

# **Electricity Distribution Circle -III**

**Hydel Colony Bulandshahr. U.P.**



**E – TENDER NO. : 93/EDC- III/B/2022-2023**

## **कार्य का विवरण**

अल्पकालीन ई-निविदा द्वारा विद्युत वितरण खण्ड-डिबाई के अन्तर्गत कॉवड़ यात्रा मार्ग में पड़ने वाले विद्युत पोलों की इन्सुलेशन व ढीले तारों की रिसैगिंग एवं अन्य कार्य।

**Office of the  
Superintending Engineer  
Electricity Distribution Circle -III  
Hydel Colony Bulandshahr. U.P**

**Phone No. : 9193302300**

**Email :- [sed3bsr@gmail.com](mailto:sed3bsr@gmail.com)**

**Date of Opening : 21.02.2023**

**Prices:** Rs. 1000.00 (Tender cost) + GST 18 % of tender cost i.e. Rs.180.00

**Total:** Rs. 1180.00 only (including GST)

**Earnest Money:** Rs. 2,000.00

**Superintending Engineer**  
**Electricity Distribution Circle-III**  
**Hydel Colony Bulandshahr**

Tender Specification No. : **E – TENDER NO. : 93/EDC- III/B/2022-2023**

Name of Item/Work : अल्पकालीन ई-निविदा द्वारा विद्युत वितरण  
खण्ड-डिबाई के अन्तर्गत कौवड़ यात्रा मार्ग में पड़ने  
वाले विद्युत पोलों की इन्सुलेशन व ढीले तारों की  
रिसैगिंग एवं अन्य कार्य।

Tender Fee (Non-refundable) : **Rs.1180.00**

Tender Submission last date : **21.02.2023**

Due date of opening of tender : **21.02.2023**

**Superintending Engineer**  
**Electricity Distribution Circle-III**  
**Bulandshahr**

**From**

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

To,

**Superintending Engineer  
Electricity Distribution Circle-III  
Bulandshahr.**

Dear Sir,

I/We hereby submit UTR/Pay Slip No. ....  
date ..... of RTGS/NEFT of Rs. ....  
(Rupees.....) only from  
..... (Bank), in Bank account NO:  
191605000573 IFSC Code- ICIC0001916, ICICI CIVIL LINES, MOTIBAGH, BULANDSHAHR  
of SE EDC-III BULANDSHAHR as Earnest Money against E-Tender Specification  
**No. 93/EDC- III/B/2022-2023.**

**Yours Faithfully**

**Signature of E-Tender  
With full address and seal**

**TENDER FORM**  
**(TO BE SUBMITTED IN TENDER BID PART – I)**

**From** .....  
 .....  
 .....  
 .....

**To,**

**Superintending Engineer**  
**Electricity Distribution Circle-III**  
**Bulandshahr.**

**Subject :** Tender for \_\_\_\_\_  
 against E-Tender No \_\_\_\_\_ due for opening on  
 \_\_\_\_\_.

**Sir,**

With reference to your invitation to E- TENDER for the above, I/we hereby offer to the UP POWER CORPN. LTD./PASCHIMANCHAL VIDYUT VITRAN NIGAM LTD MEERUT. The works/items in the schedule of Prices and delivery completion annexed or such portion thereof as you may determine in strict accordance with the annexed conditions of contact Form "A" and :B" specifications and schedule of rates to the entire satisfaction of the purchaser or in default thereof to forfeit/to pay UP POWER CORPORATION. LTD,/PASCHIMANCHAL VIDYUT VITRAN NIGAM LTD, MEERUT. the sum of money mentioned in the said conditions. The rates quoted are inclusive prorate and in full satisfaction of all claims. I/we agree to abide by this tender for the date fixed for opening of the same.

A sum of Rs ..... (in the form of ..... ) as Earnest Money has been deposited in the Bank account NO: 191605000573 IFSC Code- ICIC0001916, ICICI CIVIL LINES, MOTIBAGH, BULANDSHAHR of SE EDC-III BULANDSHAHR of SE EDC-III BULANDSHAHR through RTGS/NEFT, the full value of which shall be retained by the UP POWER CORPN. LTD/PVVNL against the security deposit as given in the said conditions of contract.

I/we hereby undertake and agree to execute a contract in the form annexed hereto in accordance with the conditions of contract.

**Encl: As above**

**Date:**

**Witness:**

**Address :**

**Yours faithfully**

**Signature of tenderer along with seal**

**ANNEXURE :2**  
**DECLARATION FORM**

**NOTE:**

- i) This Agreement is to be filled in and enclosed with tender Bid Part-I.

**AGREEMENT**

E – Tender Invited by : **Superintending Engineer  
Electricity Distribution Circle-III  
Bulandshahr**

E – Tender Specification No : **93/EDC- III/B/2022-2023.**

**Name of Tenderer** \_\_\_\_\_

In consideration of the **U.P. POWER CORPORATION LTD./ PASCHIMANCHAL VIDYUT VITRAN NIGAM LIMITED**, having treated the E-Tenderer to be an eligible person whose Tender may be considered, the E-Tenderer hereby agree to the conditions that the proposal in response to the above invitation shall not be withdrawn within three months from the date of opening of E-Tender, also to the conditions that if there after the E-Tenderer does withdraw his proposal within the said period, the earnest money deposited by him may be forfeited to the U.P. Power Corporation Ltd. in the discretion of the later.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

Witness :

(i)

(ii)

**Signed by Tenderer**

**With Official Seal**

**Terms & Conditions**  
**E-TENDER NO: 93/EDC- III/B/2022-2023**

अल्पकालीन ई-निविदा द्वारा विद्युत वितरण खण्ड-डिबाई के अन्तर्गत कॉवड़ यात्रा मार्ग में पड़ने वाले विद्युत पोलों की इन्सुलेशन व ढीले तारों की रिसैगिंग एवं अन्य कार्य।

