) The Contract Price for the above purpose shall be the amount communicated vide Notification of Award No.dated
- 5) The parties hereto hereby agree and declare that in consideration of the payments to be made by the Owner, the Contractor shall execute the works as defined in the contract in the manner and as prescribed in the contract or which are implied or may

be necessary for the completion of the said works or incidental thereto on the terms and conditions mentioned in the contract.

- 6) This Contract annuls all communications which were exchanged prior to its signatures, whether written or oral, between the parties hereto.

IN WITNESS WHEREOF the parties hereto have signed this Agreement hereunder on the date respectively mentioned against signature of each.

For and on behalf of Owner

For & on behalf of Contractor

Place:

Place:

Date: _____

Date: _____

Witnesses:

Witnesses:

1)

1)

2)

2)

4. PERFORMANCE SECURITY FORM

Bank Guarantee

(To be stamped in accordance with Stamp Act if any, of the Country of the issuing Bank)

To

GUARANTOR: BANK

GUARANTEE NUMBER: _____

PRINCIPAL :

(hereinafter referred to as "Contractor"):

BENEFICIARY: NTC LTD., having its registered office at New Delhi (hereinafter referred to as "Owner"): .,

Agreement to which this Guarantee relates:

Agreement for(hereinafter referred to as the "Agreement").

Aggregate Maximum Amount of Rs*..... ONLY.

This Guarantee:, equivalent to [.....%] of the aggregate of the Agreement Price

Expiry Date:@

Final Expiry Date : (30 days after the Expiry Date).

We, ,[Bank].. ., having our registered office at being the Guarantor under this Guarantee, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby irrevocably and unconditionally guarantee and undertake, subject to no other conditions to pay to you, the abovementioned Owner, or such other persons for the time being entitled to the benefit hereof, upon your written request, any sum or sums up to the Aggregate Maximum Amount of this Guarantee as amended from time to time, upon any failure by the Contract to fulfill any of the conditions of the Agreement required to be performed during the performance of the Agreement , as determined by you in your absolute judgment.

We, as Guarantor, will effect payment forthwith upon receipt of your written demand, without proof, conditions, grounds or reasons for such demand for the sum specified therein, notwithstanding any contestations, claims, demands or objections made by the Contract or any other third party and without any right to set-off or counterclaim

Any payment made hereunder shall be made free and clear of, and without deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and whomsoever imposed. We, further, unconditionally acknowledge that any such demand by the Owner of the amounts payable by us to the Owner shall be final, binding and conclusive evidence in respect of the amounts payable by the Contractor to the Owner.

We agree that our obligations under this Guarantee are irrevocable, absolute and unconditional and shall remain in full force and effect till the Final Expiry Date without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation: (i) any time or other indulgence granted by the Owner to the Contract under the Agreements, (ii) any amendment, modification, supplementation or other variation of the Agreement, (iii) any invalidity, irregularity or unenforceability of all or part of the Agreement or any obligation of the Contract under or pursuant thereto, (iv) any partial or complete performance of the Agreement, (v) any lack of or limitation on the status or power of the Contract, (vi) any winding-up, dissolution, receivership or bankruptcy of the Guarantor, the Contract and any amalgamation, merger, reconstruction, reorganization or any change in the constitution of the Guarantor and/or the Contract, or (vii) any other act, omission, event or circumstance which would or may but for this provision operate to prejudice, affect or discharge this Guarantee or our obligations hereunder.

We hereby waive notice of acceptance of this Guarantee and notice of any liability to which it may apply. Except with respect to the written demand for payment referred to above, we waive presentment, demand of payment, protest, notices of any kind and any right to require that resort be made to the Contract or any other security.

We, as Guarantor, undertake to pay to the Owner any money so demanded notwithstanding any dispute or disputes raised by the Contract in any suit or proceeding pending before any Arbitration or Court or Tribunal relating thereto our liability under this Guarantee being absolute and unequivocal.

This Guarantee shall be a continuing security and accordingly: (i) it shall extend to cover any amount due at any time from the Contract to Owner under the Agreement; and (ii) it shall not be discharged by an intermediate discharge or repayment by or for the account of the Contract or any settlement of accounts between the Contract and the Owner.

The benefit of this Guarantee may be assigned by you, without our consent, upon such terms as you may think fit to the lenders, which have agreed to extend credit facilities in connection with the Agreement or to any other entity as you may deem fit.

The sums payable under this Guarantee shall be remitted by the Guarantor to the Owner's designated bank account the details of which will be informed to the Guarantor by the Owner in writing, , and a remittance of sums payable hereunder into such designated account shall discharge the Guarantor of its liability hereunder to the extent of such remittance.

Notwithstanding anything contained hereinabove:

- 1) Our liability under this Guarantee shall not exceed the Aggregate Maximum Amount of this Guarantee;
- 2) This Guarantee will be valid up to the Expiry Date.
- 3) We shall be liable to pay any amount under this bank guarantee or part thereof only if we receive a claim or demand in writing on or before the Final Expiry Date.

This Guarantee shall be governed by and construed in accordance with laws of India.

This Guarantee shall be extended upon written instructions from the Owner to the Guarantor.

Upon the Final Expiry Date, this Guarantee shall become null and void, whether returned to the Guarantor for cancellation or not and any claim or statement received after the Final Expiry Date where applicable, shall be ineffective and not accepted.

[GUARANTOR BANK]

By _____

Place and Date

Name:

Title:

Date:

Notes: 1. (*) This sum shall be ten percent (10%) of the Contract Price (As mentioned in Para -- of Notification of Award.)

(@) This date will be sixty (60) days beyond the Defects liability period as specified in the Contract.

2. The stamp papers of appropriate value shall be purchased in the name of guarantee issuing Bank.

3. The following information should be invariable mentioned on the back side of the Bank Guarantee :

Vendor's stamp with full details i.e. name of the purchaser in whose favour & purpose for which this stamp paper has been purchased.

5. BANK GUARANTEE FORM FOR ADVANCE PAYMENT

Bank Guarantee

GUARANTOR: BANK

GUARANTEE NUMBER: _____

PRINCIPAL: (hereinafter referred to as "Contractor")

BENEFICIARY: NTC LTD., having its registered office at New Delhi (hereinafter referred to as "Owner")

Agreement to which this Guarantee relates: Advance Payment against

Aggregate Maximum Amount of *

This Guarantee: Rupeesequivalent to [%] of the aggregate of the Agreement Price

Expiry Date:@

Final Expiry Date : [30 days after the Expiry Date]

We,[Bank] , having our registered office at, being the Guarantor under this Guarantee, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby irrevocably and unconditionally guarantee and undertake, subject to no other conditions to pay to you, the abovementioned Owner, upon your written request, any sum or sums up to the Aggregate Maximum Amount of this Guarantee, as amended from time to time, upon any failure by the Contractor to fulfill any of the conditions of the Agreement as determined by you in your absolute judgment.

We, as Guarantor, will effect payment forthwith, upon receipt of your written demand, without proof, conditions, grounds or reasons for such demand for the sum specified therein notwithstanding any contestations, claims, demands or objections made by the Contractor or any other third party and without any right to set-off or counterclaim .

