

# **GENERAL CONDITIONS OF CONTRACT (GCC)**

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# GENERAL CONDITIONS OF CONTRACT (GCC)

## 1. Definitions

1.1 In this contract the following terms shall be interpreted as indicated:

- a) "IFB" means Invitations for Bids.
- b) "ITB" means Instruction to Bidders
- c) "GCC" means General Conditions of Contract
- d) "RC" means Rate Contract
- e) "Contract" means a legal agreement entered into between the purchaser and the supplier, as recorded in the agreement signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- f) "Contract Price" means the price payable to the supplier under a contract for the full and proper performance of its contractual obligations.
- g) "Goods" means all the items, materials, equipment and /or machinery, which the supplier is required to supply to the purchaser in terms of a contract.
- h) "Services" means the services ancillary to the supply of the goods, such as transportation and insurance and any other incidental services, such as installation, commissioning, provision of technical assistance, training and other such obligations of the supplier covered under a contract.
- i) "Purchaser" means the buyer named in a bidding document and in the corresponding contract, purchasing the goods ordered and includes its successors and /or assignees.
- j) "Consignee" means the individual or body to whom the contracted goods are required to be delivered as per the terms and conditions incorporated in a contract.
- k) "Supplier" means the individual or firm supplying the goods under a contract and includes its successor and/assignees.
- l) "Day" means calendar day of the Gregorian Calendar.
- m) "Month" means calendar month of the Gregorian Calendar.

## 2. Application

2.1 These general conditions of contract (as contained in this section) shall apply to the extent they are not superseded by provisions in other parts of the contract.

## 3. Country of Origin

3.1 All goods and services supplied under the contract shall have their origin in India or in the countries, with which the Government of India has trade relations.

3.2 For purposes of this clause, "origin" means the place where the goods are mined, grow or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing and substantial or major assembling of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

3.3 The origin of goods and services is distinct from the nationality of the supplier.

## 4. Standards

4.1 The goods supplied under this contract shall conform to the standards mentioned in the "Technical Specification" and when no applicable standard is mentioned, to the latest authoritative standards, as applicable to the goods country of origin.

## 5. Use of contract documents and information

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract or any provision thereof or any specification. Plan drawing, pattern, sample or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Also disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for the purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent make use of any document of information enumerated in GCC sub-clause 5.1 except for the purposes of performing the contract.

- 5.3 Every document other than the contract itself, mentioned in GCC sub-clause 5.1 shall remain the property of the purchaser and shall be returned (in all copies) to the purchaser on completion of the supplier's performance under the contract, if so required by the purchaser.

## 6. Patent rights

- 6.1 The supplier shall at all times indemnify the purchaser, free of cost, against all third-party claims of infringement of patent, trade mark or industrial design rights arising from use of the goods or any part thereof in India.

## 7. Performance Security

- 7.1 Within 21(twenty one) days after the issue of notification of award by the purchaser, the supplier, shall furnish performance security to the purchaser for an amount of 10% ( Ten per cent ) of the contract value, valid up to 60 (Sixty) days after the date of completion of all contractual obligations by the supplier, including the warranty obligations.
- 7.2 In the event of any correction of defects or a replacement of defective material during the warranty period, the warranty for the corrected/replaced material shall be extended to a further period of twelve months from the date of the correction/replacement and the Performance Security for the proportionate value (which will be determined by the purchaser in consultation with the supplier) shall be extended by 60 (Sixty) days over and above the extended warranty period.
- 7.3 In the event of any contract amendment, the supplier shall, within 21( twenty- one) days of issue of such amendment, furnish the necessary amendment to the Performance Security, rendering the same valid in all respect in terms of the contract, as amended.
- 7.4 The proceeds of the Performance Security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete its obligations under the contract.
- 7.5 The Performance security shall be denominated in Indian Rupees or in the currency of the contract and shall be in one of the following forms:
- a) Cash in Indian Currency,
  - b) Demand draft on any scheduled commercial bank in India, to be drawn in favour of the purchaser as indicated in the Schedule of Requirements.
  - c) Bank Guarantee issues by a scheduled commercial bank in India, in the prescribed form as provided in section VII/4 of this bidding document.
- 7.6 Subject to GCC sub-clause 7.4 above, the performance security will be discharged by the purchaser and returned to the supplier on completion of the supplier's contractual obligations including the warranty obligations under the contract.