These specific conditions shall be read and construed along with annexed conditions to the contract Form (A) modified by the provisions hereof, but if there is any conflict or consistency between the provisions thereof and those contained in the General Conditions of the form (A). The provisions contained in these special conditions shall prevail:

1. RATES:- The rates mentioned in the schedule of quantities and prices are shall be firm.
2. PAYMENT:- 90% running payment shall be allowed against the work done and verified by the Engineer-in-charge of the work, through cheque on availability of funds and balance 10% payment shall be made after completion of the entire project.
3. COMPLETION PERIOD:- Quantity of work in tender has been taken on actual work in pipe line/expected works to be completed within three months period for total quantity of work, there may be several jobs. Individual job may be very small, but due to emergency, individual job has to be completed in three days time. Contractor will not refuse to work for small quantity of work. Work up to 05poles/TF has to be completed in three days & work above pole to 15 pole/TF has to be completed in one week. If works are not available in tender period allotted, then tender period may be extended further on ability of the work.
4. CANCELLATION OF AGREEMENT:- The agreement shall be cancelled in case the contractor does not complete the work as per provisions, security deposited by firm shall be forfeited.
5. EARNEST MONEY:- Each tender must be accompanied by the Earnest Money in the form of cash deposit through RTGS/NEFT, which will be refunded in the event of tender being rejected. No tender shall be entertained without Earnest Money. Cheque/FDR/CDR will not be accepted against the Earnest Money in any case.
6. TAXES:- GST shall be paid extra if legally applicable.
7. AWARD OF CONTRACT:- The Engineer of the Contract is not bound to accept the lowest or any tender and reserves the right of accepting the whole or any part of the tender without assigning any reason what-so-ever.
8. Security as deposited by the contractor will be refunded after 2 months of completion of work or it may be kept for a longer time/period if considered necessary by the Engineer-in- charge.
9. In the event of any accident/casualty during the course of execution of work, shall be the responsibility of contractor. Any payment, compensation thereof shall be borne by the contractor. Complete safety measure will be taken by contractor own cost. Only required shutdown will be provided by the department. But Earthing has take kept in fault attending area at their own.
10. As the work is of tentative basis on expected words to come. Period of completion will depend on availability of work. But since work is of emergency type related to break down, immediate action for attending breakdown is to be taken by the firm.
11. Variation work : - The increase and decrease can vary upto 10% of the total work value of the contract as per site requirement. However tendered unit rates shall remain firm upto a variation
12. Other terms and conditions shall be covered as per form (A) enclosed.
13. Any other taxes, duties, if required from time to time shall have to be paid by the contractor.
14. PENALTY:-  $\frac{1}{2}$  % penalty per week, subject to maximum of 10% on the total face value of the agreement, shall be imposed in case the Contractor do not take up the work on schedule date.

Signature of Tenderes with  
Full Address & Seal

Superintending Engineer

## Special Terms & Conditions

- (1) As the work BOQ is of tentative nature, so the variation of work at site may be 100%. So Contractor has to keep in mind that rates have been taken for jobs. There may be large variation in jobs of works. The work will not go beyond tender amount finalized.
- (2) If more than 100% variation of work is required, Superintending Engineer, EDC-III, BSR will allow on Executive Engineer Distribution concerned recommendations.
- (3) As the work is of emergency type so only some hours will be allowed to arrange staff for work. So please quote rate as per emergency work.
- (4) If emergency work is not done with in time, the work may be carried did by agency at market price. Difference of market price & your rates will be deducted from your bill with extra penalty of Rs. 2000/- per case, It will also be treated as irresponsible behavior of Contractor after arrounting tender. So in future, your participations in tender may be cancelled due to failure of work in previous tenders work.
- (5) The work may be carried out in other division as per requirement Juridiction of EDC-III, Bulandshahr area.

Signature of Tenderes with  
Full Address & Seal

Superintending Engineer

**SCHEDULE OF GENERAL PARTICULARS**

Note - Your tender should not be considered if you fail to submit this Performa duly filled up. Replies should be completed without ambiguity and should be clearly written against each item. You may however attach extra sheet if the space available is not sufficient.

1	Name of Tenderer	
	a) Registered Office	
	b) Postal address of tender	
	c) E-mail address	
2	E-TENDER NO. against which you have tendered	
3	Name and address of Tenderers	
4	Location and address of works	
5	UTR/Pay Slip No. and date by which cost of tender document have been deposited.	
6	Whether the tenderer is sole Proprietor/partnership concern/pvt. Ltd., Company/Public undertaking	
7	Are you registered with UPPCL/PVVNL, If so, give the letter reference vide which You are registered	
8	Do you agree to all Terms & conditions of Tender specification and if not state Modification clearly, which you would desire in the general conditions of contract Form A/It may please be noted that it Shall be entirely at the discretion of PVVNL to accept or reject, the modifications proposed	
9	Please state clearly ( Yes/No) if you would Agree to execute the work, in case the modifications as suggested under S.No.8 above are not accepted by PVVNI, with Out imposing any further conditions from Your side	
10	Annual Turnover in Rs..... per year	
11	Give the reference who can certify your financial status and capability to undertake such work. One of the reference should be from a scheduled bank	
12	Do you confirm that there are no type Graphical errors/omissions in pricing part of tender( Answer Yes/No)	
13	State the name and designation of your relative(s) , if any working in corporation	



14	Earnest money	
	i) Earnest Money deposit or not	
	ii) If yes, state amount of earnest money deposited	
	iii) No. & . date of UTR/Pay Slip (for earnest money)	
15	Validity of offer	
	A minimum validity of three month from the date of tender of opening is required.)	
16	Whether the quoted prices are also applicable for any reduced order (Answer Yes/No).	
17	Do you confirm that the prices are firm In all respects (Answer Yes/No)	
18	Do you confirm that the rates are inclusive of Taxes.( Answer Yes/No )	
19	Terms of payment (Monthly/Running/Final)	
20	Are you registered with GST if So registration No. & date	
21	Income Tax clearance certificate Enclosed or not. (Answer Yes/No)	
22	Whether quoted price per unit (state separately for each item) are FOR destination. (Answer Yes/No).	
23	Are you having license of A Class contractor (Answer Yes/No)	

Tenderer

Full .....