Any payment made hereunder shall be made free and clear of, and without deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and whomsoever imposed. We, further,

unconditionally acknowledge that any such demand by the Owner of the amounts payable by us upto the Aggregate Maximum Amount of this Guarantee to the Owner shall be final, binding and conclusive evidence in respect of the amounts payable by the Contractor to the Owner.

We agree that our obligations under this Guarantee are irrevocable, absolute and unconditional and shall remain in full force and effect till the Final Expiry Date without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation: (i) any time or other indulgence granted by Owner to the Contractor, (ii) any amendment, modification, supplementation or other variation of the Agreement, (iii) any invalidity, irregularity or unenforceability of all or part of the Agreement or any obligation of the Contractor under or pursuant thereto, (iv) any partial or complete performance of the Agreement, (v) any lack of or limitation on the status or power of the Contractor, (vi) any winding-up, dissolution, receivership or bankruptcy of the Guarantor, the Contractor and any amalgamation, merger, reconstruction, reorganization or any change in the constitution of the Guarantor and/ or the Contractor, or (vii) any other act, omission, event or circumstance which would or may but for this provision operate to prejudice, affect or discharge this Guarantee or our obligations hereunder.

We hereby waive notice of acceptance of this Guarantee and notice of any liability to which it may apply. Except with respect to the written demand for payment referred to above, we waive presentment, demand of payment, protest, notices of any kind and any right to require that resort be made to the Contractor or any other security.

We, as Guarantor, undertake to pay to the Owner any money so demanded notwithstanding any dispute or disputes raised by the Contractor in any suit or proceeding pending before any Court or Tribunal relating thereto or otherwise our liability under this Guarantee being absolute and unequivocal.

This Guarantee shall be a continuing security during its currency and accordingly: (i) it shall extend to cover the amount due from the Contractor to Owner from time to time under the Agreement upto the expiry date; and (ii) it shall not be discharged by an intermediate discharge or repayment by or for the account of the Contractor or any settlement of accounts between the Contractor and the Owner without prior written consent of the Owner.

The sums payable under this Guarantee shall be remitted by the Guarantor to the Owner's designated bank account, the details of which will be informed to the Guarantor by the Owner in writing, and a remittance of sums payable hereunder into such designated bank account shall discharge the Guarantor of its liability hereunder to the extent of such remittance.

We, agree that this Guarantee is in addition to and not in substitution or in derogation of any other security held by the Owner to secure the performance of the obligations of the Contractor under the Agreement.

We, agree that the Owner shall be entitled, at its option, to enforce this Guarantee against the surety, as principal debtor in the first instance without proceeding at the first instance against the Contractor. We, can amend the value of this Guarantee on a quarterly basis with prior written notice to the Owner, upon receipt of request from the Contractor for change in the value of the Guarantee provided that such request is accompanied with a written certification from the Owner approving such change in the value of the Guarantee.

This Guarantee shall come into force simultaneously with the Owner making the said Advance Payment to the Contractor and shall remain in force and effect till the Advance Payment made by the Owner to the Contractor under the Agreement has been fully recovered in accordance with the Agreement, provided that any claim or liability arising prior to the Expiry Date of this Guarantee shall not be adversely affected in any way.

Notwithstanding anything contained hereinabove:

- 1) Our liability under this Guarantee shall not exceed the Aggregate Maximum Amount of this Guarantee
- 2) This Guarantee will be valid upto the Expiry Date.
- 3) We shall be liable to pay any amount under this Guarantee or part thereof only if we receive a claim or demand in writing, on or before the Final Expiry Date.

This Guarantee shall be governed by and construed in accordance with laws of India.

This Guarantee shall be extended upon written instructions from the Owner to the Guarantor.

Upon the Final Expiry Date, this Guarantee shall become null and void, whether returned to the Guarantor for cancellation or not and any claim or statement received after the Final Expiry Date where applicable, shall be ineffective and not accepted.

[GUARANTOR BANK]

Place and Date

By _____
Name:
Title:
Date:

- Notes:
1. (@) This date will be ninety (90) days beyond the date of Completion of the Facilities.
 2. * Advance is payable against Schedule 1 and Schedule 2 only.
 3. The stamp papers of appropriate value shall be purchased in the name of guarantee issuing Bank.
 4. The following information should invariably be mentioned on the back side of the Bank Guarantee :

Vendor's stamp with full details i.e. name of the purchaser in whose favour & purpose for which this stamp paper has been purchased.

6. FORM OF COMPLETION CERTIFICATE

Date: _____

IFB No: _____

[Name of Contract]

To: *[Name and address of Contractor]*

Dear Ladies and/or Gentlemen,

Pursuant to GCC Clause 24 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Owner dated *[date]*, relating to the *[brief description of the facilities]*, we hereby notify you that the following part(s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the Owner hereby takes over the said part(s) of the Facilities on the date mentioned below.

1. Description of the Facilities or part thereof: *[description]*
2. Date of Completion: *[date]*

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Facilities including Commissioning Test(s) in accordance with the Contract nor of your obligations during the Defects Liability Period.

Very truly yours,

Title
(Engineer In-Charge)

7. FORM OF OPERATIONAL ACCEPTANCE CERTIFICATE

Date: _____

IFB No: _____

[Name of Contract]

To: *[Name and address of Contractor]*

Dear Ladies and/or Gentlemen,

Pursuant to GCC Sub-Clause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Owner dated *[date]*, relating to the *[brief description of the facilities]*, we hereby notify you that the Commissioning Test(s) of the following part(s) of the Facilities were satisfactorily attained on the date specified below.

1. Description of the Facilities or part thereof: *[description]*
2. Date of Operational Acceptance: *[date]*

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defects Liability Period.

Very truly yours,

Title
(Engineer In-Charge)

**8. FORM OF TRUST RECEIPT FOR PLANT, EQUIPMENT
AND MATERIALS RECEIVED**

We M/s (*Contractor's Name*)..... having
our Principal place of business athaving been awarded a Contract
No..... dated for (*Contract Name*)..... by
NTC LTD.

We do hereby acknowledge the receipt of the Plant, Equipment and Materials as are fully
described and mentioned under Documents of Title/RR/LR etc. and in the schedule
annexed hereto, which shall form an integral part of this receipt as "Trustee" of NTC LTD.
The aforesaid materials etc. so received by us shall be exclusively used in the successful
performance of the aforesaid Contract and for no other purpose whatsoever. We undertake
not to create any charge, lien or encumbrance over the aforesaid materials etc, in favour of
any other person/institution(s)/Banks.

