



**KIOCL LIMITED**  
**(A Govt. of India Enterprises)**  
**II Block, Koramangala,**  
**BANGALORE – 560 034**

**TECHNICAL**  
**SERVICES**  
**DEPARTMENT**  
**MANUAL**  
**2012**

**(INTERNAL CIRCULATION ONLY)**



सत्यमेव जयते

प्रमोद कुमार रस्तोगी  
**P. K. Rastogi**



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29<sup>th</sup> May, 2009

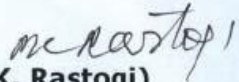
## FOREWORD

Companies under Government ownership or large public participants depend on full time Board Members and independent Board Members to carry on the activities of the Company to achieve the goal for which the Company is established. It will be difficult for large stakeholders to participate in day-to-day management.

The Management being the trustee on behalf of the stakeholders, they should observe strict discipline in conducting the day-to-day activities in the larger interest of the organization. Every issue will have a different dimension depending on the concerned employee/executive looking into the same. To converge different ideas and to take a consistent stand on the issues, it is necessary that guidelines are laid down which are free from distortion and provide clear cut directions.

Manuals play a very important role in this direction and act as a ready-reckoner even to the new-corner into the organization. In this respect, KIOCL Limited has got prepared 11 Manuals comprising of all Departments. These Manuals take care of the present working conditions and the possible changes that may occur in near future.

I congratulate KIOCL team for their efforts in bringing out these Manuals and I sincerely hope that these will be updated from time to time to keep abreast of the changing working environment.

  
(P.K. Rastogi)



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ಅಧ್ಯಕ್ಷ ಮತ್ತು ನಿರವಧಿ ನಿರ್ದೇಶಕರು

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K. RANGANATH  
Chairman-cum-Managing Director



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July 18, 2009

## FOREWORD

The requirement of department manuals was felt for a long time to streamline the functions of the department and to define the roles & responsibilities of the employees working in various departments.

Keeping this in view, KIOCL LTD prepared 11 department manuals which explain in detail the functions of these individual department & its responsibilities, detailed working procedures and decision making process etc.

I am happy to record that the officials of KIOCL Ltd and the Consultant M/s Chunder Khator & Associates, Kolkata have put in their best efforts to bring out these manuals successfully.

I am sure that these manuals will provide necessary guidance and support during various stages of departmental activities for taking suitable decision as per company policies and guidelines. Further, these manuals will be helpful not only to the KIOCL Ltd but for other stake holders also to understand the working procedure of the each individual departments and company as a whole.

I congratulate all the concerned officials for their sincere effort in preparation of these manuals in a systematic and time bound manner.

I hope the respective departments follow the procedures laid down in the manuals to perform their day to day activities and improve up on continuous basis.

*K. Ranganath*  
(K.Ranganath)

**This manual is for internal regulation of procedures relating to the function. While disciplines in the Company have to observe the procedures scrupulously, this Manual cannot be cited for any legal proceedings against the Company.**

**The procedures mentioned in the manual are in line with the existing policies of the company.**

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## **SEGMENT – 1 PERSPECTIVE**

<b>Ref. No. 1.1</b>	<b>Subject- Genesis &amp; Scope of Manual</b>
<b>Ref. No. 1.2</b>	<b>Subject- Functions</b>
<b>Ref. No. 1.3</b>	<b>Subject- Objectives</b>
<b>Ref. No. 1.4</b>	<b>Subject- Policy</b>

<b>Description/Process Flow/Control Perspective</b>	<b>Responsibility</b>
<p><b>1.1 Genesis &amp; Scope</b></p> <p>To initiate, Plan, Execute &amp; Monitor Major Capital Projects &amp; Repairs, as per approval of the competent authority/ KIOCL Board.</p> <p><b>1.2 Functions</b> The primary functions of the Department are:</p> <ol style="list-style-type: none"> <li>a) To meet Project requirements from Site, Management, Production, Stores, and any other areas within the KIOCL.</li> <li>b) The TS Department floats tenders for selecting suitable Consultants / Contractors / Agencies/ Firms for the specified work/jobs.</li> <li>c) Monitors the Progress of the sanctioned / approved Project, to meet the Project dead lines, costs, and quality specifications.</li> <li>d) Liaison with Central / State Govts. to obtain necessary &amp; statutory clearances.</li> <li>e) Provide management information regarding the status of the Projects.</li> <li>f) Review &amp; update Department Quality Manual for ISO 9001:2008 for continual improvements.</li> <li>g) For all the proposals beyond 20 Lakhs received from site, contracts will be concluded at TS dept.,</li> <li>h) Co-Ordination with successful consultant / contractor/ agency and concerned depts. within the organization for successful completion of the project.</li> </ol> <p><b>1.3 Objectives</b></p> <p>To select competent &amp; qualified Contractors / Consultants for Planned Projects, and Implement within stipulated period, costs, and satisfying agreed specifications.</p> <p><b>1.4 Policy</b></p> <p>To achieve the Objectives within the Policies and Guidelines set by the Board / Management.</p>	<p>Head of the Dept. of Technical Services,</p>

## **SEGMENT – 2 PROJECT INITIATION**

<b>Ref. No. 2.1</b>	<b>Subject-Project Initiation</b>
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<b><i>Description/Process Flow/Control Perspective</i></b>	<b><i>Responsibility</i></b>
<p><b><u>2.1 Project Initiation</u></b></p> <p>All Projects requiring medium and large investments, either Capital or Revenue, are initiated from the Departments based on the directions from the Management / Board resolution as per the requirement of the company to carry out the work at existing or new locations.</p> <p>These are of the following types:</p> <ol style="list-style-type: none"> <li>1. Consultancy services.</li> <li>2. Finalization &amp; fixing of contractors/firms, generally order value more than Rs.20 Lakhs and above.</li> <li>3. Modification and expansion of the plant.</li> <li>4. Expansion of Capacity.</li> <li>5. Major Repairs.</li> <li>6. R &amp; D initiatives to improve processes for new raw materials.</li> <li>7. New projects.</li> </ol> <p>Based on the above, the TS Department initiates a Note Sheet for approval from competent authority for inviting Tenders from suitable Consultants / Contractors/ Agencies.</p>	<p>Head of Dept. of the Technical Services</p>

## **SEGMENT – 3 TYPES OF TENDERS**

<b>Ref. No. 3.1</b>	<b>Subject- Types of Tenders</b>
<b>Ref. No. 3.2</b>	<b>Subject- Open Tender</b>
<b>Ref. No. 3.3</b>	<b>Subject- Limited Tender</b>
<b>Ref. No. 3.4</b>	<b>Subject- Nominated Tender</b>
<b>Ref. No. 3.5</b>	<b>Subject- Expression of Interest</b>
<b>Ref. No. 3.6</b>	<b>Subject- Pre-bid meeting</b>

<b>Description/Process Flow/Control Perspective</b>	<b>Responsibility</b>
<p><b>GENERAL:</b></p> <p>The purpose is to select the right Contractor/ Consultant/ Agency for the Job/Work / Task as per the direction given by the approving authority / Board of KIOCL Ltd.</p> <p><b>3.1 <u>Types of Tenders</u></b></p> <ol style="list-style-type: none"> <li>1. Open / Global Tender.</li> <li>2. Limited Tender.</li> <li>3. Nominated Tender.</li> <li>4. Expression of Interest.</li> </ol> <p><b>3.2 <u>Open / Global Tender</u></b></p> <p>The tender enquiries are normally floated through Open Tender route. The advertising media of the tender is as under:</p> <p>(i) <u>If the estimated value of the work is less than Rs.25.0 Lakhs.</u></p> <p>(a) To publish in any one Regional / State newspaper in the local language or in English edition newspaper depending upon the requirement.</p> <p>(b) To publish in the company website.</p> <p>(ii) <u>If the estimated value of the work is more than sl.no.(i) and less than Rs.100.0 Lakhs</u></p> <p>(a) To publish in any one state newspaper in the local language or in English edition newspaper of the state / southern or in both depending upon the requirement.</p> <p>(b) To publish in the company website.</p>	<p>Head of the Dept. of TS</p> <p>Or</p> <p>Nominated Officer</p>

(iii) If the estimated value of the work is more than Rs.100 Lakhs.

(a) To publish in any one state newspaper in the local language and in All Indian English edition newspaper.

(b) To publish in the Indian Trade Journal, Kolkata.

(c) To publish in the company website.

(d) To publish in the Govt. tenderer.

In case of Global Tenders, in addition to the above, it is to be published in any of the leading International Journal and also to Indian Embassies of major trading countries.

**Note:** However, the advertisement media can be changed / altered in consultation with the Head of the Dept. (CP&TS), depending upon the importance and magnitude of the job.

The Open / Global tender will be further categorized as follows:

(i) SINGLE BID TENDERS: Single bid tenders contain one tender schedule of price bid only. The estimated rates as per Karnataka PWD schedule of rates or as per previous work order rates will be given in the tender schedule along with quantities against each item of work and the contractors will be asked to quote overall uniform percentage (%) (above/below/ at par) or item wise rates on the estimated rate.

(ii) TWO BIDS TENDERS: In the two bids tender two tender schedule namely "UNPRICED" and "PRICED" parts will be there.

a) First sealed cover shall be superscribed as "**Un Priced** , ..... (Name of the work shall be specified)....." shall contain ..... full set (01 or 02 or 03.... shall be specified) of tender documents including all annexure duly filled-in with official seal and Signature on all pages but without any mention of rates & prices.

First envelope shall also contain "**TENDER FORM FEE**" & "**EARNEST MONEY**" in the form of Demand Draft as specified in the tender document.

b) Second sealed cover superscribed as "**Priced** – ..... (Name of the work shall be specified)....." shall contain **One Set** of prices filled in strictly as per format i.e. Schedule of Priced

format with official seal and signature. Prices should be quoted and written in wording at specified format only and no other additional papers to be enclosed there in.

- c) Both the above covers should be kept in 3<sup>rd</sup> cover and sealed and superscribed as "Bid – ..... (Name of the work shall be specified)....." and addressed to

Head of the Department,  
Technical Services Dept.,  
KIOCL Limited,  
II Block, Koramangala,  
BANGALORE – 560 034.

and shall be submitted to his office on or before the due date of submission.

### **3.3 Limited Tender**

The Limited Tenders are floated when the user Department or the Consultant suggests the names of the potential Suppliers /Contractors/Agencies.

The names suggested by the Consultants are first scrutinized by the Technical Services and then they are considered for Limited Tender with the approval of the competent authority.

The tendering system is similar to open tender method but

- (i) Without advertisement in the newspaper publications.
- (ii) Without seeking any tender form fee.

But normally, the limited tender will published in the company website and it is a two bid tender system.

### **3.4 Nominated Tender**

Award of work on nomination basis shall be considered and limited to areas where Emergency, Safety of men, machines and as per expert professional / consultant advice.

The award of the above tender will be exercised within the Delegation of Power (DoP) of the Competent authority. However this needs to be put up to the Board for information as per CVC guidelines.

Vide CVC Circular No.15/5/06, dated 9<sup>th</sup> May 2006, the following points should be strictly observed on award of contract works / consultancy on nomination basis.

- (i) All works awarded on nomination basis should be brought to the notice to the KIOCL Board for scrutiny and vetting post facto.
- (ii) The reports relating to such awards will be submitted to the Board every quarter.
- (iii) The audit committee may be required to check at least 10% of such cases.

### **3.5 Expression of Interest**

For selecting a Project Consultant/ agency / firm where the Organization has no experience of the concerned job, Tender for Expression of Interest is floated through leading publications as bought out in the clause 3.2. This is part of Open / Limited Tender.

**Note:** Approval from the competent authority or from the Chairman-Cum-Managing Director shall be obtained before issuing any Tenders.

### **3.6 Pre bid meeting:**

A pre-bid meeting will be conducted / arranged along with the potential bidders to clarify / explain the techno-commercial details of the tender document (NIT). The participation in the pre-bid meeting has not been made mandatory for bidding.

This meeting will be conducted before the receipt of the offer/bid documents from the bidders. It facilitates, based on the techno-commercial clarifications the bidder/s to quote competitive price in the priced format and to give clarity on the tendered job and its terms & conditions.

Subsequent to the pre-bid meeting, amendments to tender terms and conditions, if any, shall be issued in the form of Bulletin and also uploaded on the KIOCL`s website. Offers shall be submitted in accordance with the tender terms and conditions and the amendments issued, if any, by the bidders.

The pre-bid meeting is also not an obligatory for all the tenders. This will be decided upon case to case basis. The requirement of the pre-bid meeting will be decided in consultation with the Head of Dept. of the CP&TS depending upon the criticality of the job.

## **SEGMENT – 4 PROCEDURE FOR ISSUE OF TENDERS**

<b>Ref. No. 4.1</b>	<b>Subject-Issue of Open Tenders</b>
<b>Ref. No. 4.2</b>	<b>Subject-Issue of Limited Tenders</b>

<b>Description/Process Flow/Control Perspective</b>	<b>Responsibility</b>
<p><b>4.1 Issue of Open Tenders / Global Tenders</b></p> <p>On receipt of approval for issue of Open Tender to fix up Consultant/ Contractor/ Agency from the competent authority or from the Chairman Cum Managing Director, the open tender advertised will be published in the news paper depending upon the estimated cost of the job / work. The publication will be predetermined as bought out in the clause no. 3.2. The open tender document will contain the following details :</p> <ol style="list-style-type: none"> <li>1. Open tender reference no. and date.</li> <li>2. Brief Scope of the job to be carried out.</li> <li>3. Date of issue of tender / bid</li> <li>4. Last date &amp; time of collection of Tender Documents.</li> <li>5. Pre-Qualification criteria condition.</li> <li>6. Cost of Tender document</li> <li>7. Date of Pre-Bid meeting and place. (If necessary)</li> <li>8. Last date of time &amp; place of submission and Opening of Technical Part (Un-priced) if the tender is in two bid system.</li> <li>9. Amount of EMD and mode of payment.</li> <li>10. Security Money and Liquidated Damage, etc.,</li> <li>11. Tender document validity period and</li> <li>12. Any other relevant details as the case may be.</li> </ol> <p style="padding-left: 40px;">The tender document / Bid generally consists of:</p> <ol style="list-style-type: none"> <li>a) Invitation to bid.</li> <li>b) Technical specification for the work.</li> <li>c) Terms &amp; Conditions of the contract.</li> <li>d) Special conditions of contract.</li> <li>e) Schedule of Items and Prices- Priced Format.</li> <li>f) General Conditions of Contract (GCC) of KIOCL.</li> <li>g) Integrity Pact Agreement format.</li> <li>h) Check list.</li> <li>i) Drawing if any.</li> </ol>	

## **Leviable charges for the open tender:**

### **(1) TENDER FORM/DOCUMENT FEE:**

Usually, the maximum tender form fee shall be about 1% of the Earnest Money Deposit (EMD) amount of the tender. If the tender form fee comes less than Rs.100/-, the minimum tender form fee shall be collected to Rs.100/- (Rupees One Hundred) only.

The tender form fee shall be rounded off to next Rs.50/- (Rupees Fifty) on each case.

### **(2) EARNST MONEY DEPOSIT (EMD):**

Earnest Money Deposit (EMD) shall be 1% to 1.5% of the estimated cost of the job of tendering value.

(a) If the EMD amount is less than Rs.2.0 Lakhs, it shall be deposited in the form of a Demand Draft only from any Nationalized Bank drawn in favour of KIOCL Limited., Bangalore. No interest will be paid on Earnest Money Deposit. No other form of Earnest Money Deposit shall be acceptable. The Bids not accompanied by EMD shall be liable to be rejected at the sole discretion of the KIOCL without any further consideration.

(b) If the EMD amount is more than Rs.2.0 Lakhs, it can also be submitted in the form of **Bank Guarantee** as per format No. KIOCL/B/TS/QF-04/REV-0 of General Conditions of Contract (No. TS/B/KIOCL/QF-31/REV-1). The following points should be taken care of while submitting the Bank Guarantee:

- (i) The Bank Guarantee should be on non-judicial stamp paper having a value as per Rules in force.
- (ii) The stamp paper should be purchased in the name of the Bank, who gives the Guarantee and not in the name of the Bidder.
- (iii) The Bank Guarantee should be strictly as per the proforma.

- (iv) The Bank Guarantee should be from any of the Nationalized Bank.
- (v) If any correction is made on the Guarantee, the same should be endorsed by the Bank with its official seal.

EMD shall be returned to unsuccessful bidders without any interest after issue of work order / Letter of Intent to the successful Bidder and in case of the successful bidder, the same shall be returned after submission and acceptance of the Security Deposit as referred to in Article No. 37 of "General Conditions of Contract" (TS/B/KIOCL/QF-31/REV-1).

- (3) In the case of jobs with an estimated value beyond Rupees Fifty (50) Crores the EMD amount will be decided on case-to-case basis in consultation with finance.

(4) SECURITY DEPOSIT - (ISD & SD) :

10% of the value of work shall be deducted as security deposit and retained till the completion of maintenance period as applicable.

i.e, Initial Security Deposit of 3% of the value of work shall be deposited immediately after the placement of order. The balance 7% as security deposit shall be recovered from each running bill. The Security Deposit shall be refunded after successful completion of maintenance period.

The acceptance of the Security Deposit as referred to in Article No. 37 of "General Conditions of Contract" (TS/B/KIOCL/QF-31/REV-1) will be applicable.

(5) ADVANCE PAYMENT-

Normally NO advance payment will be made for any works / procurement.

(6) FOR MORE INFORMATION ON LEVIABLE CHARGES:

For any other necessary details or clarifications either GCC or Special conditions of the contract or both would be referred to the specific contract.

(7) LIQUIDATED DAMAGES:

The Liquidated Damages (LD) as referred to in Article No. 36 (C) of "General Conditions of Contract" (TS/B/KIOCL/QF-31/REV-1) will be applicable. The LD is subjected to maximum of 5% of the total Contract Value.

However, KIOCL Ltd reserves the right to increase/ waive the liquidated damages either in part or in full at his sole discretion.

(8) CONSEQUENTIAL DAMAGES:

In case of Turnkey contracts, the contractor will have to compensate the KIOCL Ltd towards Consequential Damages suffered by KIOCL Ltd due to time and / or cost overrun in completion of the turnkey project. This will be in addition to the Liquidated Damages leviable.

(9) LEVIABLE CHARGES FOR CONSULTANCY SERVICES:

Normally No Tender form fee / document fee, Earnest Money Deposit, Liquidated Damage, Penalty and Security Deposit is levied for the consultancy services / jobs unless otherwise specified in the tender document.

(10) PRE-QUALIFICATION CRITERIA CONDITION:

As per the Central Vigilance Commission Circular No. 12-02-1-CTC-6, dated 17.12.2002 the following points must be considered while fixing the eligibility criteria.

(A) For Civil/Electrical Works:

- (i) Average annual financial turnover during last three (03) years, ending 31<sup>st</sup> March of the previous financial year, should be at least 30% of the estimated cost.

*The Audited Profit & Loss account and Balance sheet for past three completed financial years should be obtained.*

- (ii) Experience of having successfully completed similar works during last seven (07) years ending last day of month previous to the one in which applications (tender) are invited should be either of the following.

- a. Three (03) similar completed works costing not less than the amount equal to 40% of the estimated cost.  
or
- b. Two (02) similar completed works costing not less than the amount equal to 50% of the estimated cost.  
or
- c. One (01) similar completed work not less than the amount equal to 80% of the estimated cost.

**Similar work** – The definition of similar work should be clearly defined in the tender document.

*The work completion certificates should be obtained to meet the PQ Criteria.*

**NOTE:** As per 6<sup>th</sup> structured meeting of Vigilance held on 31.08.2010 at Bangalore it was clarified that the dilution of the PQ Criteria cannot be done without proper justification. The PQ criteria shall be stipulated as per CVC guidelines in the first attempt. In case of no response, then PQ criteria can be relaxed by 25% each time, on case to case basis.

In addition to the above details, following informations also to be obtained:

(a) The contractor / firms should have his own PF, ESI Codes, Income tax PAN Number, Service tax number.

- I. PF Number
- II. ESI Number
- III. PAN Number
- IV. Service Tax Number

(b) BANK DETAILS:

- (i) Name of the Bank & Branch
- (ii) Type of Account
- (iii) Account No.
- (iv) MICR No.
- (v) Branch code
- (vi) IFSC /RTGS No.

(11) VALIDITY PERIOD OF THE PRICE OFFER/BID:

The bid shall be valid for a period of "**Three (03) months**" from the due date of receipt of the bid. In case of curtailment or increase of the validity period, it shall be clearly mentioned in the tender document.

(12) NEGOTIATION WITH THE L-1 BIDDER:

As per CVC Circular No. 1/01/10 dated 20.01.2010 and IOC no. KIOCL/Vig/B/6.03/2010/033, dated 28.01.2010

- (i) There should be no post tender negotiations with L1 bidder except in certain exceptional situations.
- (ii) Negotiation with L2, L3 ... etc is not correct.
- (iii) If at all negotiations are warranted under exceptional circumstances, then it can be only with L1 (Lower Tenderer) if the tender pertains to the award of work / supply orders and only with H1 (Higher Tenderer) if the tender is for sale of materials.

If the negotiation with L1 bidder under certain exceptional situations, it can be only with approval of the competent authority.

**4.2 Limited Tender**

On receipt of approval for Issue of Limited Tender to fix up Consultant/ Contractor from the Chairman-Cum-Managing Director the tender documents are sent to the selected bidders (Consultants/Contractors), depending on the Nature of the job to be carried out. Records of names of the Consultants/Contractors to whom the tenders are being sent are maintained. Following details are furnished in the tender paper:

- (i) Profile of the Organization,
- (ii) Scope of work
- (iii) Tender Document
- (iv) Form for submission of bid
- (v) Pre-Bid meeting and any other relevant information's.
- (vi) Last date and time & place of submission
- (vii) Amount of EMD, Security Money and mode of payment
- (viii) Invitation to Bid, Instruction to bidders, Forms of Bid and General Condition of Contract & Special condition of the contract if any.

- (ix) Technical Specification.
- (x) Price Schedule etc.,

**A. Nominated Tender**

Issuing of the bid for the Nominated tenders is same as that of Limited Tender with the approval of CMD.

**B. Appointment of Consultants:**

While appointing the consultants viz, open / limited/ nominated tender, the circular No: 3L-IRC, dated 10.01.1983, OM No. OFF 1 CTE 1 dated 25.11.2002, Circular No. 15/05/06 dated 09.05.2006, OO No. 23/07/2007 dated 05.07.2007, OO dated 19/05/10 & 31/05/2011 issued by CVC shall be complied.

**C. Expression of Interest – (EOI)**

Expression of Interest is published in the Leading publications & in the company & govt. websites where there are no known suitable consultants.

Issuing of the tender document subsequent to EOI is same as Open / Limited tender procedure.

**D. Bidders List**

KIOCL maintains a List of Contractors / agencies / Companies & Consultants for Item No. 4.2. List of the Bidders is based on involvement of various agencies with KIOCL Limited from the past enquiries/suggested names/ similar type of work carried out by the agency.

Technical Services may also obtain the list of Bidders from the consultants or from the site office and short list from the above for the particular job in hand.

## **SEGMENT - 5      RECEIPT AND OPENING OF TENDER**

<b><i>Ref. No. 5.1</i></b>	<b><i>Subject-Receipt of Tenders</i></b>
<b><i>Ref. No. 5.2</i></b>	<b><i>Subject-Opening of Technical Bids</i></b>
<b><i>Ref. No. 5.3</i></b>	<b><i>Subject- Tender Committee Recommendation for Opening of Priced Offer</i></b>
<b><i>Ref. No.5.4</i></b>	<b><i>Subject-Opening price Bids</i></b>
<b><i>Ref. No. 5.5</i></b>	<b><i>Subject- Tender Committee Recommendation for Issue of Order</i></b>
<b><i>Ref. No. 5.6</i></b>	<b><i>Subject-Tender Committee Members</i></b>
<b><i>Ref. No. 5.7</i></b>	<b><i>Subject-Internal Auditing</i></b>
<b><i>Ref. No. 5.8</i></b>	<b><i>Subject-Deviation in the NIT</i></b>

<b><i>Description/Process Flow/Control Perspective</i></b>	<b><i>Responsibility</i></b>
<p><b>5.1 Receipt of Tenders</b></p> <p>a) The bidder shall deposit the Tender in the locked Box marked clearly/ handed over to the concerned officer after obtaining the receipt of submission. Similarly the tenders Received by post or courier are also kept in the same box/ kept in the safe custody after properly entering in the particular register with date and time.</p> <p>b) Tender received later than the specified date and time are not opened and sent back to the bidder.</p> <p>c) The details of the received Bids are recorded in the Register.</p> <p>The technical portions of the bids are not generally opened in the presence of the bidders except in specific cases. The envelopes containing the Tenders are numbered as soon as the Tender boxes are opened. They are numbered e.g., 1/4, 2/4..... i.e.1 of 4 nos. of total numbers of tenders received, and 2 of 4 nos.of total numbers of Tenders received etc.</p>	<p>HOD of TS</p> <p>OR</p> <p>Nominated Officer</p>

## **5.2 Opening of Technical Bids**

In case of two-bid system, Techno-Commercial bids are opened first. A Representative of the finance and user Department are present. However for Single bid system no such requirement is needed.

All tender envelopes are initialed and dated by representatives of Technical Services and Finance departments. Similarly all the pages of the bid / some of the main pages are initialed and dated. It is ensured that along with techno-commercial document necessary requirements like proof showing Pre Qualification criteria, EMD amount, cost of tender paper, validity period of the bid etc are also submitted by the bidder before scrutinizing the technical bid.

The techno-commercial bids are then evaluated to ensure that all the technical & commercial details submitted are in line with the tender requirement. Deviations & Omissions are noted and the bidders are then asked to confirm to the specifications as described by the Tender to bring all the bidders at the same platform. The successful bidders are then short-listed.

If any of the requirements are not fulfilled the bid stands rejected and EMD would be returned to the particular bidder after issue of LOI / WO to the L-1 bidder.

The approval to open the Price bid is obtained from competent authority with necessary techno-commercial recommendation and finance concurrence.

## **5.3 Tender Committee Recommendation for Opening of Priced Offer:**

The tender committee will come into picture only after the receipt of the offers/bid and the role is to scrutinize all the offers/bid received. Tender committee will put up their recommendations for acceptance or otherwise of such offers/bid with proper justification following the necessary guidelines.

#### **5.4 Opening of Price Bids**

- a) The Price Bids of the techno-commercially accepted offers are opened in presence of representative of the Finance, Technical Services Dept. & qualified bidders and details are registered in the particular Register.
- b) Price Bid envelopes are initialed by TS and Finance representatives.

#### **5.5 Tender Committee Recommendation for Issue of Order:**

The tender committee will scrutinize the comparative statement of the techno-commercially acceptable offers received. Tender committee will put up their recommendations for acceptance of such offers and recommends for placement of order on L-1 bidder following the necessary guidelines.

#### **5.6 Tender Committee Members:**

In pursuance to office order no. S/BC/12(32)/2010/1452, dated 06/09/2010, the tender committees are re-constituted on case to case basis for processing the administratively approved procurement / contract proposals from "Evaluation of offers received stage" to "Submission of purchase / WO proposal for approval".

(i) For Works & Service contracts from above **Rs.50,000/- to Rs.15 Lakhs** – to function at Corporate Office for commercial aspects based on Site Tender Committee Recommendation.

- (a) Dealing officer of the case file.
- (b) JM (Finance) / AM (Finance) or as nominated by Head of Finance Dept, Bangalore.
- (c) Manager level officer concerned.

(ii) For Works & Service contracts from above **Rs.15 Lakhs to Rs.20 Lakhs** – to function at Corporate Office for commercial aspects based on Site Tender Committee Recommendation.

- (a) Dealing officer of the case file.
- (b) SM (F&A), Bangalore or as nominated by Head of Finance Dept, Bangalore.
- (c) Manager level officer concerned.

(iii) For Works & Service Contracts above **Rs.20 Lakhs to Rs.50 Lakhs.**

- (a) Indenting Officer or as nominated by Head of Pellet Plant / BF Unit as the case may be.
- (b) SM (F&A), Bangalore or as nominated by Head of Finance Dept, Bangalore.
- (c) SM (TS) or as nominated by Head of CP&TS dept as the case may be.

(iv) For all contracts beyond **Rs.50 Lakhs up to Rs.5 Crores** handled by Technical Services Dept.,

**For PP, PF and CPP:**

- (a) Head of Pellet Plant, Mangalore.
- (b) Head of CP&TS Dept, Bangalore.
- (c) DGM (F), Bangalore or as nominated by Head of Finance Dept (Not below DGM(F))

**For Blast Furnace Unit:**

- (a) Head of BF Unit, Mangalore.
- (b) Head of CP&TS Dept, Bangalore.
- (c) DGM (F), Bangalore or as nominated by Head of Finance Dept (Not below DGM(F))

(v) For all the procurement / Contracts **beyond Rs.5 Crores**, the above committees i.e, at Para (iv) above, shall continue with D(C) heading the committees and D(P&P) associating with the committees.

**5.7 Internal Auditing:**

If the estimation is more than Rs.20 Lakhs, then the file should be routed through Internal Auditing Dept., and should have the clearance of Inter Audit before it is put up for the approval of the competent authority.

**5.8 Deviation in the NIT:**

No deviation shall be permitted in tender procedures in variance to NIT terms and conditions. Such cases should be eliminated and if at all required, re-tender is the only route.

## **SEGMENT - 6 EVALUATION OF BIDS**

<b>Ref. No. 6.1</b>	<b>Subject-Evaluation of Bids</b>
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<b>Description/Process Flow/Control Perspective</b>	<b>Responsibility</b>
<p><b><u>6.1 Evaluation of Bids:</u></b></p> <p>The techno-commercially qualified bids (Priced part) are evaluated as per the tender terms and conditions.</p> <p>The opened priced bids are numbered as L1, L2, L3..... etc. whereas L1 stands for lowest offer value, L2 is the second lowest value and so on.</p> <p>TS dept. moves the proposal to the competent authority giving details of the L1 bidder along with comparative statement for further action based on the evaluation and recommendation by the tender committee for the particular job for finance vetting and for approval.</p> <p>Normally with L1 bidder no price negotiation is carried out.</p> <p>However, <b>under exceptional circumstances</b> if needed, further price negotiation can be carried out after obtaining approval from the competent authority with necessary justification.</p> <p>On approval for negotiation, it is held with the participation of finance, bidder and the committee (if negotiation committee is formed) or the concerned department representative &amp; consultants, if engaged.</p> <p>After negotiation and evaluation the details are brought out in a note with recommendation for finance vetting and for approval by the competent authority / the KIOCL Board for placement of order.</p> <p>A board note with necessary details is prepared and submitted with the concurrence of finance and approval of Chairman-cum Managing Director wherever Board approval is required.</p>	<p>HOD OR Nominated Officer And Finance Officer</p>

## **SEGMENT – 7 AWARD OF WORK**

<b>Ref. No. 7.1</b>	<b>Subject-Award of Work</b>
<b>Ref. No. 7.2</b>	<b>Subject-Agreement</b>
<b>Ref. No. 7.3</b>	<b>Subject-Amendment of Work Order</b>

<b>Description/Process Flow/Control Perspective</b>	<b>Responsibility</b>
<p><b><u>7.1 Award of Work</u></b></p> <p><b>1.</b> On approval from <b>competent authority / the KIOCL Board</b> the award of work will be intimated to the successful bidder through telegram /telex /fax with a Letter of Intent (LOI) containing the following information, wherever the agreement / work order takes time for finalization of details.</p> <ol style="list-style-type: none"> <li>1 Subject.</li> <li>2.Reference</li> <li>3.Value of the Order</li> <li>4.Effective date</li> <li>5.Nominated officer</li> <li>6.Acknowledgement for receipt</li> </ol> <p><b>2.</b> The detailed work order /agreement containing the following information:</p> <ol style="list-style-type: none"> <li>1.Detailed letter /Agreement in the non Judicial stamp paper.</li> <li>2.Scope of contract</li> <li>3.Estimated value of contract</li> <li>4. Time schedule</li> <li>5.Special condition of contract</li> <li>6.Technical specification</li> <li>7.Schedule of items, rates (both in figure and words ) unit and quantity</li> <li>8. General condition of contracts</li> <li>9.Drawing if any</li> <li>10.Nominated officer who operates the contract</li> <li>11. All the pages in the document are signed by both the owner and the party</li> <li>12. Paying authority</li> <li>13. Other necessary details</li> </ol>	<p>H.O.D. OR Nominated Officer</p>

The contract awarded is entered in the register with all necessary details.

**7.2 Contract Agreement**

A contract agreement is entered into after issue of Letter of Intent (LOI) on specific cases with necessary details as per 7.1 para (2) as soon as possible after finalization of details of the job. The agreement executed between KIOCL & party shall be completed with in a period of 30 days from the date of issue of LOI.

This covers all the relevant issues/points and conditions applicable to the Contract, which have been mutually agreed upon.

**7.3 Amendment of Work Order**

The various constituent of the contract like, quantities, specification, completion period etc may need to be revised during the execution of the project. Such alteration will be through amendment intimated to the party through fax / telegram /letter / E-mail after the due approval of the Competent authority / Chairman-cum Managing Director with the concurrence of the Finance Department. The amendment shall form part of the contract after the document is duly signed by both parties.