Signature .....

Name .....

Designation.....

Date.....

Seal of Company

**GENERAL TERMS & CONDITIONS OF E-TENDER NO: 93/EDC- III/B/ 2022-2023**

- 1 Tenderers are requested to go through the instructions carefully and furnish complete information along with their tender offer failing which their offer may not be considered at all. Tenders shall be received in two separate parts as under :-
  - (a) **TENDER BID PART-I (TECHNO-COMMERCIAL BID)**  
It shall contain the tender fee, earnest money in the prescribed form shall be submitted online only on E-Tender Portal <https://etender.up.nic.in> will contain the Tender Performa, Pre-Qualification documents, Income Tax, Sales Tax clearance certificates, Technical particulars, Guarantee, Test certificate, Drawings, Literatures, Schedules of delivery and other general terms and conditions, past experience etc. shall be subscribed “TENDER BID PART-I AGAINST E-TENDER No – 93/EDC-III/B/2022-2023
  - (b) **TENDER BID PART-II (FINANCIAL BID)**  
Part-II (Financial Bid) shall be submitted online only on E-Tender Portal <https://etender.up.nic.in> It shall contain commercial particulars including prices and other documents/conditions if any as mentioned in Tender Document. Financial Bid shall not be received in this office and tenderers have to submit online only on E-Tender Portal. The price bid of qualified bidders in Part-I shall be opened on E-Tender portal only.
2. The tender shall be received upto 11.00 noon on 21.02.2023 on e-tender portal only. Tender received late shall not be considered at all. This office shall not be responsible for any postal delay.
3. The tender will be publically opened by the Superintending Engineer or his authorized representative in his office at 15.00 hrs. on 21.02.2023 in the presence of tenderers or their authorized representative, who wish to be present. In case the tender opening date is holiday, the date of submission and opening of tender will stand extended to next working day.
4. In case the offer is not with the valid Earnest Money, Part II of the tender bid shall not be opened. No further consideration of the tender shall be made in such cases.
5. **EARNEST MONEY & TENDER FEES**  
Each tender must be accompanied by the Earnest money for Rs.2,000.00 & Tender Fees 1180.00 only in the form of NEFT/RTGS of Bank in favour of Superintending Engineer Electricity Distribution Circle-IIIrd, Bulandshahr. Account No191605000573 IFSC Code- ICIC0001916, ICICI CIVIL LINES, MOTIBAGH, BULANDSHAHR of SE EDC-III BULANDSHAHR
6. Superintending Engineer, Electricity Distribution Circle-III, Bulandshahr reserve the right to reject any tender or all the tenders or part thereof or to distribute the work amongst more than one tenderers without assigning any reason thereof.

Signature of Tenderes with

Superintending Engineer

Full Address &amp; Seal

## ELECTRICITY DISTRIBUTION CIRCLE-III, BULANDSHAHR

E-TENDER NO.: 93/EDC- III/B/2022-2023

## PRE QUALIFYING CONDITIONS

S No.	Conditions	Enclose Yes/No	Details
1.	निविदा शुल्क .....		
2.	धरोहर धनराशि .....		
3.	विद्युत सुरक्षा निदेशालय द्वारा निर्गत, फर्म का नवीनतम एवं वैध " क " श्रेणी का प्रमाण-पत्र।		
4.	जी0एस0टी0 द्वारा निर्गत, फर्म के पंजीकरण का वैध एवं नवीनतम प्रमाण-पत्र।		
5.	फर्म के स्वामी का पेन कार्ड।		
6.	फर्म के स्वामी का आधार कार्ड।		
7.	फर्म के स्वामी का जिलाधिकारी द्वारा जारी नवीनतम एवं वैध चरित्र प्रमाण पत्र।		
8.	कैन्सिल चेक।		
9.	पिछले तीन वर्ष के इनकम टैक्स रिटर्न (2018-19, 2019-20 2020-21 एवं 2021-22) की प्रति।		
10.	राष्ट्रीयकृत बैंक द्वारा जारी निविदा लागत (Estimated Cost) का न्यूनतम 25% धनराशि का नवीनतम एवं वैध हैसियत प्रमाण पत्र। (राष्ट्रीयकृत बैंक के अलावा जिलाधिकारी व अन्य बैंक का हैसियत-प्रमाण पत्र मान्य नहीं होगा)		
11.	किसी भी विभाग में काली सूची में न डाले जाने एवं उ.प्र.पा. का.लि. में सगा सम्बन्धी कार्यरत न होने का नवीनतम एवं वैध शपथ-पत्र।		
12.	फर्म का विगत 03 वर्षों में सरकारी/अर्द्धसरकारी विभाग में कार्य करने का अनुमानित कार्य लागत का 80% का एक कार्यादेश अथवा 50% के दो अथवा 40% के तीन कार्यादेश होना चाहिए।		
13.	पिछले पाँच वित्तीय वर्षों में से सर्वश्रेष्ठ तीन वर्षों के लिए न्यूनतम औसत कारोबार (Minimum Average Annual Turnover) (MAAT) रु0 ..... से कम नहीं होना चाहिए। (अनुमानित लागत का 150 प्रतिशत)		
14.	प0वि0वि0नि0लि0/अन्य डिस्कॉम में कार्य करने का अनुभव।		
15.	<b>Net Worth of the bidder should be positive. Net worth means the sum total of the paid up capital and free reserves (excluding reserves created out of revaluation) reduces by aggregate value of accumulated losses (including debit balance in profit and loss account for current year) and intangible assets.</b>		