For M/s
(*Contractor's Name*)

Dated :

(AUTHORISED SIGNATORY)

Place :

SEAL OF COMPANY

**9a. FORM OF INDEMNITY BOND TO BE EXECUTED
BY THE CONTRACTOR FOR THE EQUIPMENT
HANDLED OVER BY THE OWNER
FOR PERFORMANCE OF ITS CONTRACT
(Entire Equipment Consignment in one lot)
(On Non-Judicial stamp paper of appropriate value)**

INDEMNITY BOND

THIS INDEMNITY BOND is made thisday
of..... 20 by (*Contractor's Name*) a Company
registered under the Companies Act, 1956/Partnership firm/Proprietary concern having its
Registered Office at (hereinafter called as 'Contractor' or "Obligor"
which expression shall include its successors and permitted assigns) in favour of NTC
LTD., , a Company incorporated under the Companies Act, 1956 having its Registered
Office at New Delhi, and its Mill as per 'List and addresses of NTC Mills' in 'Technical
Specification' 1.1. iii) (hereinafter called "NTC LTD., " which expression shall include its
successors and assigns) :

WHEREAS NTC LTD., has awarded to the Contractor a Contract forvide its
Notification of Award/Contract No..... dated and its Amendment
No. and Amendment No....., (*applicable when
amendments have been issued*) (hereinafter called the Contract") in terms of which NTC
LTD., is required to hand over various Equipments to the Contractor for execution of the
Contract.

And WHEREAS by virtue of Clause No..... of the said Contract, the Contractor is
required to execute an Indemnity Bond in favour of NTC LTD., for the Equipments handed
over to it by NTC LTD., for the purpose of performance of the Contract/Erection portion of
the contract (hereinafter called the "Equipments")

AND THEREFORE, this Indemnity Bond witnesseth as follows:

1. That in consideration of various Equipments as mentioned in the Contract,
valued at (*Currency and amount in Figures*).....
(*Currency and amount in words*)
..... (*Mention the CIF/EXW value of*

the equipment) handed over to the Contractor for the purpose of performance of the Contract, the Contractor hereby undertakes to indemnify and shall keep NTC LTD., indemnified, for the full value of the Equipments. The Contractor hereby acknowledges actual receipt of the Equipment etc. as per despatch title documents handed over to the Contractor as detailed in the Schedule appended hereto. The Contractor shall hold such Equipment etc. in trust as a "Trustee" for and on behalf of NTC LTD.

2. That the Contractor is obliged and shall remain absolutely responsible for the safe transit/protection and custody of the Equipment at ----- Mill site against all risks whatsoever till the Equipments are duly used/erected in accordance with the terms of the Contract and the plant/package duly erected and commissioned in accordance with the terms of the Contract is taken over by NTC LTD. The Contractor undertakes to keep NTC LTD., harmless against any loss or damage that may be caused to the Equipments.
3. The Contractor undertakes that the Equipments shall be used exclusively for the performance/execution of the Contract strictly in accordance with its terms and conditions and no part of the equipment shall be utilized for any other work of purpose whatsoever. It is clearly understood by the Contractor that non-observance of the obligations under this Indemnity Bond by the Contractor shall inter-alia constitute a criminal breach of trust on the part of the Contractor for all intents and purpose including legal/penal consequences.
4. That NTC LTD., is and shall remain the exclusive owner of the equipments free from all encumbrances, charges or liens of any kind, whatsoever. The Equipments shall at all times be open to inspection and checking by the Engineer in charge or other employees/agents authorized by him in this regard. Further, NTC LTD., shall always be free at all times to take possession of the Equipments in whatever form the Equipments may be, if in its opinion, the equipments are likely to be endangered, mis-utilised or converted to uses other than those specified in the Contract, by any acts of omission or commission on the part of the Contractor or any other person or on account of any reason whatsoever and the Contractor binds himself and

undertakes to comply with the directions of demand of NTC LTD., to return the Equipments without any demur or reservation.

5. That this Indemnity Bond is irrevocable. If at any time any loss or damage occurs to the Equipments or the same or any part thereof is mis-utilised in any manner whatsoever, then the Contractor hereby agrees that the decision of the Engineer In-Charge of NTC LTD., as to assessment of loss or damage to the Equipment shall be final and binding on the Contractor. The Contractor binds itself and undertakes to replace the lost and/or damaged Equipments at its own cost and/or shall pay the amount of loss to NTC LTD., without any demur, reservation or protest. This is without prejudice to any other right or remedy that may be available to NTC LTD., against the Contractor under the Contract and under this Indemnity Bond.

6. NOW THE CONDITION of this Bond is that if the Contractor shall duly and punctually comply with the terms and conditions of this Bond to the satisfaction of NTC LTD. then, the above Bond shall be void, but otherwise, it shall remain in full force and virtue.

IN WITNESS WHEREOF, the Contractor has hereunto set its hand through its authorized representative under the common seal of the Company, the day, month and year first above mentioned.

SCHEDULE

Particulars of Equipments handed over	Quantity	Particulars of Despatch title Documents	Carrier	CIF/EXW Value of the Equipments	Signature of the Attorney in token of receipt
		RR/GR/ Bill of lading No & Date			

For and on behalf of

.....
(Contractor's Name)

WITNESS

- | | | |
|-----------|--|--|
| 1. | Signature
Name
Address | Signature
Name
Designation of
Authorised representative * |
| 2. | Signature
Name
Address | (Common Seal)
(In case of Company) |

.....
 * Indemnity Bond are to be executed by the authorised person and (i) in case of contracting Company under common seal of the Company or (ii) having the Power of Attorney issued under common seal of the company with authority to execute Indemnity Bond, (iii) In case of (ii), the original Power of Attorney if it is specifically for this Contract or a photostat copy of the Power of Attorney if it is General Power of Attorney and such documents should be attached to Indemnity Bond.

**9b. FORM OF INDEMNITY BOND TO BE EXECUTED
BY THE CONTRACTOR FOR THE EQUIPMENT
HANDLED OVER IN INSTALMENTS BY THE
OWNER FOR PERFORMANCE OF ITS CONTRACT
(On Non-Judicial stamp paper of appropriate value)**

INDEMNITY BOND

THIS INDEMNITY BOND is made this.....day of..... 20
..... by(*Contractor's Name*) a Company registered under the
Companies Act, 1956/Partnership firm/Proprietary concern having its Registered Office at
.....(hereinafter called as 'Contractor' or "Obligor" which expression shall
include its successors and permitted assigns) in favour of NTC LTD., a Company
incorporated under the Companies Act, 1956 having its Registered Office at -----,
India and its Mill as per 'List and addresses of NTC Mills' in 'Technical Specification' 1.1. iii).
(hereinafter called "NTC LTD.,") which expression shall include its successors and assigns):

WHEREAS NTC LTD., has awarded to the Contractor a Contract for vide its
Notification of Award/Contract No.....dated and its Amendment No.
..... and Amendment No....., (*applicable when amendments have been
issued*) (hereinafter called the Contract") in terms of which NTC LTD., is required to hand
over various Equipments to the Contractor for execution of the Contract.

And WHEREAS by virtue of Clause No..... of the said Contract, the
Contractor is required to execute an Indemnity Bond in favour in NTC LTD., for the
Equipments handed over to it by NTC LTD., for the purpose of performance of the
Contract/Erection portion of the contract (hereinafter called the "Equipments")

NOW THEREFORE, this Indemnity Bond witnesseth as follows :

1. That in consideration of various Equipments as mentioned in the Contract,
valued at (*Currency and amount in figures*)..... (*Currency and
amount in words*) (*Mention the CIF/EXW value of the
equipment*) to be handed over to the Contractor in installments from time to
time for the purpose of performance of the Contract, the Contractor hereby
undertakes to indemnify and shall keep NTC LTD., indemnified, for the full
value of the Equipments. The Contractor hereby acknowledges actual
receipt of the initial installment of the Equipment etc. as per details in the

Schedule appended hereto. Further, the Contractor agrees to acknowledge actual receipt of the subsequent installments of the Equipments etc. as required by NTC LTD., in the form of Schedules consecutively numbered which shall be attached to this Indemnity Bond so as to form integral parts of this Bond. The Contractor shall hold such Equipments etc. in trust as a "Trustee" for and on behalf of NTC LTD., .

