

**HEAVY ENGINEERING CORPORATION LIMITED**

( A Government of India Enterprises ) RANCHI-4

**GENERAL CONDITIONS OF CONTRACT**

(This is applicable to Purchase and Supply and Conversion Contracts entered into by the Heavy Engineering Corporation Ltd. Ranchi. This is not Applicable to Works Contracts).

**1. DEFINITION AND INTERPRETATION**

In the contract, unless the context otherwise requires:

- (1) Acceptance of Tender means the letter of memorandum / intent communicating to the supplier / contractor the acceptance of his tender and includes an advance acceptance of his tender.
- (2) Consignee means where the stores are required by the acceptance of tender to be despatched by rail, road, air or ship / steamer, the persons specified in the Acceptance of Tender to whom they are to be delivered at the destination, where the stores are required by the acceptance of tender to be delivered to a person as an interim- consignee for the purpose of despatch to another person, such other person, and in any other case the person to whom the stores are required by the Acceptance of Tender to be delivered in the manner, there in specified.
- (3) Contract means and includes the invitation to tender, instruction to tenderers, tender, Acceptance of Tender, General Conditions of Contract, Special Conditions of Contract, particulars and the other conditions specified in the acceptance of tender and includes a repeat order which has been accepted or acted upon by the contractor and a formal agreement if executed;
- (4) The Contractor means the person (s), firm or company with whom the order for the supply is placed and shall be deemed to include the Contractor's successors (approved by the Purchaser), representative, heirs, executor, and administrators as the case may be unless excluded by the terms of the contract;

- (5) Drawing means the drawing or drawings specified in or annexed to the Schedule or specification;
- (6) The term Chairman means the Chairman cum Managing Director of Heavy Engineering Corporation Limited;
- (7) The inspecting Officer means the person specified in the contract for the purpose of inspection of stores or work under the contract and includes his authorised representative (s);
- (8) Material means anything used in the manufacture or fabrication of the stores;
- (9) Particulars include :a).  
Specification ; b). Drawing ;
  - c) Pattern bearing the seal and signature of the Inspecting Officer (hereinafter called the sealed pattern) which shall include also a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer;
  - d) Sample sealed by the Purchaser for guidance of the Inspecting Officer (hereinafter called the certified sample) which shall include a certified copy thereof sealed by the Purchaser for the guidance of the Inspecting Officer;
  - e) Trade pattern, that is to say, a pattern stores conforming to which are obtainable in the open market and which denotes a standard of the Indian Standard Institute or other standardising authority or a general standard of the Industry;
  - f) Proprietary mark or brand means the mark or brand of a product which is owned by an industrial firm ;
  - g) Any other details governing the construction, manufacture or supply of stores as may be prescribed by the contract ;
- (10) Purchase Officer means the Officer signing the acceptance of tender and includes any officers who has authority to execute the relevant contract on behalf of the Purchaser ;
- (11) The Purchaser means the purchaser or purchasers named in the Schedule to Tender, and includes his successors and assignees ;
- (12) Schedule means the schedule annexed to the acceptance of tender;

- (13) Signed includes stamped, except in the case of an acceptance of tender or any amendment thereof ;
- (14) Site means the place specified in the schedule at which any work is required to be executed by the Contractor under the contract or any other place approved by the Purchaser for the purpose ;
- (15) Stores means the goods specified in the Schedule which the contractor has agreed to supply under of services ;
- (16) Supply Order means an order for supply of stores and includes an order for performance of service ;
- (17) Contract Price shall mean the sum accepted or the sum calculated in accordance with the prices accepted by or on behalf of the purchaser;
- (18) Corporation means the Heavy Engineering Corporation Limited ;
- (19) Test means such test as is prescribed by the particulars or considered necessary by the Inspecting Officer whether performed or made by the Inspecting Officer or any agency acting under the direction of the Inspecting Officer ;
- (20) Unit and quantity means the unit and quantity specified in the Schedule;
- (21) Writing or Written includes matter either in whole or in part, in manuscript, typewritten, lithographed, cyclostyled, photographed, or printed under or over signature or seal as the case may be ;
- (22) The Delivery of the stores shall be deemed to take place on delivery of the stores in accordance with the terms of the contract after approval by the Purchaser to :
  - a) The consignee at his premises ; or
  - b) Where so provided the interim consignee at his premises ; or
  - c) A carrier or other person named in the contract as an interim consignee for the purpose of transmission to the consignee.
- (23) Words in the singular include the plural and vice-versa.
- (24) Words importing the masculine gender shall be taken to include the feminine gender and words incorporating persons shall include any company or association or body of individuals, whether incorporated or not ;
- (25) The Heading of these conditions shall not affect the interpretation or construction thereof;

- (26) Terms and Expression not herein defined shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930, (as amended) or the Indian Contract Act, 1972 (as amended) or the General Clauses Act. 1897 (as amended) as the case may be.

## **2. PARTIES TO THE CONTRACT**

- (1) The Parties to the Contract are the Supplier / Contractor and the Purchaser named in the Schedule.
- (2) Authority or person signing the contract on behalf of the Contractor :  
A person signing the tender or any other document in respect of the contract on behalf of the contractor without disclosing his authority to do so shall be deemed to warrant that he has authority to bind the contractor. If it is discovered at any time that the person so signing had no authority to do so, the Purchaser may, without prejudice to any other right or render of the purchaser, cancel the contract and ask the authority to make good the losses for all costs as damages arising from the cancellation of the contract including any loss which the purchaser may sustain on account of such purchase, the provisions of clause shall apply to every such purchase as far as applicable;
- (3) Address of the contractor / supplier for communications on behalf of the Purchaser :
  - a) For all purposes of the contract, including arbitration there under, the address of the contractor mentioned in the tender shall be the address to which all communications addressed to contractor shall be sent unless the contractor communicates any other address by letter / fax / e-mail. The contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid.
  - b) Any communication or notice on behalf of the Purchaser in relation to the Contract may be issued to the contractor by the Purchaser Officer and all such communications and notices may be served on the contractor either by registered post or under certificate of posting or by ordinary post or by hand delivery or by courier at the option of such officer.