नोट—

1. निविदादाता द्वारा निविदा शुल्क व धरोहर राशि मण्डल के खाते में आर.टी.जी.एस./एन.ई.एफ. टी. के माध्यम से पृथक-पृथक रूप से जमा कराया जाना आवश्यक है तथा उक्त का साक्ष्य निविदा प्रपत्रों के साथ संलग्न करना भी अनिवार्य है। **IMPS** के माध्यम से जमा धनराशि मान्य नहीं होगी। **IMPS** द्वारा जमा की गई धनराशि अथवा संयुक्त रूप से जमा की गई (निविदा शुल्क एवं धरोहर राशि) राशि को निविदा शुल्क मानते हुए उक्त जमा राशि को जब्त कर लिया जायेगा।
2. उक्त संदर्भित कार्य उ0प्र0 पावर कॉरपोरेशन लि0, लखनऊ/रेस्पो के मानकों के अनुरूप सम्पादित कराया जायेगा।
3. समस्त निविदादाताओं को निविदा के भाग प्रथम में उपरोक्त समस्त प्रमाण-पत्र अपलोड करने आवश्यक होंगे अन्यथा उनकी निविदा का द्वितीय भाग नहीं खोला जायेगा।
4. प्रबन्ध निदेशक महोदय एवं उच्चाधिकारियों द्वारा दिये गये दिशा-निर्देशों के अनुसार प्री-क्वालीफाईड शर्तों में तकनीकी एवं प्रमाण-पत्रों में किसी प्रकार की कोई अनियमितता /जाली पाये जाते हैं तो सम्बन्धित कार्यदायी संस्था के विरुद्ध निगम नियमानुसार विधिक कार्यवाही सुनिश्चित की जायेगी।
5. अधोहस्ताक्षरी को बिना कारण बताये निविदा को निरस्त करने का पूर्ण अधिकार सुरक्षित हैं

Signature of the Tenderer/Contractor  
with seal

# FORM 'A'

## GENERAL CONDITIONS FOR THE SUPPLY OF PLANT AND THE EXECUTION OF WORKS IN CONNECTION WITH SCHEMES IN PASHCHIMANCHAL VIDYUT VITARAN NIGAM LTD.

### 1. Definition of terms

In continuing these general conditions and the annexed specification, the following words shall have the meaning here in assigned to them unless there is anything in the subject or context inconsistent with such construction.

"The purchaser" or the Board shall mean the P.V.V.N.L. and shall include his successors and assigns.

The "Contractor" Shall mean the Tenderer whose tender shall be accepted by the purchaser and shall include such Tenderer's heirs, legal representatives, successors and assigns.

The "Sub Contractor" shall mean the person named in the contract for any part of the work or any person to whom any part of the Contract has been sublet with the consent in writing of the Engineer and the heirs, legal representative's successors and assigns of such person.

The "Engineer" shall mean the officer placing the order for the work, with the contractor and such other officer as may be authorized and appointed in writing by the purchaser to act as Engineer for the purpose of the contract and in case of such officer has been so appointed, the purchaser or his duly authorized representative.

"Plant", "Equipment", "Material", "Work" or "Works" shall mean respectively the plant and materials to be provided and work or works to be done by the contractor under the contract.

The "Contract" shall mean and include the general conditions, specifications, schedules, drawings, Form of Tender, covering Letter, Schedule of Prices, or the final General Conditions, Specifications and drawings, and the agreement to be entered into under clause 3 of these general conditions.

"The Specification" shall mean the Specification annexed to these General Conditions and the schedules thereto (if any).

The "Site" shall mean the site of the proposed work as detailed in the Specifications or and other place in Uttar Pradesh where work is to be executed under the Contract.

"Test on Completion" shall mean such tests as are prescribed by the Specification to be made by the contractor before the plant is taken over by the purchaser.

"Commercial Use" shall mean the use of work, which the contract contemplates or of which it is commercially capable.

"Month" shall mean calendar month.

"Writing" shall include any manuscript, typewritten or printed statement under or over signature or seal as the case may be.

Words importing person shall include Firms, Companies, Corporations and other bodies whether incorporated or not.

Words importing the singular only shall also include the plural and vice versa where the context requires.

### 2. Contractor to inform himself fully

The Contractor shall be deemed to have carefully examined the General Conditions, Specifications, Schedules and Drawing. If he shall have any doubt as to the meaning of any portion of these General Conditions or of the Specifications, he shall, before signing the Contract, set forth the particulars thereof and submit them to the Engineer in writing in order that such doubt may be removed.

### 3. Contract

A formal agreement shall if required by the purchaser, be entered into between the Purchaser and the Contractor for the proper fulfillment of the Contract.

Further, if required by the purchaser, the Contractor shall deposit with the Purchaser as security for the due and faithful performance of the Contract such sums not being less than one percent of the total value of the Contract as may be fixed by the purchaser either in cash or in any other form approved by the Purchaser. The security deposit shall be refunded to the Contractor on the satisfactory completion of tests and the taking over of the plant by the purchaser.

The charge in respect of vetting and execution of the contract document shall be borne by the contractor. The Contractor shall furnish with an executed stamped counter-part of the Agreement. The

import licence fee will in each case have to be paid by the contractor. Import licence may have to be taken in the Board's name.

After the tender has been accepted by the Purchaser, all order or instructions to the Contractor shall except as here in other wise provided, be given by the Engineer on behalf of the Purchaser.

#### **4. Contract Drawings**

Contractor shall submit in duplicate, to the Engineer for his approval, drawings of the General Arrangement of the works to be carried out and of such detailed drawings other than shop drawings as may be reasonably necessary.

Within fourteen days of the receipt of such drawings, the Engineer shall signify his approval or otherwise of the same, and in the event of his disapproving the drawing, the contractor shall submit further drawings of approval.

Within a reasonable period of the notification by the Engineer to the Contractor of his approval of such drawings, three sets in ink on tracing cloth or ferrographic prints mounted on cloth of the drawings as approved shall be supplied to him by the Contractor and be signed by him and by the contractor respectively and thereafter deemed to be the "Contractor Drawings".