2. That the Contractor is obliged and shall remain absolutely responsible for the safe transit/protection and custody of the Equipment at NTC LTD., Mill site against all risks whatsoever till the Equipments are duly used/erected in accordance with the terms of the Contract and the plant/package duly erected and commissioned in accordance with the terms of the Contract, is taken over by NTC LTD., . The Contractor undertakes to keep NTC LTD., harmless against any loss or damage that may be caused to the Equipments.
3. The Contractor undertakes that the equipment shall be used exclusively for the performance/execution of the Contract strictly in accordance with its terms and conditions and no part of the equipment shall be utilised for any other work of purpose whatsoever. It is clearly understood by the Contractor that non-observance of the obligations under this Indemnity Bond by the Contractor shall inter-alia constitute a criminal breach of trust on the part of the Contractor for all intents and purpose including legal/penal consequences.
4. That NTC LTD., is and shall remain the exclusive owner of the Equipments free from all encumbrances, charges or liens of any kind, whatsoever. The Equipments shall at all times be open to inspection and checking by the Engineer in charge or other employees/agents authorised by him in this regard. Further, NTC LTD., shall always be free at all times to take possession of the Equipments in whatever form the Equipments may be, if in its opinion, the equipments are likely to be endangered, mis-utilised or converted to uses other than those specified in the Contract, by any acts of omission or commission on the part of the Contractor or any other person or on account of any reason whatsoever and the Contractor binds himself and

undertakes to comply with the directions of demand of NTC LTD., to return the Equipments without any demur or reservation.

5. That this Indemnity Bond is irrevocable. If at any time any loss or damage occurs to the Equipments or the same or any part thereof is mis-utilised in any manner whatsoever, then the Contractor hereby agrees that the decision of the Engineer In-Charge of NTC LTD., as to assessment of loss or damage to the Equipment shall be final and binding on the Contractor. The Contractor binds itself and undertakes to replace the lost and/or damaged Equipments at its own cost and/or shall pay the amount of loss to NTC LTD., without any demur, reservation or protest. This is without prejudice to any other right or remedy that may be available to NTC LTD., against the Contractor under the Contract and under this Indemnity Bond.

6. NOW THE CONDITION of this Bond is that if the Contractor shall duly and punctually comply with the terms and conditions of this Bond to the satisfaction of NTC LTD., , THEN, the above Bond shall be void, but otherwise, it shall remain in full force and virtue.

IN WITNESS WHEREOF, the Contractor has hereunto set its hand through its authorised representative under the common seal of the Company, the day, month and year first above mentioned.

SCHEDULE No.1

Particulars of Equipments handed over	Quantity	Particulars of Despatch title Documents	Carrier	CIF/EXW Value of the Equipments	Signature of the Attorney in token of Receipt
		RR/GR/ Bill of lading No & Date			

(Please number subsequent schedules)

For and on behalf of

.....
(Contractor's Name)

WITNESS

- | | |
|--|--|
| <p>1.</p> <p>Signature</p> <p>Name</p> <p>Address</p> | <p>Signature</p> <p>Name</p> <p>Designation of
 Authorised
 representative *</p> |
| <p>2.</p> <p>Signature</p> <p>Name</p> <p>Address</p> | <p>(Common seal)
 (In case of Company)</p> |

* Indemnity Bond are to be executed by the authorised person and (i) in case of contracting Company under common seal of the Company or (ii) having the Power of Attorney issued under common seal of the company with authority to execute Indemnity Bond, (iii) In case of (ii), the original Power of Attorney if it is specifically for this Contract or a Photostat copy of the Power of Attorney if it is General Power of Attorney and such documents should be attached to Indemnity Bond.

**9c. FORM OF INDEMNITY BOND TO BE EXECUTED
BY THE CONTRACTOR FOR THE EQUIPMENT
HANDLED OVER IN INSTALMENTS BY THE
OWNER FOR PERFORMANCE OF ITS CONTRACT
(Through Sub-Contractor)
(On Non-Judicial stamp paper of appropriate value)**

INDEMNITY BOND

THIS INDEMNITY BOND is made thisday of.....20 by(*Contractor's Name*) a Company registered under the Companies Act, 1956/Partnership firm/Proprietary concern having its Registered Office at (hereinafter called as 'Contractor' or "Obligor" which expression shall include its successors and permitted assigns) in favour of NTC LTD., , a Company incorporated under the Companies Act, 1956 having its Registered Office at New Delhi, and its Mill as per 'List and addresses of NTC Mills' in 'Technical Specification' 1.1. iii) (hereinafter called "NTC LTD., " which expression shall include its successors and assigns) :

WHEREAS NTC LTD., has awarded to the Contractor a Contract forvide its Notification of Award/Contract No..... dated and its Amendment No. and Amendment No....., (*applicable when amendments have been issued*) (hereinafter called the Contract") in terms of which NTC LTD., is required to hand over various Equipments to the Contractor for execution of the Contract.

And WHEREAS by virtue of Clause No..... of the said Contract, the Contractor is required to execute an Indemnity Bond in favour of NTC LTD., for the Equipments handed over to it by NTC LTD., for the purpose of performance of the Contract/Erection portion of the contract (hereinafter called the "Equipments")

NOW THEREFORE, this Indemnity Bond witnesseth as follows:

1. That in consideration of various Equipments as mentioned in the Contract, valued at (*Currency and amount in Figures*).....(*Currency and amount in words*)..... (*Mention the CIF/EXW value of the equipment*) to be handed over to the Sub-Contractor in installment from time to time for modification for the purpose of performance of the Contract, the Contractor

hereby undertakes to indemnify and shall keep NTC LTD., indemnified, for the full value of the Equipments. The Contractor hereby acknowledges actual receipt of the initial installment of the Equipment handed over to the Sub-Contractor for modification as per details in the Schedules appended hereto. Further, the Contractor agrees to acknowledge actual receipt of the subsequent installments of the equipments etc. are to be handed over to Sub-Contractor for modification, in the form of Schedules consecutively numbered which shall be attached to this Indemnity Bond so as to form integral parts of this Bond. The Contractor shall hold such Equipment etc. in trust as a "Trustee" for and on behalf of NTC LTD.