**3. QUOTATIONS OF RATES BY CONTRACTORS**

- a) The price quoted by the contractor shall not be greater than the ceiling price fixed by the Government for the stores or where there is no ceiling price, be greater than the price usually charged by the contractor for stores of the same nature, class or description to private purchaser.
- b) If it is discovered that the contractor has contravened the above condition, then without prejudice to any other action which might be taken against him, it shall be lawful for the Purchaser (i) to revise the price at any-stage so as to bring it in conformity with sub-clause (a) above, or (ii) to terminate the contract and forfeit the Security Deposit.
- c) The firms are required to quote only firm prices. No-variation in cost due to changes in cost will be allowed.
- d) Sales Tax of any description and other duties whatsoever where leviable and intended to be claimed should be distinctly shown along with the price quoted. Where this is not done all claims for payment of reimbursement of sales tax of any description / other duties whatsoever whether as a part of the price or as a tax shall be deemed to be waived for all occasions and no such claims shall be entertained on any ground whatsoever. The contractors should indicate their sales tax registration number in the place provided on the tender.

**4. INCOME TAX CLEARANCE CERTIFICATE**

All tenderers shall submit along with their tender, Permanent Account Number of Income Tax (PAN) and an Income Tax Clearance Certificate duly countersigned by the Income Tax Officer of the Circle concerned under the seal of his office. Failure to produce the requisite certificate will render their quotation liable to be rejected.

**5. RESPONSIBILITY FOR EXECUTING CONTRACT**

The contractor / supplier is to be entirely responsible for the execution of the contract in all, respects in accordance with the terms and conditions as specified in the acceptance of tender and the schedule annexed thereto. Any changes / modification in inspection criteria, supply condition etc. communicated to the contractor by the Purchase Officer will only be considered valid and lawful.

## 6. EARNEST MONEY AND SECURITY DEPOSIT

Tenderers are required to deposit as earnest money (as per specified in the Tender Inviting Notice). Earnest Money to be deposited in the forms of :

A demand draft on any Nationalised Banks in favour of Heavy Engineering Corporation Limited, Ranchi.

- a) Instruction regarding Earnest Money or Security Deposit will be specified in tender document.
- b) Draft of Earnest Money to be enclosed only in the part – II bid (Price bid). However, whether Earnest Money is included or not to be mentioned in part – I bid (Techno Commercial bid) without indicating the amount.
- c) Earnest Money Deposit (EMD) will be converted into part of the Security Deposit (SD) in case of successful bidder(s).
- d) EMD of unsuccessful bidders will be returned immediately after finalisation of contract.
- e) Exemption from deposition of EMD and SD for Small Scale Industries shall be guided as per prevailing Govt. Guidelines.
- f) State / Central Govt. Organisations, PSUs, and valid DGS&D/NSIC registered (for tendered items) firm to produce documentary evidence issued by Govt. authorities for allowing exemption towards submission of EMD / SD for availing such benefit.
- g) In the event of the contract materializing, the successful tenders will have to deposit a sum equal to a 5 percent of the total value of the contract as security for the due fulfilment of the contract within 14 days after the written notice of acceptance of the tender has been posted for the Contractor. Failing this the contract will be cancelled at the risk and expense of the supplier. This will be in addition to other remedies available to the purchaser for the successful completion of the contract. The Security Deposit shall be made in the same forms as prescribed for Earnest Money, and in addition also in the form of a Bank Guarantee from a Nationalised Bank or State Bank of India.
- h) Validity : EMD – 6 months ; SD - upto the receipt of the last consignment. In case of Ex Works Contract upto the date of despatch of last consignment.
- i) The Contractors shall have to claim to the refund of the security depositas made with in two months from the date of the termination of this

contract or until the completion of the schedule works covenanted to be executed to the satisfaction of the purchaser and until the final adjustment of accounts between the contractors and the purchaser. Security deposit money shall be retained expressly as a security for the due performance of the product and terms & conditions and so that upon the happening of the breach of any in particular if the contractors shall fail to supply any article included in the tender as acceptable to the purchaser, the whole or part of the security money shall forthwith become liable to be forfeited irrespectively of the evidence of any pecuniary loss to the Corporation occasioned by such breach.

- j) No claim shall lie against the Purchaser either in respect of interest if any due on Security Deposit or depreciation in value. On due performance and completion of the contract in all respects, the Security Deposit will be returned to the contractor without any interest on the presentation of an absolute "No Demand Certificate" in the prescribed form and upon return in good condition of any specification / process / technology sheets, drawings, samples or other property belonging to the Purchasers which may have been issued to the Contractor.

## **7. DELIVERY**

- a) The Supplier / Contractor shall be required by the Purchaser either to deliver free or F.O.B. or C.I.F. or as detailed in the Schedule of order the quantities of the stores detailed therein and the stores shall be delivered or despatched not later than the dates specified in the Schedule.
- b) The Purchaser shall not be liable to render assistance to the Contractor in securing or to arrange for or provide transport to the Contractor unless it is so specifically stated in the Schedule. Any inspection and approval by the Inspector on the contractor's premises, property in the stores shall not pass on to the Purchaser until the Stores have been received, Inspected and accepted by the consignee.
- c) No stores shall be deliverable to the consignee's Stores / Depots on Sundays, Public Holidays and beyond normal working hours without the written permission of the consignee.

## **8. DELIVERY TIME / PERIOD : THE ESSENCE OF THE CONTRACT**

- (i) The time and the date specified in the Acceptance of Tender / Schedule or as extended for the delivery of the stores shall be deemed to be the essence of the contract and delivery must be completed not later than the

date (s) so specified or extended.

(ii) Facilities to the Inspecting Office :

The Contractor shall allow reasonable facilities and free access to his works and records to the Inspecting Officer, Progress Chasing officer or such other Officer as may be nominated by the Purchaser for the purpose of ascertaining the progress of the deliveries under the contract,

(iii) Failure and termination :

Should the contractor fail to deliver the stores or any instalment thereof, within the period prescribed for such delivery the Purchaser shall without prejudice to his other rights be entitled at his option either:

- (a) to recover from the contractor as agreed liquidated damages (and not by way of penalty) a sum equivalent to 0.5 percent of the price of any stores which the Contractor has failed to deliver as aforesaid for each completed week subject to a maximum limit of 10 % or
- (b) to purchase from elsewhere without notice to the Contractor or on the account and at the risk of the contractor for the stores not delivered or others of a similar description without cancelling the contract in respect of the consignments not yet due for delivery, or
- (c) to cancel the contract or a portion thereof, and if so desired, to purchase or authorise the purchase of stores not so delivered or others of a similar description at the risk and cost of the contractor.