## 8. Inspection and tests

- 8.1 The purchasers and /or its nominated representative(s) shall have the right to inspect and/or to test the goods to confirm their conformity to the contract specification and other technical details incorporated in the contract at no extra cost to the purchaser. **The Schedule of Requirements** and the Technical Specification incorporated in the bidding document shall specify what inspections and tests, the purchaser requires and where and how they are to be conducted. The purchaser shall notify, in advance the supplier in writing, of the identity of any representative(s) for this purpose.
- 8.2 The inspections and tests may be conducted on the premises of the supplier or its subcontractor(s), at the point of delivery and/or at the goods final destination. If conducted on the premises of the supplier or its subcontractor(s), all reasonable facilities and assistance, including access to relevant drawings, design details and production data, shall be furnished by the supplier to the inspectors at no charge to the purchaser.
- 8.3 Should any inspected or tested goods fail to conform to the required specifications and standard, the purchaser may reject them and the supplier shall either replace the rejected goods or make all alterations necessary to meet the specifications and standards, as required, free of cost to the purchaser and resubmit the same to the purchaser for conducting the inspections and tests again.
- 8.4 Where the contract stipulates pre-despatch inspection by the purchaser's nominated inspecting agency, the supplier shall put up the goods for inspection to the inspecting agency well ahead of time so that the inspecting agency is able to complete the inspection, within the stipulated delivery period. If the goods are tendered for inspection at the 1st moment without providing reasonable time to the inspection agency for completing the inspection, the inspecting agency may carry out the inspection and complete the formality beyond the contractual delivery period at the risk and expense of the supplier. The fact that the items have been inspected after the contractual delivery period will not have the effect of keeping the contract alive and

this will be without any prejudice to the legal rights and remedies available to the purchaser under the terms and conditions of the contract.

- 8.5 The purchaser's right to inspect, test and where necessary, reject the goods after the goods arrival at the final destination shall in no way be limited or waived by reasons of the goods having previously been inspected, tested and passed by purchaser or its representatives prior to the dispatch of the goods from the country of origin or from the supplier's premises.
- 8.6 Nothing in GCC clause 8 shall, in any way, release the supplier from any warranty or other obligations under the contract.

## **9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during their transit to their final destination as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, humid weather and precipitation during transit and open storage. The sizes and weights of the packing cases shall also take into consideration, where applicable, the available inland mode(s) of transport in India, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit. Further, limitations and/or mandatory instructions, if any, in the weights, volumes and sizes of the packages shall also be taken care of by the supplier.
- 9.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements if any, as shall be expressly provided for in the contract, including additional requirements, if any, specified in the Schedule of Requirements and any subsequent instructions given by the purchaser.

### **9.3 Packing instructions:**

The supplier will be required to make separate packages for each consignee named in the contract. Each package will be marked by supplier at its own expense, on three sides with indelible ink/paint, with the following details:

- a) contract no and date
- b) name and address of the consignee
- c) name and address of the supplier
- d) brief description of goods
- e) gross weight and outer dimension of the package
- f) country of origin of goods
- g) packing list reference number and
- h) any other requirement, relevant to the contract.

## **10. Delivery of goods**

- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified by the purchaser in the notification of award and in the contract.
- 10.2 For the purposes of the contract "FOB", CIF", CIP" and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them in the current edition of " Incoterms" which are international commercial shipping terms, published by International Chamber of Commerce, Paris, France.

## **11. Transportation**

- 11.1 Where the supplier is required under the contract to deliver the goods F.O.B., transportation of the goods, up to and including the point of putting the goods on board the vessel at the specified port of loading, shall be arranged and paid for by the supplier and the cost thereof shall be included in the contract price.
- 11.2 Where the supplier is required under the contract to deliver the goods C.I.F. or C.I.P., transportation of the goods to the port of destination or such other specified place of destination in India, as shall be mentioned in the contract, shall be arranged and paid for by the supplier and the cost thereof shall be included in the contract price.
- 11.3 Where the supplier is required under the contract to deliver the goods CIF or CIP within India, the supplier shall arrange the shipment by Indian flag vessels or vessels belonging to Conference Lines in which India is a member. Where the supplier is required under the contract to deliver the goods FOB and also to arrange on behalf and at the expense of the purchaser for ocean transportation on Indian flag vessels or vessels of Conference Lines in which India is a member country, the supplier may arrange for such transportation on

alternative carrier also, if the Indian flag vessels or Conference Line vessels are not available to transport the goods within the time frame specified in the contract. However, before arranging such alternative transportation, the supplier shall obtain prior concurrence of the purchaser for the same.

- 11.4 The supplier shall not arrange part-shipments and/or transshipment without the prior written consent of the purchaser.
- 11.5 In case the supplier violates any of the aforementioned instruction, the supplier shall be liable for all consequences (including financial loss) that the purchaser may face to such violations.

## **12. Insurance**

- 12.1 The goods supplied under the contract, shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery as indicated below in this clause (Viz. GCC clause 12).
- 12.2 Where delivery of the goods is required by the purchaser on C.I.F. or C.I.P. basis, the supplier shall arrange and pay for the cargo insurance, naming the purchaser as the beneficiary. Where delivery is on FOB basis, the insurance shall be the responsibility of the purchaser.
- 12.3 In the case of a contract on CIF or CIP basis, the insurance shall be for an amount equal to 110% ( one hundred and ten per cent ) of the CIF or CIP value of the goods from “ warehouse to warehouse” ( final destination) on “ all risks” basis including war risks and strikes.

## **13 Distribution of despatch documents.**

- 13.1 The shipping and other documents as well as dispatch details to be furnished by the supplier to the purchaser and/or to the purchaser's nominated authorities to enable the purchaser and/or its nominated authorities to clear and/or accept the goods will depend on the mode of despatch of the goods and the terms of delivery, as specified in the **Schedule of Requirements** and in the contract and, subject to the same, the instructions in this regard will be as indicated below.

### **a) For goods supplied from abroad:**

Within 24 hours of shipment, the supplier shall notify the purchase and its nominated authorities (as specified in the contract and the insurance company by cable or telex or fax, the full details of the shipment including contract number, description of goods, quantity, the vessel, the bill of lading number and date/airway bill number and date, port offloading, date of shipment, port of discharge, expected date of arrival at the port of entry etc. Further, the supplier shall also immediately dispatch by registered air-mail the specified number of copies of the following documents to the above authorities.

- i) Supplier's invoice showing contract number, description of goods, quantity, unit price and total amount.
- ii) Original and copies of the negotiable, clean, on-board bill of lading marked freight to pay and copies of non-negotiable bill of lading;
- iii) Copies of packing list identifying the contents of each package:
- IV) Insurance certificate;
- V) Manufacturer's /supplier's warranty certificate;
- VI) Pre-despatch inspection certificate issued by the purchaser's nominated inspection agency (if so specified) and the supplier's factory inspection report' and
- Vii) Certificate of origin.

The above documents shall be received by the purchaser and other authorities mentioned above at least one week before the arrival of goods at the port or place of arrival and, if not received, the supplier will be responsible for any consequent expenses.

### **b) For goods supplied from within India.**

Within 24 hours of dispatch of the goods, the supplier shall notify the complete dispatch details to the purchase and/or the purchaser nominated authorities (as specified in the contract) and the insurance company. The supplier shall also mail the specified number of copies of the following documents to them:

- i) The supplier's invoice showing contract number, description of goods, quantity, unit price and the total amount;
- ii) Railway receipt or Delivery note;
- iii) Packing list identifying contents of each package;
- iv) Insurance certificate;

- v) Manufacture's Supplier's warranty certificate;
- vi) Pre-despatch inspection certificate issued by the purchaser's nominated inspection agency (is so specified) and the supplier's factory inspection report: and.
- vii) Certificate of origin.

The purchaser shall receive the documents at least one week before the arrival of the goods (except where it is handed over to the consignee withal the documents) and if not received, the supplier will be responsible for any consequent expenses.

The documents to be provided by the supplier for claiming payment are specified in GCC clause 17 ("Payment")

## 14. Incidental Services

- 14.1 The purchaser may include in the contract any or all of the following services and/or some additional services, if specified in the **Schedule of Requirements** and the supplier is required to provide the same:
- a) performance or supervision of on-site assembly and/or start-up of the supplied goods,
  - b) furnishing of tools required for assembly and/or maintenance of the supplied goods,
  - c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods,
  - d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed to by the parties, provided that this service shall not relieve the supplier of any warranty obligations under the contract, and.
  - e) Training the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance and/or repair of the supplied goods.
- 14.2 Prices charged by the supplier for the above mentioned incidental services, if not included in the quoted price for the goods, shall be quoted separately in the bid itself and shall not exceed the prevailing rates, charged to other parties by the supplier for similar services.

## 15. Spare parts

- 14.1 As specified in the **Schedule of Requirements**, the supplier may be required to provide any or all of the following materials, notifications and information pertaining to spare parts manufactured and/or distributed by the supplier:
- a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this will not relieve the supplier of any warranty obligations under the contract; and
  - b) in the event of termination of production of the spare parts;
    - i) advance notice to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and,
    - ii) Immediately following such termination, furnishing at no cost to the purchaser, the blueprints, drawings and specifications of the spare parts, if requested.
- 15.2 Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spares for the goods. Other spare parts and components shall be supplied as promptly as possible but in any case within three months of placement of order and opening the letter of credit.

## 15 Warranty

- 15.1 The supplier warrants that the goods supplied under the contract is new unused, of the most recent of current models and incorporate all recent improvements in design and materials unless provided otherwise in the contract: The supplier further warrants that the goods supplied under the contract shall have no defect arising from design, materials ( except when the design adopted and/or the material used areas per the purchaser specifications) or workmanship or from any act or omission of the supplier, that may develop under normal use of the supplied goods under the conditions prevailing in India.
- 15.2 This warranty shall remain valid for 12 (twelve) months after the goods or any portion thereof as the case may be, have been delivered to the final destination and installed and commissioned at the final destination and accepted by the purchaser in terms of the contract or for 18 (eighteen) month from the date of dispatch from the suppliers works for domestic goods or for 21 ( twenty-one) months after the date of shipment from the Porto place of loading in the source country for imported goods, whichever is earlier, unless specified otherwise in the **Schedule of Requirements** .

- 15.3 The purchaser shall promptly notify the supplier in writing of any claim arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, with all reasonable speed (or within the period, if specified in the **Schedule of Requirements** and the contract), repair or replace the defective goods or parts thereof, free of cost, at the ultimate destination. The supplier shall take over the replaced parts/goods at the time of their replacement. No claim what so ever shall lie on the purchaser for the replaced parts/goods thereafter?
- 15.5 In the event of any correction of a defect or replacement of any defective material during the warranty period, the warranty for the corrected/replaced material shall be extended to a further period of 12 (twelve) months from the date, such corrected/replaced material starts functioning to the satisfaction of the purchaser.
- 15.6 If the supplier, having been notified, fails to remedy the defect (s) within a reasonable period (or within the period, if specified in the **Schedule of Requirements** and the contract), the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights, which the purchaser may have against the supplier, under the contract.

## **17 Payment**

- 17.1 The payment shall be made in the currency/currencies specified in the contract. The supplier shall send its claim (with relevant documents, as required) to the appropriate pay in authority as specified in the **Schedule of Requirements** and the contract. Before claiming any payment, the supplier shall ensure that all the contractual obligations for claiming that payment have been duly fulfilled.

- 17.2 The payment shall be made in the following manner and on production of the following documents:

### **A) Payment for goods supplied form abroad;**

#### **i) on shipment;**

90% of the contract price shall be paid through irrevocable letter of credit established in favour of the foreign supplier in a scheduled commercial bank in India or a bank in the supplier's country acceptable to the purchaser, upon submission of the following documents:

- a) Certified copy of the fax sent by the supplier to the purchaser and others as per GCC sub-clause 10.3 (a)
- b) Supplier's signed commercial invoice showing contract number, description of the supplied goods, corresponding quality, unit price and the total value and names(s) of the consignee(s) for the supplied goods.
- c) Original clean on board bill of lading marked freight pre-paid consigned to the interim/port consignee evidencing description of the goods, quantities, relevant details about the contract number etc.
- d) Packing list, identifying contents of each package.
- e) Insurance policy or certificate in duplicate endorsed in blank with claims payable in India in the currency of the Letter of Credit.
- f) Manufacturer's /supplier's warranty certificate and supplier's factory inspection report.
- g) Pre-despatch inspection certificate issued by the purchaser's nominated inspection agency, if so specified.
- h) Certificate of origin.
- i) Supplier's certificate confirming that the required documents have been sent to all concerned in terms of GCC sub-clause 10.3(a).
- j) Supplier's certificate confirming that the amounts shown in the invoice are correct in terms of the contract and that all the terms and conditions of the contract have been complied with for claiming this payment.
- k) Any other document(s) and/or modification of above documents specified in the **Schedule of Requirement** and the contract.

#### **ii) On final acceptance**

10% of the contract price of goods received shall be paid within 30 (thirty) days of receipt of goods on submission of the claim supported by the acceptance certificate issued by the purchaser or the purchaser's nominated representative in the proforma given in the concerned section on the bidding documents.

#### **iii) Payment of agency commission:**

Payment shall be made in Indian rupees within 30(thirty) days of presentation of claim supported by a certificate from the purchaser confirming that the goods have been delivered, full 100% payment has been made to the foreign suppliers and all other contractual obligations, have been performed by the supplier and its agent for claiming this payment.

The payment (towards agency commission) will be made by the purchaser's paying authority specified ion the contract and not through Letter of Credit.

**B). Payment for goods supplied from India:**

Payment shall be made in Indian rupees by the purchaser's paying authority, as specified in the contract (and not through Letter of Credit), in the following manner:

- i) **on delivery:** 90% of the contract price shall be paid on receipt of the goods by the consignee and upon submission of following documents to the paying authority:
- a) The supplier's invoice showing contract number, description of goods, quantity, unit price and the total amount;
  - b) Railway receipt or Delivery note;
  - c) Packing list identifying contents of each package;
  - d) Insurance certificate.
  - e) Manufacturer's /supplier's warranty certificate;
  - f) Pre-despatch inspection certificate issued by the purchaser's nominated inspection agency, if so specified and the supplier's factory inspection report,
  - g) Certificate of origin.
  - h) Provision receipt certificate for the corresponding delivery, issued by the consignee; and
  - i) Any other document(s) and/or modification of above documents specified in the **Schedule of Requirement** and the contract.

ii) **On final acceptance:**

the remaining 10% of the contract price shall be paid to the supplier within 30( thirty) day of receipt of its claim, duly supported by the final acceptance certificate for the corresponding delivery issued by the purchaser's representative in then proforma given in the concerned section on the bidding documents.

**C) Payment for incidental services and supervision:**

The incidental services and supervision, if required separately, will be specified in the Schedule of Requirements and in the contract. The payment terms applicable for such services and supervision will also be specified therein.

**17.3 Operation of the Letter of Credit:**

- (i) The payment effected through letter of credit, shall be subject to the latest Uniform Customs and Practice for Documentary Credit, of the International Chamber of Commerce;
- ii) If requested specifically by the supplier, the letter of credit will be confirmed, but the cost for the same shall be charged to the supplier's account.
- iii) If the letter of credit is required to be extended/reinstated for reasons not attributable to the purchaser; the charges thereof shall be to the supplier's account.

**18. Prices**

- 18.1 Prices charged by the supplier for the goods supplied and the services performed under the contract shall not vary from the places quoted by the supplier in its bid with the exception of any price adjustment authorized in the **Schedule of Requirements**.

**19. Modification of contract**

- 19.1 The purchaser may at any time, by a written order given to the supplier pursuant to GCC clause 31, make changes and modifications within the general scope of contract in any one or more of the following:

- a) drawings, designs or specifications where goods to be supplied under the contract are to be specifically manufactured for the purchaser.
- b) the mode of packing,
- c) the mode of dispatch,
- d) the place of delivery,
- e) the services to be provided by the supplier, and /or
- f) any other area(s) of the contract, depending on the merits of the case.

- 19.2 If any such change causes in increase or decrease in the cost of or in the time required for the supplier's performance of any provision under the contract, an equitable adjustment shall be made in the contract price or contract delivery schedule or both, and the contract shall be amended accordingly. Any claim by the



supplier for adjustment under this clause must be asserted within 21 (twenty one) days from the date of the supplier's receipt of the purchaser's amendment/modification of the contract.

- 19.3 Subject to GCC sub-clauses 19.1 and 19.2, no variation in or modification of the terms of the contract shall be made except by written amendment signed by both the parties.

## **20. Assignment**

- 20.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

## **21. Sub Contracts**

- 21.1 The supplier shall notify the purchaser in writing of all sub-contracts awarded under the contract, if not already specified in its bid. Such notifications, in its original bid or later, shall not relieve the supplier from any liability or obligation, whatsoever, under the contract.
- 21.2 Subcontract shall be only for bought-out items and sub-assemblies.
- 21.3 Subcontracts must comply with the provisions of GCC clause 3.

## **22. Delays in the supplier's performance**

- 22.1 Delivery of the goods and performance of the services shall be made by the supplier in accordance with the time schedule specified by the purchaser in the "**Schedule of Requirements**".
- 22.2 Except as provided under GCC clause 25, any unexcused delay by the supplier in maintaining its contractual delivery obligations shall render the supplier liable to any or all of the following actions:

**imposition of liquidated damages,  
forfeiture of its performance security and/or  
termination of the contract for default.**

- 22.3. If at any time during the performance of the contract, the supplier or its subcontract(s) should encounter conditions hindering timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). After the receipt of the supplier's notice the purchaser, as soon as practicable in which case the situation and may at its discretion extend the supplier's time for performance, in which case the extension of the delivery period shall be ratified by issuing an amendment to the contract.
- 22.4 The supplier shall not despatch the goods after expiry of the delivery period. The supplier is required to apply to the purchaser for extension of delivery period and obtain the same before dispatch. In case the supplier dispatches the goods without obtaining an extension, it would be doing so at its own risk and no claim for payment for such supply and/or any other expense related to such supply shall lie against the purchaser.

## **23. Liquidated damages**

- 23.1 Subject to GCC clause 25, if the supplier fails to deliver any or all of the goods or perform the services within the time period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as liquidated damages, as sum equivalent to 0.5% (half percent) of the delivered price of the delayed goods or unperformed services for each week of delay or part thereof until actual delivery or performance, up to a maximum deduction of 10% ( ten percent) of the goods or services contract price. Once the maximum is reached, the purchaser may consider termination of the contract, if the same have not been terminated already.

Further, during the above mentioned delayed period of supply and /or performance, the supplier, notwithstanding any stipulation in the contract for increase in price for any ground, shall be entitled to any increases in priced and cost, whatsoever, which take place during the period of delay. But, nevertheless, the purchaser shall be entitled to the benefit any decrease in price and cost on any ground during that period of delay.

## **24. Termination for default**

- 24.1 The purchaser, without prejudice to any other remedy for breach of contract, may by written notice of default sent to the supplier, terminate the contract in whole or in part, if the supplier fails to deliver any or all of the goods or fails to perform any other contractual obligation(s) within the time period specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC clause 22.
- 24.2 In the event the purchaser terminates the contract in whole or in part, pursuant to GCC sub-clause 24.1, the purchaser may procure, upon such terms and conditions and in such manner as it deems appropriate, goods and/or services similar to those undelivered and the supplier shall be liable to the purchaser for any excess cost for such similar goods and /or services. However, the supplier shall continue to perform the contract to the extent not terminated.