2. That the Contractor is obliged and shall remain absolutely responsible for the safe transit/protection and custody of the Equipment at Sub-Contractor premises as well as at Mill site against all risks whatsoever till the Equipments are duly used/erected in accordance with the terms of the Contract and the plant/package duly erected and commissioned in accordance with the terms of the Contract is taken over by NTC LTD., The Contractor to keep NTC LTD., harmless against any loss or damage that may be caused to the Equipments.
3. The Contractor also undertakes that the Equipments shall be used exclusively for the performance/execution of the Contract strictly in accordance with its terms and conditions and no part of the equipment shall be utilised for any other work of purpose whatsoever. It is clearly understood by the Contractor that non-observance of the obligations under this Indemnity Bond by the part of the Contractor for all intents and purpose including legal/penal consequences.
4. That NTC LTD., is and shall remain the exclusive owner of the equipments free from all encumbrances, charges or liens of any kind, whatsoever. The Equipments shall at all times be open to employees/agents authorised by him in this regard. Further, NTC LTD., Equipments in whatever form the Equipments may be, if in its opinion, the equipments are likely to be endangered, misutilised or concerted to uses other than those specified in the Contract, by any other person or on account of any reason whatsoever and the Contractor binds himself and undertakes to comply with the directions of demand of NTC LTD., to return the Equipments without any demur or reservation.

5. That this Indemnity Bond is irrevocable. If at any time any loss or damage occurs to the Equipments or the same or any part thereof is misutilised in any manner whatsoever, then the Contractor hereby agrees that the decision of the Engineer In-Charge of NTC LTD., as to assessment of loss or damage to the Equipment shall be final and binding on the Contractor. The Contractor binds itself and undertakes to replace the lost and/or damaged Equipments at its own cost and/or shall pay the amount of loss to NTC LTD., on demand without any demur, reservation or protest. This is without prejudice to any other right or remedy that may be available to NTC LTD., against the Contractor under the Contract and under this Indemnity Bond in such situations.

6. NOW THE CONDITION of this Bond is that if the Contractor shall duly and punctually comply with the terms and conditions of this Bond to the satisfaction of NTC LTD., , THEN, the above Bond shall be void, but otherwise, it shall remain in full force and virtue.

IN WITNESS WHEREOF, the Contractor has hereunto set its hand through its authorized representative under the common seal of the Company, the day, month and year first above mentioned.

SCHEDULE No.1

Particulars of Equipments handed over	Quantity	Particulars of Despatch title Documents	Carrier	CIF/EXW Value of the Equipments	Signature of the Attorney in token of receipt
		RR/GR/ Bill of lading No & Date			

(Please number subsequent schedules)

For and on behalf of

.....
 (Contractor's Name)

WITNESS

1.	Signature	Signature
	Name	Name
	Address	Designation of Authorised representative *
2.	Signature	(Common Seal) (In case of Company)
	Name	
	Address	

 * Indemnity Bond are to be executed by the authorised person and (i) in case of contracting Company under common seal of the Company or (ii) having the Power of Attorney issued under common seal of the company with authority to execute Indemnity Bond, (iii) In case of (ii), the original Power of Attorney if it is specifically for this Contract or a photostat copy of the Power of Attorney if it is General Power of Attorney and such documents should be attached to Indemnity Bond.

**9d. FORM OF INDEMNITY BOND TO BE EXECUTED BY THE CONTRACTOR FOR
CUSTOM CLEARANCE AND RECONCILLIATION OF IMPORTS
(On Non-Judicial stamp paper of appropriate value)**

INDEMNITY BOND

This INDEMNITY BOND is executed on this _____day of _____20 , by (*Name of Contractor*), a Company incorporated under the laws of (*Name of country*) and having its Principal place of business at (*Address of the Contractor*) (hereinafter called as "Contractor", which expression shall include its successors and permitted assigns) in favour of NTC LTD., a company incorporated under the Companies Act, 1956, having its registered office at New Delhi, (hereinafter called the "NTC LTD., " which expression shall include its successor and assigns).

WHEREAS NTC LTD., has entered into the following Contracts with the Contractor for execution of ----- work at ----- Mill (hereinafter called the "Contract"):

(*Details of Contract Nos. & Names to be incorporated*)

AND WHEREAS by virtue of Clause No. 21.4 of General Conditions of Contract of Contract Agreements, the Contractor has to perform all works necessary for clearance of all equipments from port authorities at Indian Port of disembarkation including port handling charges for Hydro -mechanical equipment being imported by NTC LTD., under First Contract No: (*Contract No. for Supply of Offshore Equipments*).

AND WHEREAS NTC LTD., as an importer is required to register above First Contract, in its name, for availing exemption from payment of customs duty under Section 98.01 of the Customs Tariff Act 1975 and by virtue of it being the importer, is responsible to customs authority for payment of customs duty, levies, damages etc.

NOW, THEREFORE, this Indemnity Bond witnesseth as follows:-

1. That in consideration of above, the Contractor undertakes to indemnify and keep NTC LTD., indemnified against all omissions & commissions committed by the Contractor and losses, costs, expenses or damages suffered or incurred by NTC LTD., by reason of Contractor's failure or default to pay port charges, levies, damages, penalties etc. to customs authority for the equipment imported by NTC

LTD., under the First Contract. The Contractor shall further absolve NTC LTD., of all liabilities and responsibilities in connection with processing the case for availing exemption of customs duty under Section 98.01 of the Customs Tariff Act 1975 (51 of 1975) and final reconciliation of all the imports with Customs Authorities within 3 months from the date of shipment of last consignment under First Contract.

2. The Contractor also covenants that it shall at all times, on demand and without demur indemnify and also keep harmless NTC LTD., against all losses, damages, claims and demands whatsoever which may be suffered by or brought or made against NTC LTD., as a consequence of Contractor's failure to abide by or violating the terms and stipulations relating to the Contract Agreements or any provisions of Custom Tariff Act 1975 whatsoever.
3. That this Indemnity Bond is irrevocable. NOW THE CONDITION of this Bond is that if the Contractor shall duly and punctually comply with the terms and conditions of this Bond to the satisfaction of NTC LTD., then the above Bond shall be void, but otherwise it shall remain in full force and virtue. This Bond shall be returned to the Contractor after the customs authority discharges NTC LTD., of the obligation under the Continuity Bond furnished by NTC LTD., to the Customs Authority.

IN WITNESS WHEREOF the Contractor has hereunto set its hand through its authorised representative under the common seal of the Company, the day, month and year first above mentioned.

For and on behalf of *(Name of Contractor)*

Authorised Representatives:

Common Seal

Signature:
Name:
Designation:

Witness:

1. Signature _____
Name _____
Address _____

2. Signature _____
Name _____
Address _____

* Indemnity Bond is to be executed by the authorised person having the Power of Attorney issued under common seal of the Company with authority to execute Indemnity Bonds. In case the Power of Attorney is specifically for this Contract then the original Power of Attorney should be attached to the Indemnity Bond or if it is a general Power of Attorney, a photostat copy should be attached to the Indemnity Bond.

10. FORM OF AUTHORISATION LETTER

NTC LTD.

REF. NO. :

DATE :

To,

M/s (*Contractor's Name*).....

Ref : Contract No..... Dated

forawarded by NTC LTD.

Dear Sirs,

Kindly refer to Contract No..... Dated for (*Contract Name*). You are hereby authorised on behalf of NTC LTD., having its registered office at New Delhi India, and its Mill Located as per 'List and addresses of NTC Mills' in 'Technical Specification' 1.1. iii) to take physical delivery of materials/equipments covered under despatch Document / Consignment Note no.....*.....dated and as detailed in the enclosed Schedule for the sole purpose of successful performance of the aforesaid contract and for no other purposes, whatsoever.