H.O.D.  
OR  
Nominated Officer

## **SEGMENT – 8 REPEAT ORDER**

<b>Ref. No. 8.1</b>	<b>Subject-Repeat Order</b>
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<b>Description/Process Flow/Control Perspective</b>	<b>Responsibility</b>
<p><b>Repeat Order</b></p> <p>Work Orders awarded to Contractors engaged in Painting, Repairing, Maintenances pertaining to Office and Complexes, Electrical or any such jobs could need the requirement of Repeat Orders.</p> <p>Repeat orders are such contracts which are finalized earlier wherein the terms and conditions, specifications, quantities, and rates remain basically unaltered from earlier contracts. Repeat order can also be generated if there is up / down trend in cost of inputs with proper justification and recommendation with concurrence of finance dept. Prior consent from the contractor to carry out the job at the same rate and terms &amp; conditions is also obtained before processing for placement of repeat order.</p> <p>On approval from the competent authority, the party will be intimated of KIOCL's intention for placing order on the same party provided the nature of job, terms and condition, and specification remain basically unaltered from the earlier order place on them. Quantities may not remain the same.</p> <p>In case the firm seeks any change in the terms and conditions, specifications, rates etc, the same will be discussed and finalized along with finance representative.</p> <p>The contract stands concluded only when the party accepts the intimation after the return of signed copy of the order.</p>	<p>H.O.D. OR Nominated Officer</p>

## **SEGMENT – 9 AMENDMENTS AND CANCELLATION**

<b><i>Ref. No. 9.1</i></b>	<b><i>Subject- Extension of Time</i></b>
<b><i>Ref. No. 9.2</i></b>	<b><i>Subject- Deviation in contract value</i></b>
<b><i>Ref. No. 9.3</i></b>	<b><i>Subject- Deviation in Scope of Work</i></b>
<b><i>Ref. No. 9.4</i></b>	<b><i>Subject- Short Closing of Contract</i></b>

<b><i>Description/Process Flow/Control Perspective</i></b>	<b><i>Responsibility</i></b>
<p><b>9.1 Extension of Time:</b></p> <p>Since the time is the essence of contract, it is the responsibility of the contractor to complete the work within the prescribed time.</p> <p>The date of commencement of job and completion shall be as per the work order agreement.</p> <p>The contractor shall apply for extension of time to the HOD stating the reason for extension of time in writing in the event of any delay attributable to either the owner or the contractor on the same terms and conditions of the contract without change in rate/unit or in total amount in all types of contracts.</p> <p>The delay will be determined solely on the genuineness of the reason as given by the contractor / agency. If giving extension of time is justified, suitable recommendation has to be made along with the contractors / agency's letter of request.</p> <p>Competent authority can sanction the extension of time for completing the job under reference as per delegation of power.</p> <p>An amendment would be issued to the contractor / agency in this respect within the reasonable time on the extension granted with / without penalty.</p>	<p>H.O.D. OR Nominated Officer</p>

**9.2 Deviation in contract value:**

Those cases where the work order value of the contract is increased due to the change in quantity of the schedule of items carried out as per the site conditions, duplication of the work due to modification / change in the design etc., In such cases it is required to take the deviation in the total contract value with the approval of the competent authority. A suitable amendment shall be issued to the contract indicating the revised quantity and payment shall be made as per the same rate of various items for amended quantity. The other terms & conditions of the contract remain unaltered.

**9.3 Deviation in Scope of Work:**

Those cases where there is a requirement of minor change in scope of work due to change in design, additional work / change in technology / modification etc., during the execution of the particular job is inevitable after issue of work order to the agencies, a letter shall be obtained from the particular agency and a suitable amendment for deviation in scope of work shall be issued with the approval of the competent authority without change in the item rate.

**9.4 Short Closing of Contract:**

Those cases where the work order is issued and job is already commenced by the agency, during the course of the job the said contract is required to be short closed due to unavoidable / exceptional circumstances, the contract can be terminated either as a whole or portion thereof by the KIOCL Limited with suitable compensation for the services carried out till date as per mutually agreed terms and conditions.

Head of the  
Dept. of TS

Or  
Nominated  
Officer

## **SEGMENT – 10 GENERAL CONDITION OF CONTRACT**

<b>Ref. No. 10.1</b>	<b>Subject- General</b>
<b>Ref. No. 10.2</b>	<b>Subject- GCC for Works</b>
<b>Ref. No. 10.3</b>	<b>Subject –GCC for Indigenous supply</b>
<b>Ref. No. 10.4</b>	<b>Subject – GCC for Off-Shore supply</b>

<b>Description/Process Flow/Control Perspective</b>	<b>Responsibility</b>
<p><b>10.1 General:</b></p> <p>The bidder shall study thoroughly the General Conditions of Contract (GCC) of KIOCL Limited along with other documents before submission of his quotation.</p> <p>The bidder shall be deemed to have satisfied himself before bidding as to the correctness or sufficiency of his bid for the job and prices quoted by him, which shall cover all his obligations under the contract in accordance with General Conditions of Contract.</p> <p><b>NOTE:</b> Where GCC is not included as part of the contract, the special conditions of the contract of the respective work order shall be followed.</p> <p><b>10.2 GCC for Works/service:</b></p> <p>The General Conditions of Contract (GCC) for works/service of KIOCL Limited is given in the <b>ANNEXURE – `A`</b>. (Ref: TS/B/KIOCL/QF-31/REV-1)</p> <p><b>10.3 GCC for Indigenous Supply:</b></p> <p>The General Conditions of Contract (GCC) for indigenous supply of KIOCL Limited is given in the <b>ANNEXURE – `B`</b>. (Ref: KIOCL-P/1)</p> <p><b>10.4 GCC for Off-Shore Supply:</b></p> <p>The General Conditions of Contract (GCC) for Off-Shore supply of KIOCL Limited is given in the <b>ANNEXURE – `C`</b>.</p>	<p>H.O.D. OR Nominated Officer</p>

## **SEGMENT – 11 DEBARRING CONTRACTORS FROM TENDERING**

<b><i>Ref. No. 11.1</i></b>	<b><i>Subject - General</i></b>
<b><i>Ref. No. 11.2</i></b>	<b><i>Subject – Approving Authority</i></b>

<b><i>Description/Process Flow/Control Perspective</i></b>	<b><i>Responsibility</i></b>
<p><b>General :</b>            The HOD shall recommend to the Director concerned / CMD for debarring a contractor / agency for a specific period, if the contractor / agency,            (i) Is proved to be involved in pilferage or unauthorized use of / disposal of departmental materials / documents issued for a specific work.            (ii) Has continuously refused to pay Government dues as per statute viz. Service tax, Income tax etc.,            (iii) Has not started the work and not entered into agreement after award of work.            (iv) Has failed to execute and complete the work after entering into agreement.</p> <p><b>Approving Authority:</b></p> <p>The competent authority for this purpose shall be concerned DIRECTOR / CMD.</p> <p>After the approved period of punishment the embargo on the debarred contractor / agency shall be lifted and such contractor / agency is allowed again to participate in the tender by the competent authority (who has approved for debarring the contractor / agency) on a clear recommendation by the HOD of the concerned dept., based on a representation in writing from such contractor / agency.</p>	<p>H.O.D. OR Nominated Officer</p>

## **SEGMENT – 12 BLACK LISTING OF THE CONTRACTORS**

<b><i>Ref. No. 12.1</i></b>	<b><i>Subject - General</i></b>
<b><i>Ref. No. 12.2</i></b>	<b><i>Subject – Approving Authority</i></b>

<b><i>Description/Process Flow/Control Perspective</i></b>	<b><i>Responsibility</i></b>
<p><b>12.1 General :</b></p> <p>The HOD of the concerned dept., shall recommend for black listing of the contractor / agency under the followings conditions:</p> <ul style="list-style-type: none"> <li>(i) Has been debarred / has not started the work and not entered into agreement after award of work.</li> <li>(ii) Has been debarred / has failed to execute and complete the work after entering into agreement.</li> <li>(iii) Has failed to execute the works on more than one occasion.</li> <li>(iv) Abandons abruptly the work after executing only a minor portion of the work i.e. less than 15% of the value of the work order.</li> <li>(v) Has been proved to be responsible for defective works.</li> <li>(vi) Has been proved guilty in any other related issues considered very serious.</li> </ul> <p>In the cases referred above, the merits and demerits of the case shall be thoroughly examined by the competent authority on the irregularities committed by the contractor / agency before taking the extreme action of black listing.</p> <p><b>12.2 Approving Authority:</b></p> <p>The competent Authority for approval of cases of black listing shall be Chairman cum Managing Director (CMD).</p>	<p>H.O.D. OR Nominated Officer</p>

## **SEGMENT – 13    MONITORING REPORT /** **REGISTERS**

<b>Ref. No. 13.1</b>	<b>Subject- Techno-commercial &amp; Price Bid Opening Register</b>
<b>Ref. No. 13.2</b>	<b>Subject- Issue of LOI &amp; Work Order Register</b>
<b>Ref. No. 13.3</b>	<b>Subject- EMD Register</b>
<b>Ref. No. 13.4</b>	<b>Subject- TO - Register</b>
<b>Ref. No. 13.5</b>	<b>Subject- FROM - Register</b>

<b>Description/Process Flow/Control Perspective</b>	<b>Responsibility</b>
<p><b>13.1 Techno-commercial &amp; Price Bid opening Register:</b></p> <p>The bids received with in the due date of receipt of the same and are techno-commercially acceptable are proposed for opening of the techno-commercial part in the presence of finance representative.</p> <p>The date, No. of bidders with name / name of the organization, signature of the engineer- in-charge and finance representative shall be entered in this register.</p> <p>Similarly, while opening the Priced offer of the all eligible bidders i.e., techno-commercially accepted offers would be opened with due approval in the presence of the finance representative along with the bidder as required on the specified date and time.</p> <p>The date, No. of bidders with name &amp; name of the organization who participated on that date, signature of the engineer – in-charge, finance representative &amp; participated bidders shall be entered in this register.</p> <p><b>13.2 Issue of LOI &amp; Work Order Register:</b></p> <p>With the necessary approval from the competent authority, the LOI or Work Order will be issued to the successful bidder.</p> <p>The LOI / Work Order No., date of issue, WO value, time duration of the contract etc., shall be entered in this register.</p>	<p>H.O.D. OR Nominated Officer</p>

**13.3 EMD Register:**

EMD details as specified and received would be entered in the register with date, DD No., Name of the Bank, Branch and Place, immediately after opening the techno-commercial part of the offer.

These EMDs would be sent to finance dept., with a letter specifying the Tender Notice No., Name of the work, Name of the party / agency and Place etc for further necessary action.

The EMD amount will be returned to the unsuccessful bidders and for the successful bidder the same amount will be adjusted against the security deposit or in some cases returned to the bidder after issue of work order and submission of security deposit as per the tender details.

**13.4 TO – Register:**

All the OUT-GOING letters, documents, Inter-office correspondence, tender documents, bids etc would be entered with number & date, subject, name & address etc., in the TO-Register.

**13.5 FROM – Register:**

All the IN-COMING letters, documents, Inter-office correspondence, tender documents, bids etc would be entered with number & date, subject, name & address etc., in the FROM-Register.

## **SEGMENT – 14 INTEGRITY PACT**

<b>Ref. No. 14.1</b>	<b>Subject- Introduction</b>
<b>Ref. No. 14.2</b>	<b>Subject- Commitments &amp; Obligation</b>
<b>Ref. No. 14.3</b>	<b>Subject- Independent Monitor (EIM)</b>
<b>Ref. No. 14.4</b>	<b>Subject- Agreement: Annexure - D</b>

<b>Description/Process Flow/Control Perspective</b>	<b>Responsibility</b>
<p><b>14.1 Introduction</b></p> <p>The company does its business with a number of domestic and international buyers, contractors and vendors of goods and services. It is committed to fostering ethical and corruption free business environment, and values its relationships with all counterparts and deals with them in fair and transparent manner.</p> <p>In order to achieve and strengthen these goals, company has implemented the Integrity Pact Programme in Co-Operation with Central Vigilance Commission (CVC) and Transparency India International (TII).</p> <p>As a part of this the company has appointed external Independent Monitors in consultation with CVC and TI to monitor and implement the Integrity Pact Program.</p> <p><b>14.2 Commitments &amp; Obligation</b></p> <p>It is committed to have ethical and corruption free business dealings with counter parties.</p> <p>The values its relationship with all counters parties and will deal with them in a fair and transparent manner.</p> <p>Will not seek or take bribes / undue benefits directly or indirectly for themselves or for third parties.</p> <p>Will honour its commitments and make due payments to counter parties in time subject to fulfilling contractual obligations.</p> <p>Will initiate punitive and corrective action and pursue it vigorously whenever corruption or unethical behavior occurs.</p>	<p>H.O.D. OR Nominated Officer</p>

### **14.3 Independent External Monitor (IEM)**

Two officers have been appointed as Independent External Monitors for a period of Three (03) year term and all transactions worth Rs. 30 Lakhs (Rupees Thirty Lakhs) and above, made with parties are subject to scrutiny by one of the IEMs.

### **14.4 Agreement: Annexure - D**

Integrity Pact Agreement would be made as part of all Contracts / agreements / purchase orders / work orders / transaction worth Rs. 30 Lakhs and above at NIT stage. This is brought out in the tender document and also out of the two IEMs, one would be designated as the IEM for the particular tender / Contract in sequentially.

The Integrity pact agreement of KIOCL Limited is given in the **ANNEXURE – D**.

On approval of tender documents, a copy of the particular document would be sent to the IEM.

Subsequently, the LOI / Work order / Agreement etc., shall be sent to the respective IEM for the particular jobs.

## **SEGMENT – 15 FRAUD PREVENTION POLICY**

<b>Ref. No. 15.1</b>	<b>Subject- Introduction</b>
<b>Ref. No. 15.2</b>	<b>Subject-Policy Objectives</b>
<b>Ref. No. 15.3</b>	<b>Subject-Scope of Policy</b>
<b>Ref. No. 15.4</b>	<b>Subject-Definition of Fraud</b>
<b>Ref. No. 15.5</b>	<b>Subject-Reporting of Fraud</b>
<b>Ref. No. 15.6</b>	<b>Subject-Fraud prevention policy of KIOCL</b>
<b>Ref. No. 15.7</b>	<b>Subject-Administration &amp; review of Policy</b>

<b><i>Description/Process Flow/Control Perspective</i></b>	<b><i>Responsibility</i></b>
<p><b>15.1 Introduction</b></p> <p>As per the guidelines issued by the Department of Public Enterprise on Corporate Governance, Fraud Prevention Policy is framed in the company and the same is approved by the Board of Directors in the 204<sup>th</sup> meeting held on 12.08.2011.</p> <p><b>15.2 Policy Objectives</b></p> <p>The "Fraud Prevention Policy" has been framed to provide a system for prevention / detection / reporting of any fraud that is detected or suspected and fair dealing of matters on the subject.</p> <p><b>15.3 Scope of Policy</b></p> <p>The policy applies to any fraud or suspected fraud, involving any one (full time / part time employees or persons appointed on adhoc/ temporary / contract basis, trainees, apprentices, representatives of vendors / suppliers / contractors / consultants / service providers or any other agency doing any business with KIOCL Limited.</p> <p><b>15.4 Definition of fraud</b></p> <p>`Fraud` may be defined as "Any willful act, committed intentionally by an individual(s) by deception, suppression, cheating or any other fraudulent or any illegal means, thereby, causing wrongful gain(s) to self or any other individual(s) and wrongful loss to KIOCL Ltd or bring KIOCL Ltd to disrepute".</p>	<p>H.O.D. OR Nominated Officer</p>

### **15.5 Reporting of Fraud**

Such reporting shall be made to the "Nodal Officer –Chief Vigilance Officer of the organization will be the Nodal Officer for this purpose.

If, however, there is shortage of time such report should be made to immediate Controlling Officer or to Local Vigilance Officer whose duty shall be to ensure that the inputs received is communicated to the Nodal Officer.

### **15.6 Fraud prevention policy of KIOCL**

Every one may take a note that a "Fraud Prevention Policy" is being followed at KIOCL, which provides a system for prevention / detection / reporting of any fraudulent activity is suspected by anyone, the matter must be reported to the 'Nodal Officer' (Chief Vigilance Officer) as soon as he / she comes to know of any fraud or suspected fraud.

### **15.7 Administration & review of the policy**

The Chairman and Managing Director is responsible for the administration, interpretation, application and revision of this policy. The policy will be reviewed and revised as and when needed.

As per the Circular No. KIOCL/Vig/B/2.20/2011/284 dated 02.09.2011 of Vigilance Department, the Fraud Prevention Policy (15.6) shall be included in all tenders.

## **SEGMENT – 16 ASSESSMENT OF THE VENDORS / BIDDERS**

<b>Ref. No. 16.1</b>	<b>Subject-Introduction</b>
<b>Ref. No. 16.2</b>	<b>Subject-Objectives</b>

<b>Description/Process Flow/Control Perspective</b>	<b>Responsibility</b>
<p><b>16.1 Introduction</b></p> <p>The assessing the right bidder / vendor for the specific job are one of the main tasks in the contract process. The assessment of the potential bidder / vendor depends upon yardstick evaluation. Technical Services dept., follows the assessment / selection of the successful bidders / vendors by implementing the prequalification criteria as per the Central Vigilance Circular Guidelines.</p> <p><b>16.2 Objectives</b></p> <p>The qualification required for assessing the bidders / vendors for the various jobs / works is as under:</p> <p>(i)Based on Financial Turnover: The bidders /vendors must have an annual turnover during the last three years shall be as per the CVC guidelines and shall submit the Balance sheet/profit &amp; loss account or a letter from the Chartered Accountants for the above.</p> <p>(ii)Based on the proven Experience: The bidders /vendors should be a regular contractor for the works/manufacturing/supply/repair/consultancy etc., for the job category and shall submit the evidence/supporting document/s for the specified job/works.</p> <p>(iii) The bidder /vendor must possess ESIC, PF, PAN card, Service Tax No. etc., whatever required for the particular jobs/works or if, sought in the tender document.</p> <p>(iv) The bidder / vendor should submit the organization chart, list of manpower available with them &amp; deployment for the job, tools, tackles &amp; plants available with them which they intend to deploy for the job in case work is awarded to them etc., if any, as sought in the bid document.</p> <p>The quarterly work progress report shall be monitoring by the Technical Services Dept, for monitoring / assessing the successful / work order awarded bidders / vendors. The copy of the same will be sent to Director (P&amp;P), Mangalore and Vigilance Dept., Bangalore for their information.</p>	<p>Head of Dept. of the Technical Services</p> <p>and</p> <p>HOD / Concerned officer of the respective Dept. for the particular job/s.</p>

# **ANNEXURE “A”**

TS/B/KIOCL/QF-31/REV-1



**INVITATION TO BID, INSTRUCTION TO BIDDERS,  
FORM OF BID  
AND  
GENERAL CONDITIONS OF CONTRACT**

**KIOCL Limited**  
REGISTERED AND CORPORATE OFFICE  
II BLOCK, KORAMANGALA, BANGALORE – 560 034.

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VI	FORM OF BANK GUARANTEE FOR SECURITY DEPOSIT
VII	FORM OF BANK GUARANTEE FOR EARNEST MONEY DEPOSIT

# **INVITATION TO BID**

## INVITATION TO BID

No.....

Date:

Dear Sirs,

Sub:.....

1. Bid documents for the above work are enclosed herewith.
2. Sealed bids will be received until 15.00 hours 1ST on .....at the location shown below Bids received after this date are liable to be rejected as per Instructions to Bidders.
3. The Bidders shall abide by all the details of "Instructions to Bidders" enclosed with the tender documents, Sealed bids shall be submitted in the manner as mentioned below:
  - a) First envelope shall contain tJile technical and commercial portions of the offer in four copies and shall be superscribed as "UNPRICED" - "NAME OF THE WORK" containing one full set of all tender documents including all the annexures duly filled-in and signed with official seal on all pages but without any mention of rates and prices.
  - b) Second sealed envelope superscribed "EMD-NAME OF THE WORK" shall contain Demand Draft/Bank Guarantee towards Earnest Money Deposit.
  - c) Third sealed envelope superscribed as "PRICED" - "NAME OF THE WORK" containing schedule of units, quantities and prices of the tender document with all the rates, prices etc. duly signed with official seal on all pages.

Tenderer shall strictly submit the offer in the way as mentioned above.

Sealed bids with the above markings and marked "Confidential" shall be addressed to

- a) **KIOCL Limited, II Block, Koramangala, Bangalore – 560 034**  
OR
- b) **KIOCL Limited, Panambur, Mangalore – 575 010**  
OR
- c) **KIOCL Limited, Kudremukh, Chickmagalur District – 577 142**

As may be applicable.

4. The bid shall be accompanied by an Earnest Money Deposit (EMD) of Rs..... (Rupees..... only ) to be deposited only in the form of Demand Draft on a Scheduled Bank drawn in favour of "KIOCL Limited, Mangalore/Bangalore/Kudremukh" if the EMD amount is upto and inclusive of Rs. 2 lakhs and Bank Guarantee towards EMD as per the KIOCL's approved format will also be acceptable if the EMD amount is more than Rs. 2 lakhs. No interest will be paid on Earnest Money Deposit. No other form of Earnest Money Deposit will be accepted. Bids not accompanied by EMD shall be liable to be rejected at the sale discretion of the OWNER without any further consideration.
5. This Earnest Money shall be returned to unsuccessful Bidders within 28 days after deciding the successful Bidder and in case of the successful Bidder, the same shall be returned after submission and acceptance of the Security Deposit for this work referred to in Article No.37 of "General Conditions of Contract".
6. Acceptance of the Bid will be intimated to successful Bidder through a Letter Of Intent (LOI) / Work Order/Supply Order.

The time of completion of all works under this Contract shall be ..... from the date of issue of Letter of Intent/Work Order/Supply Order.

Thanking you,

Yours faithfully,  
for KIOCL Limited.

Encl : As stated

# **INSTRUCTIONS TO BIDDERS**

## **INSTRUCTIONS TO BIDDERS**

### **1.0 PURPOSE**

- 1.1 It is the purpose of these instructions to serve as a guide to Bidders when preparing proposal for the work described in the attached specifications.

### **2.0 TENDER CONDITIONS**

- 2.1 Sealed Bids will be received until 15.00 1ST hours on the date indicated in the Invitation to Tender/Bid at the location indicated in "Invitation to Bid".

### **2.2 BIDS RECEIVED AFTER THIS DATE IS LIABLE TO REJECTION AT THE SOLE DESCRETION OF THE OWNER WITHOUT ASSIGNING ANY REASONS.**

### **3.0 REQUEST FOR INFORMATION**

- 3.1 Enquiries relating to Engineering and Commercial aspect of this specification shall be made to the address given in the Invitation to Tender/Bid.

### **4.0 PROPOSAL**

- 4.1 Bidder shall prepare his proposal in accordance with the specification and strictly as per the schedule of items. No additions/alterations/changes shall be made by the bidder. While submitting the tender. deviations. if any. shall be separately furnished. Anything not specifically mentioned, but necessary to complete the work. shall be provided by the Bidder and the cost thereof shall be deemed to be included in the prices quoted.

### **4.2 PROPOSALS SHALL BE SUBMITTED ON THE FORMS PROVIDED FOR THIS PURPOSE. FAILURE TO COMPLY MAY RESULT IN DISQUALIFICATION OF THE BID AT THE SOLE DISCRETION OF THE OWNER WITHOUT ASSIGNING ANY REASONS.**

### **5.0 GENERAL**

- 5.1 Bidder shall study thoroughly the General Conditions. Special Conditions. Specifications, Contract Drawings and other documents in the Invitation to Bid and submit his quotations accordingly. By submitting Bid for the work, Bidder will be deemed to have satisfied himself with the actual requirements in the Bid Documents.
- 5.2 By submitting the Bid for the work, Bidder will be deemed to have inspected and examined the worksite, its surroundings, locality, nature of the grounds and subsoil, the scope and nature of the work, materials necessary for the completion of the work, safety requirements, means of access to the worksite and the accommodation which may be required for storage, office. residence etc. Bidder will also be deemed to have obtained all information as to the risks, contingencies, responsibilities and other circumstances which might influence or affect his Bid and to have taken Into account all conditions and difficulties that may be encountered during the progress of the work. The rates quoted by him in the Bid shall be deemed to be adequate to complete the work according to the Contract and to cover the entire responsibility involved in executions, completion and maintenance of work. Bidder will be further deemed to have included all labour and material rates which shall include cost of materials with taxes, octroi and other duties, quarry, fees, royalty, lead, litt, loading and unloading freights for the materials, transportation. storage, insurance and all other charges necessary for the completion of the work. He shall collect from OWNER any other information he may require relating to the execution of works All items excluding the items specifically covered under OWNER's scope shall be under the scope of the bidder and same is deemed to be included in the prices quoted
- 5.3 The Bidder shall be deemed to have satisfied himself before bidding as to the correctness or sufficiency of his Bid for the work and of the rates and prices quoted by him which shall cover all his obligations under the Contract including programme of work which may be fixed by OWNER in accordance with General Conditions of Contract and all mailers and things necessary for the proper construction / erection. completion and maintenance of works. No extra charges whatsoever consequent on any misinterpretation or otherwise shall be allowed.

- 5.4 Details and Drawings as are not attached but referred to In the Bid Documents for the work may be seen in the office of the KIOCL Limited during office hours. Failure to avail himself of this shall not relieve the Bidder of his responsibility of submission of correct bid for work involved.
- 5.5 Canvassing in any form is strictly prohibited and the Bids submitted by the Bidders, who resort to canvassing will be liable for rejection.
- 5.6 The successful Bidder shall make his own arrangements for all materials except those otherwise specified in the Bid documents for issue by the OWNER at stipulated cost / or free of cost. Any materials or service to be issued/rendered to CONTRACTOR, unless specifically stipulated to be free of cost to the CONTRACTOR, shall be at the rates fixed or to be fixed by ENGINEER / OWNER based on cost plus 15%.
- 5.7 Bids shall be valid for a period of 3 (three) months from the due date of submission of the Bid
- 5.8 OWNER reserves the right to divide and award the work in this invitation to Bid to more than one Bidder if considered necessary. OWNER also reserves the right to reject any or all the Bids without assigning any reason and does not bind himself to accept the lowest Bid or any Bid.
- 5.9 Bidders shall quote the rates in figures as well as in words in English. The amount of each item shall be worked out and the total given. Bid containing "Over Written" or "erased" rate or rates and amounts and rates not shown both in figures and words in English may be liable for rejection. Bidders shall quote rates for all items, failing which the Bid will be considered incomplete and the bid is liable to be rejected. In case of discrepancy between rates in figures and words, the rates indicated in words shall be taken as final. In case of discrepancies between Rates and Amounts, the rates indicated shall be taken as final and the amounts worked out on the basis of quoted rates given in the Bid.
- 5.10 Unless otherwise specified, all rates and prices in the Bid shall cover Sales Tax and other Taxes, Octroi and other Duties, Quarry Fees, Royalties, etc., if any applicable.
- 5.11 Except when so stipulated in the Contract or mutually agreed. no foreign exchange or Import Licence for Importing equipments, components, spares or raw materials will be arranged or provided by ENGINEER / OWNER unless this is mandatory under the Government rules and regulations. OWNER may however, provide project authority certificate and disclaimer certificate as applicable to assist the Contractor, as appropriate.
- 5.12 Bidder shall sign all the pages of the Bid Document The signature in the "Form of Bid" alone shall be deemed to be taken as acceptance of other documents. Bid submitted by Partnership firm may be signed in the Firm's name by all the partners or a person authorised in the partnership deed such as the Managing Partner or any other duly authorised representative, followed by the name and designation of the person so signing. An attested copy of Registered Partnership Deed and proof of registration of the firm and the authorisation of the signatories shall accompany the Bid of any Partnership Firm. Bid by a Company shall be signed with the name of the Company by a person on its behalf and registered duly notorised Power of Attorney or other satisfactory proof showing that the person signing the Bid documents on behalf of the Company is duly authorised to do so, shall accompany the Bid.
- 5.13 Signature of the Bidder shall be attested in English by two responsible witnesses. The witnesses shall be persons of status and their addresses, names, occupations etc. shall be stated below their signature
- 5.14 Bids with rates in units different from those prescribsd in the Bid Schedules may be liable for rejection.
- 5.15 If a Bidder seeks to clarify his quotations or rates, this shall only be done in a separate covering letter in the letter, the clarifications/ modifications desired shall be with specific reference to the relevant conditions in the Invitation to Bid and the page numbers and clause numbers of the conditions shall be indicated.
- 5.16 Bidder is responsible to ensure that the bids reach before the date and time specified.
- 5.17 Acceptance of Bid will be intimated to the successful Bidder through a "Letter of Intent/Supply order/Work Order" with the issue of which the CONTRACT shall stand concluded. However, CONTRACTOR may be required to execute a formal agreement within the time specified in the Letter of Intent.

## **6.0 PARTICULARS TO ACCOMPANY BID**

6.1 The following particulars shall also accompany the Bid:

- a) Details of work of similar nature and magnitude carried out by Bidder, in the Proforma shown in Appendix-I
- b) Details of construction equipments belonging to and / or to be procured by the Bidder for use in this work, in the Proforma shown in Appendix-II.
- c) Details of manpower he proposes to engage for completion of work, in the Proforma shown in Appendix-III.
- d) All other details as may be required by ENGINEER in the form or manner stipulated therefor.
- e) List taken into account while preparing the Bid in the proforma as of the bulletins/amendment to Bid documents received and shown in Appendix-VI.
- f) Details of deviations made by the bidder.

6.2 Bidders shall, along With their Bids, submit the following:

- a) Certificate from a Scheduled Bank or any other bank accepted by Owner to prove their financial ability to undertake the work.
- b) Proof for technical and organisational ability to execute the work in its various aspects.
- c) The organisation chart alongwith number of the qualified Engineers and Supervisors who will be deployed at the site together with their qualification in the proforma shown in Appendix-IV Please Indicate separately those available on the roll of the Bidder and the numbers to be recruited for the work.
- d) Details of manufacturing and erection facilities owned and to be deployed on the work.
- e) Income Tax Clearance Certificate valid as on the date of Bid.
- f) List of proposed sub-contractors, if any, in the proforma shown in Appendix-V to be engaged subject to approval of the OWNER.
- g) Details of Insurance coverage presently considered and secured or to be secured by Bidder in the proforma shown in Appendix-VII.
- h) Balance sheet for the preceeding three financial years and the latest unaudited Balance Sheet, if any
- i) Provident Fund Account nos. in respect of workers deployed by the Bidder, if any.
- j) PAN issued by the Income Tax Authorities to the Bidder.
- k) Disputes (arbitrationllaw suits) initiated by or against the bidder during the last 3 years (completed or pending) as per Appendix-VIII.
- l) Sales Tax No. : Central and State.

**6.3 BIDS NOT GIVING THE FULL PARTICULARS AS REQUIRED ABOVE ARE LIABLE FOR REJECTION AT THE DISCRETION OF THE OWNER WITHOUT ASSIGNING ANY REASONS.**

**FORM OF BID**

**FORM OF BID**

(Bidder is required to fill up the blank spaces in this form)

M/s. KIOCL Limited.,  
Second Block, Koramangala,  
Sarjapura Road,  
Bangalore - 560 034.

Attn.: .....  
Technical Services Dept.,

OR

M/s. KIOCL Limited.,  
New Mangalore Port,  
Panambur – 575 010.

Attn.: .....  
Contracts Dept.,

OR

M/s. KIOCL Limited  
Kudremukh, PO.577142  
Chikmagalur District.

Attn.: .....  
Tender and Claims dept.,

**Name of work:**

.....  
.....  
.....

(As shown in the "Invitation to Bid")

Sir / Madam,

Having examined the "Invitation to Bid", Instructions to Bidder, General Condition of Contract, Special Conditions, Specifications, Bid Schedules, Contract Drawing and other documents for the above work, I/We, the undersigned offer to construct, erect, complete and maintain the whole of the said works in conformity with the said Bid Documents on the terms and conditions and under the provisions set out or called for in the Contract Documents at the rates listed In the Schedule of the Unit prices.

We agree to keep our Bid valid for a period of three months from the date fixed for receiving the same.

I / We undertake to commence the works within seven days from the date of Issue of Letter of Intent / Supply Order/ Work Order and to complete and deliver the whole of the works comprised in the Contract as per the Time Schedule agreed to in the Contract Document.



**DETAILS OF WORKS OF SIMILAR NATURE AND MAGNITUDE CARRIED OUT DURING  
 THE LAST THREE YEARS.**

Sl. No.	Name of work done	Value	Date of starting	Date of completion	Date of completion as per contract	Reasons for delay	Remarks

**NOTES:**

1. In the remarks column, please state whether the works stated above are carried out by you in the name of the firm in which the present Bid is submitted or any previous name or in collaboration with another party. If latter, state role / relationship of the firm vis-à-vis other party/partner and also a copy of the partnership Deed/Joint Venture agreement or the like.
2. Please enclose the true copy of the certificates issued by the authorities for works listed above.
3. In case of any dispute/differences arose amongst the partners, please give brief details in a separate annexure the status of the proceedings and the final result, if any.

(Signature of Bidder)

**LIST OF EQUIPMENTS, TOOLS AND PLANT TO BE DEPLOYED ON THIS WORK**

Sl. No.	Details of equipments, tools and plants etc.	Nos.	Whether owned or hired or to be procured	If to be procured source / cost

NOTES: Add more sheets, if required.

(Signature of Bidder)

**DETAILS OF MANPOWER PROPOSED TO BE DEPLOYED ON THIS WORK**

Sl. No.	Category of manpower	Nos. to be deployed by Contractor / By Sub-Contractor	Remarks

(Signature of Bidder)

**DETAILS OF QUALIFIED ENGINEERS AND SUPERVISORY PERSONNEL ETC. TO BE  
DEPLOYED FOR THIS WORK**

Sl. No.	Name, qualification and relevant experience	Responsibility areas

**NOTE:**

Organisational chart shall be enclosed. Attach more sheets, if required.