In the event of action being taken under (b) or (c) above, the contractor shall be liable for any loss which the purchaser may sustain on that account provided that the purchase or if there is an agreement to purchase, then such agreement is made within six months of the date of such failure. But the Contractor shall not be entitled to any gain on such purchase made against default. The manner and method of such purchase shall be at the entire discretion of the Purchaser, whose decision will be final. It shall not be necessary for the, purchaser to serve a notice of such repurchase on the defaulting contractor. This right shall be without prejudice to the right or the Purchaser to recover damages for breach of the contract by the contractor.

## 9. EXTENSION OF TIME FOR DELIVERY

- (a) Extension of time for delivery: As soon as it is apparent that delivery period as prescribed in the contract cannot be adhered to, an application for extension of time shall be sent by the contractor to the office issuing the acceptance of



tender and a copy thereof endorsed to the Inspector and the Indentor specified in the Schedule. The discretion to decide whether

extension of time should be allowed or not either with liquidated damages or otherwise will rest with the Purchase Officer (incharge Materials Management of that Plant / Chief of Plant).

- (b) Waiving of loss or damage: If such failure as aforesaid shall have arisen from any cause which the purchaser may admit as reasonable ground for extension of time, the Purchaser shall allow such additional time as he considers to be justified by the circumstances of the case and shall forego the whole or such part, as he may consider reasonable, of his claim for such loss or damage as aforesaid.

## 10. EXAMINATION OF DRAWING SPECIFICATIONS & PATTERNS

- (1) Generally the stores shall be of the best quality and workmanship and should comply with the contract and in all respects be to the satisfaction of the Inspector as well as the consignee.
- (2) In particular and without prejudice to the foregoing conditions and in addition thereto when tenders are called for in accordance with 'particulars', the contractor's tender to supply in accordance with such particulars, shall be deemed to be an admission on his part that he has fully acquainted himself with the details thereof and no claim on his part which may arise on account of non-examination or insufficient examination of particulars will in any circumstances be considered.
- (3) The contractor shall supply the stores in accordance with the particulars (unless any deviation is authorised as an exceptional case and expressly specified in the Acceptance of Tender).
- (4) If a specification and/or drawing exists then the sealed pattern or certified sample thereof will govern supply only to the extent of workmanship and finish. If neither a specification nor a drawing exists then the sealed pattern or certified sample thereof will govern supply in all respects.
- (5) When neither specification, drawing nor pattern is available to govern supply, the supply must be of quality material, pattern and workmanship which the Purchaser has agreed will be acceptable and the contractor has undertaken to supply. And when under these circumstances, a Contractor's sample has been approved, by the Inspector, the Stores supplied must be equal in all respects to such sample.

- (6) The Purchaser reserves the right to alter from time to time such specifications, pattern and drawings and as from the date specified by him the Articles shall be in accordance with the specification, patterns and drawings as so altered.
- (7) In the event of any such alteration, involving an alteration in the cost of or in the period required for production a revision of the contract price and of the time for delivery shall be made in relation to the articles, the subject of the alteration. The decision of the Purchaser on the question whether the alteration involves an alteration in the cost of or in the period required for production shall be final and conclusive.

**11. MISTAKES IN DRAWING**

The contractor shall be responsible for and shall pay for any alterations for the work due to any discrepancy, errors or omissions in the drawings or other particulars supplied by him whether such drawings or particulars have been approved by the Purchaser or not provided that such discrepancies, errors or omissions be not due to inaccurate information or particulars furnished to the Contractor on behalf of the Purchaser. If any dimensions figured upon a drawing of plan differ from those obtained by scaling the drawing or plan, the dimensions as figured upon the drawings or plan shall be taken as correct.

**12. SAMPLES**

- (1) Advance Sample : Where an advance sample is required to be approved under the terms of the contract, the contractor shall submit the sample free of cost to the Inspecting Officer within the time specified in the Acceptance of Tender. If the contractor is unable to do so he must apply immediately to the office issuing the Acceptance of Tender for extension of time, stating the reasons for the delay. If the purchaser is satisfied that a reasonable ground for an extension of time exists he may allow such additional time as he considers to be justified (and his decision shall be final) with or without alteration in the delivery period stipulated in the acceptance of tender and on such condition as he deems fit. In the event of the failure of the contractor to deliver the advance sample by the date specified in the Acceptance of tender or any other date to which the time may be extended as aforesaid by the purchaser or of the rejection of the sample, the Purchaser shall be entitled to cancel the contract and, if so desired, purchase or authorise the purchase of the stores at the risk and cost of the contractor, in which case the provisions of clause 8 (3) shall

apply as far as applicable.

- (2) Unless otherwise provided in the contract, all samples required for test shall be supplied by the contractor free of cost. Where a sample which is supplied free is rejected after examination and tests, the same or whatever remains of the sample after examination and test will be returned to the contractor at his request and cost within three months of the date of such rejection at Public rate at owner's risk.
- (3) Marking : Samples submitted shall be clearly labelled with the contractor's name and address and the acceptance of tender number.
- (4) If the contractor submits a sample whether with, before or after the tender, the same shall not govern the standard of supply except when it has been so specifically stated in the Acceptance of Tender.
- (5) Where under the contract, the contractor is required to submit an advance sample, any expenses incurred by the contractor on or in connection with the production of stores in bulk, before the sample has been approved unconditionally, shall be borne by the contractor and he shall not claim any compensation in the event of such sample being found unacceptable by the Inspecting Officer.
- (6) The rejection of the sample by the Inspecting Authority or Inspecting Officer shall be final and binding on the Contractor.
- (7) Where the contract does not require any advance sample to be approved, the contractor may before proceeding with bulk manufacture or delivery of the stores, if he so desires submit to the Inspecting Officer for inspection a sample of the stores in which case a quantity not less than 1 percent of the total quantity to be supplied unless otherwise authorised by the Inspecting Officer shall be submitted. The Contractor shall not, however, be entitled to be shown any consideration or given any extension of time or claim to be exonerated from completing the delivery within the stipulated period only on the ground of delay in the approval of any such sample.
- (8) If under the contract supplies are governed by a sealed pattern, the contractor shall be bound to examine such pattern before preparing a sample or manufacturing the stores in bulk as the case may be.
- (9) Loan of samples: If a certified sample is lent to the contractor, it will bear a label containing INTER ALIA variations known to the Inspecting Officer between the said sample and the stores desired.

