



## HEAVY ENGINEERING CORPORATION LIMITED

(A Government of India Enterprises) RANCHI-4

### General Conditions of Contract for Works Contract

#### 1. General Obligations

- 1.1 The contractor shall deposit specified amount of Earnest Money (EMD) along with the offer.
- 1.2 The Earnest Money will be converted to Security Deposit (SD) for the successful tenderer. This will form the initial Security Deposit. Subsequently a deduction at the rate of 10% (or as specified) from all "On account" payments to the contractor will be made till the total Security Deposit becomes 10% of the tender / contract value.
- 1.3 EMD and SD to be deposited in the form of Demand Draft (drawn in favour of Heavy Engineering Corporation Ltd.) or by Cash Receipt.
- 1.4 No interest shall be payable on the Earnest Money or the Security Deposit or the amount payable to the contractor under contract.
- 1.5 When the amount deducted from monthly "On account" bill aggregates to Rs. 5 Lakh or above, the contractor may have the option to convert the cash portion into Bank Guarantee. The Bank Guarantee (BG) shall be valid for the complete contract period including maintenance / performance guarantee period (wherever applicable). In case any extension of time is granted to the contractor for the completion of the work under this contract, the contractor shall simultaneously arrange for the extension of time validity of the BG.
- 1.6 On grant of completion certificate to the contractor, 50% of the SD shall be refunded to the contractor on his request which shall be payable within 14 days of time and the balance 50% will be retained as security against inaccuracy, omissions, shortcomings, quality deficiencies etc. On issue of no due certificate by the employer the remaining SD will be released. In the contracts where Performance Guarantee is an agreed / part of assignment, on completion of work, full Security Deposit will be converted to Performance Guarantee.
- 1.7 Performance Guarantee will be refunded after satisfactory completion of warranty period against issue of written certificate in this regard by the executing department.
- 1.8 All compensations or other sum of money payable by the contractor to the employer under the terms of contract with the employer or under any other contract with the employer shall, without prejudice to any other mode of recovery, be recoverable from such contractor by way of deduction of payment or encashment of Bank Guarantee.
- 1.9 The contractor shall, when called upon to do so by the employer, enter into and execute a contract agreement at his own cost. Unless specifically mentioned Contract agreement to be signed for value of work order of Rs. One lakh or more.

The original contract document shall be signed on non-judicial stamp paper of value

not below Rs.10 by the employer and the contractor. This document will be retained by the employer (Incharge Contract cell or his representative empowered as authorized signatory and Contract cell will be the custodian of original contract) and an authenticated copy thereof to be given to the contractor.

- 1.10 The contractor shall be presumed to have satisfied himself about the quantum & nature of work and all associated working environment. He shall also be presumed to have satisfied himself the correctness and sufficiency of the tender for the work as quoted by him in the tender schedule and it will be justified to assume by employer that rates and prices quoted shall cover all his obligations under the contract and all matters and things necessary for the proper completion and maintenance of the work.
- 1.11 It is understood and agreed that no extra payments shall be admissible to the contractor, consequent on any alleged misunderstanding or miscalculation or arising of any other mistake or factor not specifically provided in the contract.
- 1.12 All contracts documents are complementary to one another and what is required by one shall be as fully and effectually binding on a contractor as if the same is required by another documents; the intention of the documents is to include all - labour, material, equipment and transport and any other measure necessary for prompt and efficient execution of the work to be arranged by the contractor.
- 1.13 The contractor shall not at any time assign or sublet his contract or any part thereof to any person or allow such person to become in any way interested therein in any manner whatsoever, without prior permission in writing of the employer. Any contravention of this condition shall entitle the employer to rescind the contract and shall also render such contractor liable for payment to the employer in respect of any loss or damage arising out of or ensuing from such rescission or contract.

Provided further that where the subletting of work by the contractor in any case, is permitted by the employer, such subletting shall never be deemed to establish any contractual relationship between the subcontractor and the employer, and that the contractor shall not at any time, be absolved of any obligation or responsibility under the contract or any part thereof and shall continue to be responsible for all acts of omission and commission of the subcontractor, his agents, servants or workmen as fully and effectually as if the same were acts of omission and commission of the contractor, his agents, servants or workmen, as the case may be.

- 1.14 All the contracts or terms thereof entered into between the employer and the contractor under these General Conditions of Contract shall be governed and regulated by the relevant laws being in force from time to time in the territory of India related to contracts. The contract shall strictly conform to the provisions, of any law related to works or any regulations and bye-laws made by any local authority. In case the contractor foresee that variation in specification and drawings are necessary in view of the provisions of the law or regulations or bye-laws, he shall immediately inform the employer / appropriate authority in writing specifying proposed variations and the reasons for such variations. The contractor shall take further action as per written instruction of the employer (appropriate authority).
- 1.15 The contractor shall, when he is not personally present on the site of work, invariably place and keep on such site a properly qualified agent, duly authorized and empowered to act on his behalf and receive on his behalf orders and instructions from the employer or his representative related to such work. The contractor shall furnish the name, designation of the agent. Any change in the agent to be suitably

informed to the employer in written.

- 1.16 All notices, communications, references and complaints issued by employer or his representative or contractors shall be treated valid, if it is in writing.
- 1.17 The work as per defined specification and quality standard shall be completed within the time specified in the order or with in extended time subsequently communicated to the contractor in writing.
  - a) If there be any amount of extra additional work of any kind or other special circumstances of any kind whatsoever which may occur be such as fairly entitle the contractor to an extension of time for completion of work, the contractor shall make a request letter to the employer detailing the situation within 15 days of such work has been commenced or such circumstances have arisen. The employer / his representative will analyze and decide the amount of such extension and issue extension of time in writing.
  - b) If the contractor fails to complete the work within the time prescribed or within extended time, the contractor shall be liable to pay the employer a Liquidated Damage (LD) at the rate of 0.5 % of the value of unfinished part of the work per delayed week maximum up to 10 % of the total project value. Or depending on the work it can be specifically defined in the work order / acceptance of the tender. The employer may without prejudice to any other mode of recovery deduct the amount of such damages from any money in his hand due or which may become due to the contractor. The payment or deduction of such damages shall not relieve the contractor of his obligation to complete the works or of any other obligations and liabilities under the contract.
  - c) If the employer feels that the contractor inspite of imposition of LD may further delay the completion of work, the employer shall have the right to terminate the contract and forfeit the security deposit to the extend of 10% of the assignment value to wards LD.
- 1.18 No land / building belonging to or in possession of the employer shall be occupied by the contractor without permission of the employer. The contractor shall not use or permit use of the site for any purposes other than that for executing assigned work. Land / building rent, unless otherwise stipulated, shall be payable by the contractor.
- 1.19 In consequence to any difficulty in obtaining materials, the employer may, without any liability therefore, agree to endeavour to obtain or assist the contractor in obtaining the required quantities of such material. But if there be any delay or failure in obtaining the aforesaid materials of required quantities thereof, this will not relive the contractor from his obligation to complete the assigned work as per the quality, quantity and time schedule
- 1.20 If, at any time, any material, which the contractor would normally have to arrange himself, is supplied by the employer, either at the contractor's request or in view of avoiding possible delay, the recovery of cost of such material shall be made from contractor's bill at actual rate or at market price (calculated on landed basis, whichever is higher) along with interest rate of 10% per annum.
- 1.21 All the assistance extended to the contractor in the form of land, building, machinery, equipment, water, power etc. to be utilized economically and in proper manner. After completion of the work these shall be handed over by the contractor in good / working condition to the respective authorities.
- 1.22 The contractor shall not sell, or otherwise dispose off, or remove except for the

purpose of work any material which may be obtained as a result of excavation. All such items shall be the property of the employer.

- 1.23 The contractor shall indemnify and keep indemnified the employer for all losses and claims for injuries or damages to any person or property whatsoever which may arise out of or in consequence of the construction and maintenance of the works and against all claims demands proceeding damages costs charges and expenses whatsoever in respect thereof or relation thereto.
- 1.24 If any bribe, commission, gift or reward is given, promised or offered or attempted to be given by or on behalf of the contractor or his partner, agent or servant or by any other person on his behalf to any officer or employee of the employer or to any other person on his behalf for obtaining the contract or any other contract from the employer or for any other favour, without prejudice to any legal proceedings which may be instituted against the contractor in a court of law, it shall be open to the employer to rescind the contract and all other contracts which the contractor has entered into with the employer and to deduct any money due to the contractor under the contract or any other contract with the employer any loss or damage to the employer resulting from such rescission.
- 1.25 The contractor shall not lend, or borrow from, or have any pecuniary dealings or transactions either directly or indirectly with any employee of the employer, and if the employer has reasons to believe that the contractor has contravened the provision of this sub-clause the employer shall be entitled forthwith to rescind the contract and all other contracts with employer.

## **2. Execution of Works**

- 2.1 The contractor shall commence the work as per the start date given in the Work Order / Tender acceptance letter. If no such date is mentioned, it shall be assumed that the contractor to start the work within 15 days from receipt of such Work Order issued to him and in any case should not be delayed by more than 20 days from issue of such Work Order. Any delay beyond this will be treated as the contractor is not willing to execute the work and necessary measures will be taken by authority.
- 2.2 The contractor shall not engage another contractor or agency to execute full or part of the work without getting written approval of the employer. In case any such approval given by the employee the responsibility and obligation of execution will rest only with the contractor on whom the employer (HEC) has placed order.
- 2.3 The contractor shall take all work related directions from the nodal executive of the executing department in performing the assigned work but contractor shall continue to be responsible and shall not in any way be absolved of his obligation or responsibility for the due performance of the whole of the work in all respects and due skill and efficiency. The contractor or his representative should have the obligation to respond and present before the nodal officer whenever he instructs to do so.
  - a) No alteration / addition / omission of any part of work shall be deemed unless written instruction of the nodal executive of the executing department is received.
  - b) In case the additional work instructed has financial implication, the contractor should give in writing about the rate and quantum of additional financial impact promptly.