(Signature of Bidder)

**LIST OF PROPOSED SUB – CONTRACTORS**

Sl.No	Name of sub-contractor	Description of work or trade to be carried out	Approximate value of sub-contract

(Signature of Bidder)

**BULLETINS**

(BIDDER SHALL SUBMIT A LIST OF THE BULLETINS ISSUED BY OWNER, IF ANY, THAT HE HAS TAKEN INTO ACCOUNT WHILE PREPARING THIS BID)

Sl.No.	Bulletin No.	Date	Brief contents

(Signature of Bidder)

**DETAILS OF INSURANCE COVERAGE PRESENTLY CARRIED BY BIDDER**

Description	Amount of coverage	Individual claim	Occurrence aggregate
a) Public liability & property damage			
b) Fire and Extended coverage			
c) Automobile			
d) All Risks, Builder's Risks etc.			
e) Workman's Compensation			
f) Others as applicable under the prevailing laws or otherwise			

(Signature of Bidder)

**DISPUTES / ARBITRATIONS / LEGAL SUITS FOR LAST THREE YEARS**

Sl. No.	Brief description of dispute	Dispute with	Value	Status as on date of submission

Note: Attach more sheets, if required

(Signature of Bidder)

# **GENERAL CONDITIONS OF CONTRACT**

## GENERAL CONDITIONS OF CONTRACT

Article No		
1.00	Definitions	
2.00	Expeditious Completion	
3.00	Tender	
4.00	Site Investigations and Sub-Surface Conditions	
5.00	Standards of Workmanship	
6.00	Direction and Performance of Work	
7.00	Survey Lines and Grades	
8.00	Construction Schedule	
9.00	Work in Monsoon	
10.00	Power	
11.00	Water	
12.00	Land and House	
13.00	Quarries and Approach Roads	
14.00	Communication Lines and Natural Water Sources	
15.00	Telecommunication Facilities	
16.00	Permits and Licenses	
17.00	Levy for Entry into Port Area at Mangalore	
18.00	Materials	
19.00	Specifications	
20.00	Rates	
21.00	Escalation	
22.00	Wastages	
23.00	Supply of Drawings	
24.00	Site Order Book	
25.00	Progress Report and Daily Reports	
26.00	Employment of Engineers	
27.00	Security	
28.00	Job Site Regulations and Requirements	
29.00	Execution of Work during Night Time	
30.00	Fuel Storage Tanks	
31.00	Alterations and Omissions Variation = Quantities Extra Works	
32.00	Extension of Time	
33.00	Priority of Agreement, other Contract Documents and Drawings and Construction Documents	
34.00	Conditions under which work may be caused to be completed by Owner	
35.00	Use of Completed Portions or Items of Work	
36.00	Payments	
37.00	Security Deposit	
38.00	Period of Maintenance and Maintenance Certificate	
39.00	Responsibility of Safety	
40.00	Explosives	
41.00	Indemnity	
42.00	Insurance	
43.00	Labour Laws	
44.00	Confidentiality Title of Drawings and Technical Documentation	
45.00	Co-operation with Other Contractors	

<b>Article No</b>		
46.00	Storage	
47.00	Privileges	
48.00	Inventions and Patents	
49.00	Reports & Records	
50.00	Measurements	
51.00	Taxes	
52.00	Audit	
53.00	Independent Contractor	
54.00	Assignment	
55.00	Force Majeure	
56.00	Termination	
57.00	Miscellaneous	
58.00	Governing Laws	
59.00	Settlement of Disputes	
60.00	Notices	
61.00	Amendments	
62.00	Waiver of Breach	
63.00	Entire Contract	
64.00	Form of Bank Guarantee for Advance payment	
65.00	Form of Bank Guarantee for Security Deposit	
66.00	Form of Bank Guarantee for Earnest Money deposit	

## **GENERAL CONDITIONS OF CONTRACT**

### **1.00 DEFINITIONS**

- A. As used in the Contract including all documents contained in or referenced by the Invitation to Bid, the following terms shall have the meaning ascribed herein unless the context within which they are used clearly precludes such meaning. Terms and Expressions not herein defined shall have the same meaning as one assigned to them in the Indian Contract Act (Act IR of 1872) and failing that in the General Clauses Act (1897) and subsequent amendments thereof.
1. ACTUAL CONTRACT VALUE means the Final cost of the Work including the cost of Extra Work(s) or adjustments due to changes in works.
  2. APPROVAL of OWNER/ENGINEER shall mean the written approval by OWNER/ENGINEER of a document or drawing or other particulars or matters in relation to the Contract.
  3. "BID" shall mean the offer tendered by BIDDER to the OWNER to do and perform all work and other things necessary to complete the work required for the Project / Portion of the Project as described in the Bid document.
  4. "BIDDER/TENDERER" shall mean the party submitting a bid for the work.
  5. "BID DOCUMENTS" shall mean a document prepared and issued to the Bidder by OWNER which will contain, among other things a description of the Work to be performed, schedule of quantities and the time schedule for completion of work.
  6. "CLEAR DAYS" shall mean consecutive days without interruption for week ends or holidays and shall include the day on which the notice/request is received.
  7. "CONSTRUCTION EQUIPMENT" shall mean all machinery, plant, apparatus, parts, appliances, instruments, articles and things required for erection, construction and completion of the work required for the Project or any Portion thereof and the operation thereof, including supply of maintenance items, spare parts and consumables etc. required therefore.
  8. 'CONTRACT' shall mean and include the Invitation to Bid, Instruction to Tenderers, Offer / bid (initial/modified), the General Conditions, the Specifications, Drawings, Special Conditions and Bulletins, if any, and the Letter of Intent /Work Order/ Supply Order/the Agreement entered into by the parties including mutually agreed subsequent amendments/ changes, if any.
  9. "CONTRACTOR" shall mean the Bidder whose Bid has been accepted and shall include his/ her/its/their heirs, executors, administrators, legal representatives, successors and assigns.
  10. "CONTRACT DRAWINGS" shall mean and include the designs, blue prints or other documents of a similar nature which show or illustrate the character and nature of the work to be performed which are supplied by Owner enclosed with the Bid Document or available with the Owner for inspection by the Bidder or Drawings issued by the Owner during the execution of Contract.
  11. "CONTRACT VALUE" shall mean the amounts as stipulated in the Letter of Intent/Work Order / Supply Order/Agreement which amount represent the estimated total cost of the work to be performed by CONTRACTOR under the CONTRACT.
  12. "EFFECTIVE DATE OF THIS CONTRACT" shall mean the date of issue of Letter of Intent/ Supply Order/Work Order unless otherwise specified.
  13. "ENGINEER" shall mean person/persons nominated by or authorized by OWNER among other things to administer the Contract and / or supervise the work under the Contract.
  14. "IN PLACE" shall mean the work or any items of Work being fully completed / installed and completely incorporated as determined by ENGINEER/OWNER whose decision in this regard shall be final, binding and conclusive on the Parties.
  15. "LETTER OF INTENT" shall mean the acceptance by the OWNER of the Bid tendered by CONTRACTOR and the award there under of the work to be performed in accordance with the terms and conditions of CONTRACT.

16. "MONTH" when used for the purpose of calculating a period of time, shall mean the period from the day of one month to the corresponding day of the next calendar month if such day exists, or, if not, to the last day of the next calendar month.
  17. "OWNER" shall mean KIOCL Limited having its Registered Office at Second Block, Koramangala, Bangalore - 560 034, Karnataka, India and include its Lawful successors and assigns.
  18. PERIOD OF MAINTENANCE shall mean a period of Twelve continuous months or any other period, if specifically stipulated in the Special Conditions calculated from the date the whole work, is "IN PLACE" as certified by ENGINEER/OWNER.
  19. "PORTION" shall mean that part or parts of the work as identified in the Contract and shall include all aspects of such part or parts as are included in the Contract.
  20. "RUPEES" or "Rs" shall mean Rupees, the currency of India.
  21. "SITE" shall mean the actual place or places where the work is to be done by the Contractor and/or services are to be performed under the Contract as notified / indicated by OWNER/ENGINEER.
  22. "SPECIFICATIONS" shall mean and include the descriptions/type, quality, standard of materials and work, general arrangements, statements of technical data, performance and/or documents of a similar nature which are included in the Contract and /or issued or supplied by OWNER relating to the Work.
  23. "SUPERVISION" shall mean the direction and control in relation to the execution of work and instructions given by OWNER/ENGINEER or their authorized representative in relation thereto under the terms of the Contract.
  24. "WORK" shall mean and include all works operations / activities to be performed by CONTRACTOR as set out and/or required in the CONTRACT in accordance with the Bills of Quantities, Specifications and Drawings or to be implied there from or incidental thereto or as may be specified during the execution of work or required in such explanatory/additional instructions and drawings as shall, from time to time, during the progress of the work hereby contracted for, be issued by OWNER/ENGINEER.
  25. "WRITING" shall mean any information, request, notice, data contained or given in any manuscript, typewritten or printed statement or other document under seal or hand and includes telegrams, telexes, faxes and cables and words "In Writing" shall mean any document duly signed by any person authorized to represent CONTRACTOR and OWNER/ENGINEER.
- B. The words "Including" and "Include(s)" as used in this Contract are not to be construed as words of limitation, unless the context otherwise requires or unless a contrary intention otherwise appears in the matter.
  - C. Words imparting "Persons" shall include firms, companies, corporations and associations or of individuals, whether incorporated or not.
  - D. Word imparting the singular only shall include plural and vice-versa where the context so requires.
  - E. Word imparting masculine gender shall also include feminine gender and vice-versa where the context so requires.

## **2.00 EXPEDITIOUS COMPLETION**

It is understood and agreed by and between CONTRACTOR and OWNER/ENGINEER that time stipulated in the Contract is of the essence of this CONTRACT and accordingly CONTRACTOR shall do and perform his obligations in such a manner as not to hinder, delay or impair timely completion of the works awarded to him or interfere with, delay or impair those Portions or items of work undertaken by other contractors or interfere with, delay or impair the timely completion of the entire Project.

## **3.00 TENDER**

- A. CONTRACTOR acknowledges that this Bid contained all the information required in the Invitation to Bid, specifically for CONTRACTOR's firm lumpsum price or his firm unit price for the work to be performed.

CONTRACTOR agrees that the price(s) as awarded include any / all cost components including profits, overhead charges and other costs including but not limited to labour, equipment, materials, insurance, transportation facilities and plant not specified to be furnished by OWNER or others. CONTRACTOR further agrees to do all things necessary to complete such Work in a proper and workman-like manner to the satisfaction of the ENGINEER/OWNER.

- B. CONTRACTOR is expected to review and is chargeable with knowledge of the information contained in or referred by BID DOCUMENTS or that available with OWNER and available for examination by the CONTRACTOR.

#### **4.00 SITE CONDITIONS.**

- A. CONTRACTOR by tender of his Bid, acknowledges that he has obtained / collected available data and satisfied himself as to the nature and location of the Work, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of materials, equipment, availability of labour, water, electric power, roads and uncertainties of weather, rock soil or other physical condition on the Project, the configuration and strata and sub soil conditions, the character and quantity of Equipment, Plant and facilities needed preliminary to and during the execution and maintenance of the Work and all other matters which can in any way affect the work or the cost thereof under this Contract.
- B. CONTRACTOR further acknowledges that he has obtained and collected data and satisfied himself as to the character, quantity of any and sub surface materials including ground water, to be encountered. CONTRACTOR has considered all exploratory work done on the Project by the OWNER and other firms / agencies in relation to the work to be performed by CONTRACTOR as well as information presented by the Specifications, Contract Drawings or other documents relating to the work. Any failure of CONTRACTOR to acquaint himself with all the available information will not relieve him of the responsibility for assessing the difficulty or estimating the cost of successfully performing the work. Representations made but not so expressly stated and for which liability is not expressly assumed by ENGINEER or OWNER in this Contract and any information on or opinions concerning soils and sub-surface conditions or other matters furnished by or for ENGINEER/OWNER or any understanding, opinions or representations made or expressed by any of their officers, employees or agents, during or prior to the execution of this Contract shall be deemed only for the information of CONTRACTOR to be appropriately checked and utilized by the CONTRACTOR in preparation and submission of the bids and CONTRACTOR shall have no claim against ENGINEER or OWNER resulting from such information.
- C. Contractor shall be deemed to have acquainted himself with the regional / local geology. CONTRACTOR shall bear full responsibilities for deductions and conclusions as to the nature or conditions of the rock and other materials to be excavated, the difficulties of making and maintaining the required excavations and of doing other work affected by the geology of the site of works.
- D. In addition to the information acquired by himself from the tender documents supplied by Owner, the Contractor shall be free to conduct any further test to ascertain / obtain /acquaint additional information to take care of site / soil condition at his cost for which the OWNER shall extend facilities to the extent possible.

#### **5.00 STANDARDS OF WORKMANSHIP**

- A. CONTRACTOR guarantees that all workmanship shall be in accordance with Contract Specifications / Indian Standard Specifications and shall conform to any applicable laws, codes and/or regulations and such workmanship shall at all times be satisfactory in all respects to ENGINEER / OWNER. Should ENGINEER/OWNER determine that any work performed by CONTRACTOR fails or is likely to fail to meet the Specifications / Standard of workmanship, ENGINEER / OWNER may direct CONTRACTOR to remove such inferior work and replace such work at Contractor's sole expense, failing which the OWNER/ENGINEER may get it replaced / executed at the Contractor's risk and cost.
- B. The decision of ENGINEER/OWNER in this regard shall be final and binding upon the Parties.

#### **6.00 DIRECTION AND PERFORMANCE OF WORK**

- A. While CONTRACTOR shall be free to employ his own methods of executing the Work in accordance with the Specifications, OWNER/ ENGINEER shall have the right to direct, instruct and supervise CONTRACTOR and through him any subcontractors, to provide the maintenance of effective working organizations, to ensure the performance of the Work in the time, sequence and manner as determined by

OWNER/ENGINEER, to carry out proper correction and remedy of any and all defects discovered in the work or materials used and to make modifications in construction or the cost of construction in accordance with available construction methods. The decision(s) of OWNER / ENGINEER in these respects shall be final and binding upon the Parties. Nothing herein shall be interpreted as creating any direct relationship between the OWNER/ ENGINEER and the Sub-Contractor or the OWNER/ ENGINEER and the Employees / labour force of the Contractor / Sub- Contractor.

- B. 'i) CONTRACTOR shall employ a competent Manager for the Works and supervisory staff who shall be constantly on the works site and shall give their whole time to the execution and supervision of the Work. Such Manager shall have full authority to represent CONTRACTOR in all matters pertaining to this CONTRACT and the performance of the work hereunder and all directions and notice given to him shall be as binding as if given to CONTRACTOR.
- ii) CONTRACTOR shall employ on the work only such persons as are careful, skilled and experienced in their several trades. CONTRACTOR agrees to remove employees/ labour force engaged on the Work covered by this CONTRACT who are found to lack necessary skill, expertise or care by the ENGINEER/OWNER. CONTRACTOR shall not engage / utilise employees of OWNER, any other Contractor or any subcontractor without obtaining a written release from the party affected. CONTRACTOR shall be solely responsible for employees removed, discharged by him or leaving his employment for any reason whatsoever.
- C. CONTRACTOR shall check all materials and labour to be utilised for the Work and shall keep in convenient form such full and detailed accounts and records as may be necessary for proper financial management under this CONTRACT and the system shall be such as is found satisfactory by the OWNER/ENGINEER. Such records shall include accurate records of all personnel employed, materials brought, material consumed for the Work including the Work executed by the sub-contractor.
- D.
1. Materials and Workmanship will be subject to inspection and approval by ENGINEER / OWNER at all times as considered appropriate. However, such approval / inspection shall not relieve CONTRACTOR of his obligation to perform the Work properly. CONTRACTOR shall co-operate in permitting access for inspection at all places where Work is done, is being done or material is stored and shall provide sufficient, safe and proper facilities at all times for carrying out such inspection of the work by the OWNER/ENGINEER or such personnel / agencies as may be appointed for the purpose.
  2. OWNER may appoint an inspection and testing agency whose representative (hereafter referred to as "INSPECTOR") will carry out shop, laboratory and/or field inspection. CONTRACTOR shall furnish such INSPECTOR or ENGINEER / OWNER all facilities for carrying out such inspection at his own cost. However, OWNER will bear his own cost in relation to the tests carried out by them or through their Inspector as a part of their quality control checks.
  3. All materials and workmanship shall be of the respective kinds described in this CONTRACT and in accordance with ENGINEER's instructions and shall be subjected from time to time to such tests as ENGINEER may direct at the place of manufacture or fabrication or on the work site or at all or any other mutually agreed location. CONTRACTOR shall at his cost, provide such assistance, instruments, machines, labour and materials as are usually required for examining, measuring, any testing of the work and its quality, weight or quantity of any materials used and shall supply samples of materials before incorporation in the Work for testing as may be selected and required by ENGINEER free of cost.
  4. Unless otherwise provided, the cost of all tests as stipulated in this Contract shall be borne by CONTRACTOR excepting as brought out in the following sub para 5.
  5. If any test(s) are ordered by ENGINEER, which are either.
    - i. not so intended or provided for in the CONTRACT or become necessary due to lack of clear-cut results obtained from the tests carried out by the Contractor as per its quality control programme.
    - OR
    - ii. though so intended or provided for, is ordered by ENGINEER to be carried out by an independent agency at any place and if the test results establish that the material/ workmanship conform to the Contract Specifications.

In all cases, the decision of the Engineer in this regard shall be final, binding and conclusive on the Parties.

- E. Prior to the completion of the work by CONTRACTOR and the acceptance thereof by ENGINEER/OWNER, the work shall remain under the custody and care of and at the risk of CONTRACTOR and CONTRACTOR shall be responsible for all loss and damage to the Work and equipment in the CONTRACTOR's care and custody and shall repair, renew and make good at his own expense, all such loss and damage however caused including theft, pilferage etc.
- F. CONTRACTOR shall repair, restore and replace at his own cost any other work or any personal property (including, but not limited to, tools and equipment) belonging to OWNER, which CONTRACTOR or his sub-contractors or suppliers or their respective employees or invitees, may damage or destroy while on the Project.
- G. CONTRACTOR shall co-operate with ENGINEER/OWNER for ensuring the performance of the Work and in the preparation of all documents and reports necessary and advisable for such purposes.
- H. CONTRACTOR shall co-ordinate the work of his sub-contractors and his material suppliers and in scheduling of materials so that the construction and completion of the work will progress smoothly, expeditiously and economically.
- I. All materials and workmanship supplied by CONTRACTOR shall conform to the CONTRACT including any Specifications, Drawings or other documents and shall be so delivered, stored and handled by CONTRACTOR as to prevent any loss, damage, adulteration, deterioration or avoidable wastage.
- J.
  - 1. CONTRACTOR shall, at any time during progress of the work or within the Period of maintenance upon written notice from ENGINEER/OWNER to do so, proceed to remove from the site all materials and structures determined by ENGINEER/OWNER to be defective, deficient or otherwise unsatisfactory, whether assembled or not and dismantle all parts of the work which shall stand rejected as unsound, improper, unsatisfactory or which in any way fail to conform to the requirements of this Contract and replace all such work, materials and/or structures at his cost in time periods stipulated by the OWNER/ENGINEER.
  - 2. The cost and risk of such removal and replacement shall be borne solely by CONTRACTOR. If CONTRACTOR does not remove and replace such rejected / condemned work, materials and structures within a reasonable time as specified in OWNER/ENGINEER'S written notice, OWNER may remove or have the same removed and replace the same and charge the cost thereof to CONTRACTOR, who will continue to bear the risk thereof.
  - 3. Further more, if any applicable law, ordinance, statute or regulation creates a more extended liability for faulty materials, structures or workmanship, then the provisions of such law ordinance, statute or regulation shall apply to the Contractor/Sub-contractor in the same manner and the same extent, as applicable to the OWNER, as a part of contractor's obligations under the Contract.
- K. All equipment operated by CONTRACTOR for the work shall be of such type, standard & quality and shall be operated, inspected, serviced, maintained and equipped with spares in such a manner, as to ensure effective and smooth operation with a minimum of down time acceptable to ENGINEER / OWNER whose decision in this regard shall be final and binding upon and conclusive on the Parties. If any piece of Equipment fails to meet the aforesaid requirement, CONTRACTOR shall at his sole expense and using his own resources replace it with appropriate equipment. The Contractor shall have no claim whatsoever for any additional compensation owing to this replacement.
- L. Any work not specifically mentioned but that may reasonably be inferred from the Specifications, Contract Drawings or other documents as being required to produce the intended result shall be performed and completed by the CONTRACTOR without raising any claim or demanding any additional remuneration.
- M. If by reason of any emergency, accident or failure or other event occurring in or in connection with the work or any part thereof either during the execution of the work or during the period of maintenance, any remedial or other item of work or repair, shall in the opinion of ENGINEER/ OWNER, be urgently necessary for ensuring security and stability of the work and CONTRACTOR is unable or unwilling at once to do such work or repair, ENGINEER / OWNER may have such work or repair executed by others as ENGINEER/OWNER considers necessary. If the work or repair so done in work which, in the opinion of ENGINEER, CONTRACTOR was liable to at his own expense under this CONTRACT all costs and charges incurred in so doing shall on demand be paid by CONTRACTOR to OWNER or may be deducted by OWNER from any

moneys payable to CONTRACTOR, provided that ENGINEER/OWNER shall soon after the occurrence of any such emergency as may be reasonably practicable notify CONTRACTOR thereof in writing.

N.

1. OWNER / ENGINEER or any person authorised by him shall, at all times, have access to the work and to the location of any work to and all workshop and places where any part of work is being carried out and Contractor shall afford every facility and every assistance to the OWNER/ENGINEER or any person authorised by them in obtaining the right to such access.
2. No items of work shall be covered up or put out of view without a notice to and the prior approval of ENGINEER and CONTRACTOR shall afford full opportunity for ENGINEER to examine and measure any item of work which is about to be covered up or put out of view such as examination of the foundations before other permanent item(s) of work are placed thereon. CONTRACTOR shall give due notice to ENGINEER whenever any such item(s) of work such as foundation is/are ready or about to be ready for examination by ENGINEER.
3. If no such notice is given or prior approval obtained, CONTRACTOR shall, at his cost, uncover any part or parts of the Work or make openings in or through the same as ENGINEER may, from time to time, direct for ENGINEER's examination or check and later on reinstate and make good such part or parts to the satisfaction of ENGINEER.

If any such part or parts have been covered up or put out of view after compliance with the requirements set forth above and are found by the ENGINEER to be executed in accordance with this CONTRACT, the expenses of uncovering, making openings in or through reinstating and making good the same shall be reimbursed by OWNER. If, however, the Contractor did not notify the Engineer or obtain Engineer's prior approval and / or the work is not in conformity with the Contract provision, the cost of opening up and reinstating shall be borne by the Contractor.

O.

1. If the Contract provides for the use of any special description of materials to be supplied from OWNER's store or if it is required that CONTRACTOR is required to use certain stores to be provided by OWNER (such materials and stores and the prices to be charged thereof as hereinafter mentioned being so far as practicable for the convenience to CONTRACTOR but not so has in any way to control the meaning or effect of this CONTRACT), CONTRACTOR shall be supplied with such materials and stores as required from time to time to be used by him for the purpose of this CONTRACT only (this being calculated from Specification, Contract drawings etc). The value of the full quantity of materials and stores so supplied shall be charged by the OWNER at the rates specified in the schedule of items and shall be to CONTRACTOR's account. All materials supplied to CONTRACTOR shall continue to remain the absolute property of OWNER and shall not on any account be removed from the location of the Work and shall at all times be opened to inspection by ENGINEER. Any such materials unused and in perfectly good condition at the time of the completion or termination of this CONTRACT shall be returned to OWNER's store by a notice in writing but CONTRACTOR shall not be entitled to return any such material except with such consent and shall have no claim for compensation on account of any such material so supplied to him as aforesaid, being left with him or for any wastage in or damage to any such materials. In cases under the CONTRACT, such materials and stores are to be supplied to CONTRACTOR free of charges, all unused and waste materials shall be returned to OWNER by CONTRACTOR at CONTRACTOR's own cost and CONTRACTOR shall be responsible to account fully for such materials and stores.
2. All materials (eg. stone and other materials) obtained in the work of dismantling, excavation etc. will be considered to be OWNER's property and issued to CONTRACTOR (if he requires the same for the Work) at rates approved by OWNER. If these materials are not required by CONTRACTOR, they will be disposed off by the OWNER to the best advantage of OWNER.
3. The operation of the preceding paragraphs shall not be deemed to imply any approval by ENGINEER for the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by ENGINEER. The OWNER shall permit the Contractor to arrange such materials on his own.

**P. SITE CLEAN UP**

During the progress of the Work and as required by ENGINEER, CONTRACTOR shall keep areas occupied by him and access to such areas in the neat, clean and safe condition and free from accumulation of packing or crating materials, waste and rubbish. Rubbish and combustible wastes shall be removed on a daily basis. On the completion of any item of work, CONTRACTOR shall promptly fill up any pits and excavations and remove from such area all of his equipment and surplus material to approved areas. Upon completion of the work, CONTRACTOR shall before final payment is made, at his own expense and to the satisfaction of ENGINEER, dispose off or remove from the work site all equipment, rubbish, unused material and other equipment and materials belonging to him or used under his direction during the performance of the Work and shall leave the premises (including the quarters of CONTRACTOR employees) in a neat and clean condition satisfactory to ENGINEER.

In the event of CONTRACTOR's failure to comply promptly with any of the foregoing, OWNER/ENGINEER may, after serving a written notice of three (3) days to the CONTRACTOR, cause the same to be accomplished by any other agency at CONTRACTOR'S expense and the cost of the same may be deducted from any money due to or becoming due or payable to CONTRACTOR whether under this or any other contract. Furthermore, the said clause shall apply should it become necessary for OWNER to have the complete or part of worksite cleared as indicated above at the expense of CONTRACTOR.

ENGINEER/OWNER shall, under no circumstances, be held liable for any loss or damage caused to CONTRACTOR'S property left at the worksite owing to its removal and / or disposal through public auction or otherwise of such materials and property as deemed fit by the OWNER.

**7.00 SURVEY LINES AND GRADES**

- 7.01 As considered appropriate, ENGINEER will establish reference bench marks from which CONTRACTOR shall establish such other points, lines, elevations etc. as he may require for the proper execution of the Work.
- 7.02 CONTRACTOR shall be responsible for the true and proper setting out of the works and for the correctness of the positions, levels, dimensions and alignments of all the parts of the works and for the provisions of all necessary instruments, appliances and labour in connection therewith. If, at any time during the progress of the work any error appears or arises in the positions, levels, dimensions or alignments of any part of the works, CONTRACTOR, on being required to do so by ENGINEER, shall at his own expense, rectify such error to the satisfaction of ENGINEER unless such error is based on incorrect data supplied in writing by ENGINEER / OWNER, in which case the expenses of rectifying the same shall be borne by OWNER. The checking of any setting out or anyline or level by ENGINEER shall not in any way relieve CONTRACTOR of his responsibility for the correctness thereof and CONTRACTOR shall carefully protect and preserve all the bench marks, side rails, pegs and other things used in setting out of the works till such time required and thereafter remove with the prior written approval of the ENGINEER.

**8.00 CONSTRUCTION SCHEDULE**

- 8.01 Construction schedule shall be submitted by the Contractor to the OWNER/ENGINEER within fifteen days of award of Work or as agreed upon, indicating therein the different component items of work and time required for completion of each component item month wise and season wise, so as to complete the work in all respects within the stipulated period of completion.

CONTRACTOR shall also furnish his approach to work, indicating briefly his method of working, his plans in tackling the construction programme vis-a-vis the capacity of equipments he proposes to deploy on various components of work etc. CONTRACTOR shall obtain approval of ENGINEER / OWNER to the above. They shall mutually decide upon updating any changes in agreed Schedule including crashing required and maintain joint records in connection with all important activities. In case of any disagreement, the decision of ENGINEER shall be final and binding on the Parties.

- 8.02 CONTRACTOR shall submit a weekly schedule of work, identifying each item of work, for acceptance by ENGINEER and submit regular progress reports, as directed by the ENGINEER on all activities in an approved format.

## **9.00 WORK IN MONSOON**

- 9.01 The execution of works may entail working in the monsoon also. CONTRACTOR must maintain minimum labour force as may be required for the job and plan and execute the construction works according to the prescribed construction schedule. Even if the work has to be stopped in the monsoons, the Contractor shall maintain to the satisfaction of Engineer requisite manpower and facilities to undertake regular monsoon protection works and for tackling any contingencies that may arise.

## **10.00 POWER**

- 10.01 Power required for the work to the extent available may be provided free of cost at one point. Contractor shall draw power from this point complying all applicable statutory rules and regulations. CONTRACTOR shall strictly follow all safety rules and regulations. CONTRACTOR shall comply with the Indian Electricity Act & Rules, Factories Act & Rules and all other relevant statutes.
- 10.02 No electricity will be supplied to staff quarters and labour colony of CONTRACTOR and quarry sites.
- 10.03 CONTRACTOR shall make his own arrangements for drawing the distribution lines from the tapping point at the sub-station. ENGINEER/OWNER does not guarantee continuous power and CONTRACTOR shall make alternate arrangements by stand-by generating set etc. No claim whatsoever on this account shall be entertained by ENGINEER/ OWNER.
- 10.04 ENGINEER/OWNER will not be liable for any loss or damage to CONTRACTOR's equipment as a result of variation in voltage or frequency or interruptions of power supply or for any other losses to CONTRACTOR arising there from. CONTRACTOR shall ensure that electrical equipments deployed by him are such that the aggregate power factor does not fall below 0.9 at his premises.
- 10.05 CONTRACTOR shall ensure that there is no wastage or misuse of power. If any wastage or misuse of power is detected, the quantity so wasted or misused shall be charged to CONTRACTOR at rates to be decided by ENGINEER/ OWNER, whose decision shall be final and binding.

## **11.00 WATER**

- 11.01 Water for construction purposes will be supplied by ENGINEER/OWNER at one point free of cost. CONTRACTOR shall make his own arrangements for pumping and storing the required quantity of water and for the necessary distribution pipelines. Any shifting of this distribution pipelines necessary in the course of the work, whether necessiated by his work or others, must be done at his own cost and no claim on this account will be entertained. CONTRACTOR shall make judicious use of the water and shall ensure that there is no wastage and leakages etc.
- 11.02 CONTRACTOR shall have to make his own arrangements for requirement of drainage and water for his works, staff and labour. All the precautions shall be taken so as not to pollute the water source or surroundings.
- 11.03 ENGINEER reserves the right to draw water from the distribution lines laid down by CONTRACTOR, should the same be required for any other works or needs.

## **12.00 LAND AND HOUSE**

- 12.01 No housing accommodation for CONTRACTOR or his personnel will be made available by ENGINEER/OWNER. CONTRACTOR will have to make his own arrangements with due regard to the weather and monsoon conditions, as applicable.
- 12.02 Land to the extent available may be allocated for temporary use for site office, stores, bar bending yards near the construction site, free of cost on the basis of recommendation of ENGINEER. For other requirements such as labour camps, staff quarters etc., CONTRACTOR will make his own arrangement. CONTRACTOR shall maintain the areas allotted to him in a neat and clean condition as required by ENGINEER/OWNER. CONTRACTOR shall make his own arrangements of water, sanitary and power facilities for labour camps/staff quarters. On completion of the work, all temporary structures must be removed by CONTRACTOR with approval of ENGINEER and the land brought to its original condition. OWNER reserves the right, on completion of work, to take over any or all of the structures put up by CONTRACTOR at terms to be mutually agreed upon.

### **13.00 QUARRIES AND APPROACH ROAD**

- 13.01 Where required, CONTRACTOR shall locate suitable quarries for stone aggregate, sand and borrow area and satisfy himself of the quality and quantity of the materials required for construction. CONTRACTOR shall make his own arrangements for obtaining the quarries and establish source of required materials of appropriate quality.
- 13.02 CONTRACTOR shall not extract any materials from OWNER's land except with the prior written consent of OWNER. Permission to quarry materials from OWNER's land for bonafide use of the works may be given to the extent of the quantities available at the sole discretion of OWNER, failing which the Contractor shall make his own arrangements.
- 13.03 Washing of sand/gravel, stone aggregate for concrete/filter material shall be done where the percentage of deleterious materials is more than that specified in the Bureau of Indian Standards (BIS) specification.
- 13.04 The approach roads to work site, quarries, borrow areas and dumping areas should be laid /provided and maintained by CONTRACTOR, wherever necessary, at his cost.
- 13.05 Removal of overburden in quarries and its disposal, wherever necessary shall be done by CONTRACTOR at his cost, in conformity with the direction of the ENGINEER/State Authorities as applicable.
- 13.06 Construction of roads and/or the use of existing roads by CONTRACTOR for the transportation of materials, machinery, supplies, fuels etc., and to serve for all his other requirements to and from the Work site or on the work, shall have the prior approval of ENGINEER/State Authority.

### **14.00 COMMUNICATION LINES AND NATURAL WATER RESOURCES**

- 14.01 CONTRACTOR shall not close any communication lines without the permission of ENGINEER. CONTRACTOR shall also not obstruct any natural lines of drainage without the prior written approval of ENGINEER.

### **15.00 COMMUNICATION FACILITIES**

- 15.01 CONTRACTOR shall provide, maintain and operate at his cost all communication facilities as may be necessary for safe and efficient performance of the Work.

### **16.00 PERMITS & LICENCES**

- 16.01 CONTRACTOR shall secure and pay for all licences and permits which he may require to comply fully with all laws, ordinances and/or regulations of the proper public authorities in connection with the performance of the Work.
- 16.02 CONTRACTOR shall be responsible for all losses / damages and shall defend, indemnify and save harmless OWNER and ENGINEER in accordance with Article 41 hereof. Indemnify OWNER from and against all damages and liability which may arise out of the failure of CONTRACTOR to secure and pay for any such licenses and permits or to comply fully with any and all applicable laws, ordinances and regulations.

### **17.00 LEVIES FOR ENTRY INTO PORT AREA AT MANGALORE**

- 17.01 It is the responsibility of CONTRACTOR to pay the Port authorities the charges levied for entry of men and vehicles into Port area at the rates fixed by them.

### **18.00 MATERIALS**

- 18.01 The work is for complete job including labour and supply of all materials. Unless otherwise specified, CONTRACTOR shall make his own arrangements for cement, steel, stone ballast, stones, stone chips, sand and other construction materials as required for satisfactory completion of the Work.
- 18.02 In case of materials supplied by OWNER, the CONTRACTOR shall ensure that only the required quantities of materials are indented and got issued. Any such materials remaining unused and in perfectly good condition at the time of completion or termination of the contract shall be returned to

OWNER at a place or places as directed by ENGINEER, by a notice in writing under his hand, if he shall so require. Credit for such materials will be given at the issue rate. The CONTRACTOR shall bear the cost of loading, transporting and unloading and incidental charges for returning the surplus materials from and to the stores where from they were issued or as directed by the OWNER/ENGINEER.

- 18.03 All CONTRACTOR's materials shall be generally inspected and approved by ENGINEER from time to time at the source of supplies. CONTRACTOR shall provide all facilities for such inspection free of cost to ENGINEER. Notwithstanding any inspection at the source, the ENGINEER shall have liberty to reject any material brought to site that does not conform to the specifications without being liable for compensation.
- 18.04 All rejected materials shall be removed from the Site by CONTRACTOR at his own cost, as directed by the ENGINEER.
- 18.05 CONTRACTOR shall at his own cost, properly store all materials brought by him to the work site to prevent damage owing to rain, wind, direct exposure to sun etc., and also from theft, pilferage etc. CONTRACTOR shall maintain stocks of all materials required by him for proper and speedy execution of the work without any interruption.
- 18.06 All materials, construction plants and equipments, once brought by CONTRACTOR within the project area, are not to be removed from there without the prior written authority from ENGINEER.
- 18.07 ASSISTANCE FOR PROCUREMENT OF MATERIALS
- A. CONTRACTOR shall be responsible for procurement of all materials required for satisfactory completion of the work. However, OWNER may at his discretion, release suitable quantity of materials available with OWNER. CONTRACTOR shall make necessary arrangements for payments, transportation etc., for the quantity of materials so released.
- B. Where the CONTRACT is terminated owing to any default on the part of CONTRACTOR, CONTRACTOR shall pay all transport charges incurred for transporting any materials to any other place to be nominated by OWNER.