(Signature of Mill Authority)

(Designation):

Date

ENCL : as above

LR/RR No.

*Mention

**SCHEDULE OF MATERIAL/EQUIPMENT COVERED UNDER
DESPATCH TITLE DOCUMENT (RR NO./ LR NO.)**

Sl. No.	Contract Name	NOA No./ Contract Agreement No.	Description of Materials/ Equipments	Spec. No.	Qty.	Value
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(SIGNATURE OF THE MILL AUTHORITY)

(DESIGNATION).....

(DATE).....

11. FORM OF DECLARATION OF REASONABLE PRICING

REF. NO. :

DATE :

To

.....

Dear sir,

“We.....manufacturer of ACW machines/ or authorized agent of, on the behalf of our Principal undertake that quoted price are lowest for the same make of machine supplied in India in last 6 months. In case of any otherwise finding at later stage, NTC will have full right to recover the difference cost of supply with 100% as penalty amount.”

(Signature of Competent Authority)

(Designation):

Date

Statement - 1**BILL OF QUANTITIES**

[For ----- (Name of Mill)]

Automatic Cone Winding Machine Item	Description / Item	Unit	Qty
1	Automatic Cone Winding/Linkconer Machine (separate rates to be provided for Uster/Loeffe electronic Yarn clearer)	Nos.	1
2	Mandatory Tools and tackles (As per Statement-1A)	Set	1
3	Mandatory Spare Parts (As per Statement-1B)	Set	1
4	Hydraulic oil (First fill + 10%) for the entire equipment	Lot	1
5	Recommended Spare Parts (As per Statement-1C)	Set	1
6	Recommended Special Tools and Tackles (As per Statement- 1D)	Set	1

Statement – 1A

BILL OF QUANTITIES

Mandatory Tools and tackles (NOTE: This List be Reviewed As Per Requirement)

Item	Description / Item	Unit	Qty	
1	A. Each set comprising of following items / instruments / equipments:	Sets		
	B. A good quality tool boxes for items mentioned under A & B.	Nos.		

Statement – 1 B

BILL OF QUANTITIES

Mandatory Spare Parts For Automatic Cone Winding/Linkconer Machine

Item	Description / Item	Unit	Qty	
1				
2				
3				
4				

NOTE:

1. List of recommended Spare parts for each item is to be furnished along with its prices against each item.
2. Orders for recommended spare parts shall be optional to the Owner for a period of five (5) years after the date of Contract award.

(NOTE: Above List be Updated As Per Requirement)

Statement – 1C

BILL OF QUANTITIES

Recommended Spare Parts For Automatic Cone Winding/Linkconer Machine

Item	Description / Item	Unit	Qty	
1				
2				
3				
4				

NOTE:

3. List of recommended Spare parts for each item is to be furnished along with its prices against each item.
4. Orders for recommended spare parts shall be optional to the Owner for a period of five (5) years after the date of Contract award.

(NOTE: List Be Filled Up By The Bidder As Requirement)

Statement – 1D

BILL OF QUANTITIES

**Recommended Special Tools and Tackles For Automatic Cone Winding/linkconer
Machine**

Item	Description / Item	Unit	Qty	
1				
2				
3				

NOTE:

1. List of recommended Special tools and tackles for each item is to be furnished along with its prices against each item.

INTEGRITY PACT

Between

National Textile Corporation Limited (NTC) hereinafter referred to as
“The Principal”

and

.....hereinafter referred to as
“The Bidder/Contractor”

Preamble

The Principal intends to award, under laid down organizational procedures, contract/s forThe Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/ transparency in its relations with its Bidder(s) and/or Contractor(s).

In order to achieve these goals, the Principal will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Section 1- Commitments of the Principal

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-
 - a. No employee of the Principal, personally or through family members, will in connection with the tender for or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - b. The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.
 - c. The Principal will exclude from the process all known prejudiced persons.
2. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2- Commitments of the Bidder(s)/contractor(s)

1. The Bidder(s)/Contractor(s) commit themselves to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
 - a. The Bidder(s)/Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

- b. The Bidder(s)/ Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process.
 - c. The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s)/ contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d. The Bidder(s) /Contractors(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly the Bidder(s)/Contractors(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. Further details as mentioned in the “Guidelines on Indian Agents of Foreign Suppliers” shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupees only. Copy of the “Guidelines on Indian Agents of Foreign Suppliers” is placed at **Annexure-A**.
 - e. The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
- (2) The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section 3- Disqualification from tender process and exclusion from future contracts.

If the Bidder(s)/Contractor(s), before award or during the execution has committed a transgression through a violation of Section 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or take action as per the procedure mentioned in the “Guidelines on Banning of Business Dealings”. Copy of the “Guidelines on Banning of Business Dealings” is annexed and marked as **Annexure-B**.

Section 4- Compensation for Damages

1. If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit / Bid Security.
2. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

Section 5 – Previous transgression

1. The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti- corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the tender process.
2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in “Guidelines on Banning of Business Dealings.”

Section 6 - Equal treatment of all Bidders / Contractors / Subcontractors

1. The Bidder(s)/ Contractor(s) undertake(s) to demand from his subcontractors a commitment in conformity with this Integrity Pact.
2. The Principal will enter into agreements with identical conditions as this one with all Bidders and Contractors.
3. The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

Section 7 – Criminal charges against violating Bidder(s) /Contractor(s) / Subcontractor(s)

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

Section 8 – Independent External Monitor / Monitors

1. The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2. The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. It will be obligatory for him to treat the information and documents of the Bidder(s)/ Contractors as confidential. He reports to the Chairman, NTC.
3. The Bidder(s)/ Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s)/ Contractor(s)/Subcontractor(s) with confidentiality.
4. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit nonbinding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
6. The Monitor will submit a written report to the Chairman, NTC within 8 to 10 weeks from the date of reference or intimation to him by the *Principal* and, should the occasion arise, submit proposals for correcting problematic situations.

7. If the Monitor has reported to the Chairman, NTC, a substantiated suspicion of an offence under relevant IPC/PC Act, and the Chairman NTC has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
8. The word '**Monitor**' would include both singular and plural. Monitor would be entitled to receive such compensation as may be decided time to time by the CMD/Competent Authority.

Section 9 – Pact Duration

This Pact begins when both parties have legally signed it. It expires for the Contractor 12 months after the last payment under the contract or contract period (extended if applicable) whichever is later and for all other Bidders 6 months after the contract has been awarded.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged/determined by Chairman of NTC.

Section 10 – Other provisions

1. This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi.
2. Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.
3. If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
5. In the event of any contradiction between the Integrity Pact and its Annexure, the Clause in the Integrity Pact will prevail.”

 (For & On behalf of the Principal)
 (Office Seal)

 (For & On behalf of Bidder/Contractor)
 (Office Seal)

Place.....

Date.....