These drawings when so signed shall become the property of the Purchaser and be deposited with the Engineer, and shall not be departed from in any way what so ever except by the written permission of the Engineer as here in after provided. During the execution of the works one of the sets of drawings shall be available for reference on the site.

In the event of the contractor desiring to possess a signed set of drawings he shall supply four sets instead of three sets in this case the Engineer shall sign the fourth set return the same to the Contractor.

The Contractor if required by the Engineers shall supply in addition copies of any drawings other than shop drawing which may be reasonably be required for the purpose of the Contract and may make a reasonable charge of such copies.

The Engineer, or his duly authorized representative, whose name shall have previously been communicated in writing to the Contractor, shall have the right, at all reasonable times, to inspect at the factory of the Contractor, drawings of any portion of the work and plant.

#### **5. Mistake in Drawings**

The Contractor shall be responsible for and shall pay for any alterations of the work due to any discrepancies, errors and omission in the drawings or other particulars supplied by him whether such drawings or particulars have been approved by the engineer or not provided that if such discrepancies, errors or omission are due to inaccurate information or particulars furnished to the Contractor by the Engineer, any alterations in the work necessitated by reason of such inaccurate information or particular shall be paid for by the purchaser.

If any dimensions figured upon a drawing or plant differ from those obtained by scaling the drawing or plan, the dimension as figured upon the drawing or plan shall be taken as correct.

#### **6. Subletting of Contract**

The Contractor shall not, without the consent, in writing of the Engineer or Purchaser, which shall not be unreasonably withheld assign or sublet his Contract, or any substantial part thereof other than for raw materials for minor details, or for any part of the work of which the makers are named in the Contract, provided that any such consent shall not relieve the Contractor from any obligation, duty, or responsibility under the contract.

#### **7. Patent rights**

In the event of any claim or demand being made or action being brought against the purchaser for infringement or alleged infringement of letters- patent in respect of any machine, plant, work or thing used or supplied by the Contractor under this Contract or in respect of any method of using or working by the purchaser of such machine plant, work or thing the Contractor will indemnify the Purchaser against such claim or demand and all costs and expenses arising from or incurred by reasons of such claims or demand PROVIDED THAT the Purchaser shall notify that Contractor immediately any claim is made and that the Contractor shall be at liberty if he so desires with the assistance of the Purchaser if required but at the Contractor's own expenses, to conduct all negotiations for the settlement of the same or any litigation that may arise there from and PROVIDED THAT no such machine, plant, work or thing shall be used by Purchaser for any purpose or in any manner other than that for which they have been supplied by the Contractor and specified under this Contract.

#### **7 A. Training of Engineers**

The Contractor shall train at his works Engineer/Engineers of the Purchaser in the manufacture and assembly of machinery and its parts for a period of.....a separate agreement for such training shall be signed by the Engineer /Engineers selected for training, the Purchaser and the Contractor on the form appended hereto.

## **8. Quality of Material**

The Plant shall be manufacture and constructed in the best and most substantial and most workman like manner and with material of the best or of approved qualities for their respective uses.

## **9. Packing**

The Contractor shall be responsible for securely protecting and packing the plant so as to avoid damage under normal conditions of transport.

## **10. Delivery**

The cost of delivering the whole of the material f.o.r. at the railway station specified or on the site as the specification may define and the cost of the packing and unless otherwise agreed, import duties and customs dues shall be borne by the Contractor.

## **11. Fencing and lighting for works other than trans mission lines**

Except as hereinafter provided that purchaser shall unless otherwise specified be responsible for the proper fencing, guarding, lighting and watching of all works other than transmission lines comprised in the Contract and for the proper provision of temporary, roadways, footway, guards and fences as for the same may be rendered necessary by reason of the work for the accommodation and production of foot-passenger or other traffic and of the owners and occupiers of adjacent property and of the public.

### **11 A For transmission lines**

The Contractor shall at all time provide sufficient fencing, notice boards, lights and watchman to protect and warn the public and guard the work of transmission lines and in case the Contractor fail to make such provision or the provision made by him is considered by the Purchaser to be inadequate, the Purchaser may make such provision or further provisions as he may consider necessary and charge the cost there of the Contractor.

### **11B For all works**

If during the period of erection of a plant the Contractor or his workman or servant shall injure or destroy any part of a building or other structure contiguous to the work in progress or if any damage shall be caused from any cause whatsoever to other works (whether in progress or completed) forming part of the work for which the plant is being installed or if and imperfections become apparent in these works the causes of which imperfections are attributable to the Contractor or his workmen or servants, the Contractor shall make good such damages and imperfection and if he fails to do so within a reasonable time the Purchaser may cause the same to be made good and may deduct the cost there of from any sum that may then or at any time thereafter become due to the Contractor or from his security deposit or the proceeds of sale thereof or of a sufficient portion thereof or may recover it otherwise.

## **12. Power to vary or omit work**

No alterations, amendments, omission, additions, suspensions or variations of the work (hereinafter referred to as "Variation") under the Contract as shown by the drawings of the specification shall be made by the Contractor except as directed in writing by the Engineer, but the Engineer shall have full power, subject to the provision hereinafter contained, from time to time during the execution of the Contract by notice in writing to instruct Contractor to make such variation without prejudice to Contract, and the Contractor shall carry out the such instructions and be bound by the same conditions as for as applicable, as through the said variation occurred in the specification. If any suggested variations would in the opinion of the Contractor, if carried out prevent him from fulfilling any of his obligations or guarantees under the Contract he shall notify the Engineer thereof in written and the Engineer shall decide forthwith whether or not the same shall be carried out and if the Engineer confirms his instruction the Contractor's obligations and guarantees shall be modified to such an extent as may be justified. The difference of cost, if any occasioned by any such variations, shall be added or deducted from Contract price as the case may require. The amount of such difference, if any, shall be ascertained and determined in accordance with rates specified in the Schedule of Prices, so far as the same may be applicable and where the rates are not contained in the said Schedules or are not applicable they shall be settled by the Engineer and Contractor, jointly, as far as possible, before such variations are carried out. provided that the Purchaser shall not become liable for the payment of any charge in respect of any such variation, unless the instruction for the performance of the same shall have been given in writing by the Engineer.