## **19.00 SPECIFICATIONS**

- 19.01 All technical documents regarding construction of works are given in the Metric System and all works should be carried out as per Drawings and Specifications. Where the Specifications are not available in the drawings, the Specifications given in the Bid Documents shall apply. Where the Specifications are not available in either of the above, B.I.S. Specifications (Latest editions, unless otherwise specified) will be followed. For points not covered by the B.I.S. Specifications and/or the portion thereof and if no mention be made therein, the written instructions of ENGINEER shall be binding on CONTRACTOR.
- 19.02 If CONTRACTOR performs any work in a manner contrary to the Specifications or Drawings or any of them and without such reference to ENGINEER, he shall bear all the costs arising or ensuring there from and shall be responsible for the losses to ENGINEER/OWNER.

## **20.00 RATES**

The rates to be quoted are intended to provide for works duly and properly completed in accordance with the General and Special Conditions of Contract, Specifications and Drawings together with such alterations and/or additions as may be required/ordered and without prejudice to the generality thereof and shall include for details of construction which are obviously and fairly intended and which may not have been specifically referred to in these documents and working drawings, but are essential for execution and satisfactory completion of work including those of minor nature and shall be deemed to include and cover but not limited to inter-alia the following:

- i) The cost of all superintendence and labour, materials, tools, plants, equipments, mobilising and demobilising of equipments, fuel, lubricants, fixtures, transport charges, temporary and permanent works and quarrying charges, testing, screening, washing, handling of materials, stacking and removal charges of any rejected materials, water and power arrangements and satisfactory maintenance of the same for the full and satisfactory completion of the Work intended.

- ii) All fees, duties, royalties, rent and compensation to OWNER for surface damage or taxes and impositions payable to local authorities in respect of land and structures for all materials supplied for the Work or other duties/or expenses for which CONTRACTOR may become liable or may be put to under any provision of the law for the purpose of or in connection with the execution of the Contract including levies payable on all transactions.
- iii) Watching and lighting arrangements as required for satisfactory performance.
- iv) Setting of work profiles etc. and of construction, repair and upkeep of all central lines, bench marks and levels and pegs thereof, including provision of masonry/concrete pillars showing the central lines of structures, grid lines and levels and maintenance and protection of the same including providing fencing etc., throughout the period of Contract.
- v) Erection, maintenance and removal of temporary works and building.
- vi) Supply of samples, moulds, cost of testing of materials, works etc.
- vii) Working in all conditions including in/under water, liquid, mud, foul conditions etc., and shall also include bailing or pumping out water from the foundations, basement or any other place of construction collected from rains or any other source whatsoever, de - sludging and allied operation, at any stage of work and any time till the completion of Work including all suspension period and delays whatsoever, cost of curing including pumping of curing water wherever necessary.
- viii) Diversion and draining works, protection works, temporary facilities, bridges, gangways, drainage etc.
- ix) Work at all depths in foundations below Ground level and in superstructures up to all heights above ground level including all lifts and descents involved at any other place of work and disposal areas.
- x) Cost of all leads unless otherwise specified in the Specification / Schedule.
- xi) Provision of centering, scaffolding, strutting props etc.
- xii) All materials and labour required for fencing and protection against risk of accidents, for providing necessary planking, strutting gangway with handrails, gumboots, helmets, safety belts etc., during the progress of work.
- xiii) Diversion including compensation payable for barrier arrangements for the safety of the public or employees during the execution of works, all sanitary and medical arrangements for labour camps as may be prescribed by ENGINEER.
- xiv) Works in all shapes, straight, inclined or curved and all sizes as shown or as required.
- xv) Clearing the sites after the completion of the work of all debris, left out construction materials, machine, equipment, temporary houses, offices, stores, workshops, labour colonies etc., including micro dressing the area in neat and clean shape.
- xvi) Such other incidental charges or contingencies as may have been provided in the Specifications or as necessary or levied

**21.00 ESCALATION**

- 21.01 No escalation will be admissible on rates, materials, labour, royalties, taxes etc. on any account unless otherwise specifically provided for.

**22.00 WASTAGES**

- 22.01 For the purpose of accounting of ENGINEER/OWNER supplied materials either free or on cost recoverable basis, the following wastages shall be allowed which shall include loss of cement in bags / transit and in case of steel, rolling margin as per BIS, invisible wastage and cut pieces of less than 3 meters in length or plates of size less than 0.5 sq. meter subject to one dimension not exceeding 300 mm.

- a) **CEMENT** : 5 % (Five Percent)

The theoretical quantity of cement to be used in the work shall be calculated on the basis of the norms indicated for consumption of cement or as per the authorised design mix. Where such norms are not given, norms available in CPWD Schedule showing quantity of cement to be used in different items of works shall be applicable. Where CPWD norms are not available, it shall be calculated as directed by the ENGINEER.

In the event of it being discovered that the quantity of cement used is less than the quantity ascertained as herein before, the cost of quantity of cement not so used, shall be recovered from the CONTRACTOR on the basis of actual landed cost plus 50 % as compensation/damages, provided such works are technically accepted. Shortage of cement after accounting as stipulated above will be charged at rate specified in Article 22.02.

**b) REINFORCED STEEL :**

5% on the actual quantity incorporated in the works and measured for payment by ENGINEER/OWNER.

**c) STRUCTURAL STEEL:**

(i) Sections 5% on the quantity computed based on DOD lists.

(ii) Plates 7.5% on the quantity computed based on DOD lists.

**d) STEEL PIPES:**

3% on the quantity computed from the measurements/ "As made" drawings.

**e) C.I. PIPES:**

5% on the quantity computed from the measurements/ "As made" drawings.

**f) OTHER MATERIALS:**

5% unless otherwise specified.

22.02 Quantity in excess of the above specified wastages shall be charged at actual cost +50%, unless otherwise specified.

22.03 The surplus / balance steel beyond the maximum permissible limits allowable for invisible wastages including rolling margin shall be returned to OWNER.

**23.00 SUPPLY OF DRAWINGS**

23.01 OWNER / ENGINEER will provide drawings and other information for start of the first item of work. Subsequently, ENGINEER will maintain a flow of drawings and other required information sequenced and timed in such a manner as to permit CONTRACTOR to execute the work in accordance with the scheduled and subsequent scheduled releases.

23.02 Only three sets of drawings will be supplied by ENGINEER. Failure on the part of ENGINEER to provide drawing or maintain flow of drawings as stated above will attract the provision of Article 32 hereof.

23.03 One set of drawings shall be returned to ENGINEER/OWNER showing therein all additions and alterations in the process of execution. This set of drawings will show the "As Built Installation". However, all alterations, additions or deletions from the original drawings must have the prior approval in writing of ENGINEER.

**24.00 SITE ORDER BOOK**

24.01 CONTRACTOR shall provide at Site, a "Site order" book. The pages in the site order book shall be machine numbered. CONTRACTOR shall be responsible for obtaining all the orders entered in the order and within 24 hours, he or his authorised agent shall sign the orders issued by ENGINEER and shall carry them out strictly in accordance with these instructions and compliances shall also be recorded by CONTRACTOR and got duly countersigned by ENGINEER or his authorised agent.

**25.00 PROGRESS REPORT AND DAILY REPORTS**

25.01 Progress reports shall be submitted by CONTRACTOR in the proforma furnishing the details as required by ENGINEER.

25.02 CONTRACTOR shall submit daily reports of the following by 10 AM:

- i) Total number of labourers in the working areas.
- ii) Total number of local labourers in the working areas.
- iii) List of equipments deployed and worked.
- iv) Progress Report of the previous day.

**26.00 EMPLOYMENT OF ENGINEERS**

26.01 To ensure proper execution of work, CONTRACTOR must engage adequate number of full time qualified engineers possessing the requisite experience.

**27.00 SECURITY**

27.01 CONTRACTOR shall make his own arrangements to protect his materials, plant and equipment from pilferage, vandalism, accidental damage or loss of any kind and ENGINEER/OWNER shall not be responsible for any such occurrences.

**28.00 JOB SITE REGULATIONS AND REQUIREMENT**

28.01 CONTRACTOR shall comply with and be bound by all regulations and requirements established by ENGINEER governing CONTRACTORS, Sub-contractors and their employees engaged in the work under this CONTRACT or in preparation for such work.

**29.00 EXECUTION OF WORK DURING NIGHT**

29.01 When the work is carried out at night or in obscured daylight, adequate arrangements for floodlighting the working area shall be made by CONTRACTOR at his own cost and got approved by ENGINEER.

**30.00 FUEL STORAGE TANKS**

30.01 The storage of gasoline (petrol) and other fuel oils or other inflammable materials shall conform to the regulations for such storage issued by the concerned Statutory Authorities / State Government and Central Government Authorities.

**31.00 ALTERATIONS AND OMISSIONS - VARIATIONS IN QUANTITIES - EXTRA WORKS**

- A. Revisions to the Specifications and Drawings, may, from time to time during the progress of work, be issued by ENGINEER. Additionally, ENGINEER may, from time to time without invalidating CONTRACT make changes in the Specification and issue additional instructions and/or require additional work to be performed or delete certain work.
- B. The quantities contained in the "Schedule of Units and Quantities" are only approximate and subject to variations. Payment will be based upon the actual quantities as certified by ENGINEER and at the unit rates stipulated in the CONTRACT
- C. Rates for extra, altered or substituted work (hereinafter called "extra works") shall be determined as set forth hereinafter in consultation with OWNER. If the rates for extra work are not specifically provided for in the CONTRACT the rates will be derived by ENGINEER from the rates for similar items/clauses of works as are specified in the CONTRACT. The decision of ENGINEER in this regard shall be final and binding on and conclusive to Parties. In the absence of similar items of work, the rate for extra work/item shall be established by ENGINEER on the basis of inputs and its cost as determined by ENGINEER, plus 15% towards Contractor's overheads, profits etc.

- D. CONTRACTOR shall not be entitled to any claim because of any variation (plus or minus) in the Contract Value above the Estimate Value of Contract.
- E. CONTRACTOR shall expeditiously perform such work as is directed by ENGINEER regardless of whether such work requires variation of quantities or includes extra work with payment being made in accordance with this CONTRACT.

**32.00 EXTENSION OF TIME**

- A. If CONTRACTOR believes that the work is being delayed owing to the failure of OWNER to keep a commitment, he shall immediately notify ENGINEER/OWNER in writing, if ENGINEER/OWNER is satisfied that the reasons stated by CONTRACTOR have a bearing on the time schedule and that such delay cannot be made up by CONTRACTOR by rearranging the sequence of items of work, a change in method, by compressing the execution time required through improved supervision, more manpower or more effective equipment, by paying incentives or in any other way, then OWNER shall extend, by written notice, the said specified required completion time for a period of time equivalent to any such delay on receipt of request from the CONTRACTOR along with full justification. The decisions of OWNER in this regard shall be final and binding on the Parties.
- B. The Contractor shall not delay / discontinue execution of job for want of grant of extension of time.
- C. Such extensions shall be in full settlement and satisfaction of any or all claims which CONTRACTOR may have against OWNER for damages or losses as a result of any such delay.

**33.00 PRIORITY OF AGREEMENT, OTHER CONTRACT DOCUMENTS AND DRAWING AND CONSTRUCTION DOCUMENTS.**

- A. All Documents and Drawings forming part of the CONTRACT are intended to be read together and to be complete and in agreement.
- B. If conflicts between documents arise the documents shall prevail in the order stipulated below:
  - 1. Special conditions shall prevail over General Conditions.
  - 2. Specifications shall prevail over Tender Drawings.
  - 3. Description of items in "Schedule of Units and Quantities" read in conjunction with preamble to the Schedule, if any, shall prevail over those provided in Specification and Drawings.
  - 4. Between two issues of the same document, the document revised or re-issued as of the later date shall prevail.
  - 5. All Specifications, Drawings and other documents shall be interpreted in conformity with these General Conditions of Contract as supplemented by and/or modified in the Special Conditions.
  - 6. Wherever a Lumpsum Price for the Work is stipulated in the Award, the quantities stipulated in the "Schedule of Units and Quantities", if any, shall be disregarded in construing this Contract, and CONTRACTOR shall perform all the Work as envisaged in this CONTRACT including the Specifications and Drawings and CONTRACTOR shall be paid only the amount of such Lumpsum price in consideration thereof.
- C. All dimensions marked on the Drawings are to be taken as correct in preference to measurements by scale.
- D. CONTRACTOR shall bring to the attention of ENGINEER any obvious errors, omissions or discrepancies in the Specifications, Contract Drawings or other documents and shall request clarification from ENGINEER, whose decision shall be final and binding on and conclusive to the Parties. If work is done incorrectly because of failure to obtain this clarification from ENGINEER, CONTRACTOR shall correct such work at his own expenses.

**34.00 CONDITIONS UNDER WHICH WORK MAY BE CAUSED TO BE COMPLETED BY OWNER.**

- A. If CONTRACTOR shall, at any time in the judgment of ENGINEER, fail to engage enough properly skilled workmen or materials, plant, equipment, tools, facilities and supplies of the proper quality or fail to execute the Work with promptness and diligence or fail to make prompt payment to sub contractors or for materials or labour or fail in performance of any of his obligations within the intended meaning of this CONTRACT as provided for herein and shall within three (3) days after receipt of written notice from ENGINEER, fail to remedy or commence to remedy any such defaults or shall interfere with or disrupt or threaten to interfere with or disrupt the work or any portion thereof in any manner, whether by reason of labour disputes, shortage of labour, materials or otherwise or if the presence of CONTRACTOR or his agents or employees upon OWNER's premises or the fact that this CONTRACT has been made results in acts by third parties, which interfere with or disrupt the work or any portion thereof in any manner, whether by reason of a labour dispute, picketing, boycotting or otherwise or if a petition in bankruptcy shall be filed by or against CONTRACTOR or CONTRACTOR shall become insolvent, OWNER may, in any such event, terminate this CONTRACT with immediate effect or may exclude CONTRACTOR and his employees, sub-contractors and agents from the work or any portion thereof without terminating this CONTRACT.

Having exercised either of the above options, the work may be finished by the agencies to be appointed by OWNER and for that purpose the agency so appointed shall be authorised to enter upon the premises and take charge of all materials, tools, equipment, facilities and supplies thereof and may have the work so taken over finalised by whatever method OWNER may deem expedient.

- B. CONTRACTOR shall not be entitled in any such event as aforesaid to receive any further payment under this CONTRACT until such Work shall be wholly finished and maintained as determined by OWNER and all Payments shall be subject to Article 36F Final Payment. CONTRACTOR shall be entitled to payment only for the work performed by CONTRACTOR prior to the time of termination or exclusion as provided in paragraph A above. However, should any excess cost, expenses or any damages be incurred in completing the work, CONTRACTOR shall pay OWNER, such excess cost, expenses and/or damages as may be determined by OWNER whose decision in regard to the quantum shall be final and binding on and conclusive to the Parties and such cost, expenses or damages may be deducted or retained by OWNER in accordance with the provisions of the CONTRACT.
- C. Any unused materials, tools, equipment, facilities and supplies furnished by CONTRACTOR for the work shall be returned to CONTRACTOR following the completion thereof.
- D. The cost and expense of completing the work, as herein provided and any damage incurred through default of CONTRACTOR shall be audited and certified by OWNER, whose certificate thereof shall be final and binding and conclusive to the Parties.
- E. In the event this CONTRACT is terminated as aforesaid, CONTRACTOR shall not be released from any costs, expenses, penalties or damages which may be assessed against or levied on the CONTRACTOR.

**35.00 USE OF COMPLETED PORTIONS OR ITEMS OF WORK**

- A. Whenever, as determined by ENGINEER/OWNER any portion or item of work performed by CONTRACTOR, is in a condition suitable for use and require such use in the best interests of the Work, OWNER may cause the same to be taken over and used. Such use by OWNER shall, in no case, be construed as constituting final acceptance and shall neither relieve CONTRACTOR of any of his responsibilities under the CONTRACT nor act as a waiver of any of the conditions thereof provided that CONTRACTOR shall not be liable for the cost of repairs, rework or renewals which may be required owing to ordinary wear and tear resulting from such use.
- B. If, as a result of CONTRACTOR's failure to comply with the provisions of this CONTRACT. CONTRACTOR has to perform work on the portion or item of work being used, such operation or use may continue until such portion or item of work can without injury to the WORK be taken out of service provided that the period of such operation or use pending completion of appropriate remedial action, shall not exceed twelve (12) months, unless otherwise mutually agreed upon in writing between the parties hereto. Nothing contained herein shall prejudice the right of OWNER or ENGINEER for claiming damages for any delay in completion of work or extra costs involved.

- C. CONTRACTOR shall not use any permanently installed equipment unless such use is approved in advance by ENGINEER in writing on such terms as may be stipulated in such approval. Where CONTRACTOR's written request is granted for the use of certain equipment, CONTRACTOR shall properly use and maintain the equipment. Upon completion of its use and at his expense, repair, if necessary, such equipment to the satisfaction of ENGINEER.

## **36.00 PAYMENTS**

### **A. ADVANCE PAYMENTS**

- I. Normally mobilisation advance will not be paid. However, in exceptional case, if the same is agreed to, the OWNER may approve payment of the following advance to CONTRACTOR to the extent and under the conditions as may be stipulated by OWNER at his entire discretion. Such advance payments shall carry interest at State Bank of India's lending rate.
1. Initial mobilisation advance against Bank Guarantee in favour of the OWNER from any Nationalised / Scheduled Bank and in the format approved by the OWNER.
  2. Equipment brought to site against hypothecation of the said Equipment:- Advance against machinery shall be made only in respect of those machines, the requirement of which is approved by ENGINEER as being minimum and The value in case of second hand machinery being subject to the assessment of ENGINEER/OWNER.
  3. The recovery of mobilisation advance and the advance against old/new machinery shall be made on prorata basis during the period of Contract, starting from when 10% of the value of the Work is completed and recovered in full by the time 90% of the Work is completed. The OWNER, however, reserves the right to recover the full advance from the payments due to the CONTRACTOR in the event of termination of the CONTRACT or such circumstances that the necessity of advances is otherwise classified.
  4. The value of Bank Guarantee furnished against mobilisation advance shall progressively stand reduced to the extent recoveries are effected from the bills of CONTRACTOR towards the mobilisation advance.
- II. Advance to the extent of 75 % against cost of imperishable materials brought to the work site for incorporating in the Work, shall be paid at the sole discretion of the Owner.

Advance against materials to be incorporated in the item of Work brought to the work site shall be recovered from running bills prorata according to quantity of work billed for including wastage, if any.

### **B. PROGRESS PAYMENTS**

1. OWNER shall pay to CONTRACTOR for such WORK as is performed by CONTRACTOR and as certified by ENGINEER as being acceptable in accordance with the provisions of this CONTRACT. Payment shall be based upon the quantity of work IN PLACE as per terms stipulated in the CONTRACT.
2. CONTRACTOR shall submit to OWNER a fortnightly bill showing the unit of work IN PLACE and the amounts claimed to be payable to CONTRACTOR in accordance with the terms and conditions of this CONTRACT. In case of a lumpsum CONTRACT, OWNER may stipulate in the CONTRACT Progressive Payments as a percentage based on the Progress Work as certified by ENGINEER. Upon receipt by ENGINEER of said bill, ENGINEER shall review such bill and within Fifteen (15) clear days from submission shall,
  - a) Approve such bill and certify the same for payment  
OR
  - b) Approve part of the bill(s) and certify that part for payment, request further clarifications / revisions from CONTRACTOR as to the balance and upon receipt of satisfactory clarifications/revisions from CONTRACTOR, certify the balance for payment  
OR
  - c) Reject the entire bill subject to further clarification/ revisions from CONTRACTOR. Upon receipt by ENGINEER of satisfactory clarification/revisions to such rejected bill, ENGINEER shall approve and certify the clarified/revised bill for payment.

Payment for all bills shall be due from OWNER, except as otherwise provided herein within Fifteen (15) Clear Days of receipt by Owner ENGINEER's certification of such bills.

3. All equipment and materials brought to the Worksite by CONTRACTOR when so brought shall be deemed to vest in OWNER without prejudice to the obligation of CONTRACTOR for their safe custody. CONTRACTOR shall intimate to ENGINEER all equipment and material brought to the Worksite at the time of bringing to the Worksite and the said Equipment and materials shall be subject to check by ENGINEER/OWNER at all times. No such equipment or materials shall be removed from the Worksite by CONTRACTOR without the express written permission of OWNER.
4. Delay of Payment shall not be construed as a breach of this CONTRACT
5. OWNER shall, in accordance with the Indian Income Tax Laws, withhold from payments to be made to CONTRACTOR as advance Tax, all amounts as may be required.
6. Payments made pursuant to this CONTRACT by Owner shall not be construed as the waiver of any breach hereof by CONTRACTOR or as an acceptance of defective Work or items of work not in conformity with the terms and conditions of this CONTRACT.
7. Progress payments shall be made as the Work progresses based upon quantities of Work In Place, less appropriate adjustment.

OWNER or his designated representatives may verify the progress of the work at any time. CONTRACTOR shall co-operate in permitting access, for verification of the progress to all places where work is being done or material is stored and shall provide safe and proper facilities at all times for such verification of progress.

8. Ad hoc / Advance of 75% will be released against the work done as assessed by the ENGINEER and on submission of progressive bill by the CONTRACTOR, pending detailed scrutiny/ verification by the ENGINEER. This will be adjusted fully on passing and releasing the full payment against the bill.
9. All progressive payments shall be regarded as advances against final payment and not as payment for Work done.

#### **C. LIQUIDATED DAMAGES**

1. The date(s) of completion of Work as stipulated in the CONTRACT including various intermediate milestones fixed by Engineer shall be of the essence of CONTRACT.
2. If, CONTRACTOR fails to complete the Work or the component part of the work within the stipulated completion date or the component milestone stipulated in the CONTRACT, CONTRACTOR shall pay to OWNER, as liquidated damages for such default (unless extension of time is granted by Engineer as provided under Article 32.0 hereof) for everyday which lapse between the date prescribed thus for and the actual date of completion of such component part of the Work, the amounts determined on the basis of the percentages of the apportioned value of such components as specified herein.
  - i) Delay for first 20 days 0.1 % per day.
  - ii) Delay beyond first 20 days 0.15% per day.

Subject to maximum of 5% of the total CONTRACT VALUE.

3. OWNER reserves the right to waive the liquidated damages either in part or in full at its sole discretion.
4. The payment or deduction or retention of such liquidated damages shall not relieve CONTRACTOR of the obligations and liabilities under this CONTRACT.
5. OWNER may recover, deduct or retain the liquidated damages as assessed above from any moneys due or which may become due or payable to CONTRACTOR in this or any other Contract or in any other manner decided by the OWNER.
6. Liquidated damages as provided herein above relate only to delay in the performance by CONTRACTOR of the Work or component part thereof and the parties hereto agree that such amount for such events are pre-estimated, fair and reasonable and acceptable to the parties.

7. Component Completion Milestone as used in this Article shall mean that point at which the respective component is sufficiently complete to permit CONTRACTOR or others to proceed with subsequent steps towards completion of the Work or any portion thereof without interference from or with the immediate area or an adjacent area. OWNER/ENGINEER shall be the sole judge as to whether such Component Completion Milestone has been achieved and his decisions shall be final, binding and conclusive. Nothing in this paragraph shall be deemed to limit CONTRACTOR's obligations to complete all components to the satisfaction of ENGINEER/OWNER.

#### **D. CONSEQUENTIAL DAMAGES**

In case of Turnkey contracts, the Contractor will have to compensate the Owner towards Consequential Damages suffered by Owner due to time and / or cost overrun in completion of the turnkey projects. This will be in addition to the Liquidated Damages leviable.

#### **E. CLAIMS AND DEDUCTIONS**

1. CONTRACTOR shall send to ENGINEER/OWNER once each month an account giving full and detailed particulars of all claims for any additional expense(s), to which CONTRACTOR may consider himself entitled and of all Extra Work(s) ordered by ENGINEER which he has executed during the preceding month and no claim for payment for any such work(s) will be considered as has not been included in such particulars, provided always that OWNER shall be entitled to authorise payment to be made for any such work(s), notwithstanding CONTRACTOR's failure to comply with this condition of CONTRACT, if he has, at the earliest practicable opportunity, notified OWNER / ENGINEER in writing that he intends to make a claim for such work.
2. All costs, charges or expenses, which OWNER may have paid to others for which, under this CONTRACT, CONTRACTOR is liable and all costs, claims, charges, damages or expenses to which OWNER and/or ENGINEER are entitled to receive from CONTRACTOR under this CONTRACT may be retained by OWNER from or set-off against any money payable by OWNER to CONTRACTOR under this CONTRACT or any other contract, without prejudice to the right of OWNER and/or ENGINEER, to recover such costs, claims, charges, penalties or expenses as otherwise provided by or under law.

#### **F. FINAL PAYMENT**

Final payment of all sums due to CONTRACTOR shall be made as follows:

1. On completion of the work(s) and acceptance thereof, CONTRACTOR shall prepare a final bill of all the works performed by him under the CONTRACT and submit the same for certification by ENGINEER within a period of 60 days of the completion of Work.
2. ENGINEER shall verify the bill and check the admissibility thereof under the CONTRACT, determine the liquidated damages, consequential damages, if any, recoverable from CONTRACTOR, make appropriate adjustment for all recoveries and advances and certify to OWNER that the work under CONTRACT is duly performed by CONTRACTOR and the amount, if any, payable or recoverable from CONTRACTOR.
3. Final payment of all sums, if any, due to CONTRACTOR shall be made by OWNER.. OWNER having always the right to recheck the bill of CONTRACTOR fully.
4. CONTRACTOR shall provide ENGINEER and OWNER with a certificate satisfactory to both that all privileges, liens, claims, obligations and liabilities against or chargeable to ENGINEER or OWNER have been fully paid, satisfied and released and that CONTRACTOR has no claim(s) against OWNER and/or ENGINEER

#### **37.0 SECURITY DEPOSITS**

- A. Within 15 days of the award of the CONTRACT, CONTRACTOR shall deposit with OWNER an initial Security Deposit of 3% (three percent) of the Contract Value and the same shall be in cash or in any of the following forms.

1. Demand drafts drawn in favour of OWNER from any Nationalised / Scheduled Bank.

2. Bank Guarantee in prescribed Proforma (attached), executed by a Nationalised Bank / Scheduled Bank. If the bank guarantee is from a non-Indian Bank, the same shall be got stamped at Bangalore, Karnataka State, India, by the Foreign Banker's Associates / Subsidiaries or agents in India, in accordance with the laws applicable in State of Karnataka, India.
- B. If CONTRACTOR fails to provide the security within the period specified, such failure will constitute a breach of the Contract and the Owner shall be entitled to award the work elsewhere at CONTRACTOR's risk and cost.
  - C. No claims shall lie against OWNER either in respect of interest due, if any, on security deposits or depreciation in their value.
  - D. As and by way of additional security, from every progressive bill of CONTRACTOR, Security Deposit at the rate of 7% of the Gross Value of such bill as determined before payment shall be retained by OWNER or CONTRACTOR can submit additional Security Deposit by Bank guarantee.
  - E. Whenever the Security Deposit is furnished by CONTRACTOR in any form other than cash or Demand Draft, CONTRACTOR shall be entirely responsible to keep such form of security deposit enforceable by OWNER by extending the validity thereof, if required, by removing the restrictions thereon, within one month before the due date of expiry and keep them enforceable until released by OWNER after the period of maintenance.
  - F. The Security Deposit shall remain at the entire disposal of OWNER as a security for satisfactory execution and completion of the Work(s). OWNER shall be at liberty to deduct and appropriate from the Security Deposit such damages (liquidated or otherwise) and other dues and recoveries from CONTRACTOR under this CONTRACT and the amount by which Security Deposit is reduced by such appropriations will be made by further deductions from CONTRACTOR's subsequent bills to that extent as to make up the Security Deposit to the full.
  - G. Notwithstanding anything to contrary, in as much as the Security Deposit is to be in cash with OWNER, OWNER shall be entitled to enforce any of the approved forms of Security Deposit furnished by CONTRACTOR at any time and realise cash thereof irrespective of whether or not CONTRACTOR disputes such right. However, if CONTRACTOR obtains the extension of the time limit, if any, for the enforceability of such form of Security Deposit and intimates OWNER of such extension within one month before expiry, OWNER may not enforce such form of Security Deposit, unless it has otherwise become enforceable.
  - H. On due and satisfactory performance of all the obligations of CONTRACTOR under this CONTRACT including completion of work in all respects carrying out the obligations of CONTRACTOR during Period of Maintenance, Security Deposit shall be released by OWNER subject to recoveries, deductions and retentions there from as provided under the CONTRACT.

### **38.00 PERIOD OF MAINTENANCE AND MAINTENANCE CERTIFICATE**

- A. To the extent that the work shall, at or as soon as practicable after the expiry of the Period of Maintenance, be delivered upto OWNER in as good and perfect condition (fair wear and tear excepted) to the satisfaction of OWNER, as that, in which they were at the commencement of the Period of Maintenance, CONTRACTOR shall execute all such work of repair, modification, reconstruction, rectification and making good of defects, imperfections, shrinkages or other faults as may be required on CONTRACTOR in writing by ENGINEER / OWNER during the Period of Maintenance or within fourteen days after the expiry as a result of an inspection made by or on behalf of OWNER prior to its expiry. The decision of OWNER shall be final, conclusive to and binding on the Parties in this regard.
- B. All such work shall be carried out by CONTRACTOR at his own expense if the necessity thereof shall, in the opinion of ENGINEER/OWNER, be due to the use of material or workmanship not in accordance with this CONTRACT or to neglect or failure on the part of CONTRACTOR to comply with any obligation expressed or implied on CONTRACTOR's part under this Contract. If, in the opinion of ENGINEER/OWNER, such necessity is due to any other cause, the value of work shall be ascertained and paid for as if it was Extra Work. In case the CONTRACTOR fails to keep the required work force at Site during maintenance period, the OWNER reserves the right to change / replace any portion of the work without waiting for the CONTRACTOR, if the same is essential for keeping the operations running. The cost of such work will be recovered from the CONTRACTOR.

- C. If CONTRACTOR fails to do any such work as aforesaid required by OWNER/ENGINEER, OWNER shall be entitled to have such work carried out at CONTRACTOR's own cost and OWNER shall be entitled to recover from CONTRACTOR the cost thereof or may deduct the same from any money payable to CONTRACTOR or otherwise.
- D. CONTRACTOR shall, if required by ENGINEER/OWNER in writing, search for the cause of any defect, imperfection or fault under the directions of ENGINEER. Unless such defects, imperfection or fault shall be one, for which CONTRACTOR is not liable under this CONTRACT, the cost of the work carried out by CONTRACTOR is not liable under this CONTRACT, the cost of the Work carried out by CONTRACTOR in searching as aforesaid, shall be borne by OWNER. But if such defect, imperfection or default shall be one for which CONTRACTOR is liable as aforesaid, the cost of work carried out in searching as aforesaid, shall be borne by CONTRACTOR and he shall, in such case, repair, rectify and make good such defect, imperfection or default at his own expenses to the satisfaction of ENGINEER/OWNER. The decision(s) of ENGINEER / OWNER in these respects shall be final and binding on and conclusive to the Parties.
- E. The work shall not be considered completed, until the work shall have been completed and maintained to ENGINEER/OWNER's satisfaction. The Maintenance Certificate shall be given by ENGINEER fourteen days after the expiration of the period of maintenance on the request of CONTRACTOR, or as soon thereafter, as any work ordered during such period, shall have been completed to the satisfaction of OWNER/ENGINEER and full effect shall be given to this Article, notwithstanding any previous entry on or the taking possession of or using thereof.
- F. No certificate other than the Maintenance Certificate referred to above shall be deemed to constitute approval of any work or other matter in respect of performance of this CONTRACT or any part thereof or the accuracy of any claim or demand made by CONTRACTOR or of Extra Work, having been ordered by OWNER or should any other certificate conclude or prejudice any of the powers of ENGINEER/OWNER.
- G. ENGINEER/OWNER may by any certificate make any correction or modification in any previous certificate, which shall have been issued by him and shall have the power to withhold any certificate if the work or any item hereof is not being carried out to his satisfaction.
- H. No claim by CONTRACTOR for any matter or thing arising out of or in connection with this CONTRACT or the execution of the Work shall be considered unless CONTRACTOR shall have made a claim in writing in respect thereof before giving of the Maintenance Certificate.
- I. Period of Maintenance shall be calculated from the date of completion of the Works certified by ENGINEER
- J. The period of maintenance shall cover a period of twelve (12) months (unless otherwise specified in the (CONTRACT) after a final certificate of the completion of the work has been issued by ENGINEER as stated above.

### **39.00 RESPONSIBILITY FOR SAFETY**

**CONTRACTOR shall comply safety regulations as per statutory requirement under The Factory Act and other relevant statutes.**

- A. The safety of all persons employed by CONTRACTOR and his SUB-CONTRACTORS on the work site or any other person who enters upon the work site for reasons relating to this CONTRACT, shall be the sole responsibility of CONTRACTOR and CONTRACTOR shall defend, indemnify and save harmless OWNER and ENGINEER from / and against any actions, claims, damages, cost resulting from death to or injuries sustained by these person(s), on the work site. Statutory regulations for safety of workers shall be followed and the workmen provided with necessary safety gadgets.
- B. Contractor shall at all times maintain good order among his employees and shall not employ on the work site any unfit person or anyone not skilled in the work assigned to him Contractor shall confine his employees and all other persons, who come on to the work site at Contractor's request or for reasons relating to this CONTRACT, and confine his equipment to that portion of the Work where

the work under this CONTRACT is to be performed on roads leading to and from, such work sites and to any other area which ENGINEER/OWNER may permit CONTRACTOR to use.

- C. CONTRACTOR shall take all reasonable measures and precautions at all times to prevent injuries to or the death of any of his employees or any other person who enters upon the project. Such measures and precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workman and others against any conditions on the portion of the WORK which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by CONTRACTOR, his sub-contractors, OWNER / ENGINEER or other CONTRACTOR or other persons.
- D. It is understood that if employees of ENGINEER/OWNER perform any acts for the purpose of discharging the responsibility undertaken by CONTRACTOR in this article, whether requested to perform such acts by CONTRACTOR or not, such employees of OWNER or ENGINEER, while performing such acts, shall be considered the agents and servant of CONTRACTOR, subject to the exclusive control of CONTRACTOR

#### **40.00 EXPLOSIVES AND HAZARDOUS MATERIALS.**

- 40.01 The character, storage and method of use of all explosives / hazardous materials shall be subject to and in conformity with any applicable laws, ordinances and/or regulations. In case of blasting, the hours during which blasting operations may be carried out shall be subject to the approval of ENGINEER/OWNER.