Witness 1 :
 (Name & Address)

Witness 2 :
 (Name & Address)

- 1.0 There shall be compulsory registration of agents for all global (Open) Tender and limited Tender. An agent who is not registered with NTC shall apply for registration in the prescribed Application-Form.
 - 1.1 Registered agents will file an authenticated photostat copy duly attested by a Notary Public/Original certificate of the principal confirming the agency agreements and giving the status being enjoyed by the agent and the Commission/remuneration/salary/retainer ship being paid by the principal to the agent before the placement of order by NTC.
 - 1.2 Wherever Indian representatives have communicated on behalf of their principals and the foreign parties have stated that they are not paying any commission to the Indian agents, and the Indian representative is working on the basis of salary or as retainer, a written declaration to this effect should be submitted by the party (i.e Principal) before finalizing the order.
- 2.0 DISCLOSURE OF PARTICULARS OF AGENTS/REPRESENTATIVES IN INDIA.IF ANY.**
- 2.1 Tenderers of Foreign nationality shall furnish the following details in their offer.
 - 2.1.1 The name and address of the agents/representatives in India, if any and the extent of authorization and authority given to commit the Principals. In case the agents/representatives be a foreign Company, it shall be confirmed whether it is real substantial Company and details of the same shall be furnished.
 - 2.1.2 The amount of commission /remuneration included in the quoted price(s) for such agents /representatives in India.
 - 2.1.3 Confirmation of the Tenderer that the commission / remuneration if any, payable to his agents/representatives in India, may be paid by NTC in Indian Rupees Only.
 - 2.2 Tenderers of Indian Nationality shall furnish the following details in their Offers.
 - 2.2.1 The name and address of the foreign principals indicating their nationality as well as their status, i.e. whether manufacturer or agents of manufacturer holding the Letter of Authority of the Principal specifically authorizing the agent to make an offer in India in response to Tender either directly or through the agents/representatives.
 - 2.2.2 The amount of commission/remuneration included in the price(s) quoted by the Tenderer for himself.
 - 2.2.3 Confirmation of the foreign principals of the Tenderer that the commission/remuneration , if any, reserved for the Tenderer in the quoted price(s) , may be paid by NTC in India in equivalent Indian Rupees on satisfactory completing of the Project or supplies of Stores and Spares in case of operation items.
 - 2.3 In either case, in the event of contract materializing, the terms of payment will provide for payment of the commission/remuneration, if any payable to the agents /representatives in India in Indian Rupees on expiry of 90 Days after the discharge of the obligations under the contract.
 - 2.4 Failure to furnish correct and detailed information as called for in paragraph-2.0 above will render the concerned tender liable to rejection or in the event of a contract materializing, the same liable to termination by NTC. Beside this there would be a penalty of banning business dealing with NTC or damage or payment of a named sum.

• **Introduction**

- 1.1. National Textile Corporation Limited (NTC) deals with Agencies viz parties/ contractors/ suppliers/ bidders, who are expected to adopt ethics of highest standards and a very high degree of integrity, commitments and sincerity towards the work undertaken. It is not in the interest of NTC to deal with Agencies who commit deception, fraud or other misconduct in the tendering process.
- 1.2. Since banning of business dealings involves civil consequences for an Agency concerned, it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

2. Scope

- 2.1 The Information for Bidders/ Instruction to Bidders and even the General Conditions of Contract (GCC) of NTC generally provide that NTC shall have the rights to remove from list of approved suppliers / contractors or to ban business dealings if any Agency has been found to have committed misconduct or fraud or anything unethical not expected from a reputed contractor.
- 2.2 The procedure of (i) Removal of Agency from the List of approved suppliers / contractors/bidders; (ii) Suspension and (iii) Banning of Business Dealing with Agencies, has been laid down in these guidelines.
- 2.3 These guidelines shall apply to all the Mills whether operational or closed/ showrooms/ RMDs/ Regional Offices/Sub Offices/Liaison Office of NTC.
- 2.4 It is clarified that these guidelines do not deal with the poor performance of the contractors/ Agencies.
- 2.5 The banning shall be with prospective effect, i.e. future business dealings.

3. Definitions

In these Guidelines, unless the context otherwise requires:

- I. "Party / Contractor / Supplier / Bidders" shall mean and include a public limited company or a private limited company, a joint Venture, Consortium, HUF, a firm whether registered or not, an individual, cooperative society or an association or a group of persons engaged in any commerce, trade, industry, etc. "Party / Contractor/ Supplier / Bidder" in the context of these guidelines is indicated as 'Agency'.
- II. "Unit" shall mean the Mills whether operational or closed/showrooms/RMDs/Regional Offices/Sub Offices/Liaison Office of NTC.
- III. "Competent Authority" and 'Appellate Authority' shall mean the following:

a) For NTC Wide Banning

The concerned director shall be the 'Competent Authority' for the purpose of these guidelines. CMD shall be the 'Appellate Authority' in respect of such cases.

- b) For Mills whether operational or closed/showrooms/RMDs/Regional Offices/Sub Offices/Liaison Office of NTC.

Head of the Unit/Head of Finance shall be the 'Competent Authority' for the purpose of these guidelines, in respect of concerned unit/Sub-office/Regional Office. The concerned Executive Director/ Regional Head of the Unit/ Region shall be the 'Appellate Authority' in all such cases.

- IV. "Investigating Committee" shall mean any Officer/Committee appointed by Competent Authority to conduct investigation.
- V. "Approved Agencies viz Parties / Contractors / Suppliers/Bidders" shall mean and include list of Parties/ Contractors / Suppliers / Bidders etc, who have been pre-qualified by NTC for any tender/contract/bid.

4. Initiation of Banning / Suspension

Action for banning /suspension business dealings with any Agency shall be initiated by the department responsible for invitation of bids after noticing the irregularities or misconduct on the part of Agency concerned. Besides the concerned department, Vigilance Department may also be competent to initiate such action.

5. Suspension of Business Dealings.

- 5.1 If the conduct of any Agency dealing with NTC is under investigation, the Competent Authority may consider whether the allegations (under investigation) are of a serious nature and whether pending investigation, it would be advisable to continue business dealing with the Agency. If the Competent Authority, after consideration of the matter including the recommendation of the Investigating Committee, if any, decides that it would not be in the interest to continue business dealings pending investigation, it may suspend business dealings with the Agency. The order of suspension would operate for a period not more than six months and may be communicated to the Agency as also to the Investigating Committee. The Investigating Committee may ensure that their investigation is completed and whole process of final order is over within such period. However, if investigations are not completed in six months time, the Competent Authority may extend the period of suspension by another three months, during which period the investigations must be completed.
- 5.2 The order of suspension shall be communicated to all Departmental Heads of NTC and Heads of the Units, which would also be displayed on Intranet, if available. During the period of suspension, no business dealing may be held with the Agency.
- 5.3 As far as possible, the existing contract(s) with the Agency may continue unless the Competent Authority, having regard to the circumstances of the case, decides otherwise.
- 5.4 If the Agency concerned asks for detailed reasons of suspension, the Agency may be informed that its conduct is under investigation. It is not necessary to enter into correspondence or argument with the Agency at this stage.
- 5.5 It is not necessary to give any show-cause notice or personal hearing to the Agency before issuing the order of suspension.