In the event of the Engineer requiring any variations, such reasonable proper notice shall be given to the Contractor as will enable him to make his arrangement accordingly, and in case where goods or materials have already been prepared or any designs, drawings or patterns have been made or work done that require to be altered, the Engineer shall allow such Compensation in respect there of as he shall consider reasonable.

Provided that no such variation shall except with the consent in writing of the Contractor, be such as will involve an increase or decrease of total price payable under the Contract by more than 10 percent thereof.

In every case in which the Contractor shall receive instructions from the Engineer for carrying out any work which either then or later will in the opinion of the Contractor, involve a claim for additional payment, the Contractor shall, as soon as reasonably possible after the receipt of such instructions, inform the Engineer of such claim for additional payment.

**13. Negligence**

If the Contractor shall neglect to execute the work with due diligence and expedition, or shall refuse or neglect to comply with any reasonable orders given him in writing by the Engineer in connection with work or shall contravene any provision of Contract the purchaser may give seven days notice in writing to the Contractor, to make good the failure neglect or contravention complained of and if the Contractor shall fail to comply with the notice within a reasonable time from the date of service thereof in the case of a failure, neglect or contravention capable of being made good within that time, then and in such case the Purchaser shall be at liberty to employ other workmen and forthwith perform such work as the Contractor may have neglected to do, or if the purchaser shall think fit, it shall be lawful for him to take the work wholly, Or in part out of the Contractor's hands and give it to another person on contract at a reasonable price or provided any other materials, tools tackles or labour for the purposed of completing the work, or any part thereof and in that event the Purchaser shall, without being responsible to the Contractor for fair wear and tear of the same have free use of all the materials, tools, tackles or other things which may be on the site, for use at any time in connection with the work to the exclusion of any right of the Contractor over the same, and the Purchaser shall be entitled to retain and apply any balance which may be otherwise due on the Contract by him to the Contractor or such part thereof as may be necessary to the payment of the cost of executing such work as aforesaid.

If the cost of executing the work as aforesaid shall exceed the balance due to the Contractor, and the Contractor fails to make good the deficiency the Purchaser may recover it from the Contractor in any lawful manner or the Purchaser may sell the said materials, tools tackle or other things belonging to the Contractor, and the proceeds of such sale shall be applied toward the payment of such deficiency and the costs of and incidental to such sale and any balance remaining after crediting the same shall be paid to the Contractor on the Certificate of the Engineer, provided that when all expenses cost and charges incurred in the completion of the work are paid by the contractor, all such materials; tools, tackle or other things remaining unsold shall be removed by the Contractor.

**14. Death, Bank-raptly, etc**

If the contractor shall die or commit any act of bankruptcy, or being a corporation commence to be wound up except for reconstruction purposes or carry on its business under a receiver, the executors, successors or other representative in law of the estate of the contractor or any such Receiver, Liquidator, or any person in whom, the contract may become vested shall forthwith give notice thereof in writing to the Purchaser and shall for one month during which he shall take all reasonable steps to prevent a stoppage of the work have the option of carrying out the Contract subject to his or their providing such guarantee as may be required by the Purchaser but not exceeding the value of the work for the time being remaining unexecuted. In the event of stoppage of the work period of the option under this clause shall be fourteen days only provided that should the above option not be exercised, the Contractor may be determined by the Purchaser by notice in writing to the contractor and the Purchaser may exercise the same power which he should exercise and will have the same right which he could have under the proceeding clause if the work had been taken out of Contractor's hand under that clause.

**15. Inspection & Testing**

The Engineer and his duly authorised representative shall have testing at all reasonable times the access to the Contractor's premises, and shall have the power at all reasonable time to inspect and examine the materials and workmanship of the plant during its manufacture there and if part of the plant is being manufactured on other premises the Contractor shall obtain for the Engineer and for his duly authorised representatives permission to inspect it as the plant was manufactured on the Contractor's own premises.

The Engineer shall on giving seven day's notice in writing to the Contractor setting out any grounds of objections which he may have in respect of the work, be at liberty to reject all or any plant or workmanship connected with such work which in his opinion are not in accordance with the contract or are in his opinion defective for any reason whatever provided that if such notice be not sent to the Contractor within reasonable time after the grounds upon which such notice is based have come to the knowledge of



Engineer he shall not be entitled to reject the said plant or workmanship on such grounds unless specifically provided otherwise all tests shall be made at the Contractor's works before shipment.

**15 A. Test at Contractor's Premises**

The Contractor shall, if required, give the Engineer notice of any materials being ready for testing and the Engineer or his said representatives if so desires shall, on giving twenty-four hours previous notice in writing to the Contractor, attend at the Contractor's premises within seven days of the date on which the material is notified as being ready, failing which visit the Contractor may proceed with the tests which shall be deemed to have been made in the Engineer's presence, and he shall forthwith forward to the Engineer duly certified copies of tests in duplicate.

In all cases where the Contractor provides for tests whether at the premises of the Contractor or of any Sub-Contractor, the Contractor, except where otherwise specified shall provide free of charges such labour, materials, electricity, fuel, water, stores, apparatus and instruments as may reasonably be demanded to carry out efficiently such tests of the plant in accordance with the contract and shall give facilities to the Engineer or to his authorised representative to accomplish such testing.

If special tests other than those specified in the contract are required they shall be paid for by the Purchaser as "Variations" under clause 12.

When the tests have been satisfactorily completed at the Contractor's works the Engineer shall issue a certificate to that effect.