#### **41.00 INDEMNITY**

- A. CONTRACTOR shall defend, indemnify and save harmless ENGINEER and OWNER, their Officers, Directors, Servants and Employees from and against any and all expenses and cost (including court cost and attorney's fees), damages or liabilities of any kind or nature whatsoever, which may arise out of or result from any claims, demands, causes of action and/or judgements stated or obtained by or threatened to be instituted by CONTRACTOR, his employees, other contractors, any third party or any person or persons including, but not limited to, property damage or the death or injury of any person resulting from any defects, faults, shortages, errors, omissions, neglect, whether deliberate or accidental or wilful misconduct of CONTRACTOR, his agents, servants or sub-contractors, in the use, occupation, ownership of property or the performance of any work undertaken by CONTRACTOR, his agents, servants or sub-contractors. These obligations shall survive the completion, cancellation or termination of this CONTRACT.
- B. Should ENGINEER or OWNER deem himself insecure as to the ability of CONTRACTOR to so indemnify, ENGINEER/OWNER may demand that CONTRACTOR promptly provide reasonable assurance in form and substance satisfactory to OWNER, of CONTRACTOR's ability to comply with the provisions of this Article. CONTRACTOR's failure to provide such satisfactory assurance shall be a sufficient ground for termination of this CONTRACT OWNER shall have the final decision of the satisfactoriness of any such assurance and OWNER's decision shall be final and binding.

#### **42.00 INSURANCE**

- A. CONTRACTOR shall maintain and require his sub-contractors to maintain in full force and effect, from Insurance Companies in India acceptable to OWNER from the time of execution of this CONTRACT.
  - 1. All such Insurances as are required by law concerning the ownership, operation or use of any motor vehicles, specifically including liability insurance protection
  - 2. Such Insurance(s) in such amounts to cover such risks as shall be required by OWNER.
  - 3. CONTRACTOR shall obtain and maintain such Insurance(s) as will protect CONTRACTOR and OWNER from claims under any employee benefit laws, workmen's compensation laws and disability benefit laws, from claims of damages because of bodily injury, occupational sickness or disease or death of any of CONTRACTOR's employees resulting from or relating to the Work.
  - 4. CONTRACTOR shall obtain and keep in full force and effect Insurance(s) of such types and for such amounts as are required by Indian Laws, Ordinances or Regulations.

- B. CONTRACTOR shall submit copies of such policies and coverage for written approval by ENGINEER/OWNER.
- C. CONTRACTOR shall ensure that the insurer furnishes ENGINEER/OWNER with evidence of such Insurance(s), a copy of the issued policy and any amendments thereto and prompt notification of any cancellation or termination thereof. Should CONTRACTOR default in paying any premium when due, OWNER, without prejudice to other remedies set forth in this CONTRACT shall be at liberty to pay such premium and recover the same from CONTRACTOR.
- D. Any such insurance requirements are hereby established as the minimum policies and coverages which CONTRACTOR must secure and keep in force. CONTRACTOR shall, at all times, be free to obtain additional or increased coverage at CONTRACTOR's sole expense.
- E. The provisions contained within this Article are not intended and do not impair or in any manner limit the liabilities or obligation assumed by CONTRACTOR as may be set forth more fully elsewhere in this CONTRACT.

#### **43.00 LABOUR LAWS**

CONTRACTOR shall comply with any and all laws, ordinances, regulations and decisions of courts (which shall be deemed to be a part of this CONTRACT) concerning the health, sanitary arrangements, wages, welfare, safety and employment of any and all of his workers upon the work site or any portion thereof and shall exclusively bear the consequences of failure to comply therewith. CONTRACTOR shall indemnify and hold ENGINEER and OWNER harmless from any claims, fines or penalties which may be made against ENGINEER or OWNER as a result of CONTRACTOR's failure to fulfill these obligations.

Without limiting the generality of the foregoing, CONTRACTOR shall fully comply with the following:

- A. CONTRACTOR shall not employ children below the age stipulated under law.
- B. Minimum Wages Act: CONTRACTOR shall comply with the provisions of the Minimum Wages Act and any Rules made thereunder by any Government in respect of all employees employed by him in carrying out this CONTRACT. CONTRACTOR shall pay the employees wages not less than the minimum rates of wages, if any, fixed by such Government for that Category (including wages, payable for weekly holidays contemplated under the Minimum Wages Act).

CONTRACTOR, subject to the authority given to ENGINEER under the paragraphs of this Article and subject to OWNER's right to control access to the project, shall have full control of labour employed by CONTRACTOR on or about the work, with the power to employ and discharge and CONTRACTOR shall fulfil his obligations to pay or cause to be paid wages or compensations made applicable by any laws, ordinances or regulations promulgated by the Government of India or any State Government or local authorities. In the event of failure of CONTRACTOR to disburse wages due to his own and sub-contractors labour, the OWNER reserves the right to effect such payments directly and adjust the same against amount due to the CONTRACTOR.

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

CONTRACTOR shall ensure payment of minimum wages not only as existing at the time of award but also as may be notified by statutory authorities.

- C. CONTRACTOR shall comply with all the provisions of the Contract Labour (Regulation and Abolition) Act and the Rules made thereunder. CONTRACTOR shall get his establishment registered and/or obtain Licence, as the case may be, from the authorities declared under the said

Act and Rules and intimate OWNER before starting the work under this CONTRACT. If CONTRACTOR fails to obtain the licence before commencement of the work, ENGINEER/OWNER shall have the right to terminate this CONTRACT without any reference to CONTRACTOR and in such case CONTRACTOR shall be liable to pay all the expenditure and cost incurred or may be incurred owing to cancellation of this CONTRACT.

CONTRACTOR shall ensure, as provided in the said Act, that the disbursement of wages to his direct and indirect labour is made in the presence of the authorized representative of OWNER. CONTRACTOR shall give for this purpose prior notice to the authorized representative of OWNER at least 48 hours prior to the time of actual payment of wages regarding the date, place and time at which the disbursement of wages is to be made for his direct and indirect labour. CONTRACTOR shall also ensure that the payment to his indirect labour is made on the same date and time and at the same place where his direct labourers are paid. Further, the payment of wages by CONTRACTOR to his direct labourers shall be made only on working days and only at this place of work and not otherwise. In case the total strength of the direct and indirect labourers of all the work that CONTRACTOR is executing exceeds at any time the strength of the workers specified in his licence, it shall be CONTRACTOR's responsibility to ensure that his licence is modified for the increased strength prior to the engagement of such additional direct and indirect labourers.

- D. CONTRACTOR shall, at all times, indemnify OWNER against all claims for compensation under the provision of the Workman's Compensation Act 1923 (viii of 1923) or any other law for the time being in force by or in respect of, any workmen employed by CONTRACTOR in carrying out this CONTRACT and against all costs and expenses or damages incurred by OWNER in connection there with and without prejudice to any other means of recovery. OWNER shall be entitled to deduct from any money payable to CONTRACTOR (whether under this CONTRACT or any other contract) all money paid or payable by OWNER by way of compensation aforesaid or for costs or expenses in connection with any claim thereto and CONTRACTOR shall abide by the decision of OWNER as to the sum payable by CONTRACTOR under the provisions of this paragraph.
- E. In respect of labourers directly or indirectly employed on the work, CONTRACTOR shall provide at his costs, reasonable facilities for securing proper working and living conditions such as water supply, lavatories, bathing places, cleanliness etc. Where women labour is employed, urinals and lavatories shall be provided separately by CONTRACTOR for male and female workers as well as crèches for the infant children of women labourers. Labourers engaged on hazardous jobs and occupations shall be provided with necessary safety appliances by CONTRACTOR free of charge. CONTRACTOR shall provide hutments for labourers employed on the work.
- F. CONTRACTOR's establishment will be subject to inspection, investigation etc., by ENGINEER/OWNER for assuring proper and faithful compliance of the provision of this CONTRACT by CONTRACTOR with regard to the implementation of Labour Laws and other matters anticipated herein. CONTRACTOR shall abide by the decisions and orders of ENGINEER/OWNER with regard to any such matter and furnish, if required, necessary compliance report within the stipulated time.
- G. CONTRACTOR shall be responsible for the observance of the provisions of this clause by subcontractors employed by him in the execution of this CONTRACT.
- H. CONTRACTOR shall comply with the provisions of the Payment of Wages Act, 1936 and Rules made thereunder in respect of all employees employed by him in carrying out this CONTRACT.
- I. CONTRACTOR shall comply with all the provisions of Employees Provident Fund and Misc. Act 1952, Rules and Schemes made thereunder. CONTRACTOR shall get his establishments covered under the said Act, Rules and Schemes made thereunder and intimate to the OWNER the Account Number allotted or any other arrangement approved by the concerned authorities before starting working under this Contract. If CONTRACTOR fails to comply the aforesaid before commencing the work, ENGINEER/OWNER shall have the right to terminate this CONTRACT without any reference to the CONTRACTOR and in such cases, the CONTRACTOR shall be liable to pay to the ENGINEER/OWNER all the expenses and cost incurred or may be incurred owing to the cancellation of this CONTRACT. The ENGINEER/OWNER shall also have the right to recover any penalties levied by the concerned authorities for any failure on the part of the CONTRACTOR,
- J. The CONTRACTOR shall comply with all the Provisions of the Factory Act, Rules and Regulations made thereunder.

- K. The CONTRACTOR shall comply with all the provisions of the Maternity Benefit Act 1961 and Rules made thereunder in respect of female workers, if any engaged by them.
- L. The CONTRACTOR shall furnish all the information required by the OWNER monthly or at such intervals to enable the OWNER to satisfy himself that all labour and welfare measures prescribed by Law have been fulfilled by the CONTRACTOR from time to time.

**44.00 CONFIDENTIALITY: TITLE TO DRAWINGS AND TECHNICAL DOCUMENTATION**

- A. Title to all technical data including, but not limited to, Specifications, Drawings, Bills of materials, How Diagrams, Layout details and the contents thereof, furnished by ENGINEER to CONTRACTOR shall remain with ENGINEER or with OWNER as the case may be.
  - 1. Such data shall not be used or divulged to others by CONTRACTOR except to the extent necessary in connection with CONTRACTOR's performance hereunder.
  - 2. CONTRACTOR shall use his best efforts to prevent any disclosure of such data to others by CONTRACTOR's personnel and shall take all reasonable steps necessary to prevent such disclosures.
  - 3. At ENGINEER'S request, any Specifications, Drawings or other technical data furnished to CONTRACTOR by ENGINEER shall be returned to ENGINEER/OWNER upon
    - a) Complete or partial termination, as provided for herein, of CONTRACTOR's services:  
or,
    - b) Completion of the Work.
- B. CONTRACTOR shall not have any title in Specifications, Drawings, Bills of materials, Diagrams, Reports, Layout details, Memorandum as well as any other technical data and the contents thereof whether prepared by ENGINEER or CONTRACTOR and ENGINEER/ OWNER, as the case may be, shall have the full title thereof, such materials and data shall not be used or divulged to others by CONTRACTOR except to the extent necessary in connection with CONTRACTOR's performance hereunder.
- C. The provisions relating to confidentiality of technical data as set forth above shall not apply to technical data which
  - 1. In the case of data furnished to CONTRACTOR by ENGINEER were known to CONTRACTOR prior to the time they were furnished in and in the case of data prepared thereunder or by any third party under CONTRACTOR's direction, were known to CONTRACTOR or such third party prior to their preparation hereunder (except if CONTRACTOR and/or such third party are prohibited from disclosing such technical data by separate prior agreement) ; or
  - 2. Is or later becomes generally available to public; or
  - 3. Is received from third parties having a bonafide right to make such disclosure.
- D. CONTRACTOR, before making disclosure to third party of any of the information referenced in this Article, shall obtain a written commitment from such third party to abide by the provisions of this Article, Such commitments shall be approved by ENGINEER and shall expressly set forth the provisions contained in this Article and shall be signed by such third party,
- E. No part of this CONTRACT nor any information relating to the project or any portion thereof shall be made public by CONTRACTOR in any manner without the prior review and written consent of ENGINEER. In addition, CONTRACTOR shall not make public any information related to the progress of the work or any portion thereof.
- F. Obligations arising under this Article shall survive complete termination of this CONTRACT.

#### **45.00 CO-OPERATION WITH OTHER CONTRACTORS**

- 45.01 CONTRACTORS and his sub-contractors, if any, shall co-operate with OWNER/ENGINEER and other contractors on the project and shall so carry out their work so that other Contractors shall not be hindered, delayed or interfered with, in the progress of their work and so that the Work shall be properly and expeditiously completed. CONTRACTOR shall also plan his operations as to avoid interference with the operations of OWNER or other Contractors or sub-contractors on the work site any portion thereof or other items of work in the area. Where precedence of the work between various Contractors is involved, the decision of ENGINEER/OWNER shall be final and without recourse.

#### **46.00 STORAGE**

- 46.01 CONTRACTOR shall provide or cause to be provided all storage yards, transit sheds and warehouses necessary for the performance of his work at locations approved by ENGINEER / OWNER. Material supplies, equipment and plant stored by CONTRACTOR shall be effectively protected against pilferage and against damage by the elements. CONTRACTOR shall adopt all procedures, maintain all personnel and keep all records so that at all times CONTRACTOR can account for

- store receipts
- storage locations
- inventories
- disbursements
- final destinations

of all stored items received for CONTRACTOR's work on the Works or/ and portion thereof.

#### **47.00 PRIVILEGES**

- 47.01 CONTRACTOR shall also pay, satisfy and discharge liens and all claims, obligations and liabilities which may be asserted against ENGINEER or OWNER or his property by reason of or as a result of any acts or omissions of CONTRACTOR, his employees, representatives, licencees or suppliers or his sub-contractors, in connection with or relating to the performance of this CONTRACT.

#### **48.00 INVENTIONS AND PATENTS**

- A. If any officer or employee of CONTRACTOR, during the performance of the Work, makes any invention directly related to the project, such invention shall be promptly disclosed to ENGINEER and OWNER.
- B. CONTRACTOR agrees to indemnify, save and defend harmless ENGINEER/OWNER from and against any and all suits, legal proceedings, claims, demands, damages, costs and attorney's fees incidental to any infringement or to any claimed infringement of any patent or patents in the manufacture, sale or use of any materials or apparatus furnished by CONTRACTOR under this CONTRACT. ENGINEER and/or OWNER may be represented in any such or legal proceedings by attorneys of their own selection.

#### **49.00 REPORTS AND RECORDS**

- A. Within Fifteen (15) days of the award, Contractor shall submit to ENGINEER/OWNER, CONTRACTOR's programme, the content and form of which shall be satisfactory to OWNER / ENGINEER, showing the order of procedure and method in which he proposes to carry out the work and time limit and sequence of carrying out the work and shall, whenever required by ENGINEER/OWNER, furnish for his information particulars in writing of CONTRACTOR's arrangements for the carrying out of the Work and constructional plant and temporary works which CONTRACTOR intends to supply, use or construct as the case may be, The approval by ENGINEER/OWNER of such programme or the furnishing of such particulars shall not relieve CONTRACTOR of any of his duties or responsibilities under this CONTRACT.

- B. CONTRACTOR shall submit to ENGINEER/OWNER by the Fifth (5) day of each month for each part of his Work under this CONTRACT and in summary.
1. A month by month forecast and a historical record upto completion of his requirements and actual use of:
    - i. manpower by craft, type and position or other description.
      - materials and supplies including quantity on hand and delivery status.
    - ii. construction equipment and plant furnished by CONTRACTOR.
  2. A month by month forecast upto completion of the amount of work done and the amount remaining to be completed and all historical record of the work performed.
  3. Such other reports as ENGINEER/OWNER may from time to time specify.

## **50.00 MEASUREMENTS**

- A. The mode of measurement shall be in accordance with Bureau of Indian Standard Specifications as laid down in BIS 1200 unless otherwise specified to the contrary. In the event BIS does not specify any mode of measurement for a particular item of work, the same shall be measured as directed by ENGINEER/OWNER.
- B. ENGINEER shall, unless otherwise stated, ascertain the value and work done in accordance with this CONTRACT. ENGINEER shall, when he requires any part or parts or the work to be measured, give notice to CONTRACTOR who shall forthwith attend or send a qualified agent to assist ENGINEER or ENGINEER's representative in making such measurement and shall furnish all particulars required by either of them. Should CONTRACTOR not attend or neglect or omit to send such agent, then the measurement made by ENGINEER or approved by him shall be taken to be the correct measurement of the work.
- C. RECORDS OF MEASUREMENTS
- I. Progress payments of all Work in place will be on the basis of measurement sheet/books.
  - II. All pages of measurement books/sheets shall be machine numbered. All receipts and issues of measurement books/sheets shall be recorded in a register. The eventual return of all measurement books/sheets shall be recorded and carefully preserved.
- D. DETAILED MEASUREMENT
- All measurement shall be neatly written on the measurement books/sheets. Each set of measurements shall commence with entries stating
- a) Full Name of Work as given in the Contract.
  - b) Location of work.
  - c) Name of CONTRACTOR.
  - d) Date of CONTRACT entered into with CONTRACTOR.
  - e) Date of Commencement of work,
  - f) Date of completion of work.
  - g) Date of measurement.

At the end of measurements, dated signature, designation of the person, who recorded the measurements shall be made.

E. **CONTRACTOR'S SIGNATURE ON MEASUREMENT BOOK**

Measurements entered in the Measurement Book shall invariably be signed by CONTRACTOR or his authorised agent in token of his acceptance. Should CONTRACTOR fail to sign, ENGINEER shall note this in such Measurement Book and the measurements recorded by ENGINEER shall be final and binding on and conclusive to the Parties.

**51.00 TAXES**

51.01 CONTRACTOR shall pay all contributions, fees, taxes and premiums payable under all applicable laws relating to the employment and/or measured upon the payroll of employees engaged in the performance of work under CONTRACT and all sales tax, excise, octroi, royalty, transportation, privilege, occupational and other taxes and duties applicable to Equipment, materials and supplies furnished or work performed which CONTRACTOR is required by law to pay and shall keep harmless OWNER from liability for such contributions, premiums and taxes. Under no circumstances shall CONTRACTOR be reimbursed for any income taxes or corporate taxes, fees or levies.

**52.00 AUDIT**

- A. CONTRACTOR's accounts, related to the Work or any portion thereof shall be available for audit by designated representatives of OWNER at all reasonable times.
- B. Such representatives shall at all times be afforded proper facilities for inspection of CONTRACTOR's accounts and shall have access to CONTRACTOR's premises, work and materials, records, ledgers and vouchers of every description pertaining to CONTRACTOR's performance of this CONTRACT.

**53.00 INDEPENDENT CONTRACTOR**

53.01 In the performance of the work, CONTRACTOR shall act as an independent Contractor and not as agent or employee of ENGINEER or of OWNER.

**54.00 ASSIGNMENT**

- A. CONTRACTOR shall not assign this CONTRACT or sublet it in whole or in part without prior written consent of OWNER, nor shall CONTRACTOR assign any moneys due or to become due hereunder without the prior written consent of OWNER. Any permitted assignment of subletting under this CONTRACT shall not release CONTRACTOR from his obligation to perform and any assignee or sub-contractor shall be considered the agent of CONTRACTOR and, as between the parties, hereto, CONTRACTOR shall be and remain liable as if no such assignment or subletting had been made.
- B. Without restricting the foregoing, CONTRACTOR hereby agrees and undertakes to include in his contract(s) with sub-contractor(s), in their essence, all the terms and conditions of this CONTRACT.

**55.00 FORCE MAJEURE**

- A. Any delay, in or failure of performance of the CONTRACT by CONTRACTOR or OWNER shall not constitute defaults by such party or give rise to any claim for damages against it, if and to the extent such delay or failure of performance is caused by acts of God, acts of war or hostilities, acts or omissions of Government, invasion, revolution, civil commotion, blockade, embargo, sabotage, fires, severe earth quakes, typhoons, cyclones, lightning, plague, epidemic or other act, omission or circumstances, (excluding monsoon) which are beyond the reasonable control of the parties affected which they could not have reasonably foreseen and guarded against and which by exercise of reasonable care and diligence, they are unable to prevent (hereinafter referred to as Force Majeure). ENGINEER/OWNER shall be the sole judge to decide whether or not an event is Force Majeure and decision is final and binding. Monsoon season is not considered a FORCE MAJEURE event.
- B. The party affected by the occurrence of the event of Force Majeure shall promptly notify within 10 days of such occurrence to the other part hereto at its commencement and termination along with the copies of any documents, if any, showing the existing or termination of such event and its effect on the WORK. Delay occasioned by Force Majeure shall give rise to an extension of the time for performance of either party obligations under this CONTRACT commensurate with such delay.
- C. Should CONTRACTOR or OWNER be prevented from fulfilling his obligations as provided for under this CONTRACT by the existence of a cause of Force Majeure lasting continuously for a period of

forty five (45) days, the party which is so prevented shall prior to the termination of the Force Majeure condition and after the expiry of the said period of forty five (45) days have the option to terminate this CONTRACT without further liability to either party, except that CONTRACTOR shall be paid for the work performed upto the date of such termination.

## **56.00 TERMINATION**

Except as otherwise provided in Article 34, conditions under which the work may be caused to be completed, which Article, if applicable shall expressly, supersede the provisions of this Article, if either party hereto commits a breach of any of the terms and provisions contained in this CONTRACT and required to be observed/complied with on its part other than delay in payment or non-payment by OWNER and CONTRACTOR of any amounts when due, the party affected by such breach shall notify the other party of such breach and the party committing the breach shall have fifteen (15) clear days from the receipt of such notice to correct or commence action to correct such breach.

1. If the party committing the breach fail or neglect to remedy or commence action to remedy such breach within the said fifteen (15) clear days from the date of service of the notice as aforesaid, the party affected by the breach may thereafter serve on the party committing the breach a written notice of seven (7) clear days terminating this CONTRACT.
2. In the event of termination of this CONTRACT by OWNER, as aforesaid, OWNER subject to the provisions of paragraph (3) below shall pay to CONTRACTOR such amounts as may remain due and outstanding at the time of such termination in accordance with the terms and provisions of this CONTRACT.
3. If this CONTRACT is terminated by OWNER on account of breach of any of its terms and provisions which CONTRACTOR failed to remedy in spite of notices having been given to them as aforesaid, OWNER shall be entitled to make a claim on, and demand payment in respect thereof from CONTRACTOR for damages (including liquidated damages / consequential damages) arising as a result of such breach. For the purpose aforesaid, OWNER shall be entitled to deduct or retain amounts for such damages from moneys payable to CONTRACTOR any amount payable or which may become payable to CONTRACTOR in accordance with the terms and provisions of this CONTRACT.
4. If this CONTRACT is terminated by CONTRACTOR on account of breach of any of its terms and provisions which OWNER failed to remedy in spite of notices having been given to him as aforesaid, CONTRACTOR shall be entitled to make claim and demand payment in respect thereof from OWNER for actual damages arising as a result of such breach.
5. OWNER shall have the right to terminate this CONTRACT hereunder on fifteen (15) clear days notice without assigning any reason therefor, in which event OWNER will pay CONTRACTOR for all work performed upto the date of such termination in accordance with the Award. Such work performed shall be documented to the satisfaction of OWNER and OWNER shall take full credit for any amounts previously paid to CONTRACTOR. OWNER shall not pay or be liable to pay any damage or other claim by CONTRACTOR for his expected profit or interest on the value of the uncompleted items of Work and CONTRACTOR hereby waives any right of action in damages or otherwise against OWNER by reason of such termination.

## **57.00 MISCELLANEOUS**

- A. CONTRACTOR shall, at his own cost, provide the material for and execute all temporary shoring, timbering and strutting and such other structures as are necessary during the execution of Work for stability and safety of all structures, excavations and work such that no damage, injury or loss is caused or likely to be caused to any person or property.
- B. CONTRACTOR shall, at his own cost, provide such sheds, store houses as OWNER/ ENGINEER may consider necessary for storing of materials and shall also, at his own cost provide all construction equipments.
- C. Any demurrage charges that may be incurred owing to CONTRACTOR's failing to unload or load the same on being called upon to do so, unload his own materials and equipments booked in the name

of the OWNER will be debited to CONTRACTOR's account and shall be paid by him to the proper officer on demand or deducted from any sum which may be due to him from OWNER.

- D. When work is being carried out in or around a running plant where the plant must run uninterrupted, CONTRACTOR can only work at specified places and times mutually arranged. Progress of Work in certain areas might have to be expedited as required by ENGINEER/OWNER.
- E. The use or sale of ardent spirits or other intoxicating beverages upon the work spot and any other unlawful activities are strictly forbidden and CONTRACTOR shall strictly comply with these conditions.
- F. Except where otherwise specified, CONTRACTOR, shall pay all tollage and other royalties, rent and other payments or compensation (if any) for getting stone, sand, gravel, clay or other materials required for the Work or temporary works or any of them.
- G. All operations necessary for the execution of the Work and for the construction of any temporary works shall so far as compliance with requirements of the CONTRACT permits, be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads, railway tracks and footpaths or to or of properties whether in the possession of OWNER or any other person and works of other Contractors and CONTRACTOR shall save harmless ENGINEER/OWNER and indemnify ENGINEER/OWNER in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters.
- H. CONTRACTOR shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to project from being subjected to extraordinary traffic of CONTRACTOR or any of his sub-contractors and in particular, shall select routes and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of plant materials and equipment from and to the project shall be limited so far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such highways and bridges. Damages, if any, shall be rectified by the CONTRACTOR at his own cost.
- I. Where the nature of the work is such as to require the use by CONTRACTOR of waterborne transport, the foregoing provisions of this clause shall be construed as though highway included a lock, dock, seawall or other structural related to a waterway and vehicles included craft and shall have effect accordingly.
- J. CONTRACTOR shall, in accordance with the requirements of ENGINEER/ OWNER, afford all reasonable facilities for any other contractors employed on the project and their workmen and for the workmen of OWNER and of any other properly authorised authority or statutory body, who may be employed in the execution on or near the location of any work not included in this CONTRACT or of any contract which ENGINEER/OWNER may enter into in connection with or ancillary to the project.
- K. Should the general conduct of the work, including the premises of OWNER under occupation of CONTRACTOR lead to infringement of the Indian Penal Code, either in consequence of the riotous or illegal proceedings of CONTACTOR's labour, supervising staff of others to such an extent as to necessitate the employment of Special Police or Magistrate, the cost of such extra force is to be defrayed by CONTRACTOR and not by ENGINEER / OWNER.
- L. CONTRACTOR must take sufficient care in moving his construction plants and Equipments from one place to another so that they may not cause any damage to the property of ENGINEER/OWNER or other person particularly to the overhead and underground cables and, in the event of his failure to do so, the cost of such damages, including eventual loss of working hours on any work as estimated by OWNER/ ENGINEER, is to be borne by CONTRACTOR.
- M. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archeological interest discovered on the site shall be, as between OWNER and CONTRACTOR deemed to be absolute property of OWNER and CONTRACTOR shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article and shall immediately, upon discovery thereof and before removal acquaint OWNER / ENGINEER of such discovery and carry out OWNER / ENGINEER's orders as to the disposal of the same.

**58.00 GOVERNING LAWS**

58.01 This CONTRACT shall be governed and interpreted in accordance with the Laws in India. Any provision, required to be included in a contract of this type by any applicable and valid law, ordinance, rule or regulation, shall be deemed to be incorporated herein.

**59.00 SETTLEMENT OF DISPUTES**

- A. If at any time any question, disputes or difference of whatsoever nature shall arise between the Owner and the Contractor upon or in relation to or in connection with the Contract, either party may forthwith give to the other notice in writing of the existence of such question, dispute or difference and the same other than the questions, disputes or differences for the decision of which specific provisions have been made in the foregoing Articles of these conditions hereinafter referred to as "Excepted Matters" and the decision of such "Excepted Matters" according to the said provisions shall be final and binding on the Parties shall be referred to Arbitration by a sole arbitrator to be appointed by the Chairman cum Managing Director / Managing Director of the Owner or any person acting in such capacity.
- B. When the Sole Arbitrator withdraws from his office for any reason whatsoever, he shall be replaced by the Chairman cum Managing Director/ Managing Director of the OWNER or any person acting in that capacity. The arbitral proceedings shall continue from that stage onwards and the earlier hearings shall not be repeated.
- C. The language to be used in the arbitration proceedings shall be English.
- D. The award of the arbitrator shall be final, conclusive and binding on the Parties.
- E. The provisions of Arbitration and Conciliation Act, 1996 and the Rules there under and amendments thereto in force shall be applicable to this Contract.
- F. The Venue of Arbitral Proceedings shall be only in Bangalore, India.
- G. Only courts in Bangalore shall have jurisdiction regarding the matters relating to this arbitration.

**60.00 NOTICES**

60.01 Any written notices or other documents or drawing required by this CONTRACT shall be sent by Registered Post, Postage prepaid or by cable or Telex, fax, courier, charges prepaid or hand delivered and shall be forwarded to the respective Address set forth below unless another address is substituted by written notice:

FOR OWNER: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

FOR ENGINEER \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

FOR CONTRACTOR: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

WITH A COPY TO: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**61.00 AMENDMENTS**

61.01 This CONTRACT may be amended by a writing specifically made in this behalf which shall be mutually agreed upon and duly signed by the authorised representatives of the parties hereto.

**62.00 WAIVER OF BREACH**

62.01 Any failure by OWNER or ENGINEER, at any time or from time to time, to enforce or require the strict keeping and performance by CONTRACTOR of any of the terms or conditions of this CONTRACT shall not

constitute a waiver by OWNER or ENGINEER of a breach of any such terms or conditions and shall not affect or impair such terms or conditions in any way, or the right of OWNER or ENGINEER at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms and conditions.

**63.00 ENTIRE CONTRACT**

63.01 This CONTRACT and any annexures attached hereto or documents referred to herein shall constitute the entire CONTRACT and understanding between the parties hereto as to the subject matter hereof and shall supersede all prior agreements/CONTRACTS, negotiations and Letter of Intent, whether written or oral, pertaining to this Work and either party shall be bound by any conditions, definitions, warranties or representations with respect to the subject matter of this CONTRACT, otherwise than as expressly provided herein.

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**FORM OF BANK GUARANTEE FOR ADVANCE PAYMENT**

To  
The KIOCL Limited.,

Second Block, Koramangala, **OR**  
Bangalore - 560 034.

New Mangalore Port,  
Panarnbur,  
Mangalore - 575010

**OR** Kudremukh,  
Chickmagalur Dist. 575 142.

In consideration of KIOCL Limited (hereinafter referred to as "Company") agreeing to pay to M/s..... (hereinafter referred to as, "Contractor") a sum of Rs ..... (Rupees ..... only) as and by way of advance in terms of Order No..... dated..... (hereinafter referred to as "Contract") on production of Bank Guarantee by the Contractor for Rs..... (Rupees..... only) we, ..... (hereinafter referred to as "the Bank") do hereby covenant and agree with the Company as follows:

1. We hereby guarantee the payment to the Company the said advance of Rs..... (Rupees..... only) and interest thereon at 15.5 percent per annum from the date of demand till payment against any loss or damage caused to or suffered or that may be caused to or suffered by the Company by reason of any breach by the said Contractor of any of the terms and conditions contained in the said Contract.
2. Notwithstanding anything contained hereunder, we ..... hereby unconditionally and irrevocably undertake to pay to the Company to the extent of Rs..... (Rupees..... only) plus interest thereon at 15.5 percent per annum from the date of demand till payment without any demur merely on a demand from the Company stating that the amount claimed is due by way of loss or damage caused to or suffered or would be caused to or suffered by the Company by reason of breach by the said Contractor of any of the terms and conditions contained in the said Contract. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs ..... ( Rupees..... only) and interest thereon as mentioned above from the date of demand till payment.
3. Our liability under this present Guarantee is absolute and unequivocal and we undertake to pay the Company the amount so demanded notwithstanding the Contractor raising any dispute and/or disputes or filing any suit or proceeding before any Court or Tribunal Authority. The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment hereunder.
4. We.....further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and that it shall continue to be enforceable till all the dues of the Company under or by virtue of the said Contract have been fully paid and its claims satisfied or discharged and till the Company certifies that the terms and conditions of the said Contract have been fully and properly carried out by the said Contractor and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before ..... we shall be discharged from all liability under this Guarantee thereafter.
5. This Guarantee shall not be revocable by us except with the written consent of the Company and shall continue to be enforceable till..... Should it be necessary to extend this Guarantee beyond the said date, we undertake to extend the validity of this Guarantee for such further period as may be required by the Company, and such extension shall be given one month before the expiry of the Guarantee failing which the amount covered under this Guarantee shall become forthwith payable, notwithstanding that the Contract is continuing and / or the Company has or has not terminated the Contract or preferred any claim against the Contractor.
6. We, ..... further agree with the Company that the Company shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Contract or to extend time of performance by the said Contractor from time to time or to postpone for any time or from time to time exercise of any of the powers exercisable by the Company against the said Contractor and to forbear or enforce any of the terms and conditions relating to the said Contract and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor or for any indulgence by the Company to the said Contractor or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

7. This Guarantee shall not in any way be affected due to change in our constitution or by your taking or varying or giving up any securities from the Contractor or any other person, firm or Company on its behalf or by the change in the constitution, the winding up, dissolution, insolvency or death as the case may be of the Contractor.
8. In order to give full effect to the Guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the Contractor hereby guaranteed by us as aforesaid and we hereby expressly waive all our rights of suretyship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
9. We ..... also undertake not to revoke this Guarantee during its currency except with the previous consent of the Company in writing.

Dated the .....day of..... . 20

For .....

(indicate the name of Bank)

#### **IMPORTANT NOTE**

The following points should be taken care of while submitting the Bank Guarantee:

1. The Bank Guarantee should be on non-judicial stamp paper having a value as per Rules in force.
2. The stamp paper should be purchased in the name of the Bank, who give the Guarantee and not in the name of the Contractor.
3. The Bank Guarantee should be strictly as per the proforma.
4. The Bank Guarantee should be from any of the Nationalised Banks or Scheduled Banks.
5. If any correction is made on the Guarantee, the same should be endorsed by the Bank with its official seal.