6. Ground on which Banning of Business Dealings can be initiated

- 6.1 If the security consideration, including questions of loyalty of the Agency to NTC so warrants;
- 6.2 If the Director of a company (other than Govt. company) /owner of the Agency, proprietor or partner of the firm, is convicted by a Court of Law for offences involving moral turpitude in relation to its business dealings with the Government or any other public sector enterprises, during the last five years;
- 6.3 If business dealings with the Agency have been banned by the Ministry of Textiles, Government of India.
- 6.4 If the Agency has resorted to corrupt, fraudulent practices including misrepresentation of facts;
- 6.5 If the Agency uses intimidation / threatening or brings undue outside pressure on NTC or its official for acceptance / performances of the job under the contract;
- 6.6 If the Agency misuses the premises or facilities of the NTC, forcefully occupies or damages the NTC's properties including land, water resources, forests / trees or tampers with documents/records etc. (Note:The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealing for any good and sufficient reason).

7. Banning of Business Dealings

- 7.1 A decision to ban business dealings with any Agency shall normally apply throughout NTC. However, the Competent Authority of the Unit can impose such ban unit-wise only if in the particular case banning of business dealings by respective Unit will serve the purpose and achieve its objective and banning throughout the Company is not required in view of the local conditions and impact of the misconduct / default to beyond the Unit. Any ban imposed by Corporate Office shall be applicable across all Units of NTC.
- 7.2 There will be an Investigating Committee in each Unit to be appointed by Head of the Unit for processing the cases of "Banning of Business Dealings". However, for procurement of items /award of contracts at Corporate Office, the committee shall consist of officers not below the rank of Senior Manager from Indenting Division & Finance. Member from department responsible for invitation of bids shall be the convener of the committee. The functions of the committee shall, inter-alia include:
 - i) To study the report of the department responsible for invitation of bids and decide if a prima-facie case for banning exists, if not, send back the case to the Competent Authority.
 - ii) To recommend for issue of show-cause notice to the Agency by the concerned department as per clause 9.1.
 - iii) To examine the reply to show-cause notice and call the Agency for personal hearing, if required.
 - iv) To submit final recommendations to the Competent Authority for banning or otherwise.

8. Removal from List of Approved Agencies - Suppliers/ Contractors, etc.

- 8.1 If the Competent Authority decides that the charge against the Agency is of a minor nature, it may issue a show-cause notice as to why the name of the Agency should not be removed from the list of approved Agencies - Suppliers / Contractors/Bidders etc.
- 8.2 The effect of such an order would be that the Agency would not be qualified for competing in Open Tender Enquiries or Limited Tender Enquiries till the period mentioned in the order.
- 8.3 Past performance of the Agency may be taken into account while processing for approval of the Competent Authority for awarding the contract.

9. Show-cause Notice

- 9.1 In case where the Competent Authority decides that action against an Agency is called for, a show-cause notice has to be issued to the Agency, Statement containing the imputation of misconduct or misbehavior may be appended to the show-cause notice and the Agency should be asked to submit within 15 days a written statement in its defence.
- 9.2 If the Agency requests for inspection of any relevant document in possession of NTC, necessary facility for inspection of documents may be provided.
- 9.3 The Competent Authority may consider and pass an appropriate speaking order:
 - a) For exonerating the Agency if the charges are not established;
 - b) For removing the Agency from the list of approved Suppliers/Contractors, etc.
 - c) For banning the business dealing with the Agency.
- 9.4 If it decides to ban business dealings, the period for which the ban would be operative may be mentioned.
- 9.5 Unitwise banning may be done for a period upto six months only and for more than six months banning, it should be pervasive i.e. for all the units. In case of pervasive banning for more than six months i.e. across all the units, it should be done after approval of the Director (Finance) of the corporate office.

10. Appeal against the Decision of the Competent Authority

- 10.1 The Agency may file an appeal against the order of the Competent Authority banning business dealing etc. The appeal shall be filed to Appellate Authority. Such an appeal shall be preferred within one month from the date of receipt of the order banning business dealing, etc.
- 10.2 Appellate Authority would consider the appeal and pass appropriate order within 120 days which shall be communicated to the Agency as well as the Competent Authority.

11. Circulation of the names of Agencies with whom Business Dealings have been banned

The concerned unit shall forward the name and details of the Agency (ies) banned to IT&C Division of Corporate Office for displaying the same on the NTC website.

Corrupt, Fraudulent, Collusive or Coercive Practices Policy

1.0 Corrupt, Fraudulent, Collusive or Coercive Practices

It is expected from the Bidders/ suppliers/ contractors that they will observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy:

- (a) For the purposes of this provision, the terms set forth below shall mean as under:
 - (i) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value and /or personal satisfaction to influence the action of a public official in the procurement process or in contract execution; and
 - (ii) "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Purchaser, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Purchaser of the benefits of free and open competition;
 - (iii) "Collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Purchaser, designed to establish bid prices at artificial, noncompetitive levels; and
 - (iv) "Coercive practice" means harming or threatening to harm, directly or indirectly, person or their property to influence or affect the execution of a contract;
 - (v) "Integrity Pact" means an agreement called Integrity Pact between the contractor and the Employer shall be signed committing the persons/ officials of both the parties, not to exercise any corrupt influence on any aspect of the Tender/Contract. The Independent External Monitor(s)(IEM) appointed by the Employer shall oversee the compliance of obligation under the Integrity Pact.
 - (vi) "Independent External Monitor(s)(IEMs)" means the External Monitor(s) appointed by the Employer to oversee the implementation of Integrity Pact
- (b) A Bid may be rejected by the Purchaser if it is determined at any stage that the respective Bidder has engaged in corrupt, fraudulent, collusive and coercive practices or defaulted commitments under integrity pact as mentioned above in competing for the contract in question.
- (c) The Purchaser may declare a firm ineligible, either indefinitely or for a stated period of time, if it at any time determines that the firm has engaged in corrupt or fraudulent practices, Collusive and Coercive practices or defaulted commitments under integrity pact in competing for, or in executing, a contract.
- (d) Banning of Business Dealings: It is not in the interest of NTC to deal with Agencies who commit deception, fraud or other misconduct in the tendering process. The grounds on which Banning of Business Dealings can be initiated are as follows:-
 - i) If the security consideration, including questions of loyalty of the Agency to NTC so warrants;
 - ii) If the director/ owner of the Agency, proprietor or partner of the firm, is convicted by a court of law for offences involving moral turpitude in relation to its business dealings with the Government or any other public sector enterprises, during last five years;

- iii) If business dealings with the Agency have been banned by the Ministry of Textiles, Government of India or by any other department of GOI.
- iv) If the Agency has resorted to corrupt, fraudulent practices including misrepresentation of facts;
- v) If the Agency uses intimidation / threatening or brings undue outside pressure on NTC or its official for acceptance / performances of the job under the contract:
- vi) If the Agency misuses the premises or facilities of the NTC, forcefully occupies or damages the NTC's properties including land, water resources, forests / trees or tampers with documents/records etc. (Note: The examples given above are only illustrative and not exhaustive. The Competent Authority may decide to ban business dealing for any good and sufficient reason).
- vii) In the transaction where NTC is a seller, the term Purchaser shall be deemed to have been replaced by 'Seller' and vice versa.

The procedure for banning of Business Dealings shall be governed as per NTC's "Guidelines on Banning Business Dealings" as enclosed separately. **(Annexure B)**.