

NUCLEAR POWER CORPORATION OF INDIA LIMITED
(A Government of India Enterprise)
Directorate of Corporate Planning

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HEAD QUARTERS INSTRUCTION ISSUAL

TITLE: HEAD QUARTERS INSTRUCTIONS (HQI) ON GENERAL CONDITIONS OF CONTRACT (GCC) APPLICABLE FOR AWARDED ENGINEERING SERVICES CONTRACTS

No. : HQI - 5025 (R- 0)

NPCIL-HQI-0000	- Guidelines for preparation of HQIs
NPCIL-HQI-0001-0899 series	- Directorate of Operations
NPCIL-HQI-0901-0950 series	- Directorate of RS&A
NPCIL-HQI-0951-0999 series	- Reactor Systems
NPCIL-HQI-1000 series	- Directorate of Human Resources
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 (N. Nagai)
 Executive Director (CP&CC) 03/09/2011

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NUCLEAR POWER CORPORATION OF INDIA LTD.

(A Government of India Enterprise)

(Engineering Directorate)

GENERAL CONDITIONS OF CONTRACT (GCC) APPLICABLE FOR AWARDED ENGINEERING SERVICES CONTRACTS	REF.NO.HQI : 5025
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1. SCOPE

The Engineering Services covered under the GCC are enumerated below :-

a) **Project Services :**

- i) Process Control, Feasibility studies, Site selection, Site related studies, like, intake and outfalls, dam break, earthquake, flood, blast, tomography, environmental impact etc.
- ii) Drafting/Conversion of drawings.
- iii) Analytical studies, Codes, guides and standard Data Collection and Assessment

b) **Implementation Services:**

- i) Design & detail engineering activities
- ii) Procurement assistance
- iii) Quality management/Inspection services/Quality surveillance

c) **Construction Supervision Services:**

- i) Project Management
- ii) Commissioning Services
- iii) Contract Management
- iv) Supervisory Services

d) **Technical Services:**

- i) Engineering validation (Proof Consultancy)

e) **Software Development Services:**

- i) New software development
- ii) Modification / Customization of existing software
- iii) Review, assessment, verification, validation and audit of IT systems and Components

- iv) Implementation of software (customization, development / modification of work procedure, data entry, documentation and training)

f) Any other Engineering Service having no conflict of interest:

2. APPLICABILITY

The GCC shall be applicable for all contracts in NPCIL as a whole in Engineering Services having no conflict of interest, under the category and delegation of financial powers (DFP) thereof. A separate GCC applicable for awarding Engineering Services to Governmental/Semi-Governmental Bodies, Autonomous/Aided Institutions, etc. on single tender/nomination basis is available under HQI-5024.

3. DEFINITIONS

GCC means the set of conditions governing the contract and is to be incorporated in all Engineering Service tenders under the category in NPCIL except for the tenders under the GCC (HQI-5024) for awarding Engineering Services to Governmental/Semi-Governmental Bodies, Autonomous/ Aided Institutions, etc. on single tender/nomination basis.

4. OBJECTIVE

The objective of the GCC is to facilitate outsourcing of Engineering Services.

5. PROCEDURE

The GCC for Engineering Services under the category shall come in force w.e.f. the issue of HQI for the same, subject to the following provisions.

- i) The tenders for Engineering Services under the category on or after the issue of the HQI covering the GCC, shall invariably contain this GCC only. No other set of GCC henceforth be included in the tender document for Engineering Services under the category.
- ii) The GCC shall not be applicable to the existing Contracts / Commitments made and entered into with the Engineering Services Provider before the issue of HQI covering the GCC.
- iii) The Special Conditions, required, if any, depending upon the nature of Engineering Services work and in consonance with the provisions of this GCC, can be prepared by the concerned Directorate and got approved from CMD before issue to the bidders along with tender document.
- iv) The GCC shall uniformly be applicable to all Engineering Services Tender / Contract under the category, but Special Conditions, if any, may vary from work to work depending upon nature of Engineering Services.

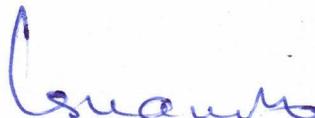
6. **EXCEPTIONS :**

Non-adoption of the GCC for Engineering Services Contracts under the category, shall be with approval of the NPCIL Board.