## FORM OF BANK GUARANTEE FOR SECURITY DEPOSIT

In consideration of KIOCL Limited (hereinafter called Company) having agreed to exempt.....(hereinafter called the said Supplier (s) / Contractor(s)) from demand under the terms and conditions of Purchase Order No..... Dated..... made between ..... And ..... for ..... (hereinafter referred to as 'contract') of security deposit for the due fulfillment by the said suppliers(s) / Contractor (s) of the terms and conditions contained in the said contract on production of a Bank Guarantee for Rs..... (Rupees.....only).

1. We,..... (hereinafter referred as "the Bank") at the request of Supplier, (s) Contractor (s) do hereby guarantee the payment to the Company an amount not exceeding Rs..... (Rupees.....only) and interest thereon at 15.5 percent per annum from the date of demand till payment against any loss or damage caused to or suffered or would be caused to or suffered by the Company by reason of any breach by the said Supplier(s)/ Contractor(s) of any of the terms and conditions contained in the said Contract.
2. We ..... do hereby unconditionally and irrevocably undertake to pay to the Company an amount to the extent of Rs. .... (Rupees .....only) and interest thereon at 15.5 percent per annum from the date of demand till payment without any demur, merely on a demand from the Company stating that the amount claimed is due by way of loss or damage caused to or suffered or would be caused to or suffered by the Company by reason of breach by the said Supplier(s) / Contractor(s) of any of the terms and conditions contained in the said Contract or by reason of the Supplier(s)/ Contractor(s) failure to perform the said contract. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs..... (Rupees.....only) and interest thereon as mentioned above from the date of demand till payment.
3. Our liability under these presents is absolute and unequivocal and we undertake to pay to the Company the amount so demanded notwithstanding the Supplier(s)/Contractor(s) raising any dispute and / or disputes or filing any suit or proceeding before any Court or tribunal or other Authority. The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment there under and the Contractor(s) Supplier(s) shall have no claim against us for making such payment.
4. We.....further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the contract and that it shall continue to be enforceable till all the dues of the Company under or by virtue of the said contract have been fully paid and its claims satisfied or discharged or till the Company certifies that the terms and conditions of the said contract have been fully and properly carried out by the said Supplier(s) / Contractor(s) and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before....., we shall be discharged from all liability under this Guarantee thereafter.
5. This Guarantee shall not be revocable by us except with the written consent of the Company and shall continue to be enforceable till.....should it be necessary to extend Guarantee beyond the said date, we undertake to extend the validity of this Guarantee for such further period as may be required by the Company, and such extension shall be given one month before the expiry of this Guarantee filing which the amount covered under this Guarantee shall become forthwith payable, notwithstanding that the Contract is continuing and /or the Company has or has not terminated the Contract or preferred any claim against the Supplier (s) Contractor(s).
6. We..... further agree with the Company that the Company shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the Contract or to extend time or performance by the said Supplier(s)/ Contractor(s) from time to time or to postpone for any time or from time to time in exercise of any of the powers exercisable by the Company against the said Supplier(s) Contractor(s) and to forbear or enforce any of the terms and conditions relating to the Contract and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Supplier(s)/Contractor(s) or for any forbearance, act or omission on the part of the Company or any indulgence by the Company to the said Supplier(s)/Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties, but for this provision, have effect of so relieving us.
7. This Guarantee shall not in any way be affected due to change in our constitution or by your taking or varying or giving up any securities from the CONTRACTOR(S)/ SUPPLIERS or any other person, firm or Company on its behalf or by the change in the constitution, winding up dissolution, insolvency or death as the case may be of the CONTRACTOR(S)/SUPPLIER(S).
8. In order to give full effect to the Guarantee herein contained you shall be entitled to act as if we were your principal debtors in respect of all your claims against the CONTRACTOR(S)/ SUPPLIER(S) hereby Guaranteed by us as aforesaid and we hereby expressly waive all our rights of suretyship and other rights if any which are in any way inconsistent with the above or any other provisions of this Guarantee.

9. We..... also undertake not to revoke this Guarantee during its currency except with previous consent of the Company in writing.

Dated the ..... day of ..... 20

For.....

(Indicate the name of Bank)

**IMPORTANT NOTE**

The following Points should be taken care of while submitting the Bank Guarantee:-

1. The Bank Guarantee should be on non-judicial stamp paper having a value of Rs.100/-or as applicable in the State of Karnataka.
2. The stamp paper should be purchased in the name of the Bank, who give the guarantee and not in the name of the Supplier.
3. The Bank Guarantee should be strictly as per the profoma.
4. The Bank Guarantee should be from any of the Nationalised Bank, Scheduled Bank or any other bank Acceptable to owner
5. If any correction is made on the guarantee the same should be endorsed by the Bank with its official seal.

## FORM OF BANK GUARANTEE FOR EARNEST MONEY DEPOSIT

In consideration of KIOCL Limited (hereinafter called "Company") having agreed to exempt..... (hereinafter called the said "Bidder") from demand under the terms and conditions of the tender documents vide No dated ..... of Earnest Money Deposit for the due fulfilment by the said Bidder of the terms of conditions contained in the tender document on production of Bank Guarantee of Rs ..... (Rupees ..... only).

1. We, ..... (hereinafter referred to as "the Bank") at the request of Bidder do hereby guarantee the payment to the Company an amount not exceeding Rs..... (Rupees..... only) and interest thereon at 15.5 percent per annum from the date of demand till payment against any loss or damage caused to or suffered, would be caused to or suffered by the Company by reason of any breach by the said Bidder of any of the terms and conditions contained in the said Tender Documents.
2. We, ..... do hereby unconditionally and irrevocably undertake to pay to the Company an amount to the extent of Rs..... (Rupees ..... only) and interest thereon at 15.5 percent per annum from the date of demand till payment without any demur, merely on a demand from the Company slating that the amount claimed is due by way of loss or damage caused to or suffered or would be caused to or suffered by the Company by reason of breach by the said Bidder of any of the terms and conditions contained in the said Tender Documents. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs..... (Rupees..... only) and interest thereon as mentioned above from the date of demand till payment.
3. Our liability under this present Guarantee is absolute and unequivocal and we undertake to pay the Company the amount so demanded notwithstanding the Bidder raising any dispute and/or disputes or filing any suit or proceeding before any court or tribunal or other Authority. The payments so made by us under this Guarantee shall be a valid discharge of our liability for payment thereunder and the Bidder shall have no claim against us for making such payment.
4. We, ..... further agree that the Guarantee herein contained shall remain in full force and effect during the period as required by the Company. Unless a demand or claim under this Guarantee is made on us in writing on or before....., we shall be discharged from all liability under this Guarantee thereafter.
5. This Guarantee shall not be revocable by us except with the written consent of the Company and shall continue to be enforceable till ..... Should it be necessary to extend this Guarantee beyond the said date, we undertake to extend the validity of this Guarantee for such further period as may be required by the Company and such extension shall be given one month before the expiry of this Guarantee, failing which the amount covered under this Guarantee shall become forthwith payable.
6. We, ..... further agree with the Company that the Company shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the Tender Documents or to extend time of finalising the bid from time to time and to forbear or enforce any of the terms and conditions relating to the Tender Documents and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Bidder or for any forbearance, act or omission on the part of the Company or any indulgence by the Company to the said Bidder or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

7. This Guarantee shall not in any way be affected due to change in our constitution or by your taking or varying or giving up any securities from the Bidder or any other person, firm or Company on its behalf or by the change in the constitution, winding up, dissolution, insolvency or death as the case may be of the Bidder.
8. In order to give full effect to the Guarantee herein contained, you shall be entitled to act as if we are your principal debtors in respect of all your claims against the Bidder hereby Guaranteed by us as aforesaid and we hereby expressly waive all our rights of suretyship and other rights, if any, which are in any way inconsistent with the above or any other provisions of this Guarantee.
9. We, ..... also undertake not to revoke this Guarantee during its currency except with the previous consent of the Company in writing.

Dated the ..... day of..... 20

For .....

(indicate the name of Bank)

#### IMPORTANT NOTE

The following points should be taken care of while submitting the Bank Guarantee:

1. The Bank Guarantee should be on non-judicial stamp paper having a value as per Rules in force.
2. The stamp paper should be purchased in the name of the Bank, who give the Guarantee and not in the name of the Bidder.
3. The Bank Guarantee should be strictly as per the proforma.
4. The Bank Guarantee should be from any of the Nationalised Banks or Scheduled Banks.
5. If any correction is made on the Guarantee, the same should be endorsed by the bank with its official seal.

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# **ANNEXURE “B”**

## **KIOCL LIMITED II nd Block, Koramangala BANGALORE-560034**

### **GENERAL CONDITIONS (For Indigenous Supply) KIOCL-P/1**

#### **1.0 DEFINITIONS**

As used herein and any Contract documents, the following words shall have the following meanings.

- 1.1 “OWNER/PURCHASER” shall mean KIOCL Limited, a Government of India Enterprise having its registered Office at II Block, Koramangala, Bangalore, Karnataka.
- 1.2 “SUPPLIER/CONTRACTOR” shall mean the person, firm or body corporate contracting with OWNER/PURCHASER for the supply to the OWNER/PURCHASER of any equipment, materials, spares/ and / or supplies as per the Contract, and shall be deemed to include Suppliers successors (approved by OWNER) representatives, heirs, executors and administrators, unless otherwise excluded by the Contract.
- 1.3 “SUB-CONTRACTOR” shall mean any individual, firm or body corporate contracting directly with the supplier and not OWNER to furnish Supplier with any portion of the work, other than the purchase of “off the shelf” items or Pre-fabricated machinery or supplies. Supplier shall remain fully liable and responsible to the owner for the work so sub-contracted as well as for all acts and / or commissions of SUB-CONTRACTORS.
- 1.4 “CONTRACT” shall mean and include the invitation to Tender, Instruction to Tenderers, the Tender, The General Conditions, the specifications, special Conditions, if any, and the acceptance of Tender/ Purchase Order Issued by OWNER all in respect of supply and delivery of the equipment, materials, spares and / or supplies called for by the SPECIFICATIONS and may also include any agreement if and when signed by and between OWNER and SUPPLIER and includes subsequent changes / amendments, if any.
- 1.5 “WORK” shall mean and include any and all labour, supervision, service, material, machinery equipment, tools, supplies and facilities required for the supply and delivery by Supplier of the equipment, materials, spares and / or supplies called for by the CONTRACT.

- 1.6 “TENDERER” shall mean the person firm or body corporate submitting a Tender against the invitation to tender and shall include his/its/their executors, administrators, legal representatives successors and permitted assignees.
- 1.7 “INVITATION TO TENDER”, shall include the specifications instructions to tenderers, the general conditions etc.
- 1.8 “TENDER” shall mean the formal quotation submitted by a tenderer proposing to perform the work requested in the invitation to Tender issued by OWNER.
- 1.9 “PATICULARS” shall mean and include.
- 1.9.1 Specifications:
- 1.9.2 Drawings: and
- 1.9.3 Proprietary mark or designated pattern denoting the product of an individual, firm or body corporate.
- 1.10 “SPECIFICATIONS” shall mean and include the schedules, detailed designs, statements of technical data’, performance and characteristics etc., relating to the work.
- 1.11 “INSPECTOR” shall mean any person nominated by owner and the said person nominated shall also ascertain the position of deliveries and expedite the same under the contract and periodically and finally inspect the work.
- 1.12 Words denoting person shall include firms, companies, corporations, associations or bodies of individuals whether incorporated or not. Words denoting masculine gender or singular number shall also include the feminine gender and plural number and vice-versa where the CONTRACT so requires or permits. The words “including” and include(s) as used herein are not to be construed as words of limitation unless the context otherwise requires or unless as contrary intention otherwise appears in the matter.
- 2.0 AUTHORITY OF PERSON SIGNING DOCUMENT
- 2.1 A person signing the Tender or any other documents forming a part of the Contract on behalf of another shall be deemed to warrant that he has authority to bind such other and if, on enquiry, it appears that the person so signing had no authority to do so, OWNER may without prejudice to other civil and criminal remedies, cancel the contract and hold the signatory liable for all costs and damages. Any person so signing shall give satisfactory evidence of his authority.

### 3.0 SECURITY DEPOSIT

- 3.1 SUPPLIER shall within fifteen days of receipt of OWNER's acceptance of tender, deposit with the OWNER a security deposit equal to Ten percent (10%) of the CONTRACT value in any one of the following forms:
- 3.1.1 Cash or Demand Draft payable at Bangalore.
- 3.1.2 Bank Guarantee as per Annexure-I hereto from any Indian Nationalised Bank, Scheduled Bank or any other established Bank acceptable to the OWNER.
- 3.2 The Bank Guarantee shall be for the due and faithful performance of the CONTRACT BY SUPPLIER and shall remain binding, notwithstanding such variations, alterations or extensions of time as may be made, given, conceded or agreed to between OWNER and SUPPLIER under these General Conditions or otherwise and shall be in the form as per Annexure-I (enclosed) and the validity of the Bank guarantee shall be extended from time to time as required by OWNER.
- 3.3 If SUPPLIER fails to provide the Security Deposit within the period specified, such failure will constitute a Breach of Contract and OWNER shall be entitled to terminate the CONTRACT and to place the Purchase Order elsewhere at SUPPLIER'S risk and cost.
- 3.4 No interest shall be payable by OWNER on the Security Deposits.
- 3.5 On due performance and completion by the SUPPLIER of CONTRACT in all respects the Security Deposit under the said CONTRACT will be returned without any interest thereon after the expiry of the warranty as per clause No. 26 herein below:

### 4.0 RESPONSIBILITY FOR PERFORMANCE OF CONTRACT

#### 4.1 GENERAL

The SUPPLIER shall be entirely responsible for the due performance of the CONTRACT in all respects according to the terms and conditions of the CONTRACT.

- 4.1.1 Supplies/items shall strictly adhere to the specification stipulated and shall effectively perform its functions for which purpose it is ordered.
- 4.1.2 Any approval which OWNER and / or INSPECTOR may give in respect of the work or workmanship involved in the CONTRACT (whether with or without tests carried out by the SUPPLIER /

INSPECTOR) shall not absolve the SUPPLIER of this contractual responsibilities and obligations.

4.1.3 Notwithstanding any approval or acceptance given by INSPECTOR, it shall be lawful for OWNER to reject the equipment, materials, spares and / or supplies if it is found that the equipments, materials, spares and / or supplies delivered and / or work carried out by SUPPLIER is not in conformity with the terms and conditions of the CONTRACT in all respects.

#### 4.2 CO-OPERATION WITH OTHER CONTRACTORS / SUPPLIERS

SUPPLIER shall co-operate with OWNER, other SUPPLIERS and CONTRACTORS including SUB-CONTRACTORS, if any, for any associated plant and shall freely exchange all particulars and technical information with them to obtain the most efficient and economical design and to avoid unnecessary duplication of equipment, materials, spares and / or supplies. No remuneration shall be claimed by SUPPLIER from OWNER for such technical co-operation.

#### 4.3 SUB -LETTING OF CONTRACT

SUPPLIER shall not sub-let, transfer or assign the CONTRACT or any part thereof without the express prior written approval of OWNER, other than the purchase of bought out items normally purchased from outside sources. In the event of SUPPLIER contravening this condition, OWNER shall be entitled to terminate the CONTRACT and to place the work elsewhere at SUPPLIER'S risk and expenses and SUPPLIER shall be liable for any loss or damage which OWNER may sustain in consequence or arising out of such replacing of the work.

#### 5.0 RESPONSIBILITY FOR COMPLETENESS

Any equipment, fitting, materials or supplies which may not be specifically mentioned in the SPECIFICATION or drawings but which are usual or necessary for carrying out the works under the CONTRACT within the Scope of the Supply / Work to be executed are to provided for and rendered by the SUPPLIER / CONTRACTOR without extra charge and the equipments / supplies must be complete in all respects.

#### 6.0 QUALITY OF MATERIALS AND WORKMANSHIP

6.1 TENDERER / SUPPLIER shall be deemed to have carefully examined and to have knowledge of these General Conditions, the PARTICULARS, special conditions, Instructions to Tenderers and other Documents forming the Invitation to Tender / Contract and also to have satisfied himself as to the nature of the work to be executed and other relevant matters and details.

- 6.1.1 Any information thus had or obtained from OWNER shall not, in any way, relieve SUPPLIER of his responsibilities under Article 5-0 above.
- 6.1.2 If SUPPLIER / TENDERER shall have any doubt as to the meaning of any portion of the Invitation to Tender, SUPPLIER / TENDERER shall, before signing Tender set forth the PARTICULARS thereof and submit them to OWNER in writing, in order that such doubt may be removed.
- 6.2 The work shall be of the best quality and workmanship according to the latest engineering practices existing at the time of acceptance of the TENDER and shall be manufactured from materials of the best quality and highest class for the purpose.
  - 6.2.1 Appropriate factors for safety shall be used throughout the design and specially in the design of all parts subject to varied stresses.
  - 6.2.2 All work shall be performed and completed in a thorough workman like manner and shall follow the best practice in the light of modern developments in the manufacture of high grade equipments notwithstanding any omission in the SPECIFICATION.
  - 6.2.3 SUPPLIER shall provide the equipments, materials, spares and / or supplies with proper safety devices for protection of workman and shall provide suitable removable safety guards for all exposed moving parts such as Gears, Rollers, Chains, Bells, Brake Wheels, Couplings and the like. SUPPLIER warrants that such work will meet the requirements of and be in conformity with, all applicable laws, rules, regulations and ordinances of the Government of India or any sub-division thereof.

## 7.0 DRAWINGS

- 7.1 Drawings required to be furnished by SUPPLIER shall be supplied free of cost to OWNER. All drawings shall be supplied in five (5) sets unless otherwise specified.
- 7.2 SUPPLIER shall furnish to OWNER, at the earliest for approval by Engineer, general arrangement drawings, erection drawings, electrical diagrams, bill of materials, equipment lists, and any other drawings and diagrams required for a complete and serviceable job, showing work to be completed by SUPPLIER and work to be completed by SUB-CONTRACTOR.
- 7.3 SUPPLIER shall also furnish to OWNER those specific drawings and any other details / information as requested by OWNER.

- 7.4 Drawings submitted under 7.2 and 7.3 above will be reviewed by OWNER and returned to SUPPLIER signed and stamped either “APPROVED” Approved as noted; or “not approved Resubmit, “Approved and “Approved as noted”, drawings (following corrections); may then be issued for fabrication / manufacture. “ Not Approved Resubmit” drawings shall be corrected and resubmitted for OWNER’s approval.
- 7.5 After approval by OWNER or his authorised representative, Supplier shall forward one (1) approved reproduceable (sepia) and six (6) copies of approved drawing to OWNER. The approval shall be in the form of duly authenticated stamps with signature on the drawing.
- 7.6 Approval of SUPPLIER’S drawings by OWNER shall not relieve SUPPLIER from any responsibility covered by the requirements of the CONTRACT.

## 8.0 MANUALS

- 8.1 The SUPPLIER shall deliver free of cost, the following manuals in 6 (6) copies along with the consignment for all equipments / supplies.
- 1.1.1 Operating manuals, covering general description, operating principles and operating procedures.
- 8.1.2 Maintenance manuals covering preventive and corrective maintenance.
- 8.1.3 Calibration manuals, if applicable.
- 8.1.4 Spare parts catalogue for mechanical, electrical and instrumentation portion of equipment.
- 8.1.5 Any other documentation as required in the specification.
- 8.2 Manuals shall be printed in English good quality paper and shall be contained in suitable durable bindings.
- 8.3 Manuals provided by SUPPLIERS or his SUB-CONTRACTOR/S shall be completed and shall cover all equipments, materials, spares and / or supplies.
- ## 9.0 PROGRESS REPORTS
- 9.1 Progress reports wherever specified shall be submitted to OWNER once in a month or at frequent intervals in five (5) copies in a form acceptable to OWNER.

- 9.2 Such progress reports shall indicate, in suitable details, the progress of the procurements of raw materials manufactured both in SUPPLIER'S shops and SUB-CONTRACTOR'S shops, and any other work to be performed by SUPPLIER. Photographs wherever possible shall be submitted.
- 9.3 The progress reports shall further compare actual versus projected completion dates and describe current and anticipated problems and delay factors, if any. Report shall also include corrective action taken or proposed to be taken without in any way relieving or affecting the SUPPLIER'S responsibility to deliver the equipments within the stipulated delivery date(s)\ period(s).

## 10.0 CHANGES

- 10.1 OWNER shall have the right to make such changes and / or variation in the SPECIFICATIONS as may be necessary or desirable from time to time during the subsistence of the CONTRACT till the stage of testing and commissioning.
- 10.2 Prior to commencement of any additional work based on a change in SPECIFICATION as above involving compensating / reduction on the Contract price, SUPPLIER shall submit to OWNER a detailed estimate in writing of the price for such additional / reduced works.
- 10.3 Upon approval by OWNER, OWNER shall issue to SUPPLIER a written order covering the changes in work and price, which shall then form part of the CONTRACT. SUPPLIER shall not proceed with any additional work prior to receipt of OWNER'S said written order.

## 11.0 PRICE

- 11.1 The prices shall be firm and fixed during the period of CONTRACT. The TENDRER shall quote on the basis as specified in the Invitation to Tender. The transit insurance shall be covered by OWNER.
- 11.2 The validity of the quotation should be three (3) months from the due date for opening of TENDER.
- 11.3 STATUATORY LEVIES
- 11.3.1 Sales Tax, Excise Duty and other statutory levies shall be paid as applicable during the period of delivery stipulated under the concerned CONTRACT.
- 11.3.2 Any claim in respect of any increase in price on account of any statutory increase or fresh imposition of Excise Duty, Sales Tax on account of any other Tax or Duty leviable in respect of the

equipments/ materials / spares and / or supplies specified in the CONTRACT which takes place after the expiry of original delivery period stipulated in the CONTRACT shall not be admissible on such of the equipments / materials / spares and / or supplies as are delivered after said original delivery period.

11.3.3 Notwithstanding any stipulation in the CONTRACT for increase in price on any other ground no such increase which takes place after the date of delivery stipulated in the CONTRACT, shall be admissible on such of the said equipments / materials / spares and / or supplies, as are delivered after the expiry of the date of delivery stipulated in the CONTRACT.

11.3.4 The Owner shall be entitled to the benefit of any decrease in price on account of reduction in or remission of Customs Duty, Sales Tax or on account of any other Tax or Duty or on any other grounds as stipulated in the CONTRACT which takes place after the expiry of the date of delivery stipulated in the CONTRACT.

11.3.5 OWNER is a 100% Export Oriented Unit (EOU) and is exempted from payment of terminal excise duty on indigenous capital goods, raw materials, components, spares and consumables in terms of notification No. 1/95-C.E dtd 4/1/95 against CT-3 form forwarded to the SUPPLIER.

11.3.5.1 SUPPLIER to furnish the following information to facilitate OWNER to issue CT-3 form:

- a) Full postal address of the factory of manufacture.
- b) Full postal address of Superintendent of Central Excise under whose jurisdiction the factory falls.
- c) Central Excise Tariff / Chapter NO. Under which the item (s) included in the Tender / Purchase Order are classified.
- d) Percentage of duty applicable.

11.3.5.2 SUPPLIER shall quote special price taking into account the deemed export Benefit as applicable for supplies to 100% EOU.

11.3.5.3 The SUPPLIER should ensure that original, duplicate and triplicate of AR-3A with duplicate copy of excise invoice (Transporter's copy) are sent to owner (paying authority) along with proof of despatch of goods for claiming 90% of the payment. IN addition

one photocopy of AR-3A should be sent to the final Consignee along with the consignment.

- 11.3.5.4 On request, OWNER shall get the Invoice (s) containing details of the relevant supplies certified, by Central Excise authorities to enable the SUPPLIER to claim deemed export benefits, for which purpose he shall forward separate invoice copies incorporating AR-3A details, on completion of supplies.
- 11.3.5.5 A Certificate of payment will be issued by OWNER on receipt of the items.
- 11.3.5.6 A disclaimer certificate confirming waiver of claiming export benefits due to OWNER, if any will also be issued, where quotations are specifically given special price applicable to E.O.U
- 11.3.5.7 The SUPPLIER should despatch materials only on receipt of CT-3 form, wherever duty exemption is required by OWNER as indicated in the Purchase Order. In case OWNER is unable to furnish CT-3 form for any reason, the SUPPLIER will be specially advised in writing to make payment of Central Excise Duty under "Protest" and Scrupulously follow rule 233B of Central Excise rule 1944 as laid down in the Central Excise Manual.
- 11.3.5.8 Any demand for payment of Excise Duty issued by the Central Excise Authorities on account of the failure of SUPPLIER to comply with Excise Procedures, will have to be borne by the SUPPLIER.

## 12.0 SPARES PARTS

SUPPLIER shall include in his TENDER a firm priced, itemised list of recommended spare parts necessary for the proper operation and maintenance of the equipments for a period of one (1) year.

This quotation shall be valid for 90 days from the date of acceptance of TENDER for the main equipment. It shall be obligatory on the part of SUPPLIER to ensure uninterrupted supply of spare parts for the proper maintenance of the equipments.

## 13.0 TIME SCHEDULE

- 13.1 The time and date(s) of delivery of the equipments, materials, spare and / or supplies as agreed to between SUPPLIER- OWNER shall be deemed to be the essence of the CONTRACT, and delivery must be completed not later than the date (s) / so specified.

- 13.2 Within fifteen (15) days, acceptance of Tender, SUPPLIER shall submit for OWNER'S approval a progress schedule covering all phase of the work including design, procurement, fabrication / manufacture and transportation.
- 13.3 SUPPLIER shall allow all reasonable facilities to INSPECTORS and OWNER'S representative(s) including free and full access to SUPPLIER'S facilities and to all records having a bearing on the progress and quality of the work and deliveries under the CONTRACT.

#### 14.0 INSPECTION

- 14.1 INSPECTOR shall have the right to inspect and test the work or any part thereof and to observe any test carried out by SUPPLIER AT any time and SUPPLIER, on demand from INSPECTOR shall at no additional charges to OWNER, carry out such tests, in an appropriate manner in the presence of INSPECTOR.
- 14.2 SUPPLIER shall afford at his own expense full, free and safe access and facilities at his works and / or his SUB-CONTRACTOR'S works for INSPECTOR to carryout and / or observe such inspections and / or tests.
- 14.3 Any such inspection, examination or testing carried out by INSPECTOR or observed by him shall not relieve Supplier from any of his obligations under the CONTRACT to be otherwise successfully performed by the SUPPLIER.
- 14.4 SUPPLIER shall give INSPECTOR not less than one week's notice in writing regarding any tests to be carried out by SUPPLIER or SUB-CONTRACTOR and the period likely to be required for such testing. INSPECTOR shall give the SUPPLIER written notice within five (5) days of receipt of such notice as to whether, INSPECTOR intended to witness the said tests and indicating the dates normally not more than fifteen (15) days from the date of receipt of SUPPLIER'S notice on which Inspector will be available at SUPPLIER'S or his SUB-CONTRACTOR'S facilities for such tests failing which SUPPLIER OR SUB-CONTRACTOR may proceed with the test..
- 14.5 If INSPECTOR is not present, SUPPLIER shall immediately notify Inspector in writing as to the Test results.
- 14.6 When the test and / or inspections have been complete to INSPECTOR'S satisfaction, INSPECTOR shall issue a certificate to that effect. No equipment's, materials, spares or supplies for which tests and / or inspections are performed shall be despatched by SUPPLIER before such certificates are issued.
- 14.7 INSPECTOR may reject the whole or any part of the work at any time after testing / inspection, if the INSPECTOR at his sole discretion determines the

work to be unsatisfactory or does not fulfil the requirements of the CONTRACT. INSPECTOR shall advise SUPPLIER and OWNER in writing as to the grounds for rejection. INSPECTOR'S decision regarding rejection shall be final and binding on the SUPPLIER.

14.8 In the event of any rejection as aforesaid, then without prejudice to the following provision, OWNER shall be at liberty to.

14.8.1 Allow SUPPLIER to offer once again, within a time specified by INSPECTOR, the equipments, materials, spares and / or supplies is replacement of those which have been rejected, the SUPPLIER bearing all costs for such replacement.

OR

14.8.2 Buy the quantity of equipments, materials, spares and / or supplies so rejected of the same or equivalent or the nearest specification from elsewhere at SUPPLIERS risk and cost without affecting SUPPLIER'S liability as regards the supply of any consignments due under the CONTRACT in accordance thereto.

## 15.0 PACKING MARKING AND SHIPPING SPECIFICATIONS FOR MATERIALS

### 15.1 GENERAL

This specification covers packing, making and transports / shipments materials by Road / rails / sea / Air.

15.2 This specification forms an integral part of the CONTRACT in addition to SPECIFICATIONS drawings and instructions explicitly listed in the purchase order.

15.3 SUPPLIER shall comply with all applicable descriptions in this SPECIFICATION depending upon the nature of material. Lack of relevant information and / or documents shall not relieve the SUPPLIER of his responsibility.

### 15.4 PACKING:

#### 15.4.1 GENERAL:

Workmanship shall be of the highest standards throughout all operations of packing. Materials used shall be in accordance with the best commercial practices and packing shall be withstanding all possible transit hazard for minimum period ranging from 4 to 6 months .It shall be capable of withstanding multiple handling and to perform all its functions without any detrimental effect / pitting to the contents of the package / create, bundle etc. Methods used shall be such as to ensure safe delivery of the commodity to its ultimate destination. All packages shall be done in such a manner as to reduce volume as much as possible. Suitable reapers shall be

provided on the bottom of the case /crates for easier handling by Forklift Trucks (2" square reapers per less than 1 Tonne and 3 for more than 1 Tonne)

- 15.4.1.1 Heavy machinery which includes tables, rollers, counter-weights, machines heads or other movable parts will be blocked and braced to prevent movement, items packed in bundles must be securely tied with steel wire or strapping. Steel reinforcing rods, bars, pipes structural members etc., shall be bundled in uniform length and the weight shall be within breaking strength of the securing wire or strapping.
- 15.4.1.2 Packages containing fragile articles must be packed with special precautions against risk of breakages.
- 15.4.1.3 All equipments attachments, accessories, steel structures pipes and fittings shall be painted / greased and or provided with suitable protective compound / oil to prevent rust, corrosion or damage due to bad weather.
- 15.4.1.4 All mechanical and electrical equipments and attachments shall be packed in wooden cases with adequate protection inside the case and wherever possible should be sent along with the major equipments. Each item shall be suitably tagged with identification of main equipment, item denomination and reference number to respective assembly drawing. Each item of steel structure shall be identified with erection markings with lettering height of minimum 15 mm. Such marking will be followed by the connection numbers / erection marking, with indelible paint.
- 15.4.1.5 A copy of the packing list shall accompany the material enclosed in a waterproof envelope fastened to each package.

#### 15.4.2 MECHANICAL EQUIPMENT

Pumps, compressors, etc., shall be packed individually in wooden cases.

- 15.4.3 Before packing, each assembly and / or each compartment shall be enveloped in polythene bags containing silica gel or similar dehydrating compound.
- 15.4.3.1 Motors and generators shall be packed (individually wherever necessary) in wooden cases. Vents shall be waterproof sealed. Protective paper strip shall be slipped under brushes.
- 15.4.3.2 Switchgear assemblies shall be packed in wooden cases.
- 15.4.3.3 General items of electrical material shall be packed in wooden cases, each item moisture proofed. Cable reels shall be wrapped with tar paper. Wooden strips shall be provided to protect reel edges. Ends of H.T. Cables shall be plumbed and sealed with a load-end and when finally planked the cable shall be strapped over with steel bands or hoops.

#### 15.4.4 INSTRUMENTS:

All instruments shall be packed in wooden cases with dial upward and embedded in shock absorbing material. Each instrument shall be enveloped in polythene bag containing silica gel or similar dehydrating compound and with a tag specifying the unit it belongs to. When instruments are packed in several layers in the same case

horizontal wooden partitions shall be provided suitably spaced and secured to case frame. Mercury and other chemicals to be supplied with instruments shall be packed separately in suitable containers.

#### 15.4.5.1 FITTINGS:

Packing shall be wooden cases or coated and valve flanges protected with plastic caps and tags should contain the type and specification of gland packings used.

#### 15.5 MARKING:

- 15.5.1 Marking should be for the protect, consignee, consignor, Purchase Order No., gross and net weight dimensions etc., as per enclosed KIOCL Standard Format (Annexure-II)
- 15.5.2 Cases and crates should be marked with indelible waterproof ink in clear legible characters at least on three sides.
- 15.5.3 A distinct colour splash in say / red - black around each package / create / bundle shall be given for identification.
- 15.5.4 Additional marking such as “Handle With Care”, “This Side Up” to be indicated by Arrow, ‘Fragile’ or any other Additional indications for protection and safe handling shall be added depending on the type of material.
- 15.5.5 In case of bundles the shipping marks shall be embossed on metal or similar tag wired securely on each end.
- 15.5.6 All cases will bear warning signs on the outside denoting the centre of gravity and sling marks. Specific marking for slinging should be provided for all heavy lifts weighing 5 tonnes and above. Top heavy containers will be so marked as either Top Heavy or Heavy ends.
- 15.5.7 For bulk and uniform material when packed in several cases, progressive serial number shall be indicated in each case.
- 15.5.8 When packaging material is clean and light coloured, a dark black stencil paint shall be used, However , where packing material is soiled or dark, a coat of flat Zinc white paint shall be applied and allowed to dry before applying the specific markings.
- 15.5.9 In case of large equipments like vessels, heat exchangers, etc., documents contained in the envelopes shall be fastened inside a shell connection with and identifying arrow sign “Documents” applied with indelible paint.