## **25. Force Majeure**

- 25.1 Notwithstanding the provisions of GCC clauses 22, 23 and 24, the supplier shall not be liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that its delay in performance or other failure to perform its obligations under the contract is the result of any event of Force Majeure.
- 25.2 For purpose of this clause, "Force Majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but are not restricted to acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 25.3 If a Force Majeure situation arises, the supplier shall promptly notify the purchaser in writing of such conditions and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## **26. Termination for insolvency**

- 26.1 If the supplier becomes bankrupt or otherwise insolvent, the purchaser may terminate the contract by giving written notice to the supplier, without any compensation to the supplier, provided, that such termination will not prejudice or affect any right of action or remedy which has accrued and/or will accrue thereafter to the purchaser.

## **27. Termination for convenience**

- 27.1 The purchaser, by written notice sent to the supplier, may terminate the contract, in whole or in part, at any time for its convenience. The notice for termination shall specify that the termination is for the purchaser's convenience, the extent to which performance of the supplier under the contract is terminated, and the date with effect from which such termination becomes effective.
- 27.2 The goods that are complete and ready for shipment within 30 (thirty) days after the supplier's receipt of notice of termination shall be accepted by the purchaser at the contract terms and prices. For the remaining goods, the purchaser may elect:
- a) to have any portion completed and delivered at the contract terms and prices; and/or
  - b) to cancel the remainder and pay to the supplier an agreed amount for partially completed goods and services and for materials and parts already procured by the supplier for fulfilling the contractual obligations.

## **28. Resolution of disputes**

- 28.1 If any dispute or difference of any kind shall arise between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve the same amicably by mutual consultations.
- 28.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

- 28.3 A dispute or difference, in respect of which a notice of intention to commence arbitration has been given in accordance with GCC sub-clause 28.2, shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the goods under the contract.
- 28.4 The dispute resolution mechanism to be applied pursuant to GCC sub-clause 28.3, shall be as follows:
- a) In the case of a dispute or difference arising between the purchaser and the supplier relating to any matter arising out of or connected with the contract, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of three arbitrators, one each to be appointed by the purchaser and the supplier. The third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as presiding arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of thirty days from the appointment of the arbitrator appointed subsequently, the presiding arbitrator shall be appointed by the Indian Council of Arbitration or President of the Institution of Engineers (India).
  - c) The decision of majority of arbitrators shall be final and binding upon both the parties.
  - d) The cost and expenses of the arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation etc. of its proceedings as also fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself.
- 28.5 However, where the value of the contract is Rs.15 lakhs (Rupees one and a half million) and below, the disputes or differences arising in it shall be referred to a sole arbitrator. The sole arbitrator shall be appointed by mutual agreement between the parties. If the parties fails to agree on the arbitrator within 30(thirty) days from the receipt of a request by one party from the other party to so agree, the appointment shall be made upon request of a party, by the Indian Council of Arbitration or the President of the Institution of Engineers (India).
- 28.6 The venue of arbitration shall be the place from where the contract is issued.

## **29. Governing Language**

- 29.1 The contract shall be written in English language. All correspondence and other documents pertaining to the contract, which the parties exchange, shall also be written in English.

## **30. Applicable law**

- 30.1 The contract shall be interpreted in accordance with the laws of India.

## **31. Notices**

- 31.1.1 Any notice given by one party to the other pursuant to the contract shall be sent in writing or by cable, telex or facsimile and confirmed in writing to the addresses specified in the **Schedule of Requirements**.
- 31.2 A notice shall be effective when delivered or on the notice's effective date whichever is later.

## **32. Taxes and duties**

- 32.1.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees and other such levies imposed outside India.
- 32.1.2 A local supplier shall be entirely responsible for all taxes, duties, license fees etc. incurred until delivery of the contracted goods to the purchaser.
- 32.3 Further instruction, if any, shall be as provided in the **Schedule of Requirements**.