**15 B Test on Site**

In all cases where the Contract provides for test on the site, the Purchaser, except where otherwise specified, shall provide free of charges, such labour, material, electricity, fuel, water, stores apparatus and instruments as may be required from time to time and as may reasonably be demanded efficiently to carry out such test of the plant or workmanship in accordance with Contract. In the case of the Contractor requiring electricity for test on site such electricity shall be supplied to the Contractor in the most convenient form available.

**16. Delivery of Plant**

No plant shall be forwarded until shipping instructions shall have been given to the Contractor.

Notification of delivery or dispatch in regard to each and every consignment shall be made to the purchaser immediately after dispatch or delivery. The supplier shall further supply to the consignee a priced invoice and packing account of all stores delivered or dispatched by him. All packages containers, bundles and loose materials forming part of each and every consignment shall be described fully in the packing account and full details of the contents of packages and quantity of materials shall be given to enable the consignee to check the stores on arrival at destination.

**17. Access to site and Work on site.**

Suitable access to and possession of the site shall be afforded to the Contractor by the Purchaser in reasonable time and the Purchaser shall have any foundations to be provided by him ready when required by the Contractor. where a crane is available, its safe lifting capacity shall be stated in the specification and shall be available for free use of the Contractor until the plant is taken over.

The work, so far as it is carried out on the Purchaser's premises, shall be carried out at such time as the Purchaser may approve and so as not to interfere unnecessarily with the Conduct of the Purchaser's business, but, the Purchaser shall give the Contractor all reasonable facilities for carrying out the work

No person other than Contractor, sub-contractor, and workmen and the Contractor's duly authorised agent shall, except with the special permission in writing of the Engineer or his representative, be allowed to do any work on the site in connection with the erection of the work but access to the work shall at all times be accorded to the Engineer and his representatives and other authorised officials or representatives of the purchaser.

The Contractor shall permit the execution of work by other Contractor or tradesmen whose names shall have been previously communicated in writing to the Contractor to the Engineer, and afford them every facility for the execution of their several work simultaneously with his own.

The Purchaser shall provide all the unskilled labour and facilities necessary for the execution of work included in the contract unless otherwise specified.

**18. Engineer's Supervision**

All the work shall be carried out under the direction and to the reasonable satisfaction of the engineer. If supervision of the erection for complete erection is included in the Contract, the Contractor shall be responsible for the correctness of the positions levels and dimensions of the work according to the drawings, notwithstanding that he may have been assisted by the Engineer in setting out the same.

**19. Engineer's Decision**

In respect of all matters which are left to the decision of the Engineer, including the granting or withholding of certificate, the Engineer shall if required to do so by the Contractor, given in writing, a decision thereon and his reasons for such decision. If the decision is not accepted by the Contractor the matter will, at the request of the Contractor, be referred to arbitration under the provision for arbitration hereinafter contained but subject to this right of reference to arbitration such decision shall be final and binding on the Contractor.

**20. Contractor's Representatives & Workmen**

If the supervision of erection or complete erection is also included in the Contract, the Contractor shall employ at least one competent representative and whose name or names shall have previously been communicated in writing to the Engineer by the Contractor to superintendent in the erection of the plant and the carrying out of the works. The said representatives, or if more than one shall be employed then one of such representatives, shall be present on the site during working hours, and any written orders or instructions which the Engineer or, his duly authorised representative whose name shall have been previously communicated in writing to the contractor may give to the said representative of the Contractor shall be deemed to have been given to the contractor.

The Engineer shall be at liberty to object to any representative or person employed by the Contractor in the execution of or otherwise about the works who shall in his opinion misconduct himself or be in competent or negligent and the Contractor shall remove the person so objected to upon receipt from the Engineer of notice in writing requiring him to do so and shall provide in his place a competent representative at the Contractor's expense.

The purchaser shall provide suitable living accommodation on the site for, the use of Contractor's representative unless the contractor exempts him from this liability.

**21. Liability for Accidents and Damage**

The Contractor shall be responsible for loss, damage or depreciation of the plant until the same is taken over under clause 35 or is deemed under that clause to have been taken over provided always that the Contractor shall not be responsible for any such loss, damage and depreciation occurring during such period that the plant is operated by the purchaser's staff prior to being taken over in accordance with clause 35.

Until the plant is taken over or is deemed to have been taken over as aforesaid, the Contractor shall also be liable for and shall indemnify the Purchaser in respect of all injury to person or damage to property resulting from the negligence, of the Contractor or his workmen or Sub-Contractors or from defective designs, or work, but not from any other cause.

Provided that the Contractor shall not be liable for any loss of profit or loss of Contract or any other claim made against the Purchaser not already provided for in the Contract not for any injury or damage caused by or arising from the acts of the Purchaser or of any other person or due to circumstances over which the Contractor has no control or shall his total liability for loss, damage or injury in this clause exceed the total value of Contract.

The Contractor will indemnify and save harmless the purchaser against all the actions suits, claims, demands, costs or expenses arising in connection with injuries (other than such as may attributable to the purchaser or his employees) suffered period to the date when the plant shall have been taken over under clause-35 hereof by persons employed by the Contractor or his Sub-Contractor on the work, whether at common Law or under the Workmen's Compensation Act, 1923 or any other statute in force at the date of contract relating to the question of the liability of employers for injuries suffered by employees, and will if called upon to do so take out the necessary policy of insurance to cover such indemnity.

**21A. Only applicable to complete erection Contract**

In the event of any claim being made, or action brought against the Purchaser involving the Contractor and arising out of the matters referred to and in respect of which the Contractor is liable under this clause, the Contractor shall be immediately notified thereof and he shall with assistance, if he so requires, of the Purchaser but at the sole expense of the Contractor conduct all negotiations for the settlement of the same or any litigation that may arise thereof. In such case, the Purchaser shall at the request and expense of the Contractor, afford all reasonable and available assistance for any such purpose.