- 15.5.10 The Railway Receipts (RR) / Lorry Receipts (LR) Airway Bills (AWB) should be made out in favour of the OWNER at Bangalore / Mangalore / Kudremukh as the case may be.
- 15.6.0 DESPATCH DOCUMENTS:
- 15.6.1 All documents viz., RR/LR/AWB, Invoice, Packing List, Test Certificate, Drawings and Catalogues should be in English Language.
- 15.6.2 In addition to the RR/LR/ AWB/ Invoices, packing lists, test certificate, shall be made out against each despatch in as many number or copies as shown below at 15.6.5. The invoice and packing list specifically must show uniformly the marks and numbers, contents case wise consignees' name, destination and all other particulars as per OWNER'S Standards Format enclosed (Annexure-II).
- 15.6.3 The invoice must show the unit rates and net total price. Items packed separately should also be invoiced and the value shown accordingly, packing list must show, apart from other particulars actual contents in each case net and gross weight and dimensions and the total number of packages. All documents should be duly signed by the SUPPLIER.
- 15.6.4 DESPATCH INFORMATION:
- As soon as any despatch is made, the SUPPLIER shall send immediate information by way of telex / fax message to OWNER, and Insurance Company as specified in the Purchase Order giving particulars of the despatches, Zonal code and Wagon numbers / Name of Lorry Service and Lorry Registration numbers, (as the case may be) Destination, Railway Receipt, LR.No, (as the case may be) Date, total freight amount with confirmation copies by post.
- 15.6.5 TRANSMISSION OF DESPATCH DOCUMENTS:
- SUPPLIER shall obtain the DESPATCH documents in complete sets as quickly as possible after the despatch is made and mailed as shown below so that they are received as early as possible. SUPPLIER shall be fully responsible for any delay and / or demurrage / wharfage etc., in clearance of the consignment at destination due to delay in presentation of the despatch documents or submission of documents.
- 15.6.5.1 In terms of CONTRACT or otherwise, the complete original set of documents are required to be sent to OWNER through bank, or as specified in the order.

15.6.5.2 Documents consisting of one copy of Lorry receipt / Railway receipt / Airway bill, Invoice, Packing List, Test Certificate, Catalogue / Drawing, if applicable, shall be sent to the following.

- a) In-Charge (Stores),  
KIOCL.Ltd.,  
Kudremukh-577142,  
Chickmagalur Dist.  
Karnataka State
- b) In-Charge (Stores),  
KIOCL.Ltd.,,  
Panambur,  
Mangalore-575010
- c) In-Charge Materials, (I & P)  
KIOCL.Ltd.,,  
Second Block, Koramangala,  
Bangalore-560034.
- d) In-Charge Materials, Finance & Accounts)  
KIOCL.Ltd.,,  
Second Block, Koramangala,  
Bangalore-560034.
- e) In-Charge Materials,(Inspection & Progress)  
KIOCL.Ltd.,,  
Second Block, Koramangala,  
Bangalore-560034.

## 16.0 TRANSIT RISK INSURANCE

Unless otherwise specified in the CONTRACT, all equipments / materials shall be insured against all marine and transit risk on warehouse to warehouse basis by OWNER.

## 17.0 TRASPORTATION:

17.1.1 The SUPPLIER is required to transport the items only through reputed and bank approved Transport Carriers or as specified by OWNER.

17.1.2 Wherever the items make a full truckload, the items should be despatched directly to the final consignee on door delivery basis at Kudremukh / Mangalore as the case may be.

17.1.3 In case of piece consignments, the same are to be despatched to the Transporter's godown at Mangalore from where OWNER shall arrange to clear the goods. Transportation should be carried out only through such Carriers who are having Branch Office / Godown at Mangalore in case of piece consignments.

17.1.4 In all cases of transportation, the OWNER shall be responsible for transit insurance unless otherwise specified in the CONTRACT. Thus the SUPPLIER is required to ensure that the goods are transported under the "Owners Risk" only. Non-compliance shall lead to recovery of the excess insurance premium charged by the transporter from the SUPPLIERS' bills due for payment.

## 18.0 RECONSERVATION

18.1 The SUPPLIER should ensure prior to despatch, reconsevation of equipment and material for storage for a minimum period 6 months.

18.2 The SUPPLIER should give his recommendation on reconsevation procedure to be followed in case the equipments are stored beyond six months period.

18.3 The packaged should be marked with the date of preservation of such equipments, which are liable to be damaged, if not reconseved within the specific Period.

## 19.0 TEST ON COMPLETION

19.1 Wherever possible, all tests shall be carried out before despatch

19.2 The test certificates for all components / materials / equipments as required under the technical specification shall be submitted.

19.3 Should however, it becomes necessary for the final tests as to performance and guarantee (if any) to be held until the equipments materials or supplies to be erected. Such final tests shall be carried out by the OWNER in the presence of SUPPLIER or his designated representative within one (1) month (or such other time as the parties may reasonably agree to from the date of completion of erection or from the date on which the equipments materials and / or supplies are put into operation whichever is later. The cost of these tests shall be to SUPPLIERS account.

19.4 Should the results of these tests not come within the tolerance (if any) specified, the tests shall at OWNER's option be repeated within one (1) month from the date of equipments, materials and / or supplie's are ready for retesting.

19.5 The cost of such retesting shall be to supplier's account.

20.0 FAILURE OF DELIVERY:

Should SUPPLIER fail to make despatch within the time period (s) specified in accordance with Article 13.0 above, OWNER shall be entitled immediately on such failure or at any time thereafter at the entire option of owner to either.

20.1.1 Purchase elsewhere, without notice to SUPPLIER at the risk and cost of the SUPPLIER, the equipments, materials, spares and / or supplies not delivered, of a similar or the nearest specification without canceling the CONTRACT in respect of equipment, materials, spares and / or supplies not yet due for shipment / delivery

Or

20.1.2 Cancel the CONTRACT in full or the portion thereof in default, and if so desired to purchase elsewhere the full or defaulted equipment, material, spare and / or supplies or items of similar, or the nearest specification at the risk and cost of SUPPLIER.

21.0 DELAYED DELIVERY AND LIQUIDATED DAMAGES:

OWNER shall be have the option to accept delivery of material after the originally stipulated delivery period in the CONTRACT and in case of acceptance of delayed delivery OWNER shall recover or retain from SUPPLIER as agreed liquidated damages and not as penalty a sum equal to quarter percent (1/4%)

Of the price of any equipments, materials, spares and / or supplies which SUPPLIER has failed to despatch as aforesaid for each week or part of a week, during which such despatches may be delayed, subject to a maximum limit of five percent (5%) of Contract value.

22.0 FAILURE TO MEET TEST STANDARDS

22.1.1 If the erected equipments, materials and / or supplies fail to meet the test standards under Article 19 shall be found to be defective or otherwise fail to fulfill the terms of CONTRACT. OWNER shall give SUPPLIER written notice setting forth the details of such defects or failure.

22.1.2 SUPPLIER shall immediately correct / remedy such defects and failures or alter the equipments, materials and / or supplies to bring them into compliance with the CONTRACT terms.

- 22.1.3 If SUPPLIER fails to do so within a reasonable time, as may be stipulated by the OWNER, OWNER may reject and replace, at SUPPLIER'S sole expense, the whole or any portion of the equipments, materials, supplies which are defective or fail to meet CONTRACT terms. Such replacement shall be carried out by OWNER within a reasonable time and price and, where reasonable possible the same SPECIFICATION or the nearest specification.
- 22.1.4 SUPPLIER'S liability under this clause shall be satisfied by the payment to OWNER of the assessed difference, if any, between the replacement price of the rejected / non-conforming items including transportation cost, taxes, duties, other incidental expenses and CONTRACT price and any amount previously paid to supplier.
- 22.1.5 If OWNER is unable to replace the rejected items within, a reasonable time, SUPPLIER'S liability under this clause will be satisfied by repayment of all money paid by OWNER to SUPPLIER in respect of such items.
- 22.1.6 In the event of rejection by OWNER under this clause, OWNER shall be entitled to use the rejected items in a reasonable and proper manner for time sufficient to enable OWNER to obtain replacement items. Thereafter supplier at his own cost shall immediately remove the rejected / non-conforming items from OWNER'S Premises. Such items shall be at Supplier's risk from the time of discontinuance of use and if not promptly removed thereafter, OWNER may at his option, with regard to said rejected / non-conforming items return them to SUPPLIER, on 'Freight collect' basis or dispose of / or segregate the item as OWNER deems fit but in any event at SUPPLIER'S risk.

## 23.0 NEGLIGENCE

- 23.1 If the SUPPLIER shall neglect to execute the work with due diligence or expedition or shall refuse or neglect to comply with any reasonable order given to him in writing by OWNER / INSPECTOR, in connection with the work, or shall contravene the provisions of CONTRACT, the OWNER may give notice in writing to SUPPLIER calling upon him to make good the failure, neglect or contravention complained of, within such time as may be deemed reasonable and in default of the compliance, with the said notice the OWNER without prejudice to his rights under para below hereto, may rescind or cancel the Contract holding the supplier liable for damages that the OWNER may sustain in this behalf. The making good of the failure, neglect or contravention hereunder will be governed by provision of Article 20 & 21.

23.2 If SUPPLIER fails to comply with such notices within a reasonable period from the date of serving thereof, in the case of failure, neglect or contravention capable of being made good, within that time or otherwise within such times as may be reasonable necessary for the same making good, then in such case without prejudice to the OWNER'S right under para above hereto, the OWNER shall have the option and be at liberty to take the work wholly or in part out of the SUPPLIER'S hands and may complete the work envisaged in the CONTRACT at a reasonable price with any other person or persons to execute the same or any part thereof.

23.3 If the cost of executing the work as aforesaid shall exceed the balance due to the SUPPLIER, the outstanding balance shall be paid by the SUPPLIER on the certificate of the OWNER.

#### 24.0 RECOVERY OF SUMS DUE:

24.1 Whenever under this CONTRACT any such of money is recoverable from and payable by the SUPPLIER whenever the owner has preferred any claim against the SUPPLIER, the OWNER shall be entitled to recover and / or to retain such sum by appropriating in part or whole out of the security deposited by the SUPPLIER, and in the event of the Security being insufficient or if no security has been taken from the SUPPLIER, then the balance or the total sum recoverable, as the case may be, shall be deducted / retained from any sum then due or which at any time thereafter may become due to the SUPPLIER under this or any other CONTRACT with the OWNER. Should this sum be not sufficient to cover the full amount recoverable, the SUPPLIER shall pay to the Owner, on demand the remaining balance due.

#### 25.0 PAYMENT:

25.1 All payments to SUPPLIERS shall be paid by cheque on a branch of state Bank of India, as under:

25.1.1 90% of the price of the item(s) on completion of its despatch. SUPPLIER shall submit to OWNER SUPPLIER'S invoice in 5 copies made out in favour of Owner together with consignee copy of Lorry Receipt / Railway Receipt / House Air way Bill, as the case may be, duly endorsed to OWNER together with Inspection Certificate issued by the authorised Inspection Agency and Test / Guarantee certificates (if required). In case of payment made through Bank at SUPPLIER'S request, all the related Bank charges shall be borne by the SUPPLIER.

25.1.2 Payment of the balance 10% price of the item(s) of the contract price within 30 days of receipt by OWNER of the final despatch under the CONTRACT upon presentation of OWNER'S Goods Receipt Note together with Invoice for the balance 10 % payment in 5copies drawn on OWNER.

25.1.3 In case of full Truck Load / door delivery, payment as at 25.1.1 shall be made on delivery of the consignment at destination against SUPPLIER'S Invoice in 5 copies together with receipted Transporter's bill / acknowledgement of receipt of material by the OWNER.

## 26.0 WARRANTY

26.1 SUPPLIER warrants all equipments, material, supplies and spares supplied under the CONTRACT against defects in workmanship and materials for a period of 12 months from the date commissioning / installation / use or 24 months from the date of the last despatch, whichever comes first. SUPPLIER shall replace any part that may fail or show signs of defects at Owner's premises in case the same is not repairable. OWNER'S decision as to whether the part is to be repaired or replaced is final. The cost of replacement / repair shall be borne by the SUPPLIER.

26.2 The removal of the defective part(s) from OWNER'S premises shall be SUPPLIER'S responsibility and shall be made at SUPPLIER'S expenses.

26.3 In case of defective parts not repairable at OWNER'S premises, but essential, in the meantime for commercial use of the project, SUPPLIER shall allow OWNER to use the defective parts until they are replaced.

26.4 The provisions of clauses 26.1, 26.2, and 26.3 shall apply to all replaced and renewed parts until the expiration of six (6) months from the date of renewal or replacement or until the end of the warranty mentioned in 26.1 above.

26.5 If any defect is not satisfactorily remedied within reasonable time, OWNER may proceed to make the repair / replacement at SUPPLIER'S risk and expense but without prejudice to any other contractual right, which OWNER may have against Supplier in respect of such defect.

26.6 This issuance of Inspector's certificate of inspection or certificate of approval shall in no way absolve SUPPLIER from the provisions of this article.

26.7 WARRANTY REPLACEMENT:

Warranty replacement shall be on site to site basis. The component under break-down would be handed over at site to the SUPPLIER / SUPPLIER'S duly authorised representative. He shall discuss with OWNER and settle the

issue of warranty replacement. In case no response is received within 10 days, it shall be presumed that the warranty replacement of all materials handed over shall be effected by the SUPPLIER. Within 7 days thereafter the component under break-down shall move out of the manufacturer's works. In case the subject component is available in the stock of OWNER, the same would be utilised and the replacement could be sent immediately.

## 27.0 INDEMNITY

27.1 SUPPLIER shall at all times save OWNER harmless and indemnify each of them against all claims which may be made in respect of any equipments, material spares and supplies delivered by SUPPLIER under this contract for infringement of any right protected by any patent, registration of design and / or Trade mark. In this connection OWNER shall pass on to SUPPLIER all claims made against OWNER.

## 28.0 DOCUMENTATION

28.1 All drawings, SPECIFICATIONS, data, notices and other writings required under the CONTRACT shall be in English language and dimensions, weight and volumes shall be in metric system.

28.2 All drawings, SPECIFICATIONS and other data shall be delivered to:

- 1) In-Charge (Technical Services)  
KIOCL.Ltd.,  
II Block, Koramangala  
Bangalore-560 034, INDIA

Copy To:

- 2) In-Charge (Materials, I&P)  
KIOCL.Ltd.,  
II Block, Koramangala  
Bangalore-560 034, INDIA

28.3 All Notices, claims, etc, shall be delivered to:

If to Supplier: at the address set out in the purchase order. If to Owner.

In-Charge (Materials, I&P)  
KIOCL.Ltd., II Block, Koramangala  
Bangalore-560 034, INDIA

28.4 All invoices and other claims for payment by SUPPLIER to

In-Charge (Finance & Accounts)  
KIOCL.Ltd.,  
II Block, Koramangala  
Bangalore-560 034, INDIA

With copy to: In-Charge (Materials, I&P)  
KIOCL.Ltd.,  
II Block, Koramangala  
Bangalore-560 034, INDIA

29.0 INSOLVENCY AND BREACH OF CONTRACT:

29.1 OWNER may, at any time, by notice, in writing, summarily terminate the CONTRACT without additional compensation to SUPPLIER on the happening of any of the following events that is to say;

29.1.1 If the SUPPLIER shall at any time, before final despatch, be adjudged insolvent or to enter into any arrangement or composition with his creditors, or suspend payment or if the firm be dissolved under the partnership Act,

or

29.1.2 If SUPPLIER, being a Company shall pass a resolution or court shall make an order for the liquidation of its affairs or

29.1.3 If SUPPLIER commits any act of breach of Contract not herein specifically provided for, provided always that such termination shall prejudice any right or action or remedy which, shall have accrued or shall accrue thereafter to OWNER and provided also that SUPPLIER shall be liable to pay OWNER for any extra expenditure OWNER is the thereby put to, but SUPPLIER shall not be entitled to any gain on repurchase.

30.0 GOVERNING LAW

30.1 This CONTRACT and all rights' hereunder shall be governed by the laws of the Union of India for the time being in force and shall be subjected to the jurisdiction of the Courts situated at Bangalore, India.

31.0 FORCE MAJEURE

31.1 Any delay in or failure of performance of CONTRACT by either party hereto shall not constitute defaults by such party or give rise to any claim for damages against it if and to the extent such delay or failure of performance is caused by acts of God, acts of war, hostilities, acts of commission or omissions of Government or

Government agencies, invasion, revolution, civil commotion, strikes, lockout, blockade, Embargo, sabotage, fire, flood, severe earthquake, typhoon, cyclone, lightning, plague, epidemic or others etc. or omission or circumstance, which are beyond the reasonable control of the party affected, which they could not have reasonably foreseen and guarded against (hereinafter referred to as Force Majeure)

- 31.2 The party so affected by an event of Force Majeure shall notify the other parties of the occurrence thereof within ten (10) days of its commencement.
- 31.3 The Force Majeure referred to above shall not be extended to the SUPPLIER'S SUB-CONTRACTORS works. The SUPPLIER shall be wholly responsible for timely off-loading in cases strikes, lockout, etc., in the SUB-CONTRACTOR'S works.
- 31.4 Except as provided below neither party shall be by reason of any event of Force Majeure be entitled to terminate this CONTRACT, nor shall either party have any claim for damages against the other in respect of such non-performance or delay in performance.
- 31.5 Performances and deliveries under this contract shall be resumed as soon as practicable after the event of Force Majeure has ended or ceased to exist with appropriate extension to the time for completion equal to the period of the delay, and the decision of OWNER as to whether deliveries have been so resumed shall be final and conclusive.
- 31.6 Notwithstanding anything to the contrary stated herein OWNER shall have the right prior to the end of the event of Force Majeure to terminate the CONTRACT without compensation to SUPPLIER if the CONTRACT is suspended by the occurrence of the event of Force Majeure for a period of more than forty-five (45) days. In case of such termination of the CONTRACT SUPPLIER shall repay to the OWNER all advances paid to him in respect of subject CONTRACT.

## 32.0 RISK OF LOSS

32.1 SUPPLIER guarantees the due return of all OWNER's properly including particulars issued to him and will be responsible for the full value thereof, to be assessed by OWNER, for all loss thereof or damage thereto from whatever cause happening while in possession or control of SUPPLIER, his servants, workman or agents.

## 33.0 ARBITRATION

- 33.1 If at any time any question, dispute or difference of whatsoever, nature shall arise between OWNER and SUPPLIER upon or in relation to or in connection with the CONTRACT, either party may, forthwith give to the other notice in writing of the such existence of question, dispute or difference, and the same shall be referred

arbitration by a sole arbitrator to be appointed by Chairman-cum-Managing Director of the OWNER or any person acting in such capacity.

- 33.2 Where the arbitrator withdraws from his office for any reason or otherwise the arbitrator is substituted, the Arbitral Proceedings shall continue from that stage onwards and earlier hearings shall not be repeated.
- 33.3 The language to be used in the Arbitral Proceedings shall be English.
- 33.4 The award of the Arbitrator shall be final, conclusive and binding on the parties.
- 33.5 The provisions of Arbitration & Conciliation Act 1996 and rules thereunder in force shall be applicable to the CONTRACT.
- 33.6 The venue of arbitration proceedings shall be only Bangalore, India.
- 33.7 Only Courts in Bangalore shall have jurisdiction regarding the matters relating to the arbitration.

## **ANNEXURE-I**

### **FORM OF BANK GUARANTEE FOR SECURITY DEPOSIT**

In consideration of KIOCL Limited (hereinafter called Company) having agreed to exempt.....(hereinafter called the said Supplier (s) / Contractor(s)) from demand under the terms and conditions of Purchase Order No.....

Dated..... made between .....

And ..... for ..... (hereinafter referred to as 'contract') of security deposit for the due fulfillment by the said suppliers(s) / Contractor (s) of the terms and conditions contained in the said contract on production of a Bank Guarantee for Rs.....

(Rupees.....only) we,.....

(hereinafter referred as "the Bank") at the request of Supplier, (s) Contractor (s) do hereby guarantee the payment to the Company an amount not exceeding Rs..... (Rupees.....only) and interest thereon at..... percent per annum from the date of demand till payment against any loss or damage caused to or suffered or would be caused to or suffered by the Company by reason of any breach by the said Supplier(s)/ Contractor(s) of any of the terms and conditions contained in the said Contract.

2. We..... do hereby unconditionally and irrevocably undertake to pay to the Company an amount to the extent of Rs. .... (Rupees .....only) and interest thereon at ..... percent per annum from the date of demand till payment without any demur, merely on a demand from the Company stating that the amount claimed is due by way of loss or damage caused to or suffered or would be caused to or suffered by the Company by reason of breach by the said Supplier(s) / Contractor(s) of any of the terms and conditions contained in the said Contract or by reason of the Supplier(s)/ Contractor(s) failure to perform the said contract. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs..... (Rupees.....only) and interest thereon as mentioned above from the date of demand till payment.
3. Our liability under these presents is absolute and unequivocal and we undertake to pay to the Company the amount so demanded notwithstanding the Supplier(s)/Contractor(s) raising any dispute and / or disputes or filing any suit or proceeding before any Court or tribunal or other Authority. The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment there under and the Contractor(s) Supplier(s) shall have no claim against us for making such payment.

4. We.....further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the contract and that it shall continue to be enforceable till all the dues of the Company under or by virtue of the said contract have been fully paid and its claims satisfied or discharged or till the Company certifies that the terms and conditions of the said contract have been fully and properly carried out by the said Supplier(s) / Contractor(s) and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before.....we shall be discharged from all liability under this Guarantee thereafter.
5. This Guarantee shall not be revocable by us except with the written consent of the Company and shall continue to be enforceable till.....should it be necessary to extend Guarantee beyond the said date, we undertake to extend the validity of this Guarantee for such further period as may be required by the Company, and such extension shall be given one month before the expiry of this Guarantee filing which the amount covered under this Guarantee shall become forthwith payable, notwithstanding that the Contract is continuing and /or the Company has or has not terminated the Contract or preferred any claim against the Supplier (s) Contractor(s).
6. We..... further agree with the Company that the Company shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the Contract or to extend time or performance by the said Supplier(s)/ Contractor(s) from time to time or to postpone for any time or from time to time in exercise of any of the powers exercisable by the Company against the said Supplier(s) Contractor(s) and to forbear or enforce any of the terms and conditions relating to the Contract and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said Supplier(s)/Contractor(s) or for any forbearance,act or omission on the part of the Company or any indulgence by the Company to the said Supplier(s)/Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties, but for this provision, have effect of so relieving us.
7. This Guarantee shall not in any way be affected due to change in our constitution or by your taking or varying or giving up any securities from the CONTRACTOR(S)/ SUPPLIERS or any other person, firm or Company on its behalf or by the change in the constitution, winding up dissolution, insolvency or death as the case may be of the CONTRACTOR(S)/SUPPLIER(S).
8. In order to give full effect to the Guarantee herein contained you shall be entitled to act as if we were your principal debtors in respect of all your claims against the CONTRACTOR(S)/SUPPLIER(S) hereby Guaranteed by us as aforesaid and we hereby expressly waive all our rights of suretyship and other rights if any which are in any way inconsistent with the above or any other provisions of this Guarantee.

9. We..... also undertake not to revoke this Guarantee during its currency except with previous consent of the Company in writing.

Dated the .....day of .....200

For.....

(indicate the name of Bank)

#### IMPORTANT NOTE

The following Points should be taken care of while submitting the Bank Guarantee:-

1. The Bank Guarantee should be on non-judicial stamp paper having a value of Rs.100/-or as applicable in the State of, Karnataka
2. The stamp paper should be purchased in the name of the Bank,who give the guarantee and not in the name of the Supplier.
3. The Bank Guarantee should be strictly as per the profoma.
4. The Bank Guarantee should be from any of the Nationalised Bank,Scheduled Bank or any other bank Acceptable to owner
5. If any correction is made on the guarantee the same should be endorsed by the Bank with its official seal

**ANNEXURE-II**

FROM: (Supplier's Name and Address)

TO: IN-CHARGE (STORES)  
KIOCL LIMITED  
(A GOVT.OF INDIA ENTERPRISE)  
(LOCATION AS SPECIFIED IN PURCHASE ORDER  
AS FINAL CONSIGNEE)

PURCHASE ORDER NO .....DATED.....

NET  
WEIGHT.....  
.....KGS.

GROSS WEIGHT  
.....  
KGS.

DIMENSIONS  
.....  
.....

CASE NO./TOTAL NUMBER OF PACKAGES  
.....  
(SAY 1/X, 2/X, 3/X, ETC.)

NOTE : MARKING SHALL BE BOLD. MINIMUM LETTER HEIGHT 5 CMS.

# ANNEXURE “C”

**KIOCL LIMITED**  
(A Government Of India Enterprise)  
**II nd BLOCK, KORAMANGALA**  
***BANGALORE-560 034***

## **GENERAL CONDITIONS**

**(For Off-Shore Supply)**

### KIOCL-P/2

#### 1.0 DEFINITIONS

As used herein and any Contract documents, the following words shall have the following meanings.

1.1 "OWNER/PURCHASER" shall mean KIOCL Limited, A Government of India Enterprise having its registered Office at II Block, Koramangala, Bangalore, Karnataka, INDIA

1.2.1 SUPPLIER/CONTRACT shall mean the person, firm or body corporate contracting with OWNER/PURCHASER for the supply to the OWNER/PURCHASE of any equipment, materials, spares/ and / or supplies as per the CONTRACT and shall be deemed to include SUPPLIER'S successors (approved by OWNER) representatives, heirs, executors and administrators, unless otherwise excluded by the CONTRACT.

1.3 SUB-CONTRACTOR shall mean any individual, firm or body corporate contracting directly with the SUPPLIER and not OWNER to finish

SUPPLIER with any portion of the work, other than the purchase of “off the shelf” items or Pre-fabricated machinery or supplies. SUPPLIER shall remain fully liable and responsible to the owner for the work so sub-contracted as well as for all acts and / or commissions of SUB-CONTRACTORS.

- 1.4 CONTRACT shall mean and include the invitation to Tender, Instruction to Tenderers, the Tender, The General Conditions, the specifications, special Conditions, if any, and the acceptance of Tender/ Purchase Order Issued by OWNER all in respect of supply and delivery of the equipment, materials, spares and / or supplies called for by the SPECIFICATIONS and may also include any agreement if and when signed by and between OWNER and SUPPLIER and includes subsequent changes / amendments, if any.
- 1.5 WORK shall mean and include any and all labour, supervision, service, material, machinery equipment, tools, supplies and facilities required for the supply and delivery by SUPPLIER of the equipment, materials, spares and / or supplies called for by the CONTRACT.
- 1.6 TENDRER”shall mean the person firm or body corporate submitting a Tender against the invitation to Tender and shall include his/its/their executors, administrators, legal representatives successors and permitted assignees.
- 1.7 INVITATION TO TENDER”, shall include the SPECIFICATIONS, instructions to tenderers, the General Conditions etc.
- 1.8 “TENDER” shall mean the formal quotation submitted by a tenderer proposing to perform the work requested in the invitation to Tender issued by OWNER.
- 1.9.0 PARTICULARS shall mean and include.
- 1.9.1 Specifications:
- 1.9.2 Drawings: and

- 1.9.3 Proprietary mark or designated pattern denoting the product of an individual, firm or body corporate.
- 1.10 SPECIFICATIONS shall mean and include the schedules, detailed designs, statements of technical data', performance and characteristics etc., relating to the work.
- 1.11 INSPECTOR shall mean any person nominated by the OWNER and the said person nominated shall also ascertain the position of deliveries and expedite the same under the contract and periodically and finally inspect the work.
- 1.12 Words denoting person shall include firms, companies, corporations, associations or bodies of individuals whether incorporated or not. Words denoting masculine gender or singular number shall also include the feminine gender and plural number and vice-versa where the CONTRACT so requires or permits. The words ' including" and "include(s)" as used herein are not to be construed as words of limitation unless the context otherwise requires or unless as contrary intention otherwise appears in the matter.

## 2.0 AUTHORITY OF PERSON SIGNING DOCUMENTS

- 2.1 A person signing the Tender or any other documents forming a part of the CONTRACT on behalf of another shall be deemed to warrant that he has authority to bind such other and if one enquiry, it appears that the person so signing had no authority to do so, OWNER may without prejudice to other civil and criminal remedies, cancel the contract and hold the signatory liable for all costs and damages. Any person so signing shall give satisfactory evidence of his authority.

### 3.0 SECURITY DEPOSIT

3.1 SUPPLIER shall within fifteen days of receipt of OWNER's acceptance of tender, deposit with the OWNER A security deposit equal to Ten percent (10%) of the CONTRACT value in any one of the following forms:

3.1.1 Cash or Demand Draft payable at Bangalore.

3.1.2 Bank Guarantee as per Annexure-1 hereto from any Indian Nationalised Bank, Scheduled Bank or any other established Bank acceptable to the OWNER. If the Bank Guarantee is from non Indian Bank, the SUPPLIER shall have the said Bank Guarantee properly stamped at Bangalore, Karnataka, India by the Foreign Bank's Associates, subsidiaries or agents in India in accordance with the laws applicable in the State of Karnataka

3.1.3 Letter of Credit duly confirmed by State Bank of India, Commercial Branch, Krishi Bhavan, Hudson Circle, Bangalore-560 001.

3.2 The Bank Guarantee shall be for the due and faithful performance of the CONTRACT BY SUPPLIER and shall remain binding, notwithstanding such variations, alterations or extensions of time as may be made, given, conceded or agreed to between OWNER and SUPPLIER under these General Conditions or otherwise and shall be in the form as per Annexure-I (enclosed) and the validity of the Bank Guarantee shall be extended from time to time as required by OWNER.

3.3 If SUPPLIER fails to provide the security Deposit within the period specified, such failure will constitute a breach of CONTRACT and OWNER shall be entitled to terminate the CONTRACT and to place the Purchase Order elsewhere at SUPPLIER'S risk and cost.

3.4 No interest, shall be payable by OWNER on the Security Deposits.

3.5 On due performance and completion by the SUPPLIER of CONTRACT in all respects, the Security Deposit under the said CONTRACT will be returned without any interest thereon after the expiry of the warranty as per clause No.24 herein below.

#### 4.0 RESPONSIBILITY FOR PERFORMANCE OF CONTRACT

##### 4.1 GENERAL

The SUPPLIER shall be entirely responsible for the due performance of the CONTRACT in all respects according to the terms and conditions of the CONTRACT.

4.1.1 Supplies/items supplied shall strictly adhere to the specification stipulated and shall effectively perform its functions for which purpose it is ordered.

4.1.2 Any approval which OWNER and / or INSPECTOR may give in respect of the work or workmanship involved in the CONTRACT(whether with or without tests carried out by the SUPPLIER / INSPECTOR) shall not absolve the SUPPLIER of his contractual responsibilities and obligations.

4.1.3 Notwithstanding any approval or acceptance given by INSPECTOR, it shall be lawful for OWNER to reject the equipment, materials, spares and / or supplies if it is found that the equipments, materials, spares and / or supplies delivered and / or work carried out by SUPPLIER is not in conformity with the terms and conditions of the CONTRACT in all respects.

##### 4.2 CO-OPERATION WITH OTHER CONTRACTORS / SUPPLIERS:

SUPPLIERS shall co-operate with OWNER, other SUPPLIERS and CONTRACTORS including SUB-CONTRACTORS, if any, for any associated plant

and shall freely exchange all particulars and technical information with them to obtain the most efficient and economical design and to avoid unnecessary duplication of equipment, materials, spares and / or supplies. Supplier from OWNER shall claim no remuneration for such technical co-operation.

#### 4.3 SUB-LETTING OF CONTRACT:

SUPPLIER shall not sub-let, transfer or assign the CONTRACT or any part thereof without the express prior written approval of OWNER, other than the purchase of bought out items normally purchased from outside sources. In the event of SUPPLIER contravening this condition, OWNER shall be entitled to terminate the CONTRACT and to place the work elsewhere at SUPPLIER'S risk and expenses and SUPPLIER shall be liable for any loss or damage which OWNER may sustain in consequence or arising out of such replacing of the work.

#### 5.0 RESPONSIBILITY FOR COMPLETENESS

Any equipment, fitting, materials or supplies which may not be specifically mentioned in the SPECIFICATION or drawings but which are usual or necessary for carrying out the works under the CONTRACT within the Scope of the Supply / Work to be executed are to provided for and rendered by the SUPPLIER / CONTRACTOR without extra charge and the equipments / supplies must be complete in all respects.

#### 6.0 QUALITY OF MATERIALS AND WORKMANSHIP

TENDERER / SUPPLIER shall be deemed to have carefully examined and to have knowledge of these General Conditions, the PARTICULARS, special conditions, Instructions to Tenderers and other Documents forming the Invitation to Tender / Contract and also to have satisfied himself as to the nature of the work to be executed and other relevant matters and details.

- 6.1.1 Any information thus had or obtained from OWNER shall not, in any way, relieve SUPPLIER of his responsibilities under Article 5-0 above.
- 6.1.2 If SUPPLIER / TENDERER shall have any doubt as to the meaning of any portion of the Invitation to Tender, SUPPLIER / TENDERER shall, before signing Tender set forth the PARTICULARS thereof and submit them to OWNER in writing, in order that such doubt may be removed.
- 6.2 The work shall be of the best quality and workmanship according to the latest engineering practices existing at the time of acceptance of the TENDERS and shall be manufactured from materials of the best quality and highest class for the purpose.
- 6.2.1 Appropriate factors for safety shall be used thorough the design and specially in the design of all parts subject to varied stresses.
- 6.2.2 All work shall be performed and completed in a thorough workman like manner and shall follow the best practice in the light of modern developments in the manufacture of high grade equipments notwithstanding any omissions in the SPECIFICATION.
- 6.2.3 Supplier shall provide the equipments, materials, spares and / or supplies with proper safety devices for protection of workman and shall provide suitable removable safety guards for all exposed moving parts such as Gears, Rollers, Chains, Bells, Brake Wheels, Couplings and the like. SUPPLIER warrants that such work will meet the requirements of and be in conformity with all applicable laws, rules, regulations and ordinances of the Government of India or any sub-division thereof.

## 7.0 DRAWINGS

- 7.1 Drawings required to be furnished by SUPPLIER shall be supplied free of cost to OWNER. All drawings shall be supplied in five (5) sets unless otherwise specified.
- 7.2 SUPPLIER shall furnish to OWNER, at the earliest for approval by Engineer, general arrangement drawings, erection drawings, electrical diagrams, bill of materials, equipment lists, and any other drawings and diagrams required for a complete and serviceable job, showing work to be completed by SUPPLIER and work to be completed by SUB\_CONTRACTOR.
- 7.3 SUPPLIER shall also furnish to OWNER those specific drawings and any other details / information as requested by OWNER.
- 7.4 Drawings submitted under 7.2 and 7.3 above will be REVIEWED by OWNER and returned to SUPPLIER signed and stamped either "APPROVED"APPROVED as noted; or not approved Resubmit, Approved and Approved as noted, drawings (following corrections) may then be issued for fabrication / manufacture. Not Approved Resubmit" drawings shall be corrected and resubmitted for OWNER's approval.
- 7.5 After approval by OWNER or his authorised representative, SUPPLIER shall forward one (1) approved reproduceable (sepia) and six (6) copies of approved drawing to OWNER. The approval shall be in the form of duly authenticated stamps with signature on the drawing.
- 7.6 Approval of SUPPLIER'S drawings by OWNER shall not relieve SUPPLIER from any responsibility covered by the requirements of the CONTRACT.

## 8.0 MANUALS

- 8.1 The SUPPLIER shall deliver free of cost, the following manuals in 6 (6) copies along with the consignment for all equipments / supplies.

- 8.1.1 Operating manuals, covering general description, operating principles and operating procedures.
- 8.1.2 Maintenance manuals covering preventive and corrective maintenance.
- 8.1.3 Calibration manuals, if applicable.
- 8.1.4 Spare parts catalogue for mechanical, electrical and instrumentation portion of equipment.
- 8.1.5 Any other documentation as required in the specification.
- 8.2 Manuals shall be printed in English on good quality paper and shall be contained in suitable durable bindings.
- 8.3 Manuals provided by SUPPLIERS or his SUB-CONTRACTOR/S shall be complete and shall cover all equipments, materials, spares and / or supplies.

## 9.0 PROGRESS REPORTS

- 9.1 Progress reports wherever specified shall be submitted to OWNER once in a month or at frequent intervals in five (5) copies in a form acceptable to OWNER in English.
- 9.2 Such progress reports shall indicate, in suitable details, the progress of the procurements of raw materials manufactured both in SUPPLIER'S shops and SUB-CONTRACTOR'S shops, and any other work to be performed by SUPPLIER. Photographs wherever possible shall be submitted.
- 9.3 The progress reports shall further compare actual versus projected completion dates and describe current and anticipated problems and delay factors, if any. Report shall also include corrective action taken or proposed to be taken without in any way relieving or affecting the SUPPLIER'S responsibility to deliver the equipments within the stipulated delivery date(s) / (period)(s).

## 10.0 CHANGES

10.1 OWNER shall have the right to make such and / or variation in the SPECIFICATIONS as may be necessary or desirable from time to time during subsistence of the CONTRACT till the stage of testing and commissioning.

10.2 Prior to commencement of any additional work based on a change in SPECIFICATION as above involving compensating / reduction on the Contract price, SUPPLIER shall submit to OWNER a detailed estimate in writing of the price for such additional / reduced works.

10.3 Upon approval by OWNER, OWNER shall issue to SUPPLIER a written order covering the changes in work and price which shall then form part of the CONTRACT. SUPPLIER shall not proceed with any additional work prior to receipt of OWNER'S said written order.

## 11.0 SPARES PARTS

SUPPLIER shall include in his Tender a firm priced, itemised list of recommended spare parts necessary for the proper operation and maintenance of the equipment for a period of one (1) year.

This quotation shall be be valid for 90 days from the date of acceptance of Tender for the main equipment. The TENDERER shall also quote itemised individual prices for the insurance spares necessary for uninterrupted operation of the equipment. It shall be obligatory on the part of Supplier to ensure uninterrupted supply of spare parts for the proper maintenance of the equipments.

## 12.0 TIME SCHEDULE

12.1 The time and date(s) of delivery of the equipments, materials, spare and / or supplies as agreed to between SUPPLIER- OWNER shall be deemed to be

essence of the CONTRACT, and delivery must be completed not later than the date (s) / so specified.

12.2 Within fifteen (15) days, of the acceptance of Tender, SUPPLIER shall submit for OWNER'S approval a progress schedule covering all phases of the work including design, procurement, fabrication / manufacture and transportation.

12.3 SUPPLIER shall allow all reasonable facilities to INSPECTORS and OWNER'S representative(s) including free and full access to SUPPLIER'S facilities and to all records having a bearing on the progress and quality of the work and deliveries under the CONTRACT.

### 13.0 INSPECTION

13.1 INSPECTOR shall have the right to inspect and test the work or any part thereof and to observe any test carried out by SUPPLIER at any time and SUPPLIER, on demand from INSPECTOR shall at no additional charges to OWNER, carry out such tests, in an appropriate manner in the presence of INSPECTOR.

13.2 SUPPLIER shall afford at his own expense full, free and safe access and facilities at his works and / or his SUB-CONTRACTOR'S works for INSPECTOR to carry out and / or observe such inspections and / or tests.

13.3 Any such inspection, examination or testing carried out by INSPECTOR or observed by him shall not relieve Supplier from any of his obligations under the CONTRACT to be otherwise successfully performed by the SUPPLIER.

13.4 SUPPLIER shall give INSPECTOR not less than one week's notice in writing regarding any tests to be carried out by SUPPLIER or SUB-CONTRACTOR and the period likely to be required for such testing. INSPECTOR shall give the SUPPLIER written notice within five (5) days of receipt of such notice as to whether, INSPECTOR intends to witness the said tests and indicating the dates normally not more than fifteen (15) days from the date of receipt of SUPPLIER'S notice on which Inspector will be available at SUPPLIER'S or his SUB-CONTRACTOR'S facilities for such tests failing which SUPPLIER OR SUB-CONTRACTOR may proceed with the test.

13.5 If INSPECTOR is not present, SUPPLIER shall immediately notify Inspector in writing as to the test results.

13.6 When the test and / or inspections have been complete to INSPECTOR'S satisfaction, INSPECTOR shall issue a certificate to that effect. No equipments, materials, spares or supplies for which tests and / or inspections are performed shall be dispatched by SUPPLIER before such certificates are issued.

13.7 INSPECTOR may reject the whole or any part of the work at any time after testing / inspection, if the INSPECTOR at his sole discretion determines the work to be unsatisfactory or does not fulfil the requirements of the CONTRACT.

INSPECTOR shall advise SUPPLIER and OWNER in writing as to the grounds for rejection. INSPECTOR'S decision regarding rejection shall be final and binding on the SUPPLIER.

13.8 In the event of any rejection as aforesaid, then without prejudice to the foregoing provision, OWNER shall be at liberty to.

13.8.1 Allow SUPPLIER to offer once again, within a time specified by INSPECTOR, the equipments, materials, spares and / or supplies in

replacement of those which have been rejected, the SUPPLIER bearing all costs for such replacement.

Or

13.8.2 Buy the quantity of equipments, materials, spares and / or supplies so rejected of the same or equivalent or the nearest specification from elsewhere at SUPPLIERS risk and cost without affecting SUPPLIER'S liability as regards the supply of any consignments due under the CONTRACT in accordance thereto.

#### 14.0 PRICE

- 14.1 The Supplier shall quote item-wise price(s) on FAS port of shipment for items being offered for shipment from North American Sea ports or FOB port of shipment from all other ports. The mutual responsibilities shall be as per INCO TERMS as amended from time to time. The price shall include export packing charges, inland freight to the port of shipment, terminal handling charges, container handling charges, if any etc
- 14.2 Supplier shall indicate separately the inland freight from place of manufacture to the port of shipment and insurance, if any, contained in his price. The Supplier shall also indicate separately the ocean freight.
- 14.3 Where prices are quoted on FAS Port of shipment basis, the Supplier's liability shall be deemed to cover as on FOB port basis, as defined by INCO TERMS including lifting charges, port charges, wharfage / container handling charges, terminal handling charges if any, etc.
- 14.4 For all small consignment, instruments of delicate nature etc. SUPPLIER shall quote prices on FOB international (gateway) Airport basis as per INCO TERMS.

## 15.0 DELIVERY

15.1 SUPPLIER shall be responsible to deliver shipments free alongside ship (FAS) / Free on Board (FOB) at port of shipment or FOB International Airport as specified in the ORDER.

15.2 SUPPLIER shall include and provide for securely protecting and packing the equipments, materials, supplies and spares so as to avoid loss or damage in transit including extended ocean shipment and storage under tropical conditions. All packing shall allow for easy removal and checking at the site. Special precaution shall be taken in case of transit by sea. Details regarding provisions for packing and marking all deliveries set out in Annexure-II attached hereto and made a part hereof. All cost in this regard shall be to SUPPLIERS account.

15.3 SUPPLIER shall be responsible for obtaining any export license / permit required for export from the country of manufacture of the equipments, materials, supplies and / or spares called for hereunder and all expenses incidental to the performance of statutory or non-statutory obligation in this regard shall be to SUPPLIER'S account.

15.4 Special conditions regarding shipment and transportation are set out in schedule attached hereto and made a part hereof (Annexure-II)

15.5 Should the Freight Forwarder fail to provide the shipping space at the time intimation given by the SUPPLIER, receipt of the consignment by the freight forwarder shall be taken as date of delivery to the OWNER for the purpose of levy of liquidated damages as per provision at article 19.0 below.

15.6 In case of shipment by Air, SUPPLIER shall arrange such shipments only through consolidation Agent nominated / specified in the Purchase Order.

## 16.0 RECONSERVATION

16.1 The SUPPLIER should ensure prior to dispatch, reconsevation of equipment and material for storage for minimum period 6 months.

16.2 The SUPPLIER should give his recommendation on reconsevation procedure to be followed in case the equipments are stored beyond six months period.

16.3 The packages should be marked with the date of preservation of such equipments, which are liable to be damaged, if not reconseved within the specific period.

#### 17.0 TEST ON COMPLETION

17.1 Wherever possible, all tests shall be carried out before dispatch

17.2 The test certificates for all components / materials / equipments as required under the technical specification shall be submitted.

17.3 Should however, it becomes necessary for the final tests as to performance and guarantee (if any) to be held until the equipments materials or supplies to be erected, at site, such final tests shall be carried out by the OWNER in the presence of SUPPLIER or his designated representative within one (1) month (or such other time as the parties any reasonably agree to) from the date of completion of erection or from the date on which the equipments materials and / or supplies are put into operation whichever is later. The cost of these tests shall be to SUPPLIERS account.

17.4 Should the results of these tests not come within the tolerance (if any) specified, the tests shall at Owner's option be repeated within one (1) month from the date of equipments, materials and / or supplies are ready for retesting.

17.5 The cost of such retesting shall be to supplier's account.

#### 18.0 FAILURE OF DELIVERY :

Should SUPPLIER fail to make despatch within the time period (s) specified in accordance with Article 13.0 above, OWNER shall be entitled immediately on such failure or at any time thereafter at the entire option of owner to either.

18.1.1 Purchase elsewhere, without notice to SUPPLIER at the risk and cost of the SUPPLIER, the equipments, materials, spares and / or

suppliers not delivered, of a similar or the nearest specification without canceling the CONTRACT in respect of equipment, materials, spares and / or supplies not yet due for shipment / delivery

Or

18.1.2 Cancel the CONTRACT in full or the portion thereof in default, and if so desired to purchase elsewhere the full or defaulted equipment, material, spare and / or supplies or items of similar, or the nearest specification at the risk and cost of SUPPLIER.

#### 19.0 DELAYED DELIVERY AND LIQUIDATED DAMAGES:

OWNER shall be have the option to accept delivery of material after the originally stipulated delivery period in the CONTRACT and in case of acceptance of delayed delivery OWNER shall recover or retain from SUPPLIER as agreed liquidated damages and not as penalty a sum equal to quarter percent (1/4%) of the price of any equipments, materials, spares and / or supplies which SUPPLIER has failed to despatch as aforesaid for each week or part of a week, during which such despatches may be delayed, subject to a maximum limit of five percent (5%) of Contract value.

#### 20.0 FALIURE TO MEET TEST STANDARTDS

20.1.1 If the erected equipments, materials and / or supplies fail to meet the test standards under Article 19 shall be found to be defective or otherwise fail to fulfill the terms of CONTRACT. OWNER shall give SUPPLIER written notice setting forth the details of such defects or failure.

20.1.2 SUPPLIER shall immediately correct / remedy such defects and failures or alter the equipments, materials and / or supplies to bring them into compliance with the CONTRACT terms.

20.1.3 If SUPPLIER fails to do so within a reasonable time, as may be stipulated by the OWNER, OWNER may reject and replace, at SUPPLIER'S sole expense, the whole or any portion of the equipments, materials, supplies

which are defective or fail to meet CONTRACT terms. Such replacement shall be carried out by OWNER within a reasonable time and price and, where reasonable possible the same SPECIFICATION or the nearest specification.

- 20.1.4 SUPPLIER'S liability under this clause shall be satisfied by the payment to OWNER of the assessed difference, if any, between the replacement price of the rejected / non-conforming items including transportation cost, taxes, duties, other incidental expenses and CONTRACT price and any amount previously paid to supplier.
- 20.1.5 If OWNER is unable to replace the rejected items within, a reasonable time, SUPPLIER'S liability under this clause will be satisfied by repayment of all money paid by OWNER to SUPPLIER in respect of such items.
- 20.1.6 In the event of rejection by OWNER under this clause, OWNER shall be entitled to use the rejected items in a reasonable and proper manner for time sufficient to enable OWNER to obtain replacement items. Thereafter supplier at his own cost shall immediately remove the rejected / non-conforming items from OWNER'S premises. Such items shall be at Supplier's risk from the time of discontinuance of use and if not promptly removed thereafter, OWNER may at his option, with regard to said rejected / non-conforming items return them to SUPPLIER, on 'Freight collect' basis or dispose of / or segregate the item as OWNER deems fit but in any event at SUPPLIER'S risk.

## 21.0 NEGLIGENCE

- 21.1 If the SUPPLIER shall neglect to execute the work with due diligence or expenditure or shall refuse or neglect to comply with any reasonable order given to him in writing by OWNER / INSPECTOR, in connection with the work, or shall contravene the provisions of CONTRACT, the OWNER may give notice in writing to SUPPLIER calling upon him to make good the failure, neglect or contravention complained of , within such time as may be deemed reasonable and in default of the compliance, with the said notice the

OWNER without prejudice to his rights under para below hereto, any rescind or cancel the Contract holding the supplier liable for damages that the OWNER may sustain in this behalf. The making good of the failure, neglect or contravention hereunder will be governed by provision of Article 18 & 19.

- 21.2 If SUPPLIER fails to comply with such notices within a reasonable period from the date of serving thereof, in the case of failure, neglect or contravention capable of being made good, within that time or otherwise within such times as may be reasonable necessary for the same making good, then in such case without prejudice to the OWNER'S right under para above hereto, the OWNER shall have the option and be at liberty to take the work wholly or in part out of the SUPPLIER'S hands and may complete the work envisaged in the CONTRACT at a reasonable price with any other person or persons to execute the same or any part thereof.
- 21.3 If the cost of executing the work as aforesaid shall exceed the balance due to the SUPPLIER, the outstanding balance shall be paid by the SUPPLIER on the certificate of the OWNER.

## 22.0 RECOVERY OF SUMS DUE:

- 22.1 Whenever under this CONTRACT any such of money is recoverable from and payable by the SUPPLIER whenever the owner has preferred any claim against the SUPPLIER, the OWNER shall be entitled to recover and / or to retain such sum by appropriating in part or whole out of the security desposited by the SUPPLIER, and in the event of the Security being insufficient or if no security has been taken from the SUPPLIER, then the balance or the total sum recoverable, as the acse may be, shall be deducted / retained from any sum then due or which at any time thereafter may become due to the SUPPLIER under this or any other CONTRACT with the OWNER. Should this sum be not sufficient to cover the full amount recoverable, the SUPPLIER shall pay to the Owner, on demand, the remaining balance due.

23.0 PAYMENT:

23.1 All payments due to SUUPLIER hereunder shall be made under Letter of Credit established through a bank in the country of manufacture and valid for a period extending until the date of shipment and payment schedule set out in the CONTRACT. OWNER shall be responsible for the charges for opening the Letter of Credit. All other expenses incidental to maintenance of the Letter of credit shall be borne by SUPPLIER. Charges for extending the duration of the letter of credit shall be to SUPPLIER'S account if

# ANNEXURE “D”

## KIOCL LIMITED

(A Govt. of India Enterprise)

AN ISO 9001:2000, ISO 14001:1996, OHSAS 18001:1999 COMPANY

### INTEGRITY PACT PROGRAM

#### 1. INTRODUCTION:

KIOCL LIMITED is a Central Govt. Public Sector Undertaking engaged in Mining of Iron Ore and Manufacturing Pellets and marketing it in India and abroad. KIOCL enjoys *Mini Rathna* status among the Central Govt. Public Sector undertakings, and conducts its business in highest ethical standards, fully adhering to CVC guidelines and exemplary industry practices.

KIOCL does its business with a number of domestic and international buyers, contractors and vendors of goods and services. It is committed to fostering ethical and corruption free business environment, and values its relationships with all counterparts and deals with them in fair and transparent manner.

In order to achieve and strengthen these goals, KIOCL is implementing the Integrity Pact Program in Co-Operation with Central Vigilance Commission (CVC) and Transparency International (TI). As part of this initiative KIOCL will, in consultation with CVC and TI, appoint external Independent Monitors who will help KIOCL monitor and implement the Integrity Pact Program.

Following are the details of KIOCL's Integrity Pact Program:

1. Commitments and Obligation of KIOCL
2. Commitments and Obligations of counterparties
3. Violation and Consequences

4. Independent Monitor
5. Implementation and Guidelines
6. Periodic Review and Evaluation

## **2. COMMITMENTS AND OBLIGATION OF KIOCL.**

- (a) KIOCL is committed to have ethical and corruption free business dealings with counter parties.
- (b) KIOCL values its relationship with all counter parties and will deal with them in a fair and transparent manner.
- (c) KIOCL and /or its Associates (Employees, Agents, Consultants, Advisors etc) will not seek or take bribes/undue benefits directly or indirectly for themselves or for third parties.
- (d) KIOCL will honour its commitments and make due payments to counter parties in time subject to fulfilling contractual obligations.
- (e) KIOCL will initiate punitive and corrective action, and pursue it vigorously whenever corruption or unethical behavior occurs.

## **3. COMMITMENTS AND OBLIGATIONS OF THE COUNTERPARTY.**

- (a) The counter party, directly or indirectly (through Agents/ Consultants/ advisors etc), will not pay any bribes or offer or imply any form of illegal benefit to any one to gain undue advantage in dealing with KIOCL.
- (b) The counter party will not engage in collusion, price fixing, cartelization, etc., with other counterparts.
- (c) The counter party will not pass to any third party any confidential informations entrusted to it, unless duly authorized by KIOCL.
- (d) The counter party will promote and observe ethical practices within its Organization and its affiliates.
- (e) The counter party will inform the External Independent Monitor:

- i If he receives demand for a bribe or illegal payment/benefit.
  - ii If comes to know of any unethical or illegal payment/benefit
  - iii If he makes any undue payment to any KIOCL's Associates.
- (f) The counter party will not make any false or misleading allegations against KIOCL or its Associates.

#### **4. VIOLATIONS & CONSEQUENCES:**

- (a) If a counter party commits a violation of its Commitments and Obligations under the Integrity Pact Program during bidding process (from the date of publication of tender to the date of award of work), he/she shall be liable for forfeiture of EMD /Bid Security submitted, without prejudice to other action that may be taken against it.
- (b) In case of violation of the Integrity Pact whereby after award of the contract, KIOCL terminates or is entitled to terminate the contract. KIOCL shall be entitled to demand and recover from the counter party liquidated damages equivalent to 10 percent of the contract value, or the amount equivalent to security deposit/ performance guarantee, whichever is higher.
- (c) KIOCL may ban and exclude the counter party from future dealings until the External Independent Monitors is satisfied that the counter party will not commit any future violation.
- (d) KIOCL may initiate criminal proceedings against the violating counter party.
- (e) The counter party will be liable to pay damages as determined by the External Independent Monitor.

#### **5. EXTERNAL INDEPENDENTMONITOR (EIM)**

- (a) CMD, KIOCL is the authority to appoint External Independent Monitor(s) (EIM) to oversee Integrity Pact Program implementation and effectiveness. The process for their appointment shall be similar to Outside Expert

Committee (OEC). For this purpose, a panel of Independent Monitors may be constituted by KIOCL in consultation with Transparency International (TI) and / or CVC, with whose clearance they will be appointed. It will be voluntary, non-salaried position of 3-year term. EIM will have status/benefits similar to those of Chairman of Audit Committee of Board/ status of the Directors of KIOCL

- (b) In order to ensure their impartiality, they would not be drawn from KIOCL background.
- (c) The EIM will be people of impeccable Integrity conversant with KIOCL's business, and experienced in commercial activities.
- (d) It will be voluntary, non-salaried position of three (03) years term. EIM will have status/benefits similar to those of Chairman of Audit Committee of Board/status of the Directors of KIOCL.
- (e) The major goal of EIM will be to oversee the implementation of Integrity Pact program to prevent corruption, bribes, and any other unethical practices in the KIOCL.
- (f) The EIM will not have administrative or enforcement responsibilities. He will coordinate his efforts with either anti-corruption institution such as CVC. He may engage services of outside agencies such as accounting firms, law firms etc., at KIOCL's expense, if required, in discharge of his responsibilities, with prior consent of KIOCL.
- (g) The EIM will have access to all Officers and internal records of the KIOCL. He will also have access to counter parties records and information regarding its dealing with KIOCL.
- (h) The EIM will have the right to attend any meetings between KIOCL and the counter parties.
- (i) If EIM observes or suspect an irregularity, he will inform the CMD of KIOCL and Chairman of Audit Committee of its Board of Directors. Once the EIM is satisfied that an irregularity has taken place, he may inform the Board of KIOCL.

- (j) The EIM can be removed from his Office for appropriate reasons by KIOCL only by an open and transparent process and such decision will have to be ratified by the Board of KIOCL.

## **6. IMPLEMENTATION GUIDELINES**

To implement the Integrity Pact Program the following general guidelines will govern the same:

- a) To select and appoint EIM in consultation with TI and / or CVC.
- (b) To get commitment from all Senior Level Executives/Officials of KIOCL to implement the program, so that any resistance to acceptance of Integrity Pact Program is minimized.
- (c) To develop detailed implementations plan and finalise the Integrity Pact document in consultation with the EIM.
- (d) To notify all Senior Staff Members, Board of Directors, any other oversight body of the Organisation and major suppliers of KIOCL's plan to implement the Integrity Pact Program, which is to be included in KIOCL's web site and disclosed to the media.

## **7. PERIODIC REVIEW & EVALUATION**

KIOCL will periodically review the effectiveness of Integrity Pact Program by the following procedure:

- (a) The EIM and senior leadership of KIOCL will make an bi-annual self-assessment of Integrity Pact Program effectiveness and identify areas to improve.
- (b) The EIM will submit an annual report on the progress/effectiveness of Integrity Pact Program to the KIOCL Board of Directors.
- (c) KIOCL may conduct an annual 360 degree review (by an outside agency) with senior Executives, Junior Executives, suppliers and competitors of effectiveness of Integrity Pact Program in reducing corruption.

- (d) KIOCL will arrange regular meet with TI and / or CVC on an annual basis to review the effectiveness of program.
- (e) For any amendments or changes in the clauses, consistent with the overall spirit of Integrity Pact, the CMD will be competent to approve the same and need not revert back to the Board.

## **INTEGRITY PACT**

THIS AGREEMENT is entered into between the following Parties:

**KIOCL Limited, IInd Block, Koramangala, Bangalore 560 034** hereinafter referred to as "**The Principal**",

and

### **Name & Address of the Party**

.....

.....

.....

hereinafter referred to as "**The Tenderer/ Contractor**"

### **Preamble**

The Principal intends to award a contract, following its laid-down organizational procedures, for .....

.....The Principal values full compliance with all relevant laws and regulations and the principles of economical use of resources and of fairness and transparency in its relations with its Tenderer(s) and /or Contractor(s).

In order to achieve these goals, the Principal cooperates with the renowned international Non-Governmental Organization, "Transparency International" (TI). Following TI's national and international experience, 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 below.

### **IT IS AGREED AS FOLLOWS:**

#### **Definitions:**

a) "**Principal**" means KIOCL LIMITED, incorporated under the Companies Act 1956, having their registered office at Koramangala, Bangalore – 560 034 and includes their successors.

b) "**Tenderer**" means the person, firm or company submitting a tender against the Invitation to Tender and includes his/ its/ their staff, consultants, parent and associate and subsidiary companies, agents, consortium and joint venture partners, sub-contractors and suppliers, heirs, executors, administrators, representatives, successors.

c) "**Contractor**" means the Tenderer whose tender has been accepted by the principal or Company whose tender has been accepted and shall be deemed to include his/ its/ their successors, representatives, heirs, executors and administrators unless excluded by the Contract.

d) "**Independent External Monitor**" means a person, hereinafter referred to as IEM, appointed, in accordance with **clause 8.a** below, to verify compliance with this agreement.

e) "**Party**" means a signatory to this agreement.

f) "**Contract**" means the contract entered into between the Principal and Tenderer/Contractor for the execution of work mentioned in the preamble above.

### **Commitments of the Parties**

#### ***Section 1 - Commitments of the Principal:-***

The Principal commits itself to take all measures necessary to prevent corruption (inducement to violate duty assigned to its employees) and to observe the following principles;

i) No employee of the Principal, personally or through family members or any third person, will in connection with all stages of tendering or the execution of Contract, demand or take a promise, or accept, for him/herself or any third person, any material or non-material benefit which he/she is not legally entitled to;

ii) The Principal will, during the tender process, treat all Tenderers with equity and reason. The Principal will in particular, before and during the tender process, provide to all Tenderers the same information and will not provide to any Tenderer any information/ clarification through which the Tenderer could obtain an advantage in relation to the tender process or the Contract execution;

iii) The Principal will not take, directly or indirectly, any steps, which could unduly influence the functioning of IEM.

iv) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-corruption Laws of India/ guidelines of Govt. / guidelines of CVC/ guidelines of Principal, or if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions.

v) If the Principal obtains information of conduct of a bidder, contractor or sub-contractor or of an employee or a representative or an associate of a bidder, contractor or sub-contractor, which constitutes corruption, or if the Principal

has a substantive suspicion in this regard, the Principal will inform the Vigilance Department of the principal.

**Section 2 - Commitments of the Tenderer(s)/Contractor(s):-**

2.1 The Tenderer /Contractor commits 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;

i) The Tenderer / Contractor will not directly or through any other person(s) or firm, offer, promise or give to the Principal, or 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 immaterial benefit which he / she is not legally entitled to in order to obtain, in exchange, an advantage during the tender process or to vitiate the Principal's tender process or the execution of the Contract.

ii) The Tenderer / Contractor will not enter with other Tenderers into any illegal agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or actions to restrict competitiveness or to vitiate the Principal's tender process or the execution of the Contract.

iii) The Tenderer / Contractor will not commit any criminal offence under the relevant Anti-corruption Laws of India; further, the Tenderer / Contractor will not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

iv) The Tenderer / Contractor of foreign origin shall disclose the name and address of the agents/representatives in India, if any. Similarly, the Tenderer / Contractor of Indian Nationality shall furnish the name and address of the foreign principals, if any.

v) The Tenderer / Contractor 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.

vi) The Tenderer/ Contractor will not take, directly or indirectly, any steps, which could unduly influence the functioning of IEM.

vii) The Tenderer / Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.

## **2.2 Obligation to Ensure Compliance**

a). Each Party will take all reasonable steps to ensure that the provisions of this agreement which are binding on it are complied with by all of its staff, consultants, parent and associated and subsidiary companies, agents, consortium and joint venture partners, sub-contractors and suppliers.

b). Each Party will appoint an appropriate senior manager with responsibility for ensuring that the provisions of this agreement are complied with.

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

a). If the Tenderer, before award of Contract, has committed a transgression through violation of any of the terms **under section 2 above** or in any other form such as to put his reliability or credibility as Tenderer into question, the Principal is entitled to disqualify the Tenderer from the tender process or to terminate the Contract, if already signed, for such reason.

b). If the Tenderer / Contractor has committed a transgression through a violation of any of the terms **under section 2 above** or in any other form such as to put his reliability or credibility into question, the Principal is entitled also to exclude the Tenderer / Contractor from future Contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, in particular the number of transgressions, the position of the transgressors within the company hierarchy of the Tenderer /Contractor and the amount of the damage. The exclusion will be imposed for a minimum of six (6) months and a maximum of three (3) years.

c). If the Tenderer / Contractor can prove that he has restored/ recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion before the expiry of the period of such exclusion.

d). A transgression is considered to have occurred if, in light of all available evidence, a reasonable doubt is possible.

## **Section 4 - Compensation for Damages**

a). If the Principal has disqualified the Tenderer from the tender process prior to the award according to **Section 3 above**, the Earnest Money Deposit (EMD) furnished, if any, along with the offer as per the terms of the Invitation to Tender (ITT) shall be forfeited. This is apart from the disqualification of the Tenderer as may be imposed by the Principal as brought out at **section 3 above**.

b). If the Principal has terminated the Contract according to **Section 3 above**, or if the Principal is entitled to terminate the Contract according to **section 3**

**above**, the EMD/Security Deposit furnished by the contractor, if any, as per the terms of the ITT/Contract shall be forfeited. This is apart from the disqualification of the Tenderer, as may be imposed by the Principal, as brought out at **section 3 above.**

### **Section 5 - Previous Transgression**

a) The Tenderer hereby declares that no previous transgressions with respect to provisions of Integrity pact occurred in the last three (3) years with any other Company in any country or with any other Public Sector Enterprise in India and, as such, there is no case for his exclusion from the tender process.

b) The Tenderer hereby agrees that if he has made/makes incorrect statement in regard to this aspect, he can be disqualified from the tender process or the Contract, if already awarded, can be terminated for that reason.

### **Section 6 - Equal treatment of all Tenderers/Contractors/ Sub-contractors**

a) The Tenderer / Contractor undertakes to obtain from all sub-contractors a commitment consistent with this integrity pact, and to submit it to the Principal at the time of seeking approval of the principal for appointment of sub-contractors.

b) The principal will enter into agreements with identical conditions as that of this Integrity Pact, with all Tenderers / Contractors

c) It is essential for all tenderes / contractors to sign the Integrity Pact with the company if the value of the transaction is more than 30 lakhs. The principal will disqualify from the tender process all tenderers/ contractors who do not sign this Pact or violate its provisions.

### **Section7 - Breaches of this Agreement**

a) In the event that any Party believes that there is *prima facie* evidence that there has been a failure by a Party to comply with any provision of this agreement, such Party will take the following actions:

i) It will report full details of such suspected non-compliance to the IEM and CVO with copies to the Chief Executives of each of the Parties.

ii) If any such non-compliance has been carried out, or assisted by an individual who is a member of a professional association, and such non-compliance may constitute a breach of any disciplinary code of such professional association, such Party may report such matter to the professional association.

b) If such non-compliance may constitute a criminal offence, either in the country in which the Contract is being carried out, or in the home country of

the organization or individual which carried out or assisted such non-compliance, such Party may report such matter to the appropriate criminal authorities in those territories.

**c)** In the event that any Party breaches any provision of this agreement, the other Parties may, in addition to the rights under this agreement, claim damages against the defaulting Party, and exercise any other rights they may have against the defaulting Party.

**d)** The Parties will take appropriate disciplinary or enforcement action against any of their staff, consultants, parent and associated and subsidiary companies, agents, consortium and joint venture partners, sub-contractors and suppliers who cause or assist in any breach of any provision of this agreement.

### **Section 8 - Independent External Monitor/Monitors (IEM)**

**a).** The Principal, will appoint a competent and credible IEM/Number of IEMs for the duration of this agreement from the panel of IEMs appointed in consultation with the Central Vigilance Commission (CVC).

**b).** The IEM will assess, on an independent and objective basis, the extent to which the Parties comply with their obligations under this agreement.

**c).** The Parties will, after submission of a tender; after the award of any contract to them and for the duration of the contract:

i) Allow the IEM unrestricted access to all books, records and staff relevant to such tender;

ii) Ensure that the IEM has unrestricted access to the relevant books, records and staff of their consultants, parent and associated and subsidiary companies, agents, consortium and joint venture partners, sub-contractors and suppliers.

**d).** In the event that the IEM believes that there is *prima facie* evidence that there is a violation of this agreement, the IEM will report the same to CEO of the Principal.

**e).** Upon receipt of a report from the IEM, CEO of the Principal and the Board will discuss and try to agree upon the appropriate action to be taken in line with **sections 3,4 & 5 above** to deal with such violation.

**f).** The IEM has no power to inquire any of the Parties to undertake any actions. No statement by the IEM, whether oral or in writing, is binding on any of the parties. Any Party in legal or dispute resolution proceedings can use all reports and other documentation issued by the IEM. The IEM can be called as a witness in legal or dispute resolution proceedings.

**g).** Fee and /or any other incidentals including traveling/conveyance expenses, if any, payable to IEM shall be borne by the Principal.

**h).** The IEM can only be removed from his appointment, if:

1. All parties agree in writing to remove him: or
2. He resigns: or
3. He is removed from his office by order of a Court having appropriate jurisdiction.

**i)** On completion of the term by the IEM or if the IEM is removed from his appointment or in case of death of IEM (whichever is earlier), the Principal will appoint another IEM as per **section 8.a) above** for the remaining duration of this agreement.

### **Section 9 - Duration of Agreement**

**a).** This agreement comes into force as soon as it has been signed by all the Parties have signed it. It cannot be terminated or varied except by the written agreement of all the Parties.

**b).** This agreement will expire after 12 months from the date of last payment under the respective Contract for the Contractor, and for all other Tenderers 6 months after the award of the Contract.

### **Section 10 - Other Provisions**

**a).** The Principal will disqualify from the tender process all Tenderers who do not sign this Pact or violate its provisions.

**b).** Should any occasion arise entailing IEM to undertake any investigation under the provisions of this agreement, the venue for such investigation shall generally be at KIOCL Corporate Office, Kormangala, Bangalore –560 034.

**c).** This agreement is subject to Indian law. Place of performance and jurisdiction is the corporate office of the Principal. In case of any dispute, the courts at Bangalore only shall have jurisdiction.

**d).** Changes and supplements as well as termination notices need to be made in writing. Side agreements have not been made.

**e).** Addresses along with other relevant details of the Chief Executives of the Parties are as given under;

<b>1. Principal:</b> Chairman-cum-Managing-Director, KIOCL Limited II-Block, Koramangala, BANGALORE – 560 034 <b>INDIA.</b>	<b>Tel</b> : <b>080-25531322(O)</b> : <b>080-25531272(O)</b> <b>Fax</b> : <b>080-25521584(O)</b>
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<b>2. Tenderer / Contractor</b>  ..... ..... ..... .....	<b>Tel:</b>  <b>Mobile:</b>  <b>Email:</b>  <b>Fax:</b>
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**f).** Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In that case the parties will strive to come to an agreement to their original intentions.

**g).** If the contractor is a partnership or consortium, all partners or consortium members must sign this agreement.

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For the Principal

For the Tenderer/ Contractor

Place.....

Place.....

Date .....

Date .....

Witness 1: .....

Witness 1: .....

(Name & address)

(Name & address)

Witness 2: .....

Witness 2: .....

(Name & address)

(Name & address)

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