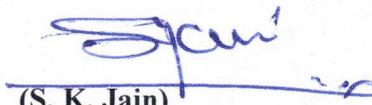
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GENERAL CONDITIONS OF CONTRACT

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GENERAL CONDITIONS OF CONTRACT (ENGINEERING SERVICES)

1. Definition

The following words and phrases shall have the meaning as herein set out wherever they appear in this document unless the context otherwise requires:

- a) **'GCC'** means the General Conditions of Contract.
- b) **'Owner or NPCIL or 'Client'** shall mean the Nuclear Power Corporation of India Ltd., and shall include its nominated officer(s), legal representatives and successors.
- c) **'Engineering-Service-Provider'** means the person(s) or firm or organization or contractor, and its legal successors to whom the Contract for Engineering Services is awarded.
- d) **'Contract'** shall mean an agreement where a proposal has been accepted and shall include notice inviting tender, the tender, acceptance thereof and the formal agreement if any, executed between Nuclear Power Corporation of India Ltd and the Engineering-Service-Provider together with the documents referred to therein including GCC with appendices and any special conditions, specifications, designs, drawings, schedule of quantities with rates and amounts. All these documents taken together shall be deemed to form one Contract and shall be complementary to one another.
- e) **'Contract Price'** shall mean:
 - (i) in the case of "Lumpsum Contracts", the sum for which the tender is accepted
 - (ii) in the case of " Item Rate Contracts", the cost of the works arrived at after extension of quantities shown in Schedule of Quantities by the item rates quoted by the tenderer for various items.
- f) **'Contract Documents'** means documents listed in the Contract Agreement including any amendments therein to.
- g) **'Engineer-in-Charge'** shall mean an Officer so appointed by the 'Owner' responsible to direct, supervise and be in charge of the work.
- h) **'Specification/Tender Document'** shall mean the technical specification and the Conditions of Contract forming part of the Contract and such other schedules and drawings as may be mutually agreed upon.
- i) **'Letter of Award'** shall mean and include, the official communication(s) issued by the Owner notifying the Engineering-Service-Provider that its proposal has been accepted by the owner.
- j) **'Date of Contract'** shall mean the Contract Date mentioned in the Letter of Award/Work Order.

- k) **'Date of Commencement'** means the date when the Engineering-Service-Provider shall commence execution of the works as mentioned in Letter of Award/ Work Order and the Completion Period for the work shall be reckoned from this date.
- l) A **'Day'** means a day of 24 hours from mid-night to mid-night irrespective of the number of hours worked in that day, a **'Week'** means a continuous period of seven (7) days, a **'Month'** means a calendar month and a **'Year'** means 365 days without regard to the number of hours worked in any day.
- m) **'Laws'** means all national (or state) legislation, statutes, ordinances and other laws and regulations and by-laws of any legally constituted public authority.
- n) **'Local Currency'** means the currency of India, **'Foreign Currency'** means a currency in which part (or all) of the Contract Price is paid in currency other than the Local Currency.
- o) **'Market Rate'** shall be the rate as decided by the Engineer-in-Charge on the basis of the cost of materials and labour at a place where the work is to be carried out plus 15% to cover all overheads and profit.
- p) **'Near Relatives'** means wife, husband, parents and grand parents, children and grand children, brothers and sisters, uncles and aunts, cousins and their corresponding in-laws.
- q) **'Retention Money'** means the accumulated retention money which the Corporation retains from the Running Bills.
- r) **'Scheduled Commercial Bank'** in India as per definition of Reserve Bank of India shall include of the following bank groups (i) State Bank of India and its associates, (ii) Nationalized Banks, (iii) Regional Rural Banks, (iv) Foreign Banks and (v) Other Indian Scheduled Commercial Banks (in the private sector).
- s) A **'Variation'** is an instruction / communication given by Engineer-in-charge or his representative, which varies the works.

2. Interpretation

In the Contract, except where the context requires otherwise:

- a) Words indicating one gender include all genders;
- b) Words indicating the singular also include the plural and vice versa;
- c) The word 'tender' is synonymous with 'bid', 'tenderer' with 'bidder' and 'tender documents' with 'bidding documents', and
- d) 'written' or 'in writing' means hand-written, type-written, printed or electronically made, which would be produced physically as an evidence for the communication.

The marginal words and other headings shall not be taken into consideration in the interpretation of GCC.

3. Law and Language

The Contract shall be governed by the law of the country or other jurisdiction stated in the Contract. The ruling language of the Contract shall be English unless otherwise stated in the Contract.

4. Confidentiality

- 4.1 The Engineering-Service-Provider shall take necessary steps to ensure that all persons employed on any work in connection with this Contract have noticed that the Indian Official Secrets Act, 1923 (XIX of 1923) applies to them and shall continue to apply even after the completion of the work under the Contract.
- 4.2 The Engineering-Service-Provider's and the Corporation's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.
- 4.3 Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Work prepared by the other Party without the previous agreement of the other Party. However, the Engineering-Service-Provider shall be permitted to disclose any publicly available information. The information required to establish his qualifications to compete for other projects / assignments shall be permitted on request.

5. Compliance with Law

- 5.1 The Engineering-Service-Provider shall, in executing the Contract, comply with applicable Laws unless otherwise stated. Engineering-Service-Provider shall indemnify the owner and hold the harmless against and from the consequences of any failure to do so under the laws.

6. Changes in Constitution

- 6.1 After award of Contract and during the currency of the Contract, if Engineering-Service-Provider intends to make changes in the constitution of the firm where the Engineering-Service-Provider is a Partnership Firm, Joint Venture, Collaborate or Consortium, shall be required to obtain prior approval in writing of the Engineering-in-Charge before any such change. Where the Engineering-Service-Provider is an individual or a Hindu Undivided Family Business Concern such approval as aforesaid shall likewise be obtained before the Engineering-Service-Provider enters into any partnership firm which would have the right to carry out the work hereby undertaken by the Engineering-Service-Provider.
- 6.2 Where the Engineering-Service-Provider is a Partnership Firm, Joint Venture, Collaborate or Consortium the Engineering-Service-Provider shall intimate the Corporation of any change or modification in the terms within their partnerships, which could happen between the submission of bids and awarding of Contract.

- 6.3 If prior approval as aforesaid is not obtained, the Contract shall be deemed to have been assigned in contravention thereof and the same action as provided under Termination of Contract may be taken .

7. Conflict of Interest

If the Engineering-Service-Provider has his Near Relative as an officer in any capacity in NPCIL, who is responsible for the award and execution of the work directly or indirectly, shall not be permitted to tender for the work unless it is established to the complete satisfaction of the employing authority, for the reason to be recorded in writing that such relationship would not affect the aspects of fairness & transparency in the selection process & monitoring of Engineering-Service-Provider's work.

8. Conflict of Interest Disclosure.

- 8.1 The Engineering-Service-Provider shall intimate the names of persons who are working with him in any capacity or are subsequently employed by him and who are near relatives of any officer in the NPCIL.
- 8.2 The Engineering-Service-Provider shall intimate if any employee of the Corporation has or develops a financial or other interest with the Engineering-Service-Provider or his company during the execution of the Contract.
- 8.3 The Engineering-Service-Provider shall intimate if any of the employee of NPCIL has any financial interest in the Engineering-Service-Provider's firm or company.
- 8.4 Any breach of the above conditions by the Engineering-Service-Provider would render him liable for cancellation of the Contract.

9. Duties & Authority of Engineer-in-Charge

- 9.1 The Corporation shall nominate the Engineer-in-Charge, who shall carry out the duties assigned to him in the Contract. The Engineer-in-charge's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.
- 9.2 The Engineer-in-Charge is entitled to watch and supervise the service provided including to check the profile of the workmen employed in connection with the work.
- 9.3 Engineer-in-Charge shall also certify and release payments for the work done/service provided and make deductions as per the Contract.
- 9.4 The Engineer-in-Charge may exercise the authority attributable to him as specified or necessarily implied in the Contract. The Corporation shall promptly inform the Engineering-Service-Provider of any change to the authority attributed to the Engineer-in-charge.

9.5 Except as Otherwise Stated in GCC.

- (a) Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer-in-Charge shall be deemed to act for and on behalf of the Corporation;
- (b) Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, supervision or similar act by the Engineer-in-Charge shall not relieve the Engineering-Service-Provider from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.
- (c) Any act by the Engineer-in-Charge in response to a Engineering-Service-Provider's request except otherwise expressly specified shall be notified in writing to the Engineering-Service-Provider within 30 days of receipt.

10. **Validity of Offer**

The offer shall be valid for acceptance by the Owner for a period of 120 days from the date of opening of tender/offer. However, the party shall be free to extend this period by mutual consent.

11. **Tender Document Cost**

Tender Document Cost, if specified in NIT, shall be payable as non-refundable fee in the form of Pay Order or Demand Draft on any scheduled commercial bank drawn in favour of 'NPCIL' and payable at a place as specified by the Owner in the tender. Taxes as applicable shall also be levied over and above the Tender Document Cost.

12. **Bid Security Deposit (BSD)**

The bidder(s) shall be required to pay Bid Security Deposit in any of the following form :-

- (a) Deposit at Call Receipt of a scheduled commercial bank, duly pledged in favour of Manager (F&A) of the unit (Project/Station/Head Quarter) at a place as specified.
- (b) Demand Draft of any scheduled commercial bank drawn in favour of Manager (F&A) of the unit (Project/Station/Head Quarter) at a place as specified.
- (c) Bank Guarantee from a scheduled commercial bank irrevocable and operative 30 days after the validity of the offer (as per standard format as specified).
- (d) Fixed Deposit Receipt issued by scheduled commercial bank endorsed in favour of Manager (F&A) of the unit (Project/Station/Head Quarter) at a place as specified.

The amount of Bid Security Deposit shall be equal to 2% of the estimate value of the work shown in NIT subject to the maximum of Rs 5 lakhs in the form described above shall be deposited along with the tender / bid documents. Tenders not

accompanied with the requisite Bid Security Deposit shall be rejected. Bid Security Deposit shall have to be valid for 30 days beyond the validity of the bid.

NPCIL, without prejudice to any other rights or remedy, will be at liberty to forfeit the full amount of Bid Security Deposit in the following cases.

(i) Bidder withdraws/modifies his bid after opening of the bid and within the validity period.

OR

(ii) The successful bidder fails to accept Letter of Award/ Work Order or commence the work within the specified time limit even after the acceptance of Letter of Award/ Work Order.

13. Security Deposit (SD)

No interest shall be payable on Bid Security Deposit.

13.1 Where rates quoted are 'all inclusive fee', in such cases the 'Security Deposit' shall be calculated and paid/deposited at the following rate(s).

- | | | |
|-----|---|---|
| i) | For Contract Value upto Rs.1000 lakhs. | 10% of Contract Value |
| ii) | For Contract Value more than Rs.1000 lakhs. | 5% of Contract Value subject to a minimum of Rs.100 lakhs |

13.2 In case, where quoted price for the Engineering Services is accepted with payment of 'fee element' separately, the Security Deposit shall be computed and recovered at a flat rate of 10% of 'fee amount only' irrespective of Contract value.

13.3 Security Deposit shall be paid or deposited either in the form of Demand Draft/ Bank Guarantee by the Engineering-Service-Provider or it shall be recovered from the Engineering –Service- Provider's running bills @ 10% of bill value (in case of Contract falling under para. 13.2 above, the recovery will be on fee amount) till the full amount of Security Deposit as computed above, is built up.

13.4 The amount of BSD deposited by the bidder at the time of submission of bid shall be converted into Security Deposit.

14. Acceptance of Bid(s)

14.1 Acceptance of the successful Bid(s) by the owner shall be sent to the bidder(s), which shall form part of the agreement. Failure and negligence to accept the Letter of Award/ Work Order on the part of the bidder shall entitle the owner to forfeit the BSD.

14.2 No intimation shall be sent to the unsuccessful bidders. However, the BSD shall be refunded to the unsuccessful bidders within 30 days from the date of issue of 'Letter of Award'.

15. Performance of the Work

The work shall be performed or the services shall be rendered by the Engineering-Service-Provider in accordance with the tender specification(s) described in the Letter of Award/Work Order. The changes/modifications, if any, required during execution of Contract and which are approved by Owner/Engineer-in-Charge, such changes/modifications shall become part of Work Order.

16. Payment of Fees/ Remuneration

Bill(s) duly completed in all respect along with required documents shall be submitted by the Engineering-Service-Provider to Engineer-in-Charge for the work carried out/ engineering services rendered immediately after completion of the work/activities. The bill will be paid within 30 days from the date of submission of bill duly completed in all respect to the Engineer-in-Charge.

17. Date of Commencement of Work & Completion Period

17.1 The execution of the works shall commence from the Date of Commencement as mentioned in the Letter of Award / Work Order and the Completion Period for the work shall also be reckoned from the said date.

17.2 The Engineering-Service-Provider shall render the service and execute the work within the specified Completion Period in accordance with the terms of the agreement. The Completion Period mentioned in the 'Letter of Award' / Work Order or the extended time in accordance with GCC shall be 'essence of the Contract'.

17.3 If the Engineering-Service-Provider commits default / refuses / delays in commencing the work, the Owner shall without prejudice to any other right or remedy, be at liberty to cancel the Contract and forfeit the 'Bid Security Deposit' absolutely. The decision of the Engineering-in-Charge in forfeiture of the 'Bid Security Deposit' shall be final.

18. Extension of Time

18.1 When execution of the work is likely to be delayed, a request for extension of time shall be made by the Engineering-Service- Provider in writing, which shall indicate the period for which extension is desired and brief reasons thereof.

18.2 Engineer-In-Charge within reasonable time but not later than 30 days from the date of receipt of such request, shall give the decision as to if extension is desired to be granted or not and the period for such extension, shall be specifically mentioned in the endorsement so issued by the Engineering -in-Charge.

18.3 The decision of the Engineer-In-Charge in this regard shall be final and conclusive.

19. Contract Price Adjustment

- 19.1 No Price Adjustment shall be permitted by the Owner to the Engineering-Service-Provider in case the Completion Period of the Contract or rendering the services is 12 months or less. However, for the Contract having Completion Period of more than 12 months, Contract Price Adjustment will be paid by the Owner to the Engineering-Service-Provider based on the provisions so provided in the Contract / Agreement.
- 19.2 In respect of extension(s) granted by the Owner, as per the request of the Engineering- Service-Provider for reasons attributable to the Engineering-Service-Provider and /or on account of Force Majeure, no Price Adjustment shall be paid for such extended period. However, for the period of delays for which the Owner is responsible, Price Adjustment shall be payable as per procedure.

20. Responsibility of the Owner

- 20.1 The Owner shall be responsible to make available all the pertinent data to the Engineering-Service-Provider as may be deemed necessary during the course of execution of work or rendering services by the Engineering-Service-Provider in time as per the terms of the Work Order.
- 20.2 The Owner shall give decision(s) on all sketches, drawings, reports, recommendations and other documents laid before the owner by the Engineering-Service-Provider in such a reasonable time so as to avoid the delay in completion of work by Engineering-Service-Provider within given Contract Completion Period.