**22. Insurance**

The Contractor shall insure the plant and shall keep it insured against loss by theft, destruction or damage by fire, flood, undue exposure to the weather, or through riot, civil commotion, war or rebellion for the full value of the plant from the time of delivery of f.o.b. British port until the plant is taken over under

clause 35. This insurance shall also cover loss by theft on site in the case of Contracts where the Contractor, is responsible for complete erection, but not in other cases.

**23. Replacement of defective work or materials.**

If during the progress of the work the Engineer shall decide and notify in writing to the Contractor that the contractor has executed any unsound or imperfect work or has supplied any plant inferior in quality to that specified the Contractor on receiving details of such defects deficiency shall, at his own expense, within such time as may be reasonably necessary for making it good proceed to alter, reconstruct or remove such work, or supply fresh materials up to the standard of the Specification and in case the Contractor shall fail so to do the Purchaser may on giving the Contractor seven days' notice in writing of his intention so to do, proceed to remove the work complained of, and, at the cost of the Contractor, perform all such work or supply all such material provided that nothing in this clause shall be deemed to deprive the Purchaser of or affect any right under the contract, which he may otherwise have in respect of such defects are deficiencies.

**24. Deduction from contract price.**

All costs, damages or expenses which the purchaser may have paid, for which under the Contract, the contractor is liable, may be deducted by the Purchaser from any money due or which may become due by him to the Contractor under the Contract, or may be recovered by suit or otherwise from the Contractor. Any sum of money due and payable, to the contractor (including security deposit returnable to him) under this contract may be appropriated by the Purchaser and set off against any claim of the Purchaser for the payment of a sum of money arising out of or under any other contract made by the contractor with Purchaser.

**25 Terms of Payment**

(1) Subject to any deduction which the Purchaser may be authorised to make under the Contract, or subject to any additions of deduction provided for under clause 12 the Contractor shall be entitled to payments as follows:

(a) Eighty percent of the f.o.r. Contract value of the plant in rupee on receipt by the purchaser of the Contractor's invoice giving the number and date of railway receipt covering the dispatch of the plant from Indian port and of the advice note giving case number and contents together with a certificate by the Contractor to the effect that the plant detailed in the said advice note has actually been dispatched under the said railway receipt and that the contract value of the said plant so dispatched is not less than the amount entered in the invoice.

(b) Ten percent of the f.o.r. Contract value of the plant on satisfactory completion of test and taking over of the plant.

(c) Ten percent of the f.o.r. Contract value of the plant at the end of twelve month from the date of taking over.

(d) For the erection of the plant in proportion of the progress of the work on the receipt by the Purchaser of monthly invoices submitted by the Contractor supported by the certificated of the Engineer.

(2) If The Time at which either of the installments due under sub clauses (b) and (c) of clause (1) hereof become payable there are minor defects in the plant which are not of such importance as to affect the full commercial use of the plant, then the purchaser shall be entitled to retain only such part at the installment then due as represents the cost of making good such minor defects and any sum so retained shall subject of the provisions of clause 36 become due upon such minor defects being made good.

(3) If the Purchaser desires that the plant of any portion thereof should not be dispatched by the Contractor when it is due for dispatch by the Contractor shall store such plant or portion at his works and be responsible for all risk. For such storage the purchaser shall pay to the Contractor at a rate of mutually agreed upon between the parties but not exceeding 5S ( five shilling per ton per week), payable quarterly plus interest at one percent per annum above the current rate of the State Bank of India on 80 percent of the Contract value of the plant or portion thereof so stored, for the period from the date on which said plant or portion become due and is ready for shipment up to the date on which it is actually shipped.

**25.** A In the event of the supplier contractor/company/not being able to supply the materials or to carry out works in accordance with the terms of this contract, the Government/purchaser/owner shall have the right to recover any sums advanced in accordance with the clause 25 from the supplier/contractor/company and from his/its assets.

**26. Provisional Sums**

In any case where the Contract price includes a provisional sum sums to be provided by the Contractor for meeting the expense of extra work or for work to be done or material to be supplied by a sub Contractor, such sum shall be expended or used, either wholly or in part or be not used at the discretion of the Engineer and entirely as he may decide and direct. If no part or only a part thereof be used then the whole or the part not used as the case may be, shall be deducted from the Contract price. If the sum used is more than such provisional same, the Contractor shall pay the excess. In the case of materials supplied on work done by a

Sub Contractor, the total of the net sums paid to the Sub Contractor on account of such materials or work and a sum equal to 10percent of such net sum allowed as Contractor's profit shall be deemed to be the sum used. None of the works or articles to which such sum of money refer shall be done or purchased without the written order of the Engineer. The Contractor shall allow the Sub-Contractor every facility for the supply of materials or execution of their several works simultaneously with his own and shall within fourteen days after the Engineer has requested him in writing so to do pay the dues of such Sub-Contractor on account of such materials or work, PROVIDED ALWAYS that the Contractor shall have no responsibility with regard to such work or articles unless he shall have previously approved the Sub Contractor and/or the material or plant to be supplied.

**27. Certificates of Engineers**

Every application to the Engineer for a certificate must be accompanied by a detailed invoice (in duplicate) setting forth in the order of the Schedule of prices, particulars of the work executed and the certificate as to such plant or work as in the reasonable opinion of Engineer in accordance with the Contract shall be issued within fourteen days if possible or for other than the first payment within such time of application for the same as is reasonably necessary for communication with the site.

The Engineer may by any certificate make any correction or modification in any previous certificate which shall have been issued by him and payments shall be regulated and adjusted accordingly.

**28. Due Date of Payments**

Payment shall be due and payable by the Purchaser in accordance with the provisions of clause 25 here of at the end of the month following that in which invoice for the amounts due together with necessary documents are received by the purchaser, provided that the Purchaser shall not be bound to make any payment under sub-clause(a) of clause-25 unless the amount of such payment represents at least 8 percent of the total contract value of the plant.

**29. Certificate not to affect rