



**GENERAL CONDITIONS OF
CONTRACT
FOR
PROCUREMENT OF SERVICES
(SAIL – S1)**

STEEL AUTHORITY OF INDIA LIMITED

Issue date: 01/06/2024

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1. DEFINITIONS & INTERPRETATIONS

1.1 DEFINITION OF TERMS:

In this General Conditions of Contract (as defined here-in-after), the following words and expressions shall have the meanings hereby assigned to it except where the context otherwise requires:

- a) "Company" means Steel Authority of India Limited (SAIL), a company registered under Indian Companies Act 1956 and having its Registered office at Ispat Bhawan, Lodhi Road, New Delhi – 110003, its Plants / Units / Mines / Offices and includes its successors and assignees.
- b) "Purchaser/Employer/Buyer" means the Plants / Units / Mines / Offices of SAIL and includes its successors and assignees
- c) "Bid" (including the term 'tender', 'offer', 'quotation' or 'proposal' in certain contexts) means an offer to supply goods, services or execution of works made in accordance with the terms and conditions set out in a document inviting such offers.
- d) Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any eligible person or firm or company, including a consortium (that is an association of several persons and/or firms and/or companies) if allowed, participating in the procurement process.
- e) "Contractor/Supplier/Vendor/Service Provider" means the "Successful Bidder"/ "Successful Tenderer" i.e. the individual, firm or company etc. whose Bid has been accepted and on whom LOA/Purchase Order has been placed OR who enters into the Contract/ Agreement to supply the service. The term includes the Contractor's authorized representatives, legal successors and permitted assignees.
- f) "Contract" means the Contract agreement between Company/ Employer and the Contractor or the Letter of Acceptance (LOA)/Purchase Order/Work Order/Service Order issued by the Company/ Employer together with all documents from the invitation of tender to issue of LOA, for execution of the Service(s) and its subsequent amendment(s), if any.
- g) "Engineer Incharge/ Engineer/ Executing Authority" means the person designated from time to time by the Company/ Employer and shall include those who are expressly authorized by him (Engineer's representative) to act for and on his behalf for operation/execution of this Contract for Services. In the context of this document, wherever "Engineer" has been mentioned, it shall also include the Engineer Incharge, Executing Authority and Engineer's representative.
- h) "Service(s)/ Work(s)" means and include all services/works/activities/jobs to be performed by the Contractor pursuant to and in accordance with Contract or part thereof as the case may be and shall include all extra, additional, altered or substituted services and approvals from any agency/third party & license(s)/permissions from statutory authorities (if any), as required for purpose of the Contract.
- i) "Contractor's/ Bidder's Representative" means such person(s) duly authorized by the Bidder/Contractor in writing to the Employer as having authority to act for and on behalf the Contractor /Bidder in matters affecting the Services and to provide the requisite services to the Employer.

- j) "Contract Documents" means collectively the Tender Documents, Designs, Drawings, Scope of Services, Specifications, Schedule of Rates (SOR), Letter of Acceptance and agreed variations/amendments if any, and such other documents constituting the tender and acceptance thereof.
- k) "Contract Price" means the sum accepted or the sum calculated in accordance with the prices accepted in the Contract as payable to the Contractor for the execution of the service/works, including Amendment(s) to Contract, if any.
- l) "Constructional Plant" means all appliances or things of whatsoever nature as required in or about the execution, completion or maintenance of the Works or Temporary Works (as hereafter defined) but does not include materials or other things intended to form or forming part of the permanent work or temporary housing, hutting, offices & Stores etc.
- m) "Temporary Works" means all temporary works of every kind required in or about the execution, completion or maintenance of the works.
- n) "Drawings" means the drawings referred to in the Specification together with approved modification and revision thereto.
- o) "Specifications" means and include detailed description, statements to technical data, performance characteristics and standards as applicable and as specified in the Contract.
- p) "Site" means the place(s) provided by the Employer where the Services/work(s) are to be carried out/executed and any other place(s) as maybe specifically designated in the Contract as forming part of the site.
- q) "Approved" means approved in writing including subsequent written confirmation of previous verbal approval(s) and "approval" means approval in writing including aforesaid.

General Disclaimer: Unless otherwise specified in the RFQ/tender, the terms and conditions stipulated herein shall be applicable. In case of any mismatch/conflict between provisions stated herein and that appearing in RFQ/tender/contract, the provisions of RFQ/tender/contract shall prevail.

1.2 INTERPRETATIONS

- 1.2.1 Headings and Marginal Notes: All headings and marginal notes to the clauses of these General Conditions of Contract or to the Specifications or to any other Tender Document are solely for the purpose of giving a concise indication and not a summary of the contents thereof, and they shall never be deemed to be part thereof or be used in the interpretation thereof the Contract.
- 1.2.2 Singular and Plural: In Contract Documents unless otherwise stated specifically, the singular shall include the plural and vice versa wherever the context so requires.
- 1.2.3 Severability: Should any provision of the Contract be found to be invalid, illegal or otherwise not enforceable by any court of law, such finding shall not affect the remaining provision(s)/clause(s) hereto and they shall remain binding on the parties hereto.

2. ORDER OF PRECEDENCE:

2.1 The documents forming the Contract are to be read together and interpreted as mutually explanatory of one another. In the event of any ambiguity or conflict between the Contract Documents, unless otherwise provided in the Contract, the order of precedence shall be in accordance with following sequence:

- i) Contract Agreement
- ii) Letter of Acceptance along with its enclosures
- iii) Special Conditions of Contract (SCC)
- iv) Technical Specifications (wherever applicable)
- v) Instructions to Bidders (ITB)
- vi) General Conditions of Contract (GCC)

3. AUTHORITY OF PERSON SIGNING DOCUMENTS:

- a) A person signing the Tender Form or any document forming part of the contract on behalf of the supplier shall be deemed to warrant that he has authority to sign such documents.
- b) In case of e-procurement, the submission of On-Line Quotation / Bid through the e-Procurement System by any authorized representative of the Tenderer who logs on to the system with the valid ID and password and/or uses digital signature to sign tender or submitted documents shall be taken as valid and the Tenderer shall be fully responsible for the execution of the Contract arising there from.

4. EXTENT AND SCOPE OF CONTRACT

4.1 The Contract comprises the services/works/activities/jobs and except in so far as the contract otherwise provides the provision for all labour, materials constructional Plant, Temporary Works and everything whether of a temporary or permanent nature required in and for such execution/completion of services/works/activities/jobs.

4.2 The Contractor shall carry out and complete the works/services in every respect in accordance with the Contract and in accordance with directions and to the satisfaction of the Engineer in respect of scope of work. The Engineer within the terms of the contract, may, in his discretion from time-to-time issue further drawings and/or written instructions, details, directions and explanations which are hereafter collectively referred as the Engineer's Instruction in regard to:

- (i) The variation or modification of the design, quality or quantity of works or the addition or omission or substitution of any work.
- (ii) Any discrepancy in the drawings or between the Tenderer Schedule and / or Drawings and / or Specifications.
- (iii) The removal from the site of any materials brought thereon by the Contractor and the substitution of any other materials there from.

- (iv) The removal and/or re-execution of any work executed by the Contractor.
 - (v) The removal/replacement of any person from the works/services employed by the contractor thereupon.
 - (vi) The opening up for inspection of any work covered up.
 - (vii) The amending and making good of any defects.
- 4.3 The Contractor shall forthwith comply with and duly execute any work/service comprised in such Engineer's instructions provided always that verbal directions and explanations given to the Contractor or his agent upon the works/services by the Engineer shall if involving a variation be confirmed in writing by the Contractor to the Employer within seven days and if not dissented from in writing within a further period of seven days by the Engineer, shall be deemed to be Engineer's instructions within the scope of the Contract.
- 4.4 If compliance with the Engineer's instructions as aforesaid involves work beyond that contemplated by the Contract, then unless the same were issued owing to some breach of this Contract by the Contractor, the Employer shall pay to the Contractor the price of the additional work as mutually agreed in writing between Company/Employer and the Contractor.
- 5. CONTRACT DOCUMENTS**
- 5.1 The documents forming the Contract are to be read as mutually explanatory of one another and in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor, the directions/ instructions in what manner the work is to be carried out.
- 5.2 The original drawings shall remain in the sole custody of the Engineer but two copies thereof shall be furnished to the Contractor free of cost. The Contractor shall provide and make at his own expense any further copies required by him. At the completion of the contract the Contractor shall return to the Engineer all drawings provided under the contract.
- 5.3 The Contractor shall give notice of reasonable period in writing to the Engineer of any further drawings or specifications that may be required for the execution of the works or otherwise under the contract.
- 5.4 One copy of the drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the site and the same shall at all time be available for inspection and use by the Engineer and by any other person authorized by the Engineer in writing.
- 5.5 The Engineer shall have full power and authority to supply to the Contractor from time to time during the progress of the works such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the works/services and the Contractor shall carry out and be bound by the same.

6. GENERAL INSTRUCTIONS & OBLIGATIONS

6.1 Backing out by bidder / withdrawal of offer:

If the bidder withdraws or modifies their bid during the period of its validity or if Bidder is awarded the contract but fails to submit performance security within the specified time period mentioned in RFQ, the Bidder may be suspended from being eligible to participate in future tenders of SAIL as per the prevalent guidelines of SAIL.

6.2 Award of Contract:

6.2.1 Employer will be the sole judge in the matter of award of Contract and the decision of Company/ Employer shall be final and binding.

6.2.2 The award of Contract will be intimated to the successful Bidder by the Employer and the same shall be binding on the Employer and the Contractor.

6.3 Addenda/Corrigenda:

6.3.1 Addenda/ Corrigenda to the Tender Documents incorporating modification(s) and clarification(s) to the Tender Document issued prior to the due date of bid submission shall become integral part of the Contract.

6.4 Contract Agreement

6.4.1 The successful Tenderer/Contractor shall be required to execute an Agreement, if stipulated in the tender/contract, within the specified time and in the specified format. In the event of failure on the part of the contractor to sign the Agreement within the aforesaid stipulated period, the employer may take suitable action as stipulated in tender including forfeiture of the Earnest Money Deposit / Security Deposit and other Legal actions.

6.5 Assignment and Subletting:

6.5.1 The Contractor shall not, save with previous written consent of the Employer, transfer or assign the Contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever (other than a charge in favour of the Contractor's Bankers of any moneys due or to become due under this contract). Provided, nevertheless, that any such consent shall not relieve the Contractor from any obligation, liability, duty or responsibility under the Contract.

6.5.2 The Contractor shall not sub-let/ sub-contract the whole or part of the Works/services except where otherwise provided by the Contract, and even then only with the prior written consent of the Employer and such consent if given shall not relieve the Contractor from any liability or obligation under the contract and the Contractor shall be responsible for the acts, defaults and neglects of any Sub-contractor, his agents or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents or workmen, provided always that the provision of labour on a piecemeal basis and the sub-contracting of any part of the work/service for which the sub-contractor is named in the contract, shall not be deemed to be a sub-letting/sub-contracting under this clause.

6.6 Waiver:

6.6.1 Failure to operate or to enforce any condition under these General conditions of Contract shall not operate as a waiver of the condition itself or any subsequent breach thereof.

6.7 Language and measures:

6.7.1 All documents pertaining to the tender/Contract including Specifications, Schedules, Notices, Correspondence, operating and maintenance Instructions or by whatever name called shall be written in English/Hindi language. Any printed literature furnished by the Tenderer may be written in another language so long as it is accompanied by a duly certified English/Hindi translation in which case, for the purposes of interpretation of the offer, the English/Hindi translation shall govern.

The Metric System of measurement shall be used in the tender/ Contract unless otherwise specified.

6.8 Inspection of site

6.8.1 The Bidder/Tenderer shall, wherever required, inspect and examine the site and its surroundings and shall satisfy himself before submitting his bid as to the nature of ground and subsoil (so far as is practicable) the form and nature of the site, the quantities and nature of the work/services and materials necessary for the completion of the works/services and the means of access to the site, the accommodation he may require and in general shall himself obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect his bid.

6.8.2 The Bidder/Contractor shall be deemed to have visited the Site(s)/work centre(s), wherever required, and familiarized themselves before submitting the bid. Non-familiarity with the Site conditions by the Bidder/ Contractor will not be considered a reason either for extra claim(s) or for any delay in performance or any other claim in this regard.

6.9 Sufficiency of Tender

6.9.1 The Tenderer/ Contractor shall be deemed to have satisfied himself before submitting its offer as to the correctness and sufficiency of his tender for the works and of the rates and prices stated in the tender Schedule which rates and price shall (except in so far it is hereinafter otherwise provided) cover all his obligations under the Contract and all matters and things necessary for the proper completion and maintenance of the works.

6.10 Abnormal Rates:

6.10.1 If a bidder quotes unworkable rates, i.e., if the quoted rate appears unworkable, such that it raises material concerns as to the capability of the Bidder to perform the contract at the offered rate, the bidder will be asked to justify the rate quoted. After evaluating the justification provided, if it is felt that the bidder has failed to substantially demonstrate its capability to deliver the contract at the offered rate, the bid/ quote may be rejected.

6.10.2 However, under compelling circumstances, where the bidder is considered for placement of order

despite having quoted abnormally low rates, the Bidder may be required to give Performance Guarantee (in addition to the Security Deposit, if applicable) in the form of Bank Guarantee/ Demand Draft/ Banker's Cheque/ FDR/ online transfer. The amount of this Performance Guarantee will be decided by Employer (SAIL) at the time of placement of order.

6.10.3 In case the Bidder refuses to give the Performance Guarantee, the following action may be taken against it by the Employer/Company:

(i) Earnest Money Deposit will be forfeited and the Bidder will not be considered in re-tendering if order/ contract is not finalized from the present tender,

(ii) Action(s) as stipulated in the Bid Securing Declaration.

6.11 **Rejection of Bid / Tender:** In case of any specific adverse report received against a Bidder by Employer, in respect of capabilities and / or performance of the tenderer during last three years preceding to the last day of the previous month in which applications (NIT) are invited, the bid of such Bidder is liable to be rejected.

6.12 **Reverse Auction:** In case price discovery through reverse auction has been envisaged in a tender, Employer may or may not resort to reverse auction as a part of its procurement strategy, or for any other reason. Decision of Employer, in this regard, will be final & binding.

6.13 **Security Deposit (SD)**

6.13.1 The contractor shall within the time specified in the Contract, deposit with the Employer Security Deposit in form of Bank Guarantee from any Scheduled Commercial Bank except Co-operative and Gramin Bank in the specified format or demand draft or Banker's Cheque or Fixed Deposit Receipt in the name of Employer or online transfer. Security Deposit shall not be accepted in cash.

6.13.2 In the of event of non- deposit of Security, within the period specified in the Contract or as allowed by the Employer, the earnest money may stand forfeited or action will be taken against Bidder as stipulated in the tender/ Contract/ Bid Securing Declaration.

6.13.3 The Security Deposit shall remain at the disposal of the Employer as security for the satisfactory execution and completion of the works/services including defect liability period, if applicable in accordance with the conditions of the contract. The employer shall be at liberty to deduct and appropriate from the security deposit any amount to its satisfaction, in case of any breach/failure on part of the Contractor in relation to the terms & conditions to the Contract.

6.13.4 On satisfactory performance and completion of the contract in all respects, the Security Deposit will be returned to the Contractor without any interest thereupon, on presentation of a no demand certificate by the Engineer and upon return in good condition of any specifications, drawings, samples, or other property belonging to the Employer which may have been issued to the/ in possession of the Contractor.

6.14 **Work to be executed to the satisfaction of Engineer**

6.14.1 The Contractor shall execute, complete and maintain the service in strict accordance with the

Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions. The Contractor shall take instructions and directions only from the Engineer or Engineer's Representative.

6.15 Programme to be Furnished

6.15.1 The Contractor shall as soon as practicable after the acceptance of his Bid, if required, submit to the Engineer for approval a programme showing the order of procedure and methodology in which contractor proposes to carry out the works/services and shall whenever required by the Engineer furnish in writing, the information/particulars of the Contractors arrangements for the carrying out of the work/service and of the constructional Plant and temporary works which the Contractor intends to supply, use or construct as the case may be. The submission to and the approval by the Engineer of such programme or the furnishing of such particulars shall not relieve the Contractor of any duties or responsibilities under the Contract.

6.16 Contractor's Representative & Personnel:

6.16.1.1 The Contractor shall appoint a person ("Contractor's Representative") who shall be responsible for and authorized to represent it at all times during the progress of the Service and to receive and to act on any instructions/ direction made by Employer in the performance of the Service pursuant to the terms of this Contract.

6.16.1.2 Contractor's Representative shall have full authority to represent and bind the Contractor in relation to any matter concerning the Contractor's performance of the services under the Contract and Employer shall be entitled to rely on all the decisions of the Contractors Representative as if they were the decisions of the Contractor.

6.16.1.3 Contractor's Representative shall supervise, coordinate and ensure the quality of all aspects of his obligations under this Contract. Contractor shall not change its Representative without the prior approval of Employer.

6.16.1.4 Contractor's Representative shall liaise with Employer for the proper coordination and timely completion of the Services and on any matter pertaining to the same.

6.16.1.5 Contractor's Representative shall extend full cooperation to Engineer/Inspector in the manner required by it for supervision /inspection/ observation of equipment, material, procedures, performance, reports and records pertaining to Services.

6.16.1.6 Contractor's Representative shall have complete charge of his personnel engaged in the performance of the Service and to ensure compliance of rules and regulations and safety practice.

6.16.1.7 If the Contractor's Representative is found not acceptable to the Engineer for reasons to be recorded in writing, the Contractor shall, as soon as practicable, having regard to the requirement of replacing him, after receiving notice of such withdrawal, remove the representative and shall not thereafter employ him again for the present contract in any capacity and shall replace him by another representative. Substitute shall meet all the laid down

qualification and other eligibility criterion as laid down in the contract.

6.17 **Contractor's Employees / Personnel:**

The Contractor in connection with performing the Services and remedying of any defects shall in accordance with the provisions of the Contract provide:

(a) only such technical assistants and other staff as are skilled and experienced in their respective callings and such agents, foreman and loading hands as are competent to give proper supervision to the work/service they are required to supervise.

(b) such skilled, semi-skilled and un-skilled labour as is necessary for the proper and timely fulfilling of the Contractor's obligations under the Contract.

The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works/services any person employed by the Contractor in or about the execution of the Works/services who in the opinion of the Engineer is guilty of misconduct or incompetent or negligent in the proper performance of his duties or whose employment is other-wise considered by the Engineer to be undesirable and such person shall not be again employed upon the present contract for services without the written permission of the Engineer. Any person so removed from the Works shall be replaced without delay by a competent substitute. Substitute shall meet all the laid down qualification and other eligibility criterion as laid down in the contract.

6.18 **Contractor's Superintendence**

6.18.1 The Contractor shall give or provide all necessary superintendence during the execution of the works/services and as long thereafter as the Engineer may consider necessary for Contract. The Contractor or one of his competent and authorized agents, approved in Writing by the Engineer (which approval may at any time be withdrawn), is to be constantly on the site/works and shall give his whole-time to the superintendence of the same. If such approval shall be withdrawn by the Engineer, the Contractor shall as soon as be practicable (having regard to the requirement of replacing him as hereinafter mentioned) after receiving written notice of such withdrawal remove the agent from the site and shall not thereafter employ him again on the site in any capacity for the present contract and shall replace him by another agent. Where mentioned in the contract, substitute shall be approved by the Engineer. Such authorized agent shall receive, on behalf of the contractor, directions and instruction from the Engineer or the Engineer's Representative.

The Contractor shall deliver to the Engineer or the Engineer's Representative returns in such forms as required and at such intervals as the Engineer may prescribe showing details of the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor on the site and such other information as are deemed necessary for the purpose of ensuring that the provisions of this contract in so far employees are concerned, are being duly complied with by Contractor.

6.19 **Extra Supervision**

6.19.1 If in the opinion of the Engineer, due progress is not made with the Contract and/ or the execution

thereof becomes contrary to specifications, and/or bad work is executed and/or bad materials are used or supplied by the Contractor, and/or any directions given by the Engineer are not properly complied with or attended to, the Engineer may, if he considers it necessary or proper for the due execution of works/ services in accordance with the Contract (of which his certificates in writing will be sufficient evidence), order the employment of extra supervising staff to supervise the work and the expenses of such employment including the salary of the supervising staff shall be borne by the Contractor.

The Engineer shall give to the Contractor not less than seven (7) days previous notice in writing of his intention to exercise this power.

6.20 Setting-out of the Works/Services

6.20.1 The Contractor shall be responsible for the true and proper and for the correctness of the Position, levels, dimensions and alignment of all parts of the works and for the provision of all necessary instruments, appliances and labour in connection therewith. If at any time during the progress of the Works, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the works the Contractor on being required to do so by the Engineer, shall at his own expense, rectify such error to the satisfaction of the Engineer unless such error is based on incorrect data supplied in writing by the Engineer in which case the expense of rectifying the same shall be borne by the Employer. The checking of any setting out or of any line or level by the Engineer shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench marks, site rails, pegs and other things used in setting out the Works.

6.21 Use of Explosives

6.21.1 Explosives shall not be used on the work/services or on the Site by the Contractor without the previous permission of the Engineer in writing and that only in the manner and to the extent permitted by the Engineer. When explosives are required for any work/services, the same shall be stored in a special magazine to be provided by and at the cost of the Contractor in accordance with the laws relating to the possession and storage of explosive for the time being in force and the Contractor shall be liable for all damages, loss or injury to any person or property & shall be responsible for complying with all the statutory obligations in these respects.

The Contractor shall forthwith obtain a license required by such law for the storage and use of explosives and all operations in which or for which explosives are employed shall be at the sole risk and responsibility of the Contractor and the Contractor shall fully and effectually indemnify the Employer in respect thereof.

6.22 Watch & Ward and Lighting

6.22.1 The Contractor shall in connection with the Works/services provide and maintain at his own cost all lights, guards, fencing and watching when and where necessary or required by the Engineer or by a duly constituted authority for the protection of the works or for the safety and convenience of the public or others.

6.23 Care of works

6.23.1 From the commencement to the completion of the works/services, the Contractor shall take full responsibility for the care thereof and of all Temporary Works and in case any damage loss or injury shall happen to the works/premises or to any part thereof or to any Temporary Works from any cause whatsoever (save and except Force majeure as defined in sub-clause 6.23.1.1 of this clause) shall at his own cost repair and make good the same so that at completion the Works/premises shall be in good order and condition and in conformity In every respect with the requirement of the Contract and the Engineer's Instruction. In the event of any such damage loss or injury happening from any of the excepted risks the Contractor shall if and to the extent required by the Engineer repair and make good the same as aforesaid at the cost of the Employer. The Contractor shall also be liable for any damage to the works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 13.1 to 13.5.

6.23.1.1 Force Majeure:

- (i) If, at any time, during the currency of this Contract, the performance in whole or in part, by either party, or any obligation under this Contract, is prevented or delayed by reason(s) of war, hostility, acts of public enemy, civil commotion, sabotage, fires, floods explosions, epidemic, pandemic , quarantine restrictions, Acts of State or other Acts of God, hereinafter referred to as eventualities, then, provided notice of the happenings of any such eventuality is given by either party to the other, within 15 days from the date of occurrence thereof , neither party shall by reason of such eventuality be entitled to terminate this Contract, nor shall either party have any claim for damages against the other, in respect of such non-performance or delay in performance. Work/services under this Contract shall resume as soon as practicable but within 15 days after such eventuality has come to an end or ceased to exist and the decision of the Employer as to whether the work has to be resumed shall be final and conclusive.
- (ii) The Notice of declaration of aforesaid Force Majeure eventualities must be supported by the Certificate of relevant Railway / Port Authority/Chamber of Commerce/Government or Quasi Government body as the case may be. If the said certificate is not available, the Affected Party must provide a certificate signed by the Affected Party's Company Secretary and one of the Directors on the Board of the Affected Company. In addition, the Affected Party shall also promptly intimate the cessation of such Force Majeure. The said intimation of cessation of Force Majeure shall be accompanied by a certificate, from the authorities as stated hereinabove.
- (iii) In case one or both parties are prevented from fulfilling their contractual obligations by state of Force Majeure lasting continuously for a period of three months, the parties may consult each other regarding further continuation of the Contract

6.24 Immunity to Government of India:

6.24.1 It is expressly understood and agreed by and between Employer (SAIL) and Bidder /Contractor that Employer is entering into this agreement solely on its own behalf and not on behalf of any other

person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that Employer (SAIL) is an independent legal entity with power and authority to enter into Contracts solely on its own behalf under the applicable Laws of India and general principles of Contract Law. The Bidder/Contractor expressly agrees, acknowledges and understands that Employer is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the Contract. Accordingly, Bidder/Contractor hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government of India arising out of the Contract and covenants not to sue to Government of India as to any manner, claim, cause of action or thing whatsoever arising of or under this agreement/Contract.

6.25 **Damage to person and property**

6.25.1 The Contractor shall (except if and so far as the Contract otherwise provides) indemnify and keep indemnified the Employer against all losses and claims for Injuries or damage to any person or property whatsoever which may arise out of or as a consequence of the performance of this contract and against all claims, demands proceedings, damage cost charges and expenses whatsoever in respect thereof or in relation thereto provided always that nothing here in contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Employer against any compensation or damages for or with respect to:

- a) The permanent use or occupation of land by the Works or any part thereof (save in respect of damages to standing crops)
- b) The right of the Employer to construct the Works or any part thereof on, over, under, in or through any land.
- c) Interference whether temporary or permanent with any right of light, air way or water or other easement or quasi-easement which is the unavoidable result of the services being rendered/ construction of the Works in accordance with the contract.
- d) Injuries or damages to persons or property resulting from any act or neglect done or committed during the currency of the Contract by the employer, his agents, or other contractors (not being employed by the Contractor) or for or in respect of any claims demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

6.25.1.1 **Indemnity by Contractor** - All materials, equipment, construction plant etc. shall be issued to the contractor only after due receipt signed by the authorized representative of the contractor. The contractor shall be entirely responsible for safety of all materials, equipment construction plants etc. so issued by the Employer and received by the contractor for erection, construction, completion, commissioning and maintenance of the work till the same are taken over by the Employer and shall indemnify the Employer for any loss thereof due to theft or accident or any other cause. The damages and costs thereof shall be paid by the contractor failing which the Employer shall have the right to recover/retain/set off the amount out of the amount which is due

or may become due to the contractor under this contract/or of any other contract/ transaction with Employer.

6.25.1.2 The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design, trademark or name or other protected rights in respect of any Constructional Plant machine work or materials used for or in connection with the Works /services or Temporary works of any of it and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

6.26 Insurance:

6.26.1 Contractor shall, at his own expense, arrange appropriate insurance to cover all risks assumed by the Contractor under this Contract in respect of its personnel deputed under this Contract as well as Contractor's equipment, tools and any other belongings of the Contractor or their personnel during the entire period of their engagement in connection with this Contract. Employer will have no liability on this account. The Personnel covered must also be covered to meet the liability under Employee Compensation Act.

6.26.2 The provisions of this Clause shall in no way limit the liability of the Contractor under the Contract.

6.26.3 Notwithstanding anything contained in the contract, failure to ensure insurance coverage, in terms provided herein, shall be construed as breach of the Contract and Employer shall have right to initiate Risk and Cost Action and termination of Contract.

6.27 Accident or Injury to Workmen

6.27.1 The Employer shall not be liable for on in respect of any damages or compensation payable under applicable law in respect or in consequence of any accident or injury to any workmen or other person in the employment of the Contractor or any sub-contractor save and except an accident or injury results from any act or default of the Employer, his agent. Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation save and except as aforesaid and against all claims demands, proceedings, costs, charges and expenses whatsoever in respect or in relation thereto.

6.28 Workmen's Compensation Act

6.28.1 The Contractor shall at all times indemnify the Employer against all claims for compensation under the provision of the Workmen's Compensation Act 1923 (VIII of 1925) or any other law for the time being in force by or in respect of any workmen employed by the Contractor in carrying out the Contract and against all costs and expenses or penalties incurred by the Employer in connection there with and (without prejudice to any other means of recovery) the Employer shall be entitled to deduct from any money due or to become due to the Contractor (whether under this contract or any other contract) all moneys paid or payable by the Employer by way of compensation aforesaid or for costs or expenses in connection with any claims thereto and the Contractor shall abide by the decision of the Employer as to the sum payable by the Contractor under the provisions of this clause.

6.29 Giving notice and Payments of Fees

6.29.1 The Contractor shall give all notices and pay all fees required to be given or paid under any general or State Statute, Ordinance or other Law or any Regulation of by Law of any local or other duly constituted authority in relation to the execution of the works/ services or of any Temporary Works and by the rules and regulation of all public bodies whose property or rights are affected or may be affected in any way by the works/services or any Temporary Works.

6.30 Compliance with Statutes, Regulations etc.

6.30.1 The Contractor shall conform in all respects with the provisions of any such Statute, Ordinance or law as aforesaid and the rules, regulations or by-law of any local or other duly constituted authority which may be applicable to the Works/services or to any Temporary Works and with such rules and regulations of public bodies as aforesaid and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Statute, Ordinance, Law, Rule, Regulation or Bye-Laws etc.

6.31 Governing Law:

The Contract entered into between the Employer Company and the Supplier shall be governed by and interpreted in accordance with the Laws of India. The place of exclusive jurisdiction shall be the place where the Employer's concerned Unit/Plant is located unless otherwise specified.

6.32 Fossils etc.

6.32.1 All fossils, coins, articles of value or antiquity and structures and other remains or things or geological or archaeological interest discovered on the site shall be as between the Employer and the Contractor be deemed to be the absolute property of the Employer and the Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint the Engineer of such discovery and carry out at the expense of the Employer the Engineer's orders as to the disposal of the same.

6.33 Tolls etc,

6.33.1 Except where otherwise specified the Contractor shall pay all tollage and other royalties, rent and other payments or compensation (if any) for getting stone, sand, gravel, clay or other materials required for the Works or Temporary Works or any of them,

6.34 Interference with Traffic & Adjoining Properties

6.34.1 All operations necessary for the execution of the Works/services and for the construction of any Temporary Works shall so far as compliance with the requirements of the Contract permits be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and footpath or adjoining to or of properties whether in the possession of the Employer or any other person and the Contractor shall save harmless and indemnify the Employer in respect of all claims demands, proceedings, damages, costs charges and expenses whatsoever arising out of or in relation to any such matters.

6.35 Extraordinary Traffic

6.35.1 The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the site from being subjected to extra-ordinary traffic of the Contractor or any of his sub-contractors and in particular shall select routes and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of plant and materials from and to the site shall be limited so far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such highways and bridges.

6.36 Waterborne Traffic

6.36.1 Where the nature of the work is such so as to require the use by the Contractor of waterborne transport, the foregoing provisions of this clause shall be construed as though "highway" includes a dock, deck, sea-wall or other structural related to a waterway and vehicles, includes craft and shall have effect accordingly.

6.37 Facilities for other Contractors

6.37.1 The Contractor shall in accordance with the requirements of the Engineer afford all reasonable facilities for any other Contractors employed by the Employer and their workmen and for the workmen of the Employer and of any other properly authorized authorities or statutory bodies who may be employed in the execution on or near the site of any work not included in the Contract or of any Contract which the Employer may enter into in connection with or ancillary to the Works.

6.38 Supply of Plant, Material and Labour

6.38.1 Except where otherwise specified, Contractor shall at his own expense supply and provide all the Constructional Plant, Temporary Works, materials both for temporary and for permanent works, labour (including the supervision thereof), transport to or from site and in and about the Work and other things of every kind required for the constructions completion and maintenance of the Works.

6.39 Delay in obtaining Materials

6.39.1 If the Employer has undertaken to supply materials in the Contract at terms stated therein the Contractor shall keep himself in touch with the day-to-day position regarding the supply of materials from the Engineer and shall so adjust the progress of the work that his labour may not remain idle nor may there be any other claim due to or arising from delay in obtaining the materials. No claim whatsoever shall be entertained by the Employer on account of delay in supplying materials.

6.40 Clearance of site on completion

6.40.1 On the completion of the Works/services, all Constructional plants / debris, kilns, vats, tanks, materials/rubbish and temporary structures of any sort or kind used for the purpose of or connected with its construction including quarters for Contractor's labour, are to be removed by the Contractor. Further, pits and excavations, if any, are to be filled up and the site handed over in a tidy and workmanlike condition. No final payment in settlement of the accounts for the Works shall be held to be due or shall be made to the Contractor till such site clearance shall have been effected by him. In the event of the Contractor failing to comply with this provision within 7 days after receiving

notice in writing from the Engineer to the effect, such clearance may be made by the Engineer at expenses of the Contractor. If it becomes necessary for the Engineer to have the site cleared as Indicated above at the expense of the Contractor, the Employer shall under no circumstances be held liable for any loss or damage to such Contractor's property as may be on site due to removal there from, which removal may be effected by means of public sale of such materials and property or in such way as deemed fit and convenient to the Engineer.

6.41 **Return of Materials**

6.41.1 Notwithstanding anything contained to the contrary anywhere in this Contract wherever any materials for the execution of the Contract are procured with the assistance of the Employer either by issue from Employer's stores or purchase made under orders or permits or licenses issued by the Employer, the Contractor shall use the said materials economically and solely for the purpose of the Contract and not dispose of them without the permission of the Employer and if required by the Engineer shall return to the Employer all surplus or unserviceable materials that may be left with the Contractor after the completion of the contract or at its termination for any reason whatsoever on being paid or credited such price as the Engineer shall determine having due regard to the initial cost and the present condition of the materials at the time of such return thereof. The credit to be given to the Contractor shall not exceed the cost or invoice price of the materials when taken back to the stores of the Company. The decision of the Engineer shall be final and conclusive. In the event of breach of the aforesaid condition the Contractor shall (in addition to making himself liable for action for contravention of the terms of the license or permit and/or for criminal breach of trust) be liable to the Employer for all moneys, advantage or profit resulting or which in the usual course would have resulted to him by reason of such breach.

6.42 **Independent capacity**

6.42.1 The parties intend that an independent Contractor relationship will be created by this Contract. The Contractor and his/her employees or agents performing under this Contract are not employees or agents of the Employer. The Contractor will neither hold himself/herself out as nor claim to be an officer or employee of the Employer by reasons hereof, nor will the Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of work will be solely with the Contractor.

6.43 **Confidentiality:**

6.43.1 All documents, drawings, samples, data, associated correspondence or other information furnished by or on behalf of the Employer to the contractor, in connection with the contract, whether such information has been furnished before, during or following completion or termination of the contract, except what is in public domain are confidential and shall remain the property of the Employer and shall not, without the prior written consent of Employer neither be divulged by the contractor to any third party, nor be used by him for any purpose other than the design, procurement, or other services and work required for the performance of this Contract. If advised by the Employer, all copies of all such information in original shall be returned on completion of the contractor's performance and obligations under this contract.

6.44 **Limitation of Liability**

6.44.1 except in cases of criminal negligence or willful misconduct,

- a) The Contractor and Employer shall not be liable to each other, whether in Contract, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, prolongation cost, overhead cost, or loss of profits or loss of opportunity or interest costs and
- b) The aggregate liability of the Contractor to the Employer, whether under the Contract, or otherwise including the cost of repairing or replacing defective equipment, shall not exceed 100% of the contract price plus escalation, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Employer with respect to copyright, patent infringement, workman compensation etc.

6.45 **Safety Rules Regulations**

Before commencement of the work/services the contractor will give an undertaking in writing that it would abide by the safety Rules and Regulations laid down by the Employer rigorously and any deviation from this would make it liable for action.

6.45.1 **Safety Clearance**

Along with contract document and job instructions from the contracting department, the contractor will get clearance from Safety Engineering Department. The contractor will not be permitted to start the job without getting a written safety clearance from Safety Engineering Department.

6.45.2 **Shutdowns**

The executing department would take necessary shutdowns wherever there are hazards of gases, electricity, moving machinery, etc the contractor shall ensure that the shutdowns/clearance are taken before sending workers in such locations.

6.45.3 **Non-Compliance**

The Head of the Department of Employer who is executing the contract or the Head of the Safety Engineering Department of Employer, upon his satisfaction that the contractor is not conforming to the directions of the Licensing Authority shall not allow contractor to proceed with the work until the contractor has complied with such directions to the satisfaction of such Head of the Department or the Head of Safety Engineering Department.

6.45.4 **Work at Height**

Whenever work at height is involved contractor should obtain passes to work at height for those persons who will be required to work at height from Safety Engineering Department.

6.45.5 **Injury to Workmen**

The contractor after preliminary examination at Employer's Plant Medical Unit (PMU) may take his injured workmen to ESI hospital/his own Doctor with permission from the Doctor at PMU on his

own risk giving an undertaking to that effect in writing to the Doctor. He will, however, have to keep Safety Engineering Department informed about the nature of the injury and the period for which the injured person is off duty on account of injury.

6.45.6 **Penalty for Violation**

Without prejudice to the right conferred by the clause-6.45.1 and clause-6.45.3 above for stoppage of work for violation of safety requirements, the contractor shall be liable for a penalty as stipulated in the contract.

6.45.7 **Recovery of Penalty**

Head of Safety Engineering Department and Head of Department executing contract will assess the penalty amount having regard to all the circumstances, in particular the nature and gravity of the violation. On the advice of Head of Safety Organization, Contract executing Department will issue a show cause notice specifying therein the proposed penalty. Considering the cause shown by the contractor if any, the Head of Department executing the contract shall pass final orders which shall then be final and binding on the contractor. The penalty amount shall be recoverable from any bill and/or SD of the contractor without any further reference to him.

6.45.8 **Safety Code**

The contractors shall strictly follow the Safety instructions issued during training and also by the Safety Engineering Department from time to time. Before starting the work, the contractor shall meet the Safety Engineer and get himself familiar with the safety measures to be taken during the execution of the work/ job/ service. The contractor shall be personally responsible for the safety of his workmen and shall be liable for prosecution in case of any accident.

6.45.9 **PPE & Safety Appliances for Mines**

6.45.9.1 The contractor shall provide all the PPE (Personal Protective Equipment) and Safety appliances required to carry out the job to all the workmen deployed by the contractor and also ensure that his workmen use those PPE and safety appliances while on the job.

6.45.9.2 The standard of PPE and safety appliances supplied by the contractor must conform to any one of the following (in order of preference):

- a. DGMS
- b. IPSS
- c. IS
- d. As per advice and design by the Safety Deptt.

6.45.9.3 Arrangements of supply of proper type of PPE and appliances shall be made by the contractor prior to the actual start of the job and Safety Department, of Company will physically check the same.

6.45.9.4 If at any stage, the contractor fails to provide proper type of PPE and safety appliances, the Company may procure and distribute the same as per requirement, with prior intimation to the contractor. In such case, the cost of items plus the other cost incurred on procurement shall be

deducted from the bill of the contractor.

6.46 **Adequate of structures, excavations and works**

The Contractor shall at his own cost provide the material for and execute all shoring, timbering and strutting as a necessary during the execution of work for the stability and safety of all structures, excavations and works such that no damage, injury or loss is caused or likely to be caused to any person or property.

6.47 **Business Responsibility and Sustainability**

6.47.1 At SAIL, we deeply value the vital role that companies can play in safeguarding and promoting human rights in the long term. We recognize our responsibility to uphold the spirit of human rights, as outlined in existing international standards, such as the Universal Declaration and the Fundamental Human Rights Conventions of the International Labour Organization. SAIL expects its suppliers to develop and implement policies and procedures to ensure all human rights in their business and to encourage their suppliers to do likewise. Our Human Rights Charter is available at <https://sail.co.in/sites/default/files/2023-09/Human-Rights-Charter.pdf>.

7. **PURCHASE PREFERENCE: (BOTH FOR INDIGENOUS AND IMPORT TENDERS)**

7.1.1 Any purchase preference to Make in India Suppliers and MSE Suppliers, shall be based on the extant guidelines of Govt. of India and guidelines of SAIL Plants / Units.

i) **Micro and Small Enterprises (MSEs):** In line with the Public Procurement Policy (PPP) for Micro & Small Enterprises (MSEs) Order 2012, issued vide Gazette Notification dated 23.03.2012 and amendments thereof the tenderer who is registered as Micro/small Enterprises must submit valid self-certified copy of Udyam Registration Certificate (URC) issued after registering on the Udyam Registration Portal i.e. <https://udyamregistration.gov.in>

In case Udyam Registration Certificate (URC) is not provided, they shall not be eligible to the benefits admissible under the Act.

ii) **Public Procurement (Preference to Make in India), Order 2017:** Procurement against this tender will be governed by the provisions enumerated in Govt. of India order no. P-45021/2/2017-PP(BE-II) dt. 15.06.2017 duly amended dt 28.05.2018, 29.05.2019, 04.06.2020 and 16.09.2020. Any subsequent modification / guidelines issued further from time to time shall also be applicable.

The Bidders shall provide self-certificate / certificate from the statutory auditor or cost auditor of the Company (in the case of companies) / from a practicing cost accountant or practicing chartered accountant (in respect of suppliers other than companies), as applicable, indicating whether they are class-I local supplier / class-II local supplier as per Annexure a(i) or a(ii) to be submitted along with Techno-Commercial.

8. RESTRICTION ON PROCUREMENT FROM A BIDDER OF A COUNTRY WHICH SHARES A LAND BORDER WITH INDIA:

- A. Any Bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services (including consultancy services and non-consultancy services) or works (including turnkey projects) only if the bidder is registered with the competent authority. Further, any bidder (including bidder from India) having specified transfer of technology (ToT) arrangement with any entity from a country which shares a land border with India, shall also require to be registered with the same competent authority as per DoE Order dated 23.07.2020 and subsequent amendments thereto from time to time.
- B. "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a consortium or joint venture (that is an association of several persons and/or firms and/or companies), every artificial juridical person not falling in any of the descriptions of Bidders stated hereinbefore, including any agency branch or office controlled by such person, participating in a procurement process.
- C. "Bidder (or entity) from a country which shares a land border with India" for the purpose of this Order means: -
- a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose beneficial owner is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above
- D. The beneficial owner for the purpose of (C) above will be as under:
1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation

- a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent, of shares or capital or profits of the company;
- b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
 3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
 4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
 5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.
- E. An Agent is a person employed to do any act for another, or to represent another in dealings with third person.
- F. Only for Works Contracts including Turnkey Contract): The successful bidder shall not be allowed to sub contract works to any contractor from a country which shares a land border with India, unless such contractor is registered with the competent authority
- G. The registration should be valid at the time of submission of bid and at the time of acceptance of bid.
- H. If the bidder was validly registered at the time of acceptance/ placement of order, registration shall not be a relevant consideration during contract execution
- I. Certificate of Conformance: By submitting their offer the bidder is deemed to have:
- "Read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; To have certified that they are not from such a country or, if from such a country, have been registered with the Competent Authority; to certify that they fulfill all requirements in this regard and are eligible to be considered."
- If subcontracting is applicable, the Bidder by submitting their offer is deemed to have
- "Read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; certified that they are not from such a country or if from such a country, have been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority; certified that they fulfill all requirements in this regard and are eligible to be considered."
- J. In case bidder is registered for this purpose, evidence of valid registration by the competent authority should be attached and should be valid at the time of bid submission and at the time of price discovery.

9. DECLARATION BY THE TENDERER:

9.1 By participation in this tender the Bidder / Tenderer is deemed to have solemnly affirmed / certified / declared / warranted / undertaken / understood the following:

A. Non-collusion:

- I. That their bid was developed genuinely, independently and made with the intention to accept the Contract if awarded;
- II. That their bid was not prepared with any agreement, arrangement, communication, understanding, promise of undertaking with any person (including any other tenderer or competitor) regarding:
 - i) prices;
 - ii) methods, factors or formulas used to calculate prices;
 - iii) an intention or decision to submit a bid;
 - iv) an intention or decision to withdraw a bid;
 - v) the submission of bid that does not conform with the requirements of the tender;
 - vi) the quality, quantity, specifications or delivery particulars of the products or services to which this tender relates; and
 - vii) the terms of the bid,
- III. That they will not, prior to the award of the Contract, enter into or engage in any of the foregoing.

Note:

This para is not applicable to Agreements, arrangements, communications, understandings, promises or undertakings with:

- a. the Plants/ Units of Steel Authority of India Limited*
- b. a joint venture partner, where joint venture agreements, arrangements, relevant to the bid exist and which are notified to Steel Authority of India Limited;*
- c. consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;*
- d. professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to the Tender;*

- e. *insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement; and*
 - f. *Banks for the purpose of obtaining financing for the contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing.*
- B.** That they have duly disclosed all intended sub-contracting arrangements relating to the Tender and will continue to disclose such arrangements to the Plants/ Units after the Contract is awarded.
- C. Authenticity of documents:**
- i. That they have carefully read the contents of the tender.
 - ii. They have not made any misleading or false representation anywhere in the tender submitted including annexures thereto.
 - iii. That they understand that their offer will be evaluated based on the documents / credentials submitted along with the offer and the same shall be binding upon it.
 - iv. That the information and documents submitted by it along with the tender documents are complete and correct and they are fully responsible for authenticity and correctness of information and documents submitted.
 - v. That at any time during the process for evaluations of tenders, if any information / document submitted by it is found to be suppressing facts / forged / false / fabricated / fudged or incorrect, it shall lead to forfeiture of the EMD, if submitted, besides banning under the extant Guidelines for Banning of Business Dealings of SAIL and initiating any legal action as deemed fit by SAIL. Further, that their offer shall be summarily rejected.
 - vi. That at any time after award of the contract, if the certificates submitted by it are found to be suppressing facts / false/ forged/ fabricated / fudged or incorrect, it may lead to termination of the contract, along with forfeiture of EMD/ SD and Performance Guarantee, if submitted, besides any other action provided in the contract including banning under the extant Guidelines for Banning of Business Dealings of SAIL and initiating any legal action as deemed fit by SAIL
- D. Anti-Bribery:** That they shall not give or take, any financial or non-financial bribe, to or from anyone during the tender or during the execution of the contract thereafter and if they notice any such incident happening, they shall report it to SAIL Vigilance.
- 9.1.1 In case of non-compliance of para 9.1 above, Employer may at its discretion, invalidate their bid, exclude it from future tenders, pursue damages or other forms of redress from it (including but not limited to damages for delay, costs and expenses of re-tendering and other costs incurred), and /or (in the event that they are awarded the Contract) terminate the Contract.

9.1.2 The Tenderer shall be required to declare whether the proprietor or any partner of the firm or Director of their company as the case may be has any relation with any employee working with the Purchaser and if so, give the name of the employee and the relationship and also whether any of it has a relationship within the meaning of section 2 (77) of the Companies ACT, 2013, read with rule 4 of Companies (Specification of definitions details) Rules, 2014 with any of the Directors of Steel Authority of India Limited.

9.2 **CODE OF INTEGRITY**

A) By participation in this tender, Bidders, Suppliers, Contractors, and Consultants are deemed to have declared that they shall observe the highest standard of ethics and shall not indulge in the following prohibited practices, either directly or indirectly, at any stage during the Tender Process or during the execution of resultant contracts:

- 1) “Corrupt practice” - making offer, solicitation or acceptance of a bribe, reward or gift or any material benefit, in exchange for an unfair advantage in the Tender Process or to otherwise influence the Tender Process;
- 2) “Fraudulent practice” - any omission or misrepresentation that may mislead or attempt to mislead so that financial or other benefits may be obtained or an obligation avoided. Such practices include a false declaration or false information for participation in a tender process or to secure a contract or in the execution of the contract;
- 3) “Anti-competitive practice” - any collusion, bid-rigging or anti-competitive arrangement, or any other practice coming under the purview of the Competition Act, 2002, between two or more bidders, with or without the knowledge of the Purchaser, that may impair the transparency, fairness, and the progress of the Tender Process or to establish bid prices at artificial, non-competitive levels;
- 4) “Coercive practice” - harming or threatening to harm persons or their property to influence their participation in the Tender Process or affect the execution of a contract;
- 5) “Conflict of interest” –participation by a bidding firm or any of its affiliates who are either involved in the Consultancy Contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if their personnel have a relationship or financial or business transactions with any official of Purchaser who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the Purchaser with an intent to gain unfair advantage in the Tender Process or for personal gain;
- 6) “Obstructive practice” - materially impede Purchasers investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by coercive practices mentioned above, to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Purchaser’s rights of audit or access to information;

B) Obligation of Proactive Disclosure

- 1) Bidders, suppliers, contractors, and consultants are obliged under this Code of Integrity to suo-moto proactively declare any conflict of interest (coming under the definition mentioned above - pre-existing or as and as soon as these arise at any stage) in any Tender Process or execution of the contract. Failure to do so shall amount to a violation of this code of integrity.
- 2) Bidder must declare, whether asked or not in a bid-document, any previous transgressions of such code of integrity with any Procuring entity during the last three years or of being debarred by the any other Organisation Failure to do so shall amount to a violation of this code of integrity.
- 3) Such declarations would not mean automatic dis-qualification for the bidder making such declarations. The declared conflict of interest shall be evaluated for taking mitigation steps, where possible. Similarly voluntary reporting of previous transgressions of code of integrity elsewhere shall be evaluated barring cases of various grades of debarment; an alert may be kept on the bidders actions in the tender and subsequent contract.

C) Punitive Provisions:

Without prejudice to and in addition to the rights of the Company to other penal provisions as per the bid documents or contract, if the Company comes to a conclusion that a Bidder/Supplier, directly or through an agent, has violated this code of integrity in competing for the Contract or in executing a contract, the Company may take appropriate measures including one or more of the following:

- i) If his bids are under consideration in any procurement:
 - a) Forfeiture or encashment of bid security
 - b) Calling off of any pre-contract negotiations, and;
 - c) Rejection and exclusion of the bidder from the procurement process
- ii) If a contract has already been awarded:
 - a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the Company;
 - b) Forfeiture or encashment of any other security or bond relating to the procurement;
 - c) Recovery of payments including advance payments, if any, made by the Company along with interest thereon at the prevailing rate;
- iii) Provisions in addition to above:
 - d) Removal from the list of registered suppliers and banning/debarment of the bidder from participation in future procurements of the Company

- a) In case of anti-competitive practices, information for further processing may be filed with the Competition Commission of India;
- b) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

10. LABOUR

10.1 Labour Rules etc.

- a. In respect of all labour directly or indirectly employed by the Contractor, on the work, it shall be the bounden duty of the Contractor to abide by and to strictly etc. comply with all labour legislations/rules, as may be applicable, enacted by the Parliament or by the State Legislature and the rules/regulations framed there under by the Central or State Government or Local Authorities providing for the conditions of employment protection of health, Sanitary arrangements, wages, provident fund, gratuity welfare, and safety of workmen. These rules and statutory obligations shall be deemed to be part of the Contract. Instructions issued by the Employer in this behalf from time to time shall be equally binding on the contractor & the Contractor shall observe them stringently.
- b. In the event of the Contractor failing to discharge his obligations imposed upon him by or under any statute as aforesaid the employer shall be entitled to rescind the Contract at the sole risk and cost of the Contractor and/or recover from him the amount of loss sustained by the Employer
- c. It is advisable for the Contractor to properly and fully acquaint himself with all the legislations as applicable to his workmen and the work under this contract or in connection herewith, so as to preclude the possibility of infringement and non-compliance thereof and to make it easy for him to observe clause 10.1 without any deviation
- d. The Contractor shall maintain records, registers in respect of workers employed by him as required under various statutes and/or prescribed by the Employer, shall issue attendance cards to each worker and shall produce the same for inspection on demand to the authorities under statutes or to the authorized representatives of the Employer
- e. All payments of whatever nature to be made by the contractor to his workmen shall be made in the presence of or shall be duly verified by an authorized representative of Employer and Employer's representative shall sign the acquaintance in token of having witnessed/verified the payment, as prescribed under law.
- f. The Running Account bill(s) of the contractor shall be released only after Contract Labour Cell (CLC) gives clearance regarding compliance of all statutory provisions by the contractor. Final bill of the Contractor shall be cleared only when a clearance certificate is issued to the Contractor from an authority declared for the purpose by the Employer that the claims of workmen in respect of wages, workmen's compensation, CPF etc. have been paid by Contractor to his workmen in full and subject to fulfillment of other conditions of contract.
- g. The Contractor shall be entirely responsible for safe and good conduct of his workmen during

the period of his contract. The Contractor shall also ensure, that no safety rules / instructions are violated by him or his workmen. The Contractor shall maintain his machineries and tools for work in safe condition and shall present the same for checking whenever called by Employer.

- h. It shall be binding on the part of the Contractor to familiarize himself and be governed by all statutes such as Mines, Act 1952, Rules and Regulations including amendments made there under if any applicable for the work, Indian Electricity Act 1910 and Indian Electricity Rules 1956 including amendments if any applicable for the work.
- i. The Contractor shall provide and ensure proper use of safety appliances by his workmen throughout the course of their employment
- j. The Contractor in fulfillment of his statutory obligations imposed by or under various Labour Laws, will among other things:
 - i) Arrange to provide cool and wholesome drinking water at appointed place/places near work site. The container of water shall be in hygienic condition.
 - ii) Implement the Employees Provident Fund Scheme or Produce exemption certificate from Provident Fund Commissioner if they are so exempted Otherwise, bills for the work will be released withholding 10% from such sums or as decided by the Employer from time to time till such time they implement the scheme or produce exemption certificate from the Provident Fund Commissioner. The Tenderers/Contractors are further required to indemnify the Employer against any loss or damage whatsoever that may be suffered by the Employer as a result of any claim, damage or penalties for any failure or non-compliance on their(Contractor's) part within the provisions of the aforesaid Act and Schemes framed there under.
- k. No labour below the age of 18 (eighteen) years shall be employed on the Job.

10.2 For Mines Only:

The Contractor shall arrange to get his workmen trained under Mines Vocational Rules-1966 at the Mines Vocational Training Centre of the Employer and shall pay all statutory allowances for such training to his workmen under training.

10.3 Labour License

- a) The contractor shall have to obtain a license from concerned Licensing Authority within preferably 15 days from the award of the Contract under Contract Labour (Regulation and Abolition) Act, 1970 & amendments thereto and shall have to comply with all the provisions of the Act and Rules framed there under and shall ensure that no violations are pointed out by the Authorities under the Act.
- b) The Running Account bills of the contract shall not be released until the license for the number of labours employed under Contract Labour (Regulation and Abolition) Act, 1970 & amendments thereto has been produced by the contractor to the office of the Employer. Whenever the number is increased, the contractor shall arrange to get such changes

incorporated in the license.

10.4 **Minimum Wages Act**

10.4.1 The Contractor shall comply with the provision of the Minimum Wages Act and the Rules made there under by the Central/State Government (as applicable) in respect of all workmen employed by him in carrying out this Contract. He shall pay the employees wages not less than the minimum rates of wages, if any, fixed by the Government for that Category (including wages, payable for weekly holidays contemplated under the Minimum Wages Act).

The Contractor shall, at all times indemnify the Employer against all claims arising out of the provisions of the Minimum Wages Act and the Rules framed there under as admissible in respect of any workmen employed by the Contractor in carrying out the Contract and against all costs and expenses incurred by the Employer in connection with and (without prejudice to other means of recovery). The Employer shall be entitled to deduct from any money due, to become due to the Contractor whether in this Contract or any other Contract) all moneys paid or payable by the Employer by way of wages and other dues (including compensation penalty, if any, imposed for committing breach of any provision of the Act by the contractor) in connection with any claim thereto and the Contractor shall abide by the decision of the Employer as to the sum payable by the Contractor under the provision of this Clause.

10.5 **Women Labour**

10.5.1 The working hours of woman labour employed by the Contractor/ Tenderer shall conform with the relevant labour acts in force.

10.6 **Gate pass**

- a) All representatives and workers of Contractor shall possess the Gate Pass issued by the Employer and concerned Officer/Engineer shall have the right to refuse the gate passes to any worker or representative of the contractor without assigning any reason,
- b) Permission to enter the Employer's premises to any representative or worker of the Contractor may be suspended or withdrawn at any time by the Employer or concerned Officer/Engineer without assigning any reason.
- c) The contractor(s) shall ensure that any gate pass issued to their workmen or representatives by Employer are not misused by the unauthorized persons for entry in the plant area or in any specified/restricted area inside the plant.
- d) The contractor shall be governed by the following provisions for enforcing safe custody and proper use of gate passes that may be issued to him/his workmen for entry into the Plant area.
 - (i) It shall amount to breach of rules and regulations regarding entry into a prohibited place by Contractors in case any gate passes issued on their demand are found to be misused by any unauthorized person (s). It shall also amount to breach of terms of the contract for which the Employer reserves the right to terminate the contract at any stage at the risk and cost of the Contractor.

- (ii) Final payment would be made to the Contractor only after all the passes issued by the Security Department are surrendered to the Employer for cancellation for which 'No Demand Certificate' should be obtained. In case of passes lost/not surrendered for any reason an amount as prescribed by the Plant/Unit, will have to be paid as penalty before final payments are cleared.

11. WORK MATERIALS & PLANT

11.1 Quality of Materials and Workmanship and Tests

11.1.1 All materials and workmanship as stipulated in the contract and in accordance with the Engineer's instruction and shall be subjected from time to time such tests as the Engineer may direct at the places of manufacture or fabrication or on the site or at all or any such places. The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any materials used and shall supply samples of materials before Incorporation in the Works for testing as may be selected and required by the Engineer.

11.2 Cost of Samples

11.2.1 All samples shall be supplied by the Contractor at his own cost.

11.3 Testing:

11.3.1 Wherever the materials involve testing for acceptance, testing of the same is to be arranged by the contractor and cost of the same is to be borne by him. However, in case material is tested at Employer's premises, no charges need to be paid by the Contractor, unless otherwise specified in the Contract.

11.3.2 In case of testing of Umpire Sample in an outside lab, if the Umpire sample fails, the Contractor shall bear the expenses of the Umpire sample testing.

11.4 Access to site

11.4.1 The Employer and / or Engineer and any person authorized by him shall at all times have access to the works and to the site and to all workshops and places where work is being prepared or where materials, manufactured articles and machinery are being obtained for the works and the Contractor shall afford every facility for and every assistance in on obtaining to right to such access.

11.5 Examination of Work/Foundation before covering up

11.5.1 No work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any work which is about to be covered up or putout of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the Engineer whenever any such work or foundation is or ready or about to be ready for examination and the Engineer shall without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such work or of examining such foundations.

11.6 Uncovering & Making Openings

11.6.1 Contractor shall uncover any part or parts of the Work or make opening in or through the same as the Engineer may from time to time direct and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of clause 11.5 and are found to be executed in accordance with the Contract, the expenses uncovering, making openings in or through reinstating and making good the same shall be borne by the Employer but in any other case, all such expenses shall be borne by the Contractor and shall be recoverable from him by the Employer or may be deducted by the Employer from any moneys due or which may become due to the Contractor.

11.7 Removal of Improper Work and Materials

11.7.1 The Engineer shall during the progress of the Work have power to order in writing from time to time.

- (a) The removal from the site within such time or times as may be specified in the order, of any materials which in the opinion of the Engineer are not in accordance with the Contract.
- (b) the substitution of proper and suitable materials and
- (c) the removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefore) of any work which in respect of materials or workmanship is not in the opinion of the Engineer in accordance with the Contract.

11.8 Suspension of Work

11.8.1 The Contractor shall on the written order of the Engineer suspend the progress of the works or any part thereof for such time and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the Engineer. The extra cost (if any) incurred by the Contractor in giving effect to the Engineer's instructions under this Clause shall be borne and be paid by the Employer unless such suspension is:

- (a) otherwise provided for in the Contractor or
- (b) necessary for the proper execution of the work or by reason of weather conditions or by some default on the part of the Contractor or
- (c) necessary for the safety of the Works or and part thereof,

Provided that the Contractor shall not be entitled to recover any such extra cost unless he gives notice in writing of his intention to claim to the Engineer within 28 days of the Engineer's order. The Engineer shall settle and determine the extra payment to be made to the Contractor in respect of such claim as the Engineer shall consider fair and reasonable.

11.9 Suspension of works for more than 90 days

11.9.1 If the progress of the Works or any part thereof is suspended on the written notice order of the

Engineer for more than ninety days, the Contractor may serve a written notice on the Engineer requiring permission within 28 days from the receipt thereof to proceed with the Works 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 to treat the suspension where it affects part only of the Works as an omission of such part thereof or where it effects the whole Works as an abandonment of the Contract by the Employer.

12. COMMENCEMENT TIME & DELAYS

12.1 Commencement/ completion of work

12.1.1 The Effective Date (Start date for commencement and period / end date for completion of Contract) shall be as specified in the Contract.

12.2 Possession of Site

12.2.1 Save in so far as the Contractor may prescribe the extent of portions of the Site of which the Contractor is to be given possession from time to time and the order in which portions shall be made available to him and subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer will give to the contractor possession of so much of the site as may be required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the Programme referred to in Clause 6.15 thereof (if any). Otherwise in accordance with such reasonable proposals of the Contractor as he shall by notice in writing to the Engineer make and will from time to time as the works proceed give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the construction of the Works due in accordance with the said programme proposals. If the Contractor suffers delay from failure on the part of the Employer to give possession in accordance with the terms of the clause, the Engineer shall grant an extension of time for the completion of the works.

12.3 Way levels etc.

12.3.1 The Contractor shall bear all expenses and charges for special or temporary way levels required by him in connection with access to the site. The Contractor shall also provide at his own cost any additional accommodation outside the Site required by him for the purpose of the Works.

12.4 Extension of Time

12.4.1 If the Contract is delayed at any time in the progress of work by any Act, delay or neglect, of the Employer, or by any other contractor employed by the Employer, or by changes ordered in the work by the Employer or by Force Majeure conditions or by any cause which the employer shall decide as justifiable, then the time of completion shall be extended by a reasonable time or by such time as the Employer may decide. No such extension shall be allowed unless claims are made in writing to Employer within 15 days from the date of occurrence of the causes of delay or as soon thereafter as is practicable, delivered to the Engineer with full and detailed particulars or any claim of extension of time to which the contractor may consider himself entitled in order that such claim.

- a. **Conditions for Extension of Delivery Period with Liquidated damages:** When the period of delivery is extended due to unexcused (i.e., where the delay is not attributable to Purchaser) delay by the Contractor, the amendment extending the delivery period shall, inter- alia be subject to the following conditions:
- i. SAIL shall recover from the Supplier/ Vendor/Contractor, under the provisions of this clause, liquidated damages on the such supplied Goods and incidental Works/ Services, which the Supplier/ Vendor/Contractor has failed to deliver within the delivery period stipulated in the Contract.
 - ii. No increase in price on account of any statutory increase in or fresh Imposition of GST, customs duty or on account of any other taxes/ duty/ cess/ levy, leviable in respect of the Works/ jobs/ Services stipulated in the said Contract which takes place after the original completion date, shall be admissible on such part of the said Works, as are delivered after the said date, however the same shall be admissible to the extent for which Input Tax Credit (ITC) is admissible against these levies; and
 - iii. Notwithstanding any stipulation in the Contract for an increase in price on any other ground, including price variation clause or foreign exchange rate variation, or any other variation clause, no such increase after the original completion date shall be admissible on such Works completed after the said date.
- b. If the delay in completion of supplies is attributable to Purchaser or Force Majeure conditions then Liquidated Damages will not be levied.

12.5 No Night or Sunday Work

- 12.5.1 Subject to any provision to the contrary contained in the Contract none of the permanent work shall save as hereinafter provided be carried on during the night or on Sundays without the permission in writing of Engineer save when the work is unavoidable or absolutely necessary for the saving of life of or property or for the safety of the Works in which case the Contractor shall immediately advice the Engineer. Provided always that provision of this clause shall not be applicable in the case of any work which it is customary to carry out by rotary or double shifts.

12.6 Rate of Progress

- 12.6.1 The whole of the materials, plant and labour to be provided by the Contractor under Clause 3 hereof and the mode manner and speed of execution and maintenance of the Works are to be of a kind and conducted in a manner approved by the Engineer. Should the rate of progress of the Works or any part thereof be at any time, in the opinion of the Engineer is too slow to ensure the completion of the works by the prescribed time or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as he may think necessary and the Engineer may approve to expedite the progress so as to complete the works by the prescribed time or extended time for completion. If the works is not being carried on by day and by night and the Contractor shall request permission of work by night as well as by day, then if the Engineer shall grant such permission the Contractor shall not be entitled to any additional payment for so doing but if such permission shall be refused and there shall be no equivalent

practicable method of expediting the progress of the work the time for completion of the Works shall be extended by the Engineer by such period as solely attributable to such refusal. All work at night shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Employer from and against any liability for damage on account of noise or other disturbance created while or in carrying out the work and from and against all claims, demands, proceedings, damages, costs, charges and expenses what so ever in regard or in relation to such liability.

12.7 Failure of Delivery: In case the completion is delayed beyond the prescribed completion period, the Works/ jobs /services can only be performed with prior consent of the Employer. Should the Contractor fail to complete the Works/jobs/ services or any part thereof, within the period prescribed for such completion, the Employer shall be entitled at his option, to the following:

a) Liquidated Damages:

In event of Works/ services not being completed within the contractual completion schedule, liquidated damages @ 0.5%,not by way of penalty, of the whole value of the Work/ job /service without taxes, duties & freight, per week or part thereof of delay, subject to maximum of 10%, (or as applicable in the case of MSE as per extant SAIL MSE guideline is recoverable from the Contractor without prejudice to the rights of Employer to procure the balance service at the risk and cost of the Contractor. The payment or deduction of such damages shall not relieve the Contractor from the contractual obligations to complete the Works/ jobs / services or balance portion thereof in time as stipulated in the Contract.

If the delay in completion of Works/ jobs/ services is attributable to Employer or Force Majeure conditions then Liquidated Damages will not be levied.

b) Risk Purchase:

Subject to the terms and conditions of this Contract, if the Contractor neglects or fails to perform the Contract by the time or times agreed upon, for any reason other than Force Majeure, the Employer after having come to know of such negligence or non-performance, after giving 14 to 30 days notice in its discretion or any such extended period that the Contractor and Employer may mutually agree, to the Contractor to rectify, shall take such action as it considers fit including but not limited to taking risk purchase action for completion of Works/ jobs /services, mitigating any losses, at the risk and cost of the Contractor as far as the undelivered Works/ jobs / services in that Completion Period is concerned. The Right of the Employer for Risk Purchase Action is in addition to the Right of Employer to terminate the Contract due to the fault of the Contractor.

The price differential in case of higher cost to Employer, if any, shall have to be borne by the defaulting Contractor. Moreover, the defaulting Contractor shall have no claim over the quantity, which they failed to complete.

12.8 Certificate Completion of work

12.8.1 When the Contractor fulfils his obligation under the Contract, he shall be eligible to apply for Completion Certificate. The Engineer shall normally issue to the Contractor, the Completion

Certificate within one month after receiving any application thereof from the Contractor after verifying from the completion documents and satisfying himself that the Works/Job/Service has been rendered in accordance with and as set out in the Contract Documents. No certificate shall be given nor shall the Works/job/Service be deemed to have been rendered until all scaffolding, Equipment(s) & machine(s), surplus materials and rubbish brought for/ generated during execution of service is cleared off the Site completely. Engineer's certification about completion of service in all aspects shall be binding and conclusive.

12.9 **Final Acceptance/ Performance Certificate**

Upon expiry of the period of Performance / Defect Liability (as per period specified after completion of work in Contract, and subject to the Engineer being satisfied that the Contractor has in all respect duly made-up any shortfall and performed all his obligations under the Contract, the Engineer shall normally issue to the Contractor, a certificate herein referred to as the Final Acceptance Certificate/ Performance Certificate to that effect. The contractor shall not be considered to have fulfilled the whole of his obligations under Contract until such Certificate shall have been given by the Engineer. Any related payment shall be released on the basis of such Certificate.

13. **MAINTENANCE DURING DEFECT LIABILITY / PERFORMANCE GUARANTEE PERIOD:**

13.1 **Definition of Period of Maintenance:**

13.1.1 In these conditions the expression Period of Maintenance shall mean a period of six months or any other period if specifically specified in the Contract calculated from the date of completion of the Works certified by the Engineer in accordance with Clause 12.8 hereof or in the event of more than one certificate having been issued by the Engineer under the said Clause from the respective dates so certified and in relation to the Period of Maintenance, the expression "The Works" shall be construed accordingly.

13.2 **Execution of work of Repair etc.**

13.2.1 To the extent that the Works shall at or as soon as practicable after the expiration of the Period of Maintenance be delivered up to the Employer in as good and perfect a condition (fair wear and tear excepted) to the satisfaction of the Engineer as that in which they were at the commencement of the period of Maintenance, the Contractor shall execute all such work of repair, amendment, reconstruction, rectification and making good of defects, imperfections, shrinkages or other faults as may be required of the Contractor in writing by the Engineer during the Period of Maintenance or within fourteen days after the expiration as a result of an inspection made by or on behalf of the Engineer prior to its expiration.

13.3 **Cost of Execution of Work or Repair etc.**

13.3.1 All such work shall be carried out by the Contractor at his own expense, if the necessity thereof, shall in the opinion of the Engineer be due to the use of materials or workmanship not in accordance with the Contract or to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract. If in the opinion of the Engineer such necessity shall be due to any other cause, the value of work shall be ascertained

and paid for as if it was additional work.

13.4 Remedy on Contractor's failure to carry out work required

13.4.1 If the Contractor shall fail to do any such work as aforesaid required by the Engineer, the Employer shall be entitled to carry out such work by his own workmen or by other Contractors and in such work which the Contractor should have carried out at the Contractor's own cost shall be entitled to recover from the Contractor, the cost thereof or may deduct the same from any moneys/payments due or that may become due to the Contractor.

13.5 Identification/assessment/rectification of defect/fault

13.5.1 The Contractor shall if required by the Engineer in writing search for the cause of any defect, imperfection or fault under the direction of the Engineer. Unless such defect, imperfection or fault shall be one for which the Contractor is liable under the Contract the cost of work carried out by the Contractor in searching as aforesaid shall be borne by the Employer But if such defect, imperfection or fault shall be one for which the Contractor is liable as aforesaid the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or default at his own expense in accordance with the provisions of clause 13 hereof.

14. PROPERTY IN MATERIALS AND PLANTS

14.1 Vesting of Certain Plant

14.1.1 All constructional Plant, Temporary works and materials owned by the Contractor or by any company in which the Contractor has a controlling interest shall when brought to on the Site immediately be deemed to become the property of the Employer.

14.2 Exclusive use of Plants/Works

14.2.1 No Constructional Plants, Temporary works or material or structure or facility or any part there of shall be removed from Site without the written consent of the Engineer which consent shall not be unreasonably withheld where the same is no longer immediately required for the purpose of completion of the works but the Employer will permit the Contractor the exclusive use of all such Constructional Plant, Temporary Works and materials in and for the completion of the works until the occurrence of any events which gives the Employer the right to exclude the Contractor from the Site and proceed with the completion of the Works.

14.3 Revesting and Removal of Plant

14.3.1 Upon removal of any such Constructional Plant, Temporary works of materials as have been deemed to have become the property of the Employer under Clause 14.1 with consent as aforesaid the property therein shall be deemed to revest in the Contractor and upon completion of the works the property in the remainder of such Constructional Plant, Temporary works and materials as aforesaid shall subject to the provisions of Clause 17.1 here of be deemed to revest in the Contractor who shall remove the same from the Site. If the Contractor fails to remove and Constructional Plant, Temporary works or materials as aforesaid within such reasonable time after

completion of the works as may be allowed by the Engineer then the Employer may sell any such Constructional Plant, Temporary works and materials as aforesaid and after deduction from any proceeds of sales the costs, charges and expenses of and in connection with such sale shall pay the balance (if any) to the contractors but to the extent that proceeds of any sale are insufficient to meet all such costs, charges and expenses, the excess shall be kept due from the Contractor to the Employer and shall be deductible or recoverable by Employer accordingly as aforesaid.

14.4 **Liability of loss of or injury to plant**

14.4.1 The Employer shall not at any time be liable for the loss of or injury to any of the Constructional Plant, Temporary Works or materials which have been deemed to become the property of the Employer under Clause 14 save as mentioned in Clause 6.23 hereof.

14.5 **Materials Supplied by Employer**

14.5.1 Unless specified as free issue, if the specification or estimate of the Works provides for the use of any special description of materials to be supplied from employer's store, or if it is required that the Contractor shall use certain stores to be provided by the Employer (such materials and stores and the prices to be charged therefor as hereinafter mentioned being so far as practicable for convenience of the Contractor but not so as in any way to control the meaning or effect of this Contract specified in the schedule or memorandum thereto annexed), the Contractor shall be supplied with such materials and store as required from time to time to be used by him for the purpose of the Contract only, this being calculated out from specifications, drawing etc. The value of the quantity of materials and stores so supplied at the rates specified in the said schedule or memorandum may be set off or deducted from any sums then due, or thereafter to become due to the Contractor under the Contract, or otherwise or against or from the Security Deposit, the same or a sufficient portion thereof being in this case to fulfil the purpose.

All materials supplied to the Contractor including free issue, shall remain the absolute property of the Employer, and shall not on any account be removed from the site of the work and shall at all times be open to inspection by the Engineer. Any such materials unused and in perfectly good condition at the time of the completion or termination of the Contract shall be returned to the Employer store. The Contractor shall not be entitled to return any such materials unless with such consent of the Engineer and shall have no claim for compensation on account of any such materials so supplied to him as aforesaid or for any wastage in or damage to any such materials.

14.6 **Material obtained during Dismantling & Excavation etc.**

14.6.1 All materials (e.g. stone and other materials) obtained in the work of dismantling, excavation etc. will be considered as the Employer's property and issued to the Contractor (if he requires the same for his use) at rates approved by the Engineer, if these materials are not required by the Contractor they will be disposed of to the best advantage of the Employer.

14.7 **No Approval by vesting**

14.7.1 The operation of the preceding Clause 14.1 to 14.5 shall not be deemed to imply any approval by

the Engineer, of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

15. MEASUREMENT

15.1 Quantities

15.1.1 The quantities set out in the Tender Schedule are the approximate estimated quantities of the work but they are not to be taken as the actual and correct quantities of the works to be executed by the Contractor in fulfillment of his obligations under the Contract.

15.2 Works /service/jobs to be measured

15.2.1 The Engineer shall except as otherwise stated ascertain and determine by measurement the value in accordance with the Contract of work /jobs/service done in accordance with the contract. He shall when he requires any part or parts of the Works to be measured give notice to the Contractor's authorized agent or representative who shall forthwith attend or send a qualified agent to assist the Engineer in making such measurement and shall furnish all required particulars. Should the Contractor not attend or neglect or omit to send such agent then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work. For the purpose of measuring such permanent work as is to be measured by record drawings, the Engineer shall prepare record drawing month by month of such work and the Contractor as and when called upon to do so in writing shall within 14 days attend to examine and agree such record drawings with the Engineer and shall sign the same when so agreed and if the Contractor does not so attend to examine and agree any such record drawings they shall be taken to be correct. If after examination of such record drawings the contractor does not agree to the same or does not sign the same as agreed they shall nevertheless be taken to be correct unless the contractor shall within 14 days of such examination lodge with the Engineer for decision by the Engineer's notice in writing of the respects in which such record drawings are claimed by him to be incorrect. The contractor shall be paid for the quantities resulting from measurement of the executed work.

15.3 Method of measurement

15.3.1 The method of measurement shall be as per extant Indian Standard IS 1200, subject to the following:

- a) Wherever a particular method of measurement is specified in the description of the item in the tender schedule/special conditions, the same shall only apply
- b) In case the method of measurement is not covered by the said Indian Standard for a particular item, the method of measurement shall be as per CPWD specifications for that item only.

Note: In case of dispute regarding method of measurement, the decision of the Engineer shall be final and binding on the contractor.

16. BILLS, CERTIFICATES, PAYMENTS& TAXES

16.1 Interim Payments

16.1.1 The Contractor shall be paid monthly on the certificate of the Engineer the amount due to him on account of the estimated value of payment work executed up to the end of the previous month. The value of work being assessed on the basis of measurements to be recorded by the Engineer or from the bill submitted by Contractor and passed by the Engineer subject to retention of percentage as per payment term. All such interim payments shall be regarded as payments by way of advance against the final payments only and not as payment for work actually done and completed and shall not prejudice the power of the Engineer to disapprove bad, unsound imperfect or unskilled work and order pulling down, removal, re-erection or reconstruction thereof or not shall be considered as admission of the due performance of the contract or any part thereof.

16.2 Monthly Bills

16.2.1 The Contractor shall submit to Engineer on or before the date fixed by the Engineer an on account bill showing the estimated contract value of the permanent work, services executed up to the end of the previous month accompanied by detailed measurements and the Engineer shall take or cause to be taken the requisite measurements and the purpose of having the same verified and the claim as for as admissible adjusted if possible, before expiry of ten days from the presentation of the bill If the Contractor fails to prepare and submit the bill within the time fixed as aforesaid the Engineer shall measure up the said work in the presence of the Contractor whose Counter signature of the measurement list will be sufficient warrant of acceptance by the Contractor and a bill prepared by the Engineer from such list shall be binding on the Contractor in all respect. If the Contractor after due notice has been given to him does not attend the measurements, the work may be measured in his absence and such measurements shall notwithstanding in his absence be binding on him irrespective of whether he has signed the measurement book or not. Running payment will also be made to all categories of Contractors at regular intervals. The measurements will be prepared jointly before a particular date of the month to be specified by the Engineer and on account bill will be paid as per payment terms in the contract.

The final bill shall be submitted by the Contractor within one month of the date fixed for completion. Otherwise, the Engineer's Certificate of the measurement and the total amount payable for the work accordingly shall be final and binding on all parties,

16.3 No Demand Certificate

16.3.1 "No Demand Certificate" will not be issued unless all the statutory payments to contract labour including retrenchment benefits, gratuity, etc. are paid and a copy of full and final payment Muster Roll duly witnessed by the nominee of employer is submitted in CLC by the contractor. The Contractor may be debarred in case he is found by CLC that he is not complying with the statutory provisions.

16.4 Deduction from the Contract Price:

16.4.1 All costs, damages or expenses which Employer may have paid or incurred, which under the provisions of the Contract the Contractor is liable to pay shall be claimed by the Employer from the Contractor as and when they fall due. Such claims shall be paid by the Contractor within 15 (fifteen) days of the receipt of the corresponding bills/ claims and if not paid by the Contractor within the

said period, the Employer may, then, deduct the amount, along with applicable penalty, from any immediate moneys/payments due to the Contractor like Running Account Bills, Final Bills, Contract Performance Security or any payment becoming due to the Contractor under the Contract or may be recovered by actions of law or otherwise, if the Contractor fails to satisfy the Employer of such claims.

16.5 **Schedule of Rates and Payments:**

16.5.1 Contractor's Payment:

The price to be paid by the Employer to Contractor for the whole of the Service to be done and for the performance of all the obligations undertaken by the Contractor under the Contract Documents shall be ascertained by the application of the respective Schedule of Rates (the inclusive nature of which is more particularly defined by way of application but not of limitation, with the succeeding sub-clause of this clause) and payment to be made accordingly for the Services actually executed and approved by the Engineer. The sum so ascertained shall (except only as and to the extent expressly provided herein) constitute the sole and inclusive payable amount of the Contractor under the Contract and no further or other payment whatsoever shall be or become due or payable to the Contractor under the Contract.

16.5.2 Schedule of Rates to be inclusive:

Unless if otherwise specified, the prices/rates quoted by the Contractor shall remain firm till the issue of Final Certificate and shall not be subject to escalation unless specific clause for variation is specified in the Contract. Schedule of Rates shall be deemed to include and cover all costs, expenses and liabilities of every description and all risks of every kind to be taken in rendering the services to the Employer by the Contractor. The Contractor shall be deemed to have known the nature, scope, magnitude and the extent of the service though the Contract Document may not fully and precisely furnish/specify them. The Tenderer shall be deemed to include the requisite services as may be required to complete the Services properly including remedying of any defect therein.

16.5.3 Schedule of Rates to cover Construction Equipments, Materials, Labour etc.:

Without in any way limiting the provisions of the preceding sub-clause the Schedule of Rates shall be deemed to include and cover the cost of all construction equipment, material, labour, insurance, fuel, consumables, stores & appliances, transportation and such other items / equipments / material as required for carrying out the services by the Contractor and all other matters in connection with each item in the Schedule of Rates and the execution of the Service or any part thereof, complete in every respect and maintained as shown or described in the Contract Documents or as may be ordered in writing during the continuance of the Contract.

16.6 **Correction and Withholding of Certificates**

16.6.1 The Engineer may by any certificate make any correction or modification in any previous certificate which shall have been issued by him and shall have power to withhold any certificate if the works or any part thereof is not being carried out to his satisfaction.

16.7 Taxes and Duties:

- a) Tenderers must clearly mention their E.C.C No. and GST Registration No. as applicable on supplies in their offers and invoices.
- b) GST, Excise Duty, and Countervailing Duty (CVD), etc. shall be clearly mentioned in the offer indicating the applicable rates. In case order is placed on the tenderer, fresh imposition or variation in statutory taxes / duties / levies, if imposed beyond the contractual delivery period, shall be admissible / availed of, provided it is Cenvat/ ITC/ setoff is admissible against these levies to Employer.

c) TCS/TDS under Income Tax:

Tax Collection at Source/ Tax Deduction at Source (TDS) shall be made towards Income Tax from all the Invoices of the Vendor/Supplier/Contractor at applicable rates as per Income Tax Act and Rules.

16.7.1 GST:

- a) For the purposes of levy and imposition of GST, the expressions shall have the following meanings:
 - a) GST –means any tax imposed on the supply of Goods and/or Services under GST Law
 - b) Cess– means any applicable Cess, existing as on date or applicable in future on the supply of Goods and Services as per Goods and Services Tax (Compensation to States) Act, 2017
 - c) GST Law - means IGST Act 2017, CGST Act 2017, UTGST Act, 2017, SGST Act, 2017, GST (Compensation to States) Act, 2017 and all related ancillary Rules and Notifications issued in this regard from time to time.
- b) The rates quoted by the Vendor/Supplier/Contractor shall be inclusive of all taxes, duties, levies and Cess except GST and Compensation Cess. Vendor/Supplier/Contractor has to clearly show the amount of GST/Compensation Cess separately in the Tax Invoices raised by it. Further, it is the responsibility of the Vendor/Supplier/Contractor to make all possible efforts to make their Accounting/IT system GST compliant in order to ensure timely availability of Input Tax Credit (ITC) to SAIL.
- c) In cases where GST is leviable on any facilities/supplies provided by SAIL and used by Vendor/Supplier/Contractors in the execution of Purchase Order/Work Order/Contract and the consideration for which is recovered by SAIL in the form of reduction in the value of invoice raised by Vendor/Supplier/Contractor, then SAIL will raise GST Invoices on such transactions and the same will be borne by Vendor/Supplier/Contractors.
- d) Evaluation of L-I prices shall be done based on landed cost net of Input Tax Credit (ITC) of GST, if ITC is available to SAIL. SAIL shall evaluate the offers on the basis of the quoted rates only and any claim subsequently by the Vendor/Supplier/Contractor for additional payment/liability shall not be admitted and has to be borne by the Vendor/Supplier/Contractor. The supplier under Composition Scheme should carefully understand the implication of Input Tax Credit (ITC) before quoting the rates.
- e) For the purpose of the tender / Purchase Order/Work Order/Contract issued pursuant to the tender, it is agreed between the parties that if any new taxes, duties or levies other than GST is

introduced subsequent to the final date of submission of tender or reverse auction by the Central/State Government/Local Authorities and such new taxes, duties or levies become payable, then an equitable adjustment on account of new taxes, duties or levies in the contracted price shall be made which shall be subject to the production of documentary evidence by the Vendor/Supplier/Contractor. This provision shall be applicable only during the original period of Contract. However, during the extended period of Contract, if any, this provision shall be applicable as follows:

- i. If Input Tax Credit (ITC) is available, the adjustment in contract price for such new tax shall be made.
 - ii. In other cases (i.e., where Input Tax Credit (ITC) is not available), adjustment in contract price shall be made only if the new tax is enacted during the period of extension arising out of reasons attributable to SAIL.
- f) In case of variation (increase/decrease) in the rate of GST after the final date of submission of tender or reverse auction, the said revised rate shall be reimbursed or recovered on production of relevant statutory documentary evidence. This provision shall be applicable only during the original period of Contract. However, during the extended period of Contract, if any, this provision shall be applicable as follows:
- i. If Input Tax Credit (ITC) is available, the said revised rate shall be reimbursed or recovered.
 - ii. In other cases (i.e. where Input Tax Credit (ITC) is not available), the said revised rate shall be reimbursed or recovered only if the reasons for extension of the contract is attributable to SAIL. In any case, recovery shall be made in case of a downward variation in the rate of tax.
- g) Vendor/Supplier/Contractor agrees to do all things not limited to providing GST compliant Tax Invoices/e-invoices/ GST Debit notes or other documentation as per GST law relating to the supply of Goods and/or Services, payment of taxes on timely basis, timely and correct filing of valid statutory Returns (including FORM GSTR-1 and FORM GSTR-3B) for the tax period on the Goods and Service Tax Network (GSTN), submission of general information as and when called for by SAIL in the customized format shared by SAIL in order to enable SAIL to update its database etc. that may be necessary to match the Invoices on GSTN Common Portal and enable SAIL to claim Input Tax Credit in relation to any GST payable under this Contract/Purchase Order/Work Order. GST charged on Debit notes shall be reimbursed only if such Debit notes are issued within the prescribed time limit (given at clause h below) for an ailment of Input Tax Credit.
- h) In the event Contractor issues a Credit note to the SAIL, such Credit note shall include GST component only in circumstances set out under Section 34 of CGST Act, 2017 and upon mutual agreement between Supplier and SAIL. This shall be subject to the condition that Supplier shall comply with the procedural requirements relating to issuance of Credit notes under the GST law. For scenarios other than those provided in Section 34 of CGST Act, 2017, a commercial credit note may be issued (without any GST component) instead of a GST credit note upon mutual agreement between Vendor/Supplier/Contractor and SAIL.

- i) The Vendor/Supplier/Contractor is required to ensure that the original copy of the Invoice/Debit Note/Credit Note is submitted to the SAIL within 15 (Fifteen) days of issuance of such document.

The Vendor/Supplier/Contractor is required to provide and separately intimate the details of any amendments done on GST Portal in respect of any Invoice/Debit Note/Credit Note earlier uploaded by it to SAIL, on real time basis.

- j) W.e.f. 09.10.2019, with the introduction of Rule 36(4) of CGST Rules and the corresponding restriction of eligible ITC, it is important that the respective Vendor/Supplier/Contractor reports the details of outward supplies in its FORM GSTR-1, on timely basis, to facilitate auto-population of details in FORM GSTR-2A at SAIL's end.
- k) In case, such details do not auto-populate in FORM GSTR-2A of SAIL, due to fault/mistake/ delay at Vendor/Supplier/Contractor's end, SAIL will not disburse the GST component to the respective Supplier. In other words, only when the Vendor/Supplier/Contractor discloses the details of outward supplies in its FORM GSTR-1 and the corresponding ITC gets auto-populated in FORM GSTR-2A, SAIL will be in a position to avail ITC and consequently disburse the tax component to the Suppliers. Any GST component, even if disbursed by SAIL, would be recoverable by SAIL as a deduction from future bills or by any other means as per the contractual terms.
- l) In case Input Tax Credit (ITC) of GST paid on input supplies is denied or demanded/recovered from SAIL by the Central/State Tax Authorities on account of any non-compliance by Vendor/Supplier/Contractor, including the non-compliance of e-invoicing provisions by the Vendor/Supplier/Contractor or non-payment of GST charged and recovered, the Vendor/Supplier/Contractor shall indemnify SAIL in respect of all claims of tax, penalty and/or interest, loss, damages, costs, expenses and liability that may arise due to such non-compliance. SAIL, at its discretion, may also withhold/recover such disputed amount from the pending payments of the Vendor/Supplier/Contractor with SAIL and also from any dues payable or deposit refundable by any other Plant/Unit of SAIL to such Vendor/Supplier/Contractor.
- m) Vendor/Supplier/Contractor shall maintain high GST compliance rating track record at any given point of time. In case, where the GST e-invoicing provisions are applicable to a Vendor/Supplier/Contractor, but he fails to issue-invoice, SAIL would not be in a position to avail ITC of input supplies provided by the Vendor/Supplier/Contractor. Under such circumstances, any loss of ITC in the hands of SAIL due to non-compliance of e-invoicing provisions at Supplier's end shall be directly recovered from such Vendor/Supplier/Contractor.

- n) **Anti-Profiteering:**

Vendor/Supplier/Contractor is required to pass on the benefit arising out of introduction of GST, including seamless flow of Input Tax Credit, reduction in Tax Rate on inputs as well as final Goods and/or Services by way of reduction of price as contemplated in the provision relating to Anti-Profiteering Measure as per CGST Act, 2017.

- o) Vendor/Supplier/Contractor shall avail the most beneficial Notifications, abatements, exemptions etc., if any, as applicable for the supplies under the Goods and Service Tax Act.
- p) SAIL shall charge the applicable GST over and above on the forfeiture of deposit due to violation of terms and conditions of the Contract by Vendor/Supplier/Contractor as well as on the liquidated damages deducted from the price payable to the Vendor/Supplier/Contractor against supply of Goods or Services. Similarly, for recovery under the Contract/Purchase Order/Work Order for shortfall in guaranteed performance or deviation in quality in terms physical or chemical or other specified norms or for under loading or overloading of wagons while dispatching contractual production to SAIL Steel Plant or any other entity as per direction of SAIL or any other recovery as per the terms of Contract/ Purchase Order /Work Order, SAIL shall also charge the applicable GST on all such recoveries.
- q) Bidder is required to provide the self-attested copy of his GST Registration certificate and complete address of his principal place of business and branches if any.
- r) In case the Bidder is registered under Composition Scheme, then they should clearly mention in the offer that they are covered under Composition Scheme and no GST will be charged separately against execution of the Contract.
- s) SAIL shall deduct Tax Deducted at Source (TDS) under GST as applicable as per the provisions of GST law while making payment to the Vendor/Supplier/Contractor

16.8 Statutory Variations:

- 16.8.1 In the event of introduction of any new legislation or any change or amendment or enforcement of any Act or Law, rules or regulations of Government of India or State Government(s) or Public Body which becomes effective after the due date of submission of Bid for the tender but within the Contractual completion period (including extended period allowed due to reasons attributed to Employer) and which results in increased cost of the jobs/services under the Contract through increased liability of taxes, (other than personnel and Corporate taxes), duties, the Contractor shall be indemnified for any such increased cost by the Employer subject to the production of documentary proof to the satisfaction of the Employer to the extent which directly is attributable to such introduction of new legislation or change or amendment as mentioned above.
- 16.8.2 Similarly, in the event of introduction of new legislation or any change or amendment or enforcement of any Act or Law, rules or regulations of Government of India or State Government(s) or Public Body which becomes effective after the due date of submission of Bid for the tender and which results in any decrease in the cost of the services/ jobs through reduced liability of taxes, (other than personnel and Corporate taxes) duties, the Contractor shall pass on the benefits of such reduced cost, taxes or duties to the Employer, to the extent which is directly attributable to such introduction of new legislation or change or amendment as mentioned above.

17. REMEDIES AND POWERS

17.1 Forfeiture

If the Contractor shall become bankrupt or have an order for appointment of any Receiver made against him or shall present any petition in bankruptcy or shall make an arrangement with or against in favour of his creditors or shall agree to carry out the Contract under a committee of inspection or his creditors (being operated) shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or if the Contractor shall assign the Contract without the prior consent in writing of the Employer or shall have an execution levied on his goods or if the Engineer shall certify in writing to Employer that in his opinion the Contractor,

- a) has abandoned the Contract
- b) without reasonable excuse has failed to commence the works/services or has suspended the progress of the works/services for twenty eight (28) days after receiving from the Engineer written notice to proceed or
- c) has failed to remove materials from the site or to pull down and replace work for 28 days after receiving from the Engineer written notice that the said materials or work have been condemned and rejected by the Engineer under these condition or
- d) is not executing the works/services in accordance with the Contract or is persistently or flagrantly neglecting to carry out his obligations under the Contract
- e) has to the detriment of good workmanship or in defiance of the Engineer's instructions to the contrary sub-let any part of the Contractor
- f) otherwise failed to perform his part of the Contract according to the true intent and meaning thereof.

then the-Employer may after giving 14 days notice in writing to the Contractor enter upon the Site and the Works and expel the Contractor there from without thereby avoiding the Contractor or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer or the Engineer by the Contract or otherwise available under the law may himself complete the works/services or may employ any other contractor to complete the works and the Employer or such other Contractor may use for such completion so much of the Construction Plant, Temporary Works/services and materials which have been deemed to become the property of the Employer under the provisions of Clause 14.1 hereof on the Site as he or they may think proper and the Employer may at any time sell any of the Constructional Plant, Temporary Works/services and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract and in the completion of the work/services as above.

17.1.1 Valuation Date of Forfeiture

The Engineer shall as soon as may be practicable after any such entry and expulsion by the Employer fix and determine ex-parte or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute and shall certify what amount (if

any) had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work than actually done by him under the Contract and what was the value of any unused or partially used materials any construction Plant and any Temporary Works which have been deemed to become the property of the Employer under Clause 14.1 hereof upon the Site.

17.1.2 **Payment after Forfeiture**

If the Employer shall enter and expel the Contractor under this Clause the Employer shall not be liable to pay to the Contractor any money/payment on account of the Contract until the expiration of the Period of Maintenance and thereafter until the costs of completion and maintenance damages for delay in completion (if any) and all other expenses incurred by the employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum or sums (If any) as the Engineer may certify would have been due to him upon due completion by him after deducting the said amount, but if such amount shall exceed the sum which would have been payable to the Contractor on the completion by him then the contractor shall upon demand pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

17.2 **Illegal Gratification and Breach of the Terms of contract**

17.2.1 The contract may also be rescinded and the Contractor shall be liable to make good any loss or damage resulting from such cancellation to the like extent provided in and Breach case of cancellation under Clause 17.1 hereof

- (a) If any bribe, gratuity, gift, loan, reward or advantage pecuniary or otherwise shall either directly or indirectly be given, promised or offered by the Contractor or any of his agents to any person employed by the Employer in any way relating to his office or employment or of any such person shall become in anyway directly or indirectly or interested in the Contractor.
- (b) if the Contractor has committed a breach of any of the terms of the Contract and in particular fair wages clause and labour Regulations

17.3 **Urgent/Emergency Repairs**

17.3.1 If by reason of any accident or failure or other event occurring to in or in connection with the Works or any part thereof either during the execution of the Works or during the period of Maintenance any remedial or other work or repair shall in the opinion of the Engineer or the Engineer's Representative be urgently necessary for security and the Contractor is unable or unwilling at once to do such work or repair the Employer may by his own or other workmen do such work or repair as the Engineer or the Engineer's Representative may consider necessary. If the work or repair so done by the Employer is work which in the opinion of the Engineer the Contractor was liable to do at his own expense under the Contract all costs and charges properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any moneys/payments due or which may become due to the contractor provided always that the Engineer or Engineer's representative (as the case may be) shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

17.4 Employer will have full Liberty to Retain and set off all sums due or to become due to contractor.

17.4.1 The Employer will have full liberty to retain and set off all sums due or to become due to the Contractor (including Security Deposit and Earnest Money) whether under this contract or under any other contract, transaction or claim whatsoever, against any sum due or to become due to the Employer under this Contract or any other contract, transaction or claim whatsoever.

17.5 Termination of Contract:

17.5.1 The Employer shall have the right to terminate the Contract at any time due to non-performance / any other activity detrimental to the interests of Employer and its brand image or in the event of the contractor's failure to discharge the obligations stipulated in the Contract to the satisfaction of Employer (as certified by Engineer) by giving 30 days notice (cure period) in writing and without payment of any compensation. The Contractor shall have to settle the account within the notice period and no material of Employer shall lie with the Contractor at the conclusion/ Termination of the Contract.

17.5.2 Employer shall have a right to terminate the contract by giving a notice of reasonable period not less than thirty (30) days, without assigning any reason thereto.

17.5.3 Employer will be entitled to terminate the Contract by giving prior notice of at least two (2) months to the other party if the other party goes into voluntary liquidation or is ordered to be wound up or is declared bankrupt, insolvent etc., by a court of law and is unable to pay its debts as they become due, and in the event of such termination, all sums due under the Agreement to either party on the date of the notice shall be immediately payable upon demand.

17.5.4 Termination of the Contract shall not affect obligations of either Party that may have accrued prior to the effective date of termination.

17.5.5 Termination of the Contract shall be in addition to, and shall not be exclusive of or prejudicial to, any other grounds for termination or rights or remedies at law or in equity which either Party may have on account of any default of the other Party.

17.5.6 If the Contract does not meet the objective set out herein and the parties mutually agree, the Contract can be terminated.

17.5.7 Upon receipt of the notice of termination, the Contractor shall either immediately or upon the date specified in the notice of termination, cease all further work/services except for such as the Purchaser may specify in the notice of termination. In the event of termination of the Contract, the Employer shall only pay to the Contractor, the Price for the parts executed by the contractor as on the date of termination.

17.6 Banning of Business Dealings:

17.6.1 On arising of any situation or occurrence of any event as mentioned in the SAIL Guidelines on Banning of Business Dealings the Tenderer/Bidder or Contractor under the tendering process or Contract with Employer, as the case may be, shall be liable for action under and in accordance with the aforementioned Guidelines. The "Guidelines on Banning of Business Dealings" as applicable on

the date of tender opening shall form part of the Tender/Contract. These guidelines are available on SAIL tender website.

18. NOTICE:

18.1 To the Contractor:

Any notice to be given to the Contractor or his duly authorized representative at the job Site under the terms of the Contract may be served by the Employer by e-mail or through registered post/Courier at the address/contact information furnished by the Contractor. Proof of issue of any such notice could be conclusive of the Contractor having been duly informed of all contents therein.

18.2 To the Employer:

18.3 Any notice to be given to the Engineer of the Employer under the terms of the Contract may be served by the Contractor, by e-mail or delivering the same through registered post /Courier at the concerned site office.

19. MISCELLANEOUS

19.1 Provision of Sheds, Stores, Houses etc.

19.1.1 The Contractor shall at his own cost provide such sheds stores, houses as the Employer may consider necessary for storing of materials and shall also provide at his own cost Batching Plant/Concrete, Mixer, Soaking vats etc.

19.2 Demurrage/ Warfage

19.2.1 Any demurrage/Warfage charges according to the Railway/port rules that may be incurred on railway wagons or trucks due to Contractor failing to unload or load the same on being called upon to do so or unload his own materials and equipments booked in the name of the Employer will be debited to the Contractor's accounts and shall be paid by him to the proper officer on demand or deducted from any sum which may be due or become due to him from the Employer.

19.3 Working around the running plant

19.3.1 When work/service is being carried out in or around a running plant where the plant must run uninterrupted the Contractor can only work at specified places and times as mutually arranged. Progress of work in certain areas might have to be expedited as required by the Employer and the Contractor must take this factor into consideration when specifying for completion and working out his rates.

19.4 Payment of Wages

19.4.1 The Contractor shall comply with the provisions of the Payment of Wages Act, 1936 and the rules made there under in respect of all employees employed by him in carrying out this Contract. If in compliance with the terms of the Contract, the Contractor supplies any labour to be used wholly or partly under direct orders and control of the Employer whether in connection with any work being

executed by the Contractor or otherwise, for the purpose of the Employer, such labour shall, for the purpose of this Clause, still be deemed to be persons employed by the Contractor, If any moneys shall as a result of any claim or application as aforesaid be ordered to be paid by the Employer such moneys shall be deemed to be moneys payable to the Employer by the Contractor and on failure by the Contractor to repay to the Employer any moneys paid by it as aforesaid within seven days after the same shall have been demanded the Employer shall be entitled to recover the same from any moneys due or accruing to the Contractor under this or other Contract with the Employer.

19.5 Use of Intoxicants

19.5.1 The use of sale of ardent spirits, or other intoxicating substances upon the work or in any of the buildings, boarding houses, encampments or other tenements owned occupied by or within the control of the Contractor or any of his employees is strictly forbidden and the Contractor shall exercise his influence and authority to the utmost extent to compliance with his condition.

19.6 Policing of the Work

19.6.1 Should the general conduct of the works including the premises of the Employer under occupation of the Contractor lead to infringement of the Indian Penal Code either in consequence of the riotous or illegal proceeding of the Contractor's labour, supervising staff or others to such an extent as to necessitate the employment of special police or Magistrate the cost of such extra force is to be defrayed by the Contractor and not by the Employer.

19.7 Movement of Constructional plants and equipment.

19.7.1 The Contractor must take sufficient care in moving his constructional Plants and equipments from one place to another so that they may not cause any damages to the property of the Employer particularly to the overhead and underground cables/pipelines/utilities and in the event of his failure to do so, the cost of such damages including eventual loss of working hours in any plant as estimated by the Employer is to be borne by the Contractor.

19.8 Partnership Firm

19.8.1 In the case of Contract by partnership firm any change in the constitution of the firm shall forthwith be notified by the Contractor to the Employer.

20. SETTLEMENT OF DISPUTES

20.1 Conciliation:

In the event of any conflict or dispute arising out of or in connection with the Contract, the Parties shall endeavor to settle such disputes amicably. If a dispute is not resolved within 30 (thirty) days after a written notice of any dispute by one Party to the other, the same shall then be resolved through the mechanism of Conciliation through Dispute Resolution Committee which shall comprise representatives/nominee of:

a. **Employer:** wherein the nominee of the Employer shall be an officer other than the officer who handled the Contract. The said nominee shall be nominated by the Head of the concerned department.

b. **Contractor**

The said Conciliation shall be chaired by the Nominee of the Employer.

If the Dispute Resolution Committee is not able to resolve the matter within 30 (thirty) days of its formation, the Conciliation shall be deemed to have failed. It is further provided that Arbitration shall only be resorted to after the failure of Conciliation. The venue of the Conciliation shall be the concerned Plant/Unit of the Employer.

If the Contractor is MSME registered party, then conciliation shall be held as per the provisions of the MSME Act if the MSME firm does not choose to abide by the process given herein above.

20.2 Arbitration

a) For Domestic Contracts (where Contractor is an Indian Party):

In the event of any dispute arising out of or in connection with the Contract in question, which has not been resolved through Conciliation in accordance with the procedure laid down in Clause above, the aggrieved Party may invoke Arbitration by sending a written notice to the other Party. The procedure for appointment of the Arbitral Tribunal shall be as follows.

- i) In cases where the total value of the Contract is less than or upto INR 1, 00, 00,000/- (Indian Rupees One Crore only) the same shall be referred to a Sole Arbitrator to be mutually appointed by both the Parties.
- ii) Where the total value of the Contract exceeds INR 1,00,00,000/- (Indian Rupees One Crore only), the arbitration shall be conducted by a quorum of three arbitrators. Each party shall nominate an arbitrator and the two party-appointed arbitrators shall within 30 (thirty) days from their nomination, nominate a third arbitrator i.e., the Presiding Arbitrator.
- iii) In case of failure to nominate the Presiding Arbitrator within a period of 30 (thirty) days from the date of nomination of the two arbitrators who has been nominated later in time by the respective parties, the aggrieved party shall approach the Court of Law (under whose jurisdiction the principal place of business of the Buyer department/ Employer is located) to appoint the Presiding Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996 (as amended up to date).
- iv) The arbitration shall be conducted in the English language. Arbitration proceedings can also be conducted online, as per the discretion of the Arbitral Tribunal.
- v) The cost of the Arbitration shall be equally borne by both the Parties.
- vi) The arbitration shall be governed by the Arbitration and Conciliation Act, 1996, as amended from time to time. The seat of arbitration shall be at the place where the concerned Plant/Unit of the Buyer department / organization is located.

vii) The Contract shall be interpreted and governed in all respects in accordance with the laws of India. All disputes in connection with or arising out of the Contract, shall be subject to the exclusive jurisdiction of the Court within the local limits of whose jurisdiction concerned Plant/Unit of the Buyer Department/Organization is located.

viii) Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

If the Supplier/Service Provider is MSME registered party, then Arbitration shall be held as per the provisions of the MSME Act if the MSME firm does not choose to abide by the process given herein above.

b) International Contracts (where contractor/Service Provider is a foreign party):

i) For such Contracts, where the dispute has not been resolved through Conciliation in accordance with the procedure laid down in Clause 20.2(a) above, the aggrieved Party may invoke Arbitration as per the procedure laid down in rules of International Chamber of Commerce (ICC) and the rules of ICC shall apply in relation to such Arbitration.

ii) The seat and venue of such Arbitrations shall be New Delhi and the Arbitration shall be governed by the Laws of India. The language of the Arbitration shall be English.

iii) The Courts at New Delhi shall have the exclusive jurisdiction in relation to disputes arising out of such Contracts.

20.2.1 **Settlement of Disputes other than taxation between SAIL and another Central Public Sector Enterprise (CPSE) or SAIL and Govt. Department(s)/Organization(s) including State Government** shall be as per the prevailing guidelines of Government of India.

In event of any dispute or difference in interpretation and application of the provisions of commercial contract(s) between CPSE/ Port trusts inter se and also between CPSEs and Government Departments/ Organizations (excluding disputes relating to Railways, Income Tax, Customs& Excise Departments), such disputes or difference shall be taken up by either party for its resolution through AMRCD as mentioned in DPE OM No. 05/0003/2019-fts-10937 dated 14th December 2022 and decision of AMRCD on the said dispute will be binding on both the parties.

20.3 **Continuance of the Contract:**

Work/ Services under the contract shall be continued by the contractor under the contract and pending Conciliation /Arbitration proceedings and recourse to Conciliation/Arbitration shall not be bar to conditions contained herein.