- 2.4 Any representative of the nodal executive of the executing department will have the right to watch, supervise the work and to test and examine any material being used for the work or final product to ascertain workmanship.
- 2.5 The whole of the work shall be executed in perfect conformity with the specifications and drawings of the work. If the contractor performs the work in a manner contrary to the specifications or drawings or any of them, he shall bear all the costs arising or ensuring rectification or loss caused to the employer and the amount will be liable to be recovered from him.
- 2.6 All drawings, specifications, process / technology, technical directions and copies thereof furnished from time to time by employer to the contractor shall be deemed and always be deemed to be the properties of the employer, and they shall not be used at any other work or purpose. All such documents to be returned to the employer on completion or termination of work.
- 2.7 The concerned executive of executing department shall have full power to make and issue from time to time, such further drawings and give all such further instructions and directions as may appear to him to be necessary or desirable for the guidance of the contractor and for proper execution of work. Contractor shall obey accordingly and shall not be entitled to any extra payments outside the contracted value unless the concerned nodal officer issues an order in writing authorizing such extra payment.
- 2.8 If any dispute or doubt arises as to the meaning or intent of any portion of the specification and drawing or as to the execution of the work or the quality of any material or as measurement of the works with the decision / perception of the nodal officer of the executing department, the contractor should give in writing in support of his argument / point of view (preferably within fifteen days of the date of receipt of such decision by the contractor) and request to resolve the issue within ten days. If the contractor is not satisfied with the response / non response of nodal officer of the executing department, the contractor may approach Incharge Operation of the plant (or Incharge Project / Marketing / Township etc. as the case may be) with the aim of resolving the dispute.
- 2.9 If neither the drawing nor the specifications contain any mention of description of minor details of work (construction, fabrication etc.) which to the opinion of the concerned engineer are obvious and fairly intended for the satisfactory completion of the work, such minor details shall be worked out (documents, drawings etc.) by contractor at his own cost. The engineer's decision in such case shall be final and conclusive.
- 2.10 a) All drawings, diagram, sketch which the contractor may require, under the condition of contract, to prepare and furnish shall duly furnished in triplicate to the employer at any time before commencement of the job or during the progress thereof for approval.
- b) Before undertaking any fabrication / work either in his workshop or site, the contractor is required to prepare detail drawing of the components and get them duly approved.
- c) The contractor shall also furnish drawings of all temporary buildings, set-ups for approval which he proposes to erect for the purpose of the work.
- d) All statutory statements, returns etc. which the contractor required to submit, should submit to the nodal officer of the executing department.

- e) All costs of expenditure which may be involved in the above a) to d) to be borne by the contractor.
- 2.11 It shall be the contractor's responsibility to submit for approval and propose alteration of drawings which in his opinion are necessary for due execution of work in accordance with the contract and every such alteration of the drawings so submitted shall be fully detailed as the original drawings. Implementation of such alterations shall be done only after approval by competent authority.
- 2.12 The contractor shall at all times be responsible for any alleged discrepancies, errors or omissions in the drawings or other particulars supplied by him irrespective of the fact the drawings have been approved by competent authority and the contractor shall be liable to pay for any rectification.
- 2.13 The contractor shall at his own expense provide himself with sheds stores house and yards as required for the efficiently carrying out the work. The employer's representative shall have free access to the said sheds, storehouses and yards at all reasonable time for the purpose of inspecting the stock of materials and plant & equipment stored therein. Adequate measures for safety, security and preventive measures against fire & other accidents for such set-ups will be the sole responsibility of the contractor.
- 2.14 a) The contractor shall keep adequate numbers of efficient and competent staffs to give necessary directions to the workmen in execution of the work. The contractor shall employ only such supervisors, workmen and labours in or about the execution of the work who are careful and skilled in their relevant trades.
- b) The contractor shall forthwith remove from work any agent, permitted subcontractor, supervisor and workman objected to by the nodal officer of the executing department.
- c) On demand the contractor shall submit a correct return showing the names of all staff and workmen employed by him.
- d) In the event that the nodal officer of the executing department or the concerned executing officer is of the opinion that the contractor is not employing on such number of staff and workmen as reasonably necessary for the proper execution / timely completion of the work, he shall forthwith communicate his opinion in writing to the contractor and the contractor shall within seven days of the receipt of the said communication be bound to employ such additional staff and labour as may be required by the concerned officer. Any failure on the part of contractor to comply shall entitle the employer to rescind the contract.
- 2.15 The concerned officer / engineer shall have access to the work place / site at all time and the contractor shall provide all necessary assistance to facilitate inspection.
- 2.16 The contractor shall give at least seven days notice in writing to the nodal officer / concerned engineer whenever any work or materials intended to be covered up in earth, in bodies or walls or otherwise to be placed beyond the reach of measurement so that the work may be inspected or the correct dimension thereof may be taken before the work is so covered or placed beyond reach of measurement. Wherever the contractor fails to do so, the same shall, at the opinion of the concerned engineer / officer, be uncovered and measured at the expense of the contractor, or in the alternative, no payment shall be made for such work or materials.
- 2.17 a) The contractor shall arrange testing and analysis of materials required by specification from authorized agency as required by concerned engineer.

Depending on situation, the concerned engineer may authorize any person in writing to supervise the work and test the whole or each part of the work or material and directly get the report.

- b) The contractor shall forthwith prepare and / or submit samples of work and materials as and when required by the engineer to do so. Such samples will be non returnable type and may be used for various purposes including approval.
  - c) All materials of the work must comply with the requirements or specification and must satisfy the tests and / or analysis standard laid down in the specifications of the Indian Standards Institution or such other recognized standards as may be decided by the concerned engineer.
- 2.18 a) If it shall appear to the employer, at any time during the progress of the work or at any time prior to the expiration of the period of warrantee, of such work, that any work, has been executed with unsound, imperfect or unskillful workmanship or materials of inferior specification, or that any materials or articles provided by the contractor for the execution of the work are unsound or of inferior quality to the contracted for or otherwise not in accordance with the contract, the contractor shall, on demand in writing from the concerned engineer / officer specifying the work, materials or articles complained of, and within the period of time mentioned in the demand, pull down, take out work so compliance of or objected to, or remove from the site or separate from other materials or sort out the material or articles. If the value of any such work or materials or articles or any part thereof has been included in any "on account" payment to the contractor, the same shall be taken into account and deducted from any subsequent payment due to the contractor will be made.
- b) However, if the contractor is dissatisfied with such decision, may make an appeal to the Incharge- Operation / marketing / project as the case may be, who shall duly consider the same and pass such order as he may think fit, and any order passed upon such appeal shall be final and binding on the contractor.
  - c) The contractor shall forthwith rectify or remove and reconstruct the work so specified either in whole or in parts, as the case may require, or as the case may be, and provide proper and suitable materials or articles for the material or articles complained of or objected to. If the contractor fails to remedy any defect within the specified period in a manner required, the concerned engineer may engage some other agency at his discretion for proper rectification and / or replacement of components, materials with proper ones at the cost and risk of the contractor. However, a written notice will be served to the contractor before proceeding with such step.
- 2.19a) All temporary works necessary for the proper execution of the work shall be provided and maintained by the contractor, and shall, with the consent of the concerned engineer / officer, at any time when such temporary works are no longer required, be removed by the contractor at his expenses and in such manner as the engineer may direct. Failure to do so on the part of contractor, the work will be done by engaging some other agency and all the incidental cost will be recovered from the contractor.
- b) The temporary office, accommodation rooms of the labour which are no longer required on completion of the assigned work shall be handed over along with land to the employer in vacant possession. If the contractor's labour refuse to vacate, and the said offices / accommodation / premises has to be evacuated by the employer, all expenses incurred in the process will be recoverable from the contractor.