- (10) If the contractor finds any further variation between the certificate samples and the particulars or specifications mentioned in the schedule he shall at once refer the matter to the Inspecting Officer and shall also give intimation of such discrepancy to the Purchase Officer. The contractor shall follow the instructions of the Inspecting Officer as to what sample or particulars should guide the production of stores and the decision of the Inspecting Officer in the matter shall be final and binding on the Contractor.
- (11) The contractor shall not detach the said label from the certified sample and if for any reasons the said label gets detached, the contractor shall at once return the certified sample to the Inspecting Officer for attaching a fresh label.

**13 RISK OF LOSS OR DAMAGE TO CORPORATION OR PURCHASER'S PROPERTY**

- (1) All the property of the Corporation or purchaser loaned whether with or without deposit on terms and conditions to be separately agreed upon in respect of each particular contract to the contractor in connection with the contract and shall remain the property of the Corporation or the purchaser, as the case may be. The contractor shall use such property for the purpose of the execution of the contract and for no other purpose whatsoever.
- (2) All such property shall be deemed to be in good condition when received by the contractor unless he shall have within twenty four hours of the receipt thereof notified the purchase officer to the contrary. If the contractor fails to notify any defect in the condition or quality of such property he shall be deemed to have lost the right to do so at any subsequent stage.
- (3) The contractor shall return all such property and shall be responsible for the full value thereof to be assessed by the Purchaser whose decision shall be final binding on the contractor. The contractor shall be liable for loss or damage to such property from whatever cause happening while such property is in the possession of or under the control of the contractor, his servants, workmen, or agents.
- (4) Where such property is insured by the contractor against loss or fire at the request of the Corporation or Purchaser such insurance shall be deemed to be affected by way of additional precaution and shall not prejudice the liability of the contractor as aforesaid.
- (5) The contractor shall furnish a bank Guarantee for safety of materials

supplied, if any, by the Purchaser for execution of contract.

**14. INSPECTION NOTICE**

- (1) When inspection during manufacture or before delivery of despatch is required, notice in writing shall be sent by the Contractor to the Inspecting Officer / Purchaser under registered post (AD) / fax / courier when the stores or material to be supplied are ready for inspection and test, and no stores shall be delivered or despatched until the Inspecting Officer has certified in writing that such stores have been inspected and approved by him.
- (2) Marking of stores :The contractor shall at his own expense mark all the approved stores with a meaningful and recognisable mark which can be easily distinguished as destined for the Purchaser (HEC). The stores which cannot be so marked shall be packed in suitable Packages or cases each of which shall be sealed and marked with such mark.

**15. CHARGES FOR WORK NECESSARY FOR COMPLETION OF THE CONTRACT**

The contractor shall pay all charges for handling, stamping, painting, marking, protecting or preserving patent / intellectual property rights, drawings, templates, models and gauges and for all such measures as the Purchaser or the Inspecting Officer may deem necessary for the proper completion of the Contract, though special provision therefore may not be made in the specification of drawings.

**16. RESPONSIBILITY OF THE CONTRACTOR FOR EXECUTING THE CONTRACT**

- (1) **Risk in the stores** : The contractor shall perform the contract in all respects in accordance with the terms and condition thereof. The stores and every constituent part thereof, whether in the possession or control of the contractor, his agents or servants or a carrier, or in the joint possession of the contractor, his agents or servants and the purchaser, his agents or servants, shall remain in every respect at the risk of the contractor until the actual delivery to the consignee at the stipulated place or destination or, where so provided in the acceptance of tender until their delivery to a person specified in the Schedule as interim consignee for the purpose of despatch to the consignee. The Contractor shall be responsible for all loss,

destruction damage or deterioration of or to the stores for any cause whatsoever while the stores after approval by the Inspecting Officer are awaiting despatch or delivery or are in the course of transit from the contractor to the consignee or interim consignee, as the case may be. The Contractor shall alone be entitled and responsible to make claims against a railway administration or other carrier in respect of non-delivery, short delivery, mis-delivery, loss, destruction, damage or deterioration of the goods entrusted to such carrier by the contractor for transit / transmission to the consignee or the interim consignee as the case may be.

- (2) **Consignee's right of rejection** : Notwithstanding any approval which the Inspecting Officer may have given in respect of the stores or any material or other particulars or the work or workmanship involved in the performance of the contract (whether with or without any test carried out by the contractor or the Inspecting Officer or under the direction of the Inspecting Officer) and notwithstanding delivery of the stores whereso provided to the interim consignee, it shall be lawful for the consignee, on behalf of the purchaser, to reject the stores or any part portion or consignment thereof within a reasonable time after actual delivery thereof to him at the place or destination specified in the schedule if such stores or part, portion or consignment thereof is not in all respects in conformity with the terms and conditions of the contract whether on account of any loss, deterioration or damages before despatch or delivery or during transit or otherwise however.
- (3) Provided that where, under the terms of the contract, the stores are required to be delivered to an interim consignee for the purpose of despatch to the consignee, the stores shall be at interim consignee for the purpose of despatch to the consignee, the stores shall be at the purchaser's risk after their delivery to the interim consignee, but nevertheless it shall be lawful for the consignee on behalf of the purchaser to reject the stores or any part, portion or consignment thereof upon their actual delivery to him at the destination if they are not in all respects in conformity with the terms and conditions of contract except where they have been damaged or have deteriorated in the course of transit or otherwise after their delivery to the interim consignee.

**(4) Guarantee Clause :**

- (i) The Contractor guarantees that the stores which he supplies will be built fully in accordance with specification and will operate properly. In all cases, the contractor guarantees that his designs would strictly follow the "as made" detailed drawings with such modifications as are notified in respect of each type. The contractor further guarantees that the stores will be free from defects in material and workmanship provided that the contractor's liability in this respect shall be limited to the furnishing and installation of replacement parts free of any charge or the repair of defective part only to the extent that such replacement or repairs are attributable to or arise from faulty workmanship or material or design in the manufacture of the stores. All replacement parts shall be shipped by the contractor C.I.F. Indian port (in case of imported), from which point the purchaser shall clear through customs and deliver at his expense to inland destination. If the contractor so desires the replaced parts can be taken over by his representatives in India for disposal as he deems fit within a period of three months from the date of receipt of replacement parts. At the expiry of this period no claim whatsoever shall lie on the purchaser.
- (ii) It shall be a condition of the guarantee hereunder that any defects complained of shall be brought to the contractor's attention within a reasonable time of their being first discovered, the guarantee herein contained shall not apply to any material which shall have been repaired or altered by the purchaser, or on his behalf in any way so as to affect its strength performance or reliability, or to any defect to any part due to misuse negligence or accident.
- (iii) The guarantee herein contained shall expire in respect of each item of stores on the expiration of 18 months from the date of its delivery (in India) or 12 months from the date of placing in service whichever is earlier, except in respect of defects notified to the contractor prior to expiration of such date.
- (iv) All replacements and repairs that the purchaser shall call upon the contractor to deliver or perform under this guarantee shall be delivered and performed by the contractor promptly and satisfactorily.
- (v) Any approval or acceptance by the purchaser of the stores or of the material incorporated therein shall not in any way limit the contractor's liability hereunder.

(vi) The decision of the purchaser in regard to contractor's liability under this guarantee shall be final and conclusive.

(vii) The provisions contained in clause relating to the removal of stores rejected by the Inspecting officer shall mutatis mutandis apply to stores rejected by the consignee as herein provided.

- (5) **Subletting of assignment** : The contractor shall not sublet, transfer or assign the contract or any part thereof or interest therein or benefit or advantage thereof in any manner whatsoever to any other agency / agencies without the previous consent in writing of the Purchaser.

In the event of the contractor's subletting or assigning the contract or any part thereof without such permission the purchaser shall be entitled to cancel the contract, and to purchase the stores elsewhere on the Contractor's account and risk and the Contractor shall be liable for any loss or damage which the purchaser may sustain in consequence arising out of such purchase.

- (6) **Changes in a firm** :

(a) Where the contractor is a partnership firm, a new partner shall not be introduced in the firm except with the previous consent in writing of the purchaser, which may be granted only upon execution of a written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the contract prior to the date of such undertaking.

(b) On the death or retirement of any partner of the contractor's firm before complete performance of the contract the purchaser may at his option cancel the contract and in such a case the contractor shall have no claim whatsoever to compensation against the purchaser.

(c) If the contract is not determined as provided in sub-clause (b) above notwithstanding the retirement of a partner from the firm he shall continue to be liable under the contract for acts of the firm until a copy of the public notice given by him under sec. 32 of the partnership Act has been sent by him to the purchaser by registered post with acknowledgment due.

(d) **Consequence of breach** : Should a partner in the contractor firm commit a breach of sub clause (5) above or the contractor should commit a breach of the condition 6 (a) of this sub clause it shall be lawful

for the purchaser to cancel the contract and purchase or authorise the



purchase of the stores at the risk and cost of the contractor and in that event the provisions of clauses 7 and 8 shall as far as applicable shall apply.

- (e) The decision of the purchaser as to any matter or thing concerning or arising out of this sub-clause or any question whether the contractor or any partner of the contractor firm has committed a breach of any of the conditions in this sub-clause contained shall be final and binding on the contractor.

(7) **Assistance to the contractor :**

- (a) The contractor shall be solely responsible to procure any material or obtain any import or other licence or permit required for the fulfilment of the contract and the grant by the purchaser or any other authority of a quota certificate or permit required under any law for distribution or acquisition of iron and steel or any other commodity or any other form of assistance in the procurement of the material aforesaid or any attempt to render assistance in the matter aforesaid shall not be construed as a representation on the part of the purchaser that the material covered by such licence or permit or quota certificate is available or constitute any promise, undertaking or assurance on the part of the purchaser regarding the procurement of the same or effect any variation in the rights and liabilities of the parties under the contract. But if by reason of any such assistance as aforesaid the contractor obtains any materials at less than their market price or the cost of production of the stores is lowered, the price of the stores payable under the contract shall be reduced proportionately, and the extent of such reduction shall be determined by the purchaser whose decision shall be final and binding on the contractor.

- (b) Every effort made by the purchaser to supply, or give assistance in the procurement of, materials, whether from the Government stock or by purchase under a permit or release order issued by or on behalf of or under authority from Government or any Officer empowered in that behalf by law or under other arrangements made by the purchaser shall be deemed to be subject to the condition that it will be performed with due regard to other demands and only if it is found practicable to do so within the stipulated time and the decision of the purchaser

whether it was practicable to supply or give assistance as aforesaid or not shall be final and binding on the contractor.

**17. USE OF RAW MATERIALS SECURED WITH CORPORATION ASSISTANCE**

- (1) Where any raw material for the execution of the contract is procured with the assistance of the Corporation by purchase or under arrangement made or permit, license, quota certificates or release order issued by or on behalf of or under authority from the Corporation or by any Officer empowered in that behalf by law, or is issued from Corporation stock and where advance payments are made to the contractor to enable him to purchase such raw materials for the execution of the contract, the contractor.
  - (a) shall hold such material as trustee for the Corporation.
  - (b) shall use such material economically and solely for the purpose of the contract.
  - (c) shall not dispose of the same without the previous permission in writing of the purchaser ; and
  - (d) shall render due account of such material and return to the Corporation at such place as the purchaser may direct all surplus or unserviceable material that may be left after the completion of the contract or its termination for any reason whatsoever.

On returning such material the contractor shall be entitled to such price therefor as the purchaser may fix having regard to the condition of such material.

- (2) Where the contract is terminated due to any default on the part of the contractor, the contractor shall pay all transport charges incurred for returning any material upto such destination as may be determined by the purchaser and the decision of the purchaser in that behalf shall be final and binding on the contractor.
- (3) If the Contractor commits breach of any of the conditions in this clause specified, he shall, without prejudice to any other liability, penal or otherwise, be liable to account to the Corporation for all moneys, advantages or profits accruing from or which in the usual course would have accrued to him by reason of such breach,
- (4) Where the stores manufactured or fabricated by the contractor out of the materials arranged or procured by or on behalf of the Corporation are rejected the contractor shall, without prejudice to any other right or remedy of the Corporation, pay to the Corporation on demand the cost price or market value of all such materials whichever is higher.

**18. INDEMNITY**

- (1) The contractor shall all time indemnify the purchaser against all claims which may be made in respect of the stores for infringement of any right protected by patent / intellectual property right, registration of designs or trade mark. Provided always that in the event of any claim in respect of alleged breach of latter's patent, registered designs or tread mark being made against the purchaser, the purchaser shall notify the contractor of the same and the contractor shall at his own expense either settle any such dispute or conduct any litigation that may arise there from.
- (2) The contractor shall not be liable for payment of any royalty licence fee or other expenses in respect of or for making use of patents or designs with respect to which he is according to the terms of the contract, to be treated as an agent of the Corporation for the purpose of making use of the patent or trade mark for fulfilment of the contract.

**19. PACKING**

- (1) The contractor shall pack at his own cost the stores sufficiently and properly for transit by rail/road, air and or sea as provided in the schedule so as to ensure their being free from loss or damage on arrival at their destination.
- (2) Unless otherwise provided in the schedule all containers (Including packing cases, boxes, tins, drums and wrappings) in which the stores are supplied by the contractor, shall be considered as non-returnable and their cost as having been included in the contract price.
- (3) If the schedule provides that the containers shall be returnable, they must be marked 'returnable' and they will be returned to the contractor as per terms of the contract.
- (4) If the schedule provides that returnable containers shall be separately charged, they shall be invoiced by the contractor at the price specified in acceptance of tender. In such cases the contractor shall give full credit for the invoiced amount if the containers are returned to the contractor.

Return of containers shall be made within a reasonable time and in the event of any disputed or difference arising as to whether the containers were so returned the decision of the purchaser thereon shall be final and binding and the purchaser may in his discretion award such compensation as may in his opinion be proper for any undue delay in returning the containers.

- (5) Each bale or package delivered under the contract shall be marked by the

contractor at his own expense. Such marking shall be distinct (all previous irrelevant marking being carefully obliterated and shall clearly indicate the description and quantity of the stores the name and address of the consignee, the gross weight of the package and the name of the contractor with a distinctive number or mark sufficient for the purpose of identification. All markings shall be carried out with such material as may be found satisfactory by the Inspecting Officer as regards quickness of drying and legibility.

- (6) The Inspecting Officer may reject the stores if the stores are not packed and/or marked as aforesaid and in case where the packing materials are separately prescribed, if such materials are not in accordance with the terms of the contract. Such rejection of the stores by the Inspecting Officer shall be final and binding on the contractor.
- (7) Each bale or package shall contain a packing note specifying the name and address of the contractor, the number and date of the acceptance of tender or supply order and the designation of the purchase Officer or Officer issuing the supply order, the description of the stores and the quantity contained in such bale or package.

## **20. NOTIFICATION OF DELIVERY**

Notification of delivery or despatch in regard to each and every instalment shall be made to the consignee and to the Purchase Officer / indenter immediately on despatch or delivery. The contractor shall further supply to the consignee, or the interim consignee, as the case may be, a packing account quoting number of the acceptance of tender and/or supply or repeat order and date of despatch of the stores. All packages, containers bundles and loose materials part of each and every instalment shall be fully described in the packing account and full details of the contents of the packages and quantity of materials shall be given to enable the consignee to check the stores on arrival at destination. The

Railway receipt/consignment note or bill of lading, if any, shall be forwarded to the consignee by registered post / courier immediately on the despatch of stores. The contractor shall bear and reimburse to the purchaser demurrage charges, if any, paid by reason of delay on the part of the contractor in forwarding the railway receipt, consignment note or bill of lading.

## **21. PROGRESS REPORTS**

- (1) The contractor shall from time to time render such reports concerning the progress of the contract and / or supply of the stores in such form as

may be required by the purchaser.

- (2) The submission, receipt and acceptance of such reports shall not prejudice the rights of the purchaser under the contract, nor shall operate as estoppels against purchaser merely by reason of the fact that he has not taken notice of or subjected to test any information contained in such report.

## **22. FREIGHT**

The stores shall be despatched at public tariff rates. In the case of F.O.R. station of despatch contract, the stores shall be booked by the most economical route or most economical tariff available at the time of despatch as the case may be. Failure to do so will render the contractor liable for any avoidable expenditure caused to the purchaser. Where alternative route available, action to be taken as per the advice of the purchase officer. If any advice of any such authority is sought, his decision or advice in the matter shall be final and binding on the contractor.

## **23. REMOVAL OF REJECTED STORES**

- (1) Any stores submitted for inspection at a place other than the premises of the contractor and rejected shall be removed by the contractor subject as hereinafter provided within 21 days of the date of issue of intimation of such rejection. If it is proved that letter containing such intimation is addressed and posted to him at the address mentioned in the purchase order/Acceptance of Tender/ Contract it will be deemed to have been served on the contractor at the time when such letter would in the course of ordinary post reach the contractor. It shall be within the authority of the purchaser or the Inspector to call upon the contractor to remove what he considers to be dangerous, infective or perishable stores within 48 hours of the receipt of such intimation.
- (2) Such rejected stores shall under all circumstances lie at the risk of the contractor from the moment of such rejection and if such stores are not removed by the contractor within the period aforementioned, the Inspector may either return the same to the contractor at contractor's risk and cost by such mode of transport as the purchaser or Inspector may select or dispose of such stores at the contractor's risk on his account and retain such portion of the proceeds as may be necessary to cover any expenses incurred in connection with such disposal. The purchaser shall also be entitled to recover ground rent / demurrage charges on the rejected

stores after the expiry of the free time mentioned above.

- (3) Stores that have been despatched by rail and rejected after arrival at destination may be taken back by the contractor either at the station where they were rejected or at the station from which they were sent. If the contract is placed for delivery F.O.R. station of despatch the contractor shall pay the carriage charges on the rejected consignment at Public Tariff Rates from the station of despatch to the station where they were rejected. If the contractor elects to take back the goods at the station from which they were despatched, the goods shall in addition be booked back to him freight to pay at Public Tariff Rates and at owner's risk. The contractor shall be liable to reimburse packing and incidental costs and charges incurred in such return of rejected stores. The goods shall remain the property of the contractor unless and until accepted by the purchaser after inspection.

#### 24. SYSTEM OF PAYMENT

- (1) Unless otherwise agreed upon between the parties, payment for delivery of the stores will be made on submission of bills in the prescribed form (which may be obtained from the purchase officer) in accordance with the instructions given in the Acceptance of Tender, by **E-payment or cheque or demand draft.**
- (2) Payment for the stores or for each consignment thereof will be made to the contractor on submission of bills accompanied by required documents in accordance with the following procedure in contracts where such a facility to the contractor has specifically been agreed to by the Purchaser:
  - (a) 90% Payments for the stores or each consignment thereof will be made to the firms against submission of proof of inspection and despatch to the consignee. The original Railway Receipt should be sent to the Accounts Officer responsible for payment along with 90% bill advising the particulars of despatch to the consignee. The Accounts Officer after passing the 90% bill should pass on the original Railway Receipt to the Consignee for taking delivery of the consignment. It should, however, be ensured that there is no delay in the Accounts Office transmitting the original Railway Receipts to the consignee.
  - (b) The balance of 10% shall be paid on receipt of the stores or each consignment thereof in accordance with the terms of the contract in good condition, by the consignee, with a certificate to that effect endorsed on the copy of the Inspection Note by the consignee which

shall accompany the bill submitted by the contractor.

- (c) In the case of C.I.F. contract 90% of the price will be paid in India on presentation of shipping documents and inspection certificate and the remaining 10% on receipt of the stores in accordance with the terms of the contract in good condition by the consignee, and on producing the certificate of the contract in good condition by the consignee, and on producing the certificate of such receipt endorsed on one copy of the Inspection Note by the consignee, or alternatively at the contractor's opinion, the full value of the stores will be paid after inspection, on receipt of the consignment in accordance with the terms of the contract in good condition by the consignee and on producing a certificate of such receipt endorsed on one copy of the Inspection Note.
- (3) In all other contracts or in contract where the Inspecting Officer also acts as the interim consignee or where inspection is carried on by the consignee himself at destination and in all cases of local delivery full payment shall be made on submission of 'final 100% bill' supported by the Inspection Certificate and consignee's receipt as the aforesaid to the Account Officer concerned.

Note : (1) The system of 90% and 10% payment is not applicable to claim amounting to Rs.200/- or below . In such cases only a single bill for the value should be submitted.

(2) In the case of running contracts, the system of payment as detailed above will be invariably followed.

## **25. RECOVERY OF SUMS DUE**

- (1) Whenever any claim for the payment of a sum of money arises out of or under the contract against the contract, the purchaser shall be entitled to recover such sum by appropriating in whole or in part, the security if any, deposited by the contractor, and for the purpose, aforesaid, shall be entitled to sell and / or realise securities forming the whole or part of any such security deposit. In the event of the security being insufficient, the balance and if no security has been taken from the contractor, the entire sum recoverable shall be recovered by appropriating any sum then due or

which at any time thereafter may become due to the contractor under the contract or any other contract with the purchaser or the Corporation or any person contracting through the Purchaser, if such sum even be not sufficient to cover the full amount recoverable; the contractor shall on demand pay to the purchaser the balance remaining due.

- (2) For the purpose of this clause, where the contractor is a partnership firm, the purchaser shall be entitled to recover such amount by appropriating the whole or in part any sum due to any partner of the firm whether in his individual capacity or otherwise.

## **26. CORRUPT PRACTICES**

- (1) The contractor shall not offer or give or agree to give to any person in the employment of the purchaser or working under the orders of the purchaser any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the contract or any other contract with the purchaser or corporation or for showing any favour or forbearing to show disfavour to any person in relation to the to the contract or any other contract with the purchaser or corporation. Any breach of the aforesaid condition by the contractor, or any one employed by him or acting on his behalf (whether with or without the knowledge of the contractor) or the commission of any offence by the contractor or by any one employed by him or acting on his behalf under chapter IX of the Indian Penal Code 1860 or the Prevention of Corruption Act 1947 or any other Act enacted for the prevention corruption by Public Servants shall entitle the Purchaser to cancel the contract and all or any other contracts with the contractor and to recover from the contractor the amount of any loss arising from such cancellation in accordance with the provision of clauses 7 and 8.
- (2) Any dispute or difference in respect of either the interpretation effect or application of the above condition or of the amount recoverable there under by the Purchaser from the contractor shall be decided by the Purchaser, whose decision thereon shall be final and binding on the contractor.

## **27. INSOLVENCY AND BREACH OF CONTRACT**

The Purchaser may at any time by notice in writing, summarily determine the contract without compensation to the contractor in any of the following events:

- (a) If the contractor being an individual or a firm, or partnership thereof, shall at



any time, be adjudged insolvent or shall have a receiving order or order for administration of his estate made against him or shall take any proceeding for conveyance or under any Insolvency Act for the time being in force or make any conveyance or assignment of his effects or enter into any arrangement or composition with his Creditors or suspend payment or if the firm be dissolved under the Partnership act, or

- (b) If the contractor being a company is wound up voluntarily or by the order of a court or a Receiver, Liquidator or Manager on behalf of the Debenture-holder is appointed or circumstances shall have arisen which entitled the Court or Debenture-holders to appoint a Receiver, Liquidator or Manager, or
- (c) If the contractor commits any breach of the contract not herein specifically provided for. Provided that always such determination shall not prejudice any right of action or remedy which shall have accrued or shall accrue thereafter to the purchaser and provided also the contractor shall be liable to pay to the purchaser for any extra expenditure he is thereby put to and the contractor shall under no circumstances be entitled to any gain on re-purchase.

**28. LAWS GOVERNING THE CONTRACT**

- (1) This contract shall be governed by the laws of India for the time being in force.
- (2) Irrespective of the place of delivery, the place of payment under the contract, the contract shall be deemed to have been made at the place from which the acceptance of tender has been issued.
- (3) Jurisdiction of Courts : The court of the place from where the acceptance of tender / purchase order has been issued shall alone have jurisdiction to decide any dispute arising out of or in respect of the contract,
- (4) Marking of Stores : The marking of the stores must comply with the requirements of the laws relating to Merchandise Marks for the time being in force in India.

**29. HEADINGS**

The headings conditions hereto shall not affect the construction thereof.

**30. ARBITRATION**

In the event of any dispute or difference of opinion between the Heavy Engineering Corporation or any of its units / division and the contractors as to

the respective rights and obligation of the parties hereafter or to the true intent and meaning of these presents and the many articles of conditions thereto, such dispute of difference of opinion shall be referred to the many articles of conditions thereto, such dispute of difference of opinion shall be referred to the sole arbitration of the Chairman, Heavy Engineering Corporation and his decision shall be final, conclusive and binding on the parties.

**31. POWERS**

All powers reserved by the chairman under the above conditions shall be exercised by the Managing Director or the executive Director of the Heavy Engineering Corporation Limited.

**32. Integrity Pact (IP) Clause**

All Tenders covered under Integrity Pact, particulars of all IEM, including their e-mail IDs, should be mentioned instead of mentioning details of a single IEM.

**Annex - 13**

< Non Judicial Stamp Paper of Rs. 100>

**INTEGRITY PACT**

Between

**Heavy Engineering Corporation Ltd.( HEC)** hereinafter referred to as “The Principal”,

and

.....hereinafter referred to as “The Bidder/ Contractor”

Preamble

The Principal intends to award, under laid down organizational procedures, contract/s for .....The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness / transparency in its relations with its Bidder(s) and/ or Contractor(s).

In order to achieve these goals, the Principal will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

**Section 1 – Commitments of the Principal**

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles :-
  - a) No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
  - b) The Principal will, during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide

to any Bidder(s) confidential/ additional information through which the Bidder(s) could obtain an advantage in relation to the tender process or the contract execution.

- c) The Principal will exclude from the process all known prejudiced persons.
2. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

## **Section 2 – Commitments of the Bidder(s) / contractor (s)**

1. The Bidders(s) / Contractor (s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
  - a) The bidder(s) / Contractor(s) will not, directly or through any other person or firm, offer promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/ she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.
  - b) The Bidder(s)/ Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process.
  - c) The Bidder(s) / Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s)/Contractor(s) will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
  - d) The Bidder(s)/Contractor(s) of foreign origin shall disclose the name and address of the Agents/ representatives in India, if any. Similarly the Bidder(s) /Contractors(s) of Indian Nationality shall furnish the name and address of

- the foreign principals, if any. Further details as mentioned in the “Guidelines on Indian Agents of Foreign Suppliers” (enclosed) shall be disclosed by the Bidder(s) / Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/ representative have to be in Indian Rupees only. Copy of “Guidelines on Indian Agents of Foreign Suppliers” attached.
- e) The Bidder(s) / Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
  - 2 The Bidder(s) / Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
  3. That a person signing IP shall not approach the courts while representing the matters to IEMs and he/ she will await their decision in the matters.

### **Section 3 – Disqualification from tender process and exclusion from future contracts**

If the Bidder(s) / Contractor(s), before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s) / Contractors) from the tender process or take actions like Banning of business dealings etc.

### **Section 4 – Compensation for Damages**

- (1) If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit / Bid Security.
- (2) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank guarantee.

### **Section 5 – Previous transgression**

- (1) The Bidder declares that no previous transgressions occurred in the last 3 years with any other Company in any country conforming to the anti corruption approach or with any other Public Sector enterprise in India that could justify

his exclusion from the tender process.

- (2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken against the bidder.

### **Section 6 - Equal treatment of all Bidders / Contractors / Subcontractors**

- (1) The Bidder(s)/ Contractor(s) undertake (s) to demand from all subcontractors a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
- (2) The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors and Subcontractors.
- (3) The Principal will disqualify from the tender process all bidders who do not sign this Pact or violate its provisions.

### **Section 7 – Criminal charges against violation by the Bidder(s) / Contractor(s) / Subcontractor(s)**

If the Principal obtains knowledge of conduct of a Bidder, Contractor or Subcontractor, or of an employee or a representative or an associate of a Bidder, Contractor or Subcontractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

### **Section 8 – Independent External Monitor / Monitors**

- (1) The Principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- (2) The monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, HEC.
- (3) The Bidder(s) / Contractor(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to subcontractors. The Monitor is under contractual obligation to treat the information and documents of the Bidder(s) / Contractor(s)/ Subcontractor(s) with confidentiality.

- (4) The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
- (5) As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerated action.
- (6) The Monitor will submit a written report to the CMD, HEC within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.
- (7) Monitor shall be entitled to compensation on the same terms as being extended to / provided to Independent Directors on the HEC Board.
- (8) If the Monitor has reported to the CMD HEC, a substantiated suspicion of an offence under relevant IPC / PC Act, and the CMD HEC has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
- (9) The word 'Monitor' would include both singular and plural.

### **Section 9 – Pact Duration**

This Pact begins when both parties have legally signed it, it expires for the Contractor 12 months after the last payment under the contract, and for all other Bidders 6 months after the contract has been awarded.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by CMD HEC.

### **Section 10 – Other provisions**

- ( 1 ) This agreement is subject to Indian Law , Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Ranchi.
- ( 2 ) Changes and supplements as well as termination notices need to be made in

writing. Side agreements have not been made.

- ( 3 ) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members.
- ( 4 ) Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

( For & On behalf of the Principal)

( For & On behalf of Bidder / Contractor )

( Office Seal)

( Office Seal )

Place.....

Date.....

Witness 1 :

( Name & Address) .....

Witness 2 :

( Name & Address) .....