21. Obligations and Responsibility of Engineering-Service-Provider

- 21.1 It shall be the responsibility of the Engineering-Service-Provider to complete the execution of the Contract, render the services within the time frame fixed by the Owner in the agreement or within the period as may be extended, as per the terms contained in the agreement.
- 21.2 It shall also be the responsibility of the Engineering-Service-Provider to engage and utilize the service of the competent and qualified personnel for the purpose of performing the work and rendering services so entrusted under the agreement. The personnel of sufficient experience and having adequate qualification, as may be agreed by Engineering-in-Charge, shall be engaged by the Engineering-Service-Provider.
- 21.3 If it comes to the notice of the Owner that technical persons with adequate qualifications and experience have not been deployed by the Engineering-Service-Provider, as per the directions of the Owner, the Engineering-Service-Provider shall be responsible and accountable to change/shift such personnel, with persons having adequate and sufficient qualifications and experience. Failure to do so shall be construed to be a default, for which the agreement could be terminated by the Owner.
- 21.4 The Engineering-Service-Provider shall exercise all reasonable skill, care and diligence in discharge of his duties in the agreement.

- 21.5 The Engineering-Service-Provider shall provide to the Owner, for review and approval full particulars of academic qualifications and experience and also the total number of 'personnel' to be employed by the Engineering-Service-Provider, for the purpose of performing the work and rendering the service entrusted to him.
- 21.6 The Engineering-Service-Provider shall be fully responsible for all risks arising from negligence, errors, omission, willful or otherwise, which may occur in connection with preparation of drawings, maps, plans, design and specifications and other engineering work and to supervise, execute and render services under the agreement. The Engineering-Service-Provider shall be liable to compensate the Owner for such negligence, errors and omissions. The liability of the Engineering-Service-Provider, if any, shall expire as per the time schedule/provision given in the Contract in this respect, otherwise after 2 years from the date of the completion of the relevant part of the work or items of the work.
- 21.7 The Engineering-Service-Provider shall provide at his own cost and risk, the personal accident insurance for his staff, to cover any risk arising out of and from the work and services to be performed under this agreement.
- 21.8 The Engineering-Service-Provider shall be further liable for the consequence of errors and omissions arising from the gross negligence on his part or on the part of his employees or associates or experts, to make good the financial losses to the owner to the extent of the total value of this Contract.
- 21.9 The Engineering-Service-Provider shall not have the benefit either directly or indirectly of any royalty or gratuity or commission, in respect of any patented or protected article or process used, unless it is mutually agreed.

22. Compensation for Delay

- 22.1 Compensation for Delay shall be levied in the Contract where the estimated cost put to tender is above Rs.5 lakhs.
- 22.2 If the Engineering-Service-Provider fails to maintain the required progress or to complete the work on or before the Contract or agreed extended Completion Period the Engineering-Service-Provider shall, without prejudice to any other right or remedy of the Corporation on account of such delay on his part, pay as agreed compensation amount calculated as stipulated below or such smaller amount as be fixed by the Corporation on the Contract Value or fee (as the case may be) of the work for every week for the progress which remains below as specified in the Contract document and / or the work which remains incomplete.

A) Contracts where fee element is paid separately in addition to Engineering Charges:

Sl. No.	Period of Contract (Originally stipulated)	Compensation for Delay- Rate per Week (on Consultancy Fee Amount Only)	Maximum Amount of Compensation
1.	Completion Period not exceeding 6 months	2%	10% of fee value paid under Contract
2.	Completion Period exceeding 6 months but not exceeding 12 months	1%	-- do --
3.	Completion Period 12 months and above	½%	-- do --

B) Contracts where rates are lump sum without separate fee element:

Sr. No.	Period of Contract (Originally Stipulated)	Compensation for Delay (Rate per Week)	Maximum Amount of Compensation
1.	Completion Period not exceeding 6 months	1% on unfinished Contract Value	5% on unfinished Contract Value
2.	Completion Period exceeding 6 months but not exceeding 12 months	½% on unfinished Contract Value	5% on unfinished Contract Value
3.	Completion Period 12 months and above	¼% on unfinished Contract Value	5% on unfinished Contract Value

21.3 The term 'Contract Value' shall be the value at Contract rates of the work as ordered.

21.4 The amount of Compensation for Delay may be adjusted or set off, against any sum payable to the Engineering-Service-Provider, under this or any other Contract with NPCIL, at one or more of its units.

23. **Force Majeure**

'Force Majeure' means and includes any cause which is beyond the control of either of the parties which they could not foresee or with a reasonable amount of diligence could not have been foreseen and which substantially affects the performance of the Contract such as

- a) Natural phenomena such as floods, droughts, earthquakes, epidemics etc.
- b) Acts of war – declared or undeclared, priorities and embargoes, quarantine etc.

- c) Other phenomena such as riots, civil commotion, statewide/ nationwide (but not local) bandh etc.

Parties shall not be liable for the delays in performing their part of obligation (s) resulting from any "Force Majeure" causes as referred to above. The time for completion of the Contract shall, however, be extended by a reasonable time to cover the period of delays completely attributable to the Force Majeure events.

24. Termination

24.1 The Owner shall have the right, any time during the execution of work to suspend, terminate or cancel the Contract in part or full by giving written notice of not less than 15 days to the Engineering-Service-Provider. Termination of Contract can be on any of the following, if the Engineering Service Provider :

- a) at any time makes default in proceeding with the work with due diligence and continues to do so after 7 days notice in writing from the Engineer-in-Charge; or
- b) commits default in complying with any of the terms and conditions of the Contract and does not remedy it or take effective steps to remedy it within 7 days after a notice in writing is given to him in that behalf by the Engineer-in-Charge; or
- c) fails to complete the work or items of work with individual dates of completion, on or before the date(s) of completion, and does not complete them within the time specified in a notice given in writing in that behalf by the Engineer-in-Charge; or
- d) offers, or gives or agrees to give to any person in the Corporation's service or to any other person on his behalf any gift, bribe, gratuity, commission, other thing of value or consideration of any kind as an inducement or reward; or
- e) enters into a Contract with the Corporation in connection with which commission has been paid or agreed to be paid by him or to his knowledge, unless the particulars of any such commission and the terms of payment thereof have previously been disclosed in writing to the Accepting Authority / Engineer-in-Charge; or
- f) obtains a Contract with the Corporation as a result of wrong tendering based on wrong and false information or other wrong and illegitimate methods of competitive tendering; or
- g) being an individual, or if a firm, any partner thereof, shall at any time be adjudged insolvent or have a receiving order or order for administration of his estate made against him or shall take any proceedings for liquidation or composition (other than a voluntary liquidation for purpose of amalgamation or reconstruction) under any insolvency Act for the time being in force or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purport so to do, or if any application be made under any insolvency Act for the time being in force for the sequestration of his estate or if a trust deed be executed by him for benefit of his creditors; or

- h) being a company, shall pass a resolution or the Court shall make an order for the liquidation of its affairs; or
- i) assigns, transfers, sublets (engagement of labour on a piece-work basis or otherwise) or attempts to assign, transfer or sublet the entire work or any portion thereof without the prior written approval of the Engineer-in-Charge; or
- j) indulges in criminal proceedings / activities with the employees of the Corporation or any other sub Engineering-Service-Provider; the Engineer-in-charge may, upon giving 7 days' notice to the Engineering-Service-Provider, terminate the Contract. The Corporation's election to terminate the Contract shall not prejudice any other rights of the Corporation, under the Contract or otherwise.

24.2 The Engineer-in-charge shall on such termination / cancellation have powers to:

- (a) take possession of the items, or other documents
- (b) carry out the incomplete work by any means at the risk and cost of the Engineering-Service-Provider. Engineer-in-Charge, whose certificate thereof shall be final, and binding on the Engineering-Service-Provider.

24.3 On termination/ cancellation of the Contract in full or in part, the Engineer-in-charge shall determine what amount, if any, is recoverable from the Engineering-Service-Provider for completion of work or part of the work or in case the work or part of the work is not completed, the loss or damage suffered by the Corporation. In determining the amount, credit shall be given to the Engineering-Service-Provider for the value of the work executed by him upto the time of termination/cancellation.

24.4 Any excess expenditure incurred or to be incurred by the Corporation in completing the work or part of the work or the loss or damage suffered or may be suffered by the Corporation as aforesaid after allowing such credit shall be recovered from any money due to the Engineering-Service-Provider on any account, and if such money is not sufficient the Engineering-Service-Provider shall be called upon in writing to pay the same within 30 days.

24.5 In case the Engineering-Service-Provider fails to pay the required sum within the aforesaid period of 30 days, the Engineer-in-Charge shall have the right to retain any or all of the Engineering-Service-Provider's equipments etc., if any, till the balance outstanding from the Engineering-Service-Provider is recovered in accordance with the provisions of the Contract.

24.6 In the event of anyone or more of the above courses being adopted by the Engineer-in-Charge, the Engineering-Service-Provider shall have no claim to compensation for any loss sustained by him by reasons of his having purchased or procured any materials or entered into any engagements or made any advances on account or with a view to the execution of the work or the performance of the Contract. In case action is taken under any of the provision aforesaid, the Engineering-Service-Provider shall not be entitled to recover or be paid any sum for any work thereof or actually executed under this Contract unless and until the Engineer-in-Charge has

certified in writing the performance of such work and the value payable in respect thereof and he shall only be entitled to be paid so certified.

- 24.7 Any sums in excess of the amounts due to the Corporation shall be returned to the Engineering-Service-Provider, provided, always that the cost or anticipated cost of completion by the Corporation of the work or part of the work is less than the amount which the Engineering-Service-Provider would have been paid had he completed the work or part of the work, such benefit shall not accrue to the Engineering-Service-Provider.
- 24.8 In case any of the powers conferred upon the Engineer-in-Charge by this clause become exercisable and the same are not exercised, the non-exercise thereof shall not constitute a waiver of any of the conditions hereof and such powers shall notwithstanding be exercisable in the event of any future case of default by the Engineering-Service-Provider and the liability of the Engineering-Service-Provider for compensation shall remain unaffected.
- 24.9 The Contract shall not be terminated due to death of the Engineering-Service-Provider. His rights and obligations shall pass over to his successor (s) , provided that the successor, in the opinion of the owner, is competent in all respect to take the responsibility of completing the balance work failing which the Contract shall be terminated.

25. Foreclosure of the Contract

It shall be within the authority of the Owner, at any time after acceptance of the offer or during the execution of the work, to foreclose or reduce the scope of the work, for any reasons whatsoever, either partly or wholly by giving the written notice not less than 15 days to the Engineering-Service-Provider. In such an event, the Engineering-Service-Provider shall have no claim whatsoever on account of any profit(s) or benefit(s) which the Engineering-Service-Provider might have derived from the execution of work in full but for the reasons of the foreclosure of the whole or part of the work. However, the Engineering-Service-Provider shall be paid at the Contract rates for the work carried out by him and the amount certified by the Engineer-in Charge/ Owner.

26. Abandonment of Work

In case, the work is abandoned by the Engineering-Service-Provider, without good and sufficient justifications and consequent loss suffered by the Owner in getting the left out job completed from other agency, the Engineering-Service-Provider shall be liable to compensate the Owner adequately by paying the difference(s), in the amount of the actual Contract value awarded to the new Engineering-Service-Provider for completing the left out balance work and the amount which would have been paid to the Engineering-Service-Provider had the Engineering-Service-Provider not abandoned the work.

27. Defect Liability

- 27.1 Should any defect occur in the work carried out or the service rendered by the Engineering-Service-Provider or study so carried out and report submitted by the Engineering-Service-Provider prior to the date of final acceptance by the Owner, the Engineering-Service-Provider shall be under a legal obligation to perform, at his own initiatives and free of cost, without any additional liability to the Owner, all such services as shall be deemed necessary to remedy such defects or inadequacy. The decision of the Engineer-In-Charge regarding 'defects or inadequacy' in the work so carried out and service rendered, shall be final and binding.
- 27.2 In case, despite the specific request by the Owner to the Engineering-Service-Provider to rectify or remedy the defect, or inadequacy so pointed out and brought to the notice of the Engineering-Service-Provider, the Engineering-Service-Provider fails and neglects to rectify the same, within the time frame given by the Owner for such rectification, then the Owner shall be within his right to correct such defects of the inadequacy(s) rectified from a third agency at the costs and risks of the Engineering-Service-Provider. It shall be within the right of the Owner to adjust/recover such additional costs, so incurred by the Owner, from the payments due and payable to the Engineering-Service-Provider.

28. Payment of Taxes, Other Levies & Travel Expenses

- 28.1 All taxes, duties, levies, insurance charges, license fees, service charges etc. prevailing on the date of opening of (where date of submission and opening is on the same day & in other cases, the last date of submission) offer / bid irrespective of whether they are payable directly by the Engineering-Service-Provider or to be collected from the Owner and paid, shall be included in the amount / rate quoted by bidder and the components of such governmental taxes, duties and other levies as included therein shall also be separately shown in the price schedule. The Owner shall not bear any additional liabilities on this account over and above the amount / rate / lump sum price quoted. Any variations in statutory taxes, duties and other levies during the execution period of Contract, shall however be adjusted/reimbursed by the Owner against production of documentary evidence (for reimbursement).
- 28.2 The rates quoted by the Engineering-Service-Provider shall be inclusive of travel expenses of his staff or the personnel for visiting the site or NPCIL office whenever required. No travel expenses in any form shall be payable by owner to the Engineering-Service-Provider except the rate/ amount so quoted for carrying out the Contract work.

However, in special case, where the Contract is awarded which includes travel expenses but the Engineering-Service-Provider is asked to undertake additional travel(s) which was not forming part of the quoted/ accepted rate/amount, under such condition, the cost of additional travel expenses only i.e. train/air fare as

decided by NPCIL shall be reimbursed to the Engineering-Service-Provider against submission of the travel ticket / boarding pass etc., as the case may be.

29. Payment for Extras and /Additions

Rates for additions and extras which are beyond the scope of work originally included in the Work Order shall be paid based on the rates available in the Contract for the similar item or the same item(s) provided the quoted rates are not abnormally high. In other situation the rate for additions and extras shall be paid based on S.O.R with the tender variation, if any or on mutually decided.

30. Sub-letting or Assignment of Contract

No sub-letting or assignment of the services to other party is permitted. However, in case where it becomes necessary to engage a sub-Engineering-Service-Provider, the name of such sub-Engineering-Service-Provider specifying the nature of the work with full details shall be submitted for approval along with tender or during the execution of Contract when need arises. On receipt of approval in writing from the Owner, the Engineering-Service-Provider may engage the services of a sub-Engineering-Service-Provider.

31. Insurance

- 31.1 The Engineering-Service-Provider shall take and maintain all necessary insurance at his own cost.
- 31.2 Policies / certificates of insurance shall be delivered in original by the Engineering-Service-Provider to the Engineer-in-charge before the date of commencement of work. In case of failure by the Engineering-Service-Provider, no payment against the running bill shall be released till the submission of the policies / certificates of insurance. All such insurances shall provide for compensation to be payable in the types and proportions for which these policies are intended.
- 31.3 The Engineering-Service-Provider shall submit premium receipts to the Engineer-in-Charge from time to time, as a proof that he has paid the necessary premium for keeping the policies alive till expiry of the Contract period.
- 31.4 The Engineering-Service-Provider shall ensure that similar insurance policies are taken out by his Sub-Engineering-Service-Provider (if any) and shall be responsible for any claims or losses to the Corporation. The Engineering-Service-Provider shall produce or cause to be produced by his Sub-Engineering-Service-Provider (if any), the relevant policy or policies and premium receipts as and when required by the Engineer-in-Charge. In case of failure on the part of Sub-Engineering-Service-Provider to obtain adequate insurance protection in connection thereof the main Engineering-Service-Provider shall be responsible for taking insurance for the sub Engineering-Service-Provider's personnel/equipment etc. Concerned Parties shall comply with all conditions of insurance policies.
- 31.5 Alterations to the terms of insurance shall not be made without the approval of the Engineer-in-charge.

31.6 All risks of loss or damage to physical property and of personal injury and death which arise during and in consequence of the execution of the Contract shall be the responsibility of the Engineering-Service-Provider. However this shall not include excepted risks which are not covered under the above said insurance policies. All consequential loss with reference to insurance claims shall be borne by the Engineering-Service-Provider.

32. Copy- Right and Patent

The Engineering-Service-Provider shall hold harmless and indemnify the Owner from and against losses, damage(s) and expenses arising from any claim for infringement of patent, copyright, design and other such rights in existence or to be granted on an application published prior to the completion of the services with respect to or arising out of or the use of or supply of designs, or any work in accordance with the design, drawings or specifications furnished, approved or recommended by the Engineering-Service-Provider.

33. Arbitration

33.1 Except where otherwise provided in the Contract, all questions and disputes relating to the meaning and interpretation of the terms of the Contract and instructions herein before mentioned or as to the quality and adequacy of the services so rendered and arising out of these conditions, whether during the progress of the work or after completion or abandonment or cancellation thereof, shall be referred to the Sole Arbitrator of the person to be appointed by the Chairman & Managing Director (CMD) of NPCIL.

33.2 It is a term of the Contract that the party who initiates arbitration proceedings shall specify the dispute or disputes to be referred to the arbitration under the clause together with the amount or amounts claimed in respect of each such dispute(s).

33.3 Arbitration proceedings shall be conducted in accordance with the provisions contained in the Conciliation and Arbitration Act, 1996 or any statutory modifications or re-enactment thereof and the rules and regulations so framed there-under.

33.4 In the arbitration proceedings initiated at the request of one of the parties, the other party shall have a right to submit 'counter claims', for and on its behalf for the decisions of the Sole Arbitrator.

33.5 The decision of the Sole Arbitrator shall be final and conclusive.

33.6 The arbitration meetings shall take place at Mumbai.

34. Completion Certificate.

34.1 Unless otherwise provided or agreed between the parties, the Contract shall be deemed to have been completed after issuance of completion certificate by Engineer-in-Charge/ Owner. Engineer-in-Charge while issuing completion certificate

shall certify that there is no demand/liability outstanding against the Engineering-Service-Provider (including Sub-Engineering-Service-Provider if any) and that all the obligations under Work Order agreement have been satisfactorily fulfilled by the Engineering-Service-Provider.

34.2 The final acceptance of the work rendered by the Engineering-Service-Provider under the scope will be given by NPCIL after 4 months from successful completion of the work and submission of all documents, report etc. to NPCIL, and acceptance of reports by the other statutory authorities like CEA, AERB etc. and upon certification by the Engineer-in-Charge.

35. Ownership

Final version of reports submitted to the Owner and all the relevant data such as maps, diagrams, plans, drawings, statistics, etc. and other supporting materials compiled in performing the services / Contract , shall be the property of the Owner. Such materials shall be completed, sorted out and indexed by the Engineering-Service-Provider prior to handing over the same to the Owner and the Engineering-Service-Provider may be permitted to retain copies thereof, provided that such materials shall not be used by the Engineering-Service-Provider for any purposes unrelated to this Contract without the prior written permission of the Owner.