- 2.20 All the materials and plants brought by the contractor in or upon (unless otherwise declared in writing while bringing, as in the case of working gadgets, tools, equipments etc. which will not form part of the work) the site or on the land occupied by the contractor in connection with work and intended to be used for the execution thereof shall, as soon as they are brought in or upon the site or the said land, be deemed to be the property of the employer. Any rejected, unusable material should be immediately removed from the site as soon as they are declared so.
- 2.21 a) The contractor shall take all reasonable care of all tools, plants and materials or other property, whether of like description or not, belonging to the employer and issued to the contractor for the purpose of the work, and the contractor shall be liable for any damage or loss caused to the same by him, his agents or his workmen or others, whilst the same were in his charge. The contractor shall sign valid receipt for all tools, plants, and materials issued to him by the engineer from time to time, and, on completion of the work, shall be bound to return, subject to normal wear and tear, the unused balance of the same to the nodal officer in good order / working condition.
- b) In case of loss or damage, the cost / repair cost will be recoverable from the contractor.
- c) Issue of plants and equipments like compressors, mixtures, portable engines etc. will be covered under Special Terms of Contract.
- 2.22 a) The contractor shall take all necessary measures to ensure a safe working environment like stability of structure, excavations, fabrications, material handling etc. and further ensure that no physical injury or harm is caused or likely to be caused to any person or no damage or loss is caused or likely to be caused to any property.
- b) Existing roads or water pipelines shall not be blocked, cut through, damaged by the activities of contractor.
- c) The contractor shall be responsible for taking all precaution to ensure the safety of public and properties belonging to employer and others.
- 2.23 The contractor shall, at his own expenses and to the satisfaction of engineer / officer concerned reinstate and make good or liable for any compensation for any injury loss or damage occasional to any property or right, whatever, including the property and rights of the employer or agents, servants or employees of the employer, being injury, loss or damage arising out of or in any way connected with, the execution or purported execution of the contract and further, the contractor shall indemnify the employer against any agent, servant or employee of the employer or which would be so enforceable against the employer, where the employer a private person, in respect to any such injury (including injury resulting in death, disability (permanent or otherwise)), loss or damage to any person or property, including all claims which may arise under the Workmen's Compensation Act or under any other law for the time being in force or otherwise.
- 2.24 Explosives shall not be used on the work or on the site by the contractor without the written permission of the engineer concerned and then only in manner and to the extent permitted by the engineer. The contractor should have proper and valid license from appropriate authority and should create all necessary infrastructure for use, handling and storing of explosives and deploy necessary skilled manpower as per prevailing regulation.



2.25 The contractor shall, on an order issued by the engineer / officer concerned and duly communicated to him, suspend the progress of the work or any part thereof for such time or times and in such manner as the engineer may consider necessary, and shall during the period of such suspension, protect and render security to the work, to the extent necessary in the opinion of the engineer, if such suspension is :

- a) Provided for the contract, or
- b) Necessary for the proper execution of the work for reason of weather conditions or by some default on the part of the contractor, or
- c) Necessary for the safety of the work or any part thereof.

The contractor shall not be entitled to any extra payments, but if the suspension ordered by the engineer is other than those mentioned above and if such period of suspension exceeds 14 days, the contractor shall be entitled to such extension of time of completion of the work as the engineer may consider proper and payment of such compensation as the engineer / officer may consider reasonable in respect of salaries / wage paid by the contractor to his employees during the period of suspension.

2.26 The contractor will have to make provision for safety of the public, employees during execution of work, all sanitary and medical arrangements for labour, employee engaged by him and persons deputed by the employer for inspection, supervision etc..

2.27 Demurrage charges calculated in accordance with the scale in force for the time being on the Railways or other transport devices and incurred due to delay in unloading / detention of transport device by the contractor which he is supposed to do shall be recoverable from the contractor.

2.28 The engineer / officer concerned may order the contractor to do any item of work whether or not the same is included in the accepted schedule of rates and the contractor shall be bound to comply with such order of engineer whether given in writing or orally. In case of the orders given orally by the engineer, the contractor shall comply with such order and confirm in writing of such order given by the engineer whether before or after the carrying out of the order shall be deemed to be an order in writing, provided further that the concerned engineer / officer do not contradict in writing about such order.

All such work shall be valued at the rates set out in the accepted schedule of rate or derived rates (based on cost of material & labour actually utilized plus 7.5% as supervision & other charges) and with the agreement of the same by the engineer shall be acceptable.

2.29a) The contractor shall be bound to handover all works executed under the contractor to the employer, complete in all respect and to the satisfaction of the engineer.

b) The concerned engineer / officer shall determine the date on which the work shall be regarded completed as contemplated in (a) above and in support of his determination, grant a certificate to the contractor on an application being so made to him, that the work was duly executed, complete in all respects on a specific date. The concerned engineer may also comment on the actual dates of completion of different activities against planned / schedule dates of completion as decided / planned and if the corporation suffered any financial loss due to non-adherence of schedule or due to any other reason.

- c) On the completion of the work, the contractor shall clear away and remove from the site all temporary constructions, surplus materials, rubbish debris and all temporary works of every kind and leave the whole of the site and work in a neat and clear condition to the satisfaction of the engineer. Failure to do so on the part of the contractor, the cost of such cleaning by some other agency will be recoverable from the contractor.

### **3. Variations in contract**

- 3.1 In the event of any of the contract requiring modifications after the contract documents have been signed, such modification shall be made in writing and shall be signed by the incharge Contract cell (or equivalent) and the same shall be binding on the part of the contractor.
- 3.2 a) The engineer shall make any variation of the form, quality or quantity of the works or any part thereof that may in his opinion be necessary and, for that purpose or if for any other reason, it shall in his opinion be desirable, shall have power to order the contractor to do and the contractor shall do any of the following.
  - i) Increase or decrease the quantity or any work included in the contract.
  - ii) Omit any such work.
  - iii) Change the character or quality or kind of any such work.
  - iv) Change the levels, lines, position and dimensions of any part of the works, and
  - v) Execute additional work of any kind necessary for completion of works and no such variation shall in any way vitiate or invalidate the contract, but the value (if any) of all such variations shall be taken into account in ascertaining the amount of contract price.
- b) No such variation shall be made by the contractor without an order in writing by the engineer concerned or appropriate authority.

### **4. Measurement Certificate and Payment**

- 4.1 The quantities set out in the accepted schedule of rates against items of works quantified are the quantities estimated to be required for such work and they may vary in actual.
- 4.2 The contractor shall be paid for the work at the rate specified in the accepted schedule of rate (HEC Schedule / CPWD schedule / schedule notified by State Govt.) and for any extra work at the rates determined under clause 2.28 of these conditions on the basis of actual measurements of such work taken by the engineer's representative / declared by the contractor in accordance with the rules prescribed for the purpose by the employer. The item wise amount so calculated (based on quantities for items in actual and rates in the accepted schedule of rates) be rounded to nearest whole number.

Unless specified otherwise, the engineer at the end of a month, shall record in the Measurement Book, the quantity of work completed during the month and cumulative up to the month in physically measurable terms (after completion of joint inspection if any) and submit the same to the concerned officer / engineer.

- 4.3 a) The contractor shall be entitled to be paid, from time to time, by way of "On account" payments for such works as he has, in the opinion of the engineer, executed in terms of the contract. All such payments to the contractor shall be due on the certificate of measurements having been granted or issued by engineer / officer concerned.
- b) On account payments made to the contractor shall be without prejudice to the final making up of the accounts (except where measurements are specifically noted in the Measurement Book as "Final Measurements") and shall in no respect be considered or used as evidence of any fact stated in or to be inferred from such accounts nor of any particular quantity of work having been executed nor of the manner of its execution being satisfactory.
- c) Unless otherwise specified, payments to the contractor will be made by cheques, but no cheque will be issued for an amount less than one hundred rupees.
- 4.4 The contractor shall all time during the progress and continuance of the work and during the period of performance warranty / maintenance, as specified in the tender acceptance or subsequent communication / order, shall be responsible for maintenance and uphold in good condition all and every part of the work.
- 4.5 a) On the issue of certificate of completion by the concerned engineer / officer in respect of the work, an adjustment of accounts shall be made and the balance of the accounts, based on engineer / officer's certified measurements of the total quantity of work executed by the contractor up to the date of completion and on the accepted schedule of rates, and for any extra works, on rates determined under clause 2.28, shall be paid to the contractor, subject always to any deductions as the employer's representative raise and submission of "No claim" certificate by the contractor.
- b) The total security deposit shall become due and shall be paid to the contractor after the issue of certificate of completion by the concerned engineer / officer. If the scope of work includes performance warranty / maintenance, the security deposit shall be converted into Performance Guarantee. If the contractor submits Bank Guarantee of equal amount to cover the performance warranty / maintenance period, he may be paid the security deposit.
- 4.6 Unless otherwise agreed upon between the parties, payment for deliverables and services 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**.

## **5 Employer's lien over all money due to the contractor**

- 5.1 The employer shall have a lien over all moneys that may become due and payable to the contractor or also on or over the deposit or security amounts made under the contract and becoming repayable to the contractor under the conditions of the said contract or in respect of debt or sum of money that may become due and payable to the employer by the contractor either alone or jointly with another or others and under the subjected contract or other or transaction of any nature, whatsoever, between the employer and the contractor, and further and unless the contractor pays and clears the claims of the employer immediately on demand, the employer shall at all times be entitled to deduct the said debt or sum due by the contractor from the

moneys, securities or deposits which have become payable to the contractor.

## **6 Regulation of labour employed by contractor**

- 6.1 The contractor shall comply with the provision of the Minimum Wage Act 1948, and all the rules made there under, in respect of any employees or workmen employed or engaged by him for the purpose of carrying out contract. The directive, rules and regulations of the state government in respect to minimum wage shall be accepted by HEC management with upward or without modification. The contractor intending to deploy labourer and workmen should be a labour licence holder from the Govt. of Jharkhand (or respective state government where the work is being carried out).
- 6.2 The contractor shall comply with the provisions of payments of wages Act. 1936, and the rules made there under, in respect of all employees or workmen employed or engaged by him in the work for the purposes of carrying out the contract.
- 6.3 The contractor shall be responsible for the safety of all employees or workmen employed by him on and in connection with the work and shall forthwith report to the concerned engineer / officer / employer's representative in all cases of accidents, howsoever caused, and make adequate arrangements for rendering all possible aids to the victims of the accidents.
- 6.4 In every case in which by virtue of the provisions of sub-section ( 1 ) of section 12 of the Workmen's Compensation Act. 1932, the employer is obliged to pay any compensation to the workmen employed by the contractor in execution of the work, the employer (HEC) shall recover from the contractor the amount of compensation so paid and, without prejudice to the rights of the employer under sub-section ( 2 ) of section 12 of the said Act. The employer shall be at liberty to recover such amount or any part thereof by deducting it from the security deposit or from any sum due from the employer to the contractor. The employer shall not be bound to contest any claim made against under sub-section ( 1 ) of section 12 of the same Act except on the written request of the contractor and upon his giving to the employer full security for all costs for which the employer may become liable in consequence of contesting such claim.
- 6.5 No quarter / accommodation shall normally be provided by the employer for the accommodation of the contractor or any of his staff employed on the work. In exceptional cases, if any accommodation is provided, the same will be on chargeable basis and the charges shall be decided by the employer wherein clarification for different elements like electricity, water charges etc. will be made. The charges / rents shall be recoverable from the payments to contractor.
- 6.6
  - a) The contractor shall at his own expense make adequate arrangements for housing, supply of drinking water and for temporary crèche where 50 or more women are employed at a time.
  - b) The contractor shall conform to all laws, rules and regulations for the time being in force pertaining to the employment for local or imported about and shall take all necessary precautions to ensure and preserve the health and safety of all staff and workmen employed on the work.
  - c) The contractor shall be bound to comply with strictly all sanitary rules and regulations and to carry out all sanitary measures which may form time to time be determined by the Government, local authority, health authority or medical

authority of the employer.

- d) Contractor shall not employ children below the age of 12 years as labourers for and in connection with the execution of the work.

## **7 Determination and Termination of Contract**

- 7.1 a) The employer shall, at any time be entitled to determine and terminate the contract, should the employer's opinion, the cessation of work becomes necessary owing to paucity of funds or for any other cause whatsoever, in which case the cost of approved materials at the site and of the value of the work done in writing form employer to contractor of such determination and termination and the reason therefore shall be conclusive proof of the fact that the contract so determined and terminated by the employer.
- b) Should the contract be determined and terminated under sub-clause ( a ) above and the contractor claim payments to compensate expenditure incurred by him in the expectation of completion of the whole work, the employer shall consider and admit such claims as are deemed fair and reasonable and are supported by vouchers to the satisfaction of the engineer. The employer's decision in this regard shall be final and conclusive and binding on the contractor.

7.2 If the contractor shall at any time

- a) Become bankrupt or insolvent, or
- b) Make arrangement with, or pass the assignment in favour of, his creditors, or agree to carry out the contract under the direction of his creditors, or
- c) Being a company or corporation, go into liquidation (other than a voluntary liquidation for the purpose of amalgamation), or
- d) Have an execution levied on his goods or property on the work, or
- e) Assign the contract or any part thereof, other wise than as provided in clause : 1.13, or
- f) Abandon the contract, or
- g) Persistently discharge the instructions of the employer or contrivance and provision of contract, or
- h) Fail to adhere to the agreed programme of the work by a margin 10% or more of stipulated period, or
- i) Fail to remove material from the site or to pull down and replace any work after receiving from the engineer a notice to the effect the said materials or work have been condemned or rejected under clause 2.14, or
- j) Fail to take steps to employ competent or additional staff and labour as required and instructed by the concerned engineer in writing, or
- k) Fail to provide the engineer or engineer's representative proper facilities for inspection of the work of any part thereof as required under clause 2.24, or
- l) Promise, offer or give any bribe or commission gift or advantage either himself or through his partner, agent or servant to any officer or employee of the employer or to any persons on his behalf as provided in clause 1.25, then, and in any of the said cases, the concerned engineer / officer may on the behalf of employer serve the contractor with a notice to effect, and if the contractor does not within seven days after delivery to him of such notice proceed to good his default / rectify accordingly, the employer shall be entitled after giving the contractor forty eight

hours notice in writing to remove the contractor from the whole or any portion or portions (as may be specified in such notice) and adopt any or several of the following clauses:

- i) Rescind the contract (of which a rescission notice in writing to the contractor from the concerned engineer / incharge contract cell shall be conclusive evidence), in which case the security deposit of the contractor shall be forfeited to the employer, without prejudice to employer's right to recover from the contractor any amount by which the cost of compensating the work by any other agency shall exceed the value of the contract.
- ii) Carry out the work, or any part thereof, by the employment of the required labour and materials, the cost of which shall include freight, supervision and all incidental charges and to debit the contractor with such costs, the amount of which is certified by the engineer, shall be final and binding upon the contractor.
- iii) Measure up the work executed by the contractor and to get the remaining work, completed by another contractor at the risk and expenses of the contractor in all respect in which case any expense that may be incurred in excess of the sum which would have paid to the contractor if the work had been carried out by him under the terms of contract, the amount of which in excess as certified by the engineer shall be final and binding upon contractor and shall be borne and paid by the contractor and may be deducted from any moneys due to him from the employer under the contractor or otherwise or from his security deposit.

Provided that in any case in which any of the powers conferred upon the employer by sub-clause (a) to (l) above, shall become exercisable and the same shall not be exercised, the non-exercise thereof shall not constitute a waiver of any of the conditions thereof and such powers shall notwithstanding, be exercisable in the event of any future case of default by the contractor for which his liability for past and future shall remain unaffected.

7.3 In the even of any or several of the courses referred to in clause 7.2 above being adopted:

- a) The contractor shall have claim to compensation for any loss sustained by him by reason of his having purchased or procured any materials, or entered into any commitments, or made any advance on account of, or with a view to, the execution of the work or performance of the contract, but the contractor shall not be entitled to recover or paid any sum for any work actually performed under the contract, unless and until the engineer shall have certified the performance of such work and the value payable in respect thereof, and the contractor shall be entitled to be paid the value so certified. The contractor shall have no claim to any payment, or compensation or otherwise howsoever, on account of any profit or advantage which he might have derived from the execution of the work in full, but which he did not derive consequence of the determination of the contract.
- b) The engineer / officer shall be entitled to take possession of any materials, tools, machinery, building on the work or the property on which these are being or ought to have been executed, and to retain and employ the same in the future execution of the work or any part thereof until the compensation of the work without the contractor being entitled to any compensation for the use and employment thereof, or for wear and tear or destruction thereof.
- c) The engineer shall, as soon as may be practicable after termination / removal of

the contract, fix and determine ex-parte, or by or after reference to the contractor, or after such investigation or enquiries as he may consider fit to make or institute and shall certify, what amount (if any) had at the time of rescission of the contract been reasonable earned by or would reasonably accrue to, the contractor in respect of the work then actually done by him under the contract and what was the value of any unused or partially used materials any constructional plant and any temporary work upon the site.

## **8. Settlement of dispute by arbitration**

- 8.1 a) All questions, disputes or differences of any kind, whatsoever arising out of, or in connection with, the contract, at any time, whether during the progress of the work or after its completion, or whether before or after the determination of the contract, other than questions, disputes or difference for the decision of which specific provisions have been made in the foregoing clauses (hereafter referred to as "excepted matters" and decisions on such "excepted matters" according to the said specific provisions shall be final and binding on the contractor and shall not be reopened or attempted to be reopened on the ground of informality, omission, delay or error in the proceeding in or about the same or on any other ground whatsoever) shall, be submitted in writing by the contractor to the employer, and the employer, shall, within a reasonable time 'after the submission of the same, make and notify its decision thereon in writing.
- b) If the contractor be dissatisfied with the decision of the employer on any matter in question, dispute or difference, on any ground, or as to the withholding by the employer of any certificate to which the contractor may claim to be entitled to, if the employer fails to make a decision within reasonable time, then and in any such case but not including any of the "expected matters", the contractor may, within ten days of the receipt of such decision or after this expiry of a reasonable period of time, the case may be demand in writing that such matter in question, dispute or difference be referred to arbitration. Such demand for arbitration shall be delivered to the employer by the contractor and shall specify the matters which are in question, dispute or difference and only such question, dispute or difference of which the demand has been made no other shall be referred to arbitration.
- c) The future progress of any work under the contract shall, unless otherwise directed by the engineer, continue during the arbitration proceedings, and payment due or payable by the employer shall be withheld on account of such proceedings, provided however that it shall also be open to the arbitrators to consider and decide whether or not such work shall continue during arbitration proceedings.
- d) Matter in question, dispute or difference to submitted to arbitration as aforesaid shall be referred for decision to two arbitrators, one to be nominated by the Chairman and the other to be nominated by the contractor. In the event of the two arbitrators being divided in their opinion, the matter under dispute shall be referred for decision to an umpire to be appointed by the two arbitrators not later than one month from the last date of their respective appointments and, in any case before they enter upon and proceed with the reference.
- i) The arbitrator or the umpire shall have power to call for such evidence by way of affidavits or otherwise as the arbitrators or the umpire, as the casemay be, shall think proper, and it shall be the duty of the parties or umpire to make the award without delay.

- ii) Unless otherwise agreed upon by the parties, the venue of the arbitration proceedings under these conditions shall be at Ranchi in the state of Jharkhand.
- iii) Subject as aforesaid, the provisions of the Arbitration Act 1940, or any statutory modifications or re-enactment thereof and of the rules made there under for the time being in force, shall apply to all arbitration proceedings under this clause.

Provided, however, that the arbitrators or as the case may be, the umpire, may from time to time, with the consent of the parties, enlarge the time for making the award.

9. Integrity Pact Clause (IP Clause)

In all Tenders Covered under Integrity Pact, particulars of all IEM, including their email ID, should be mentioned, in stead of mentioning details of a single IEM.



< 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) / Contractor(s) 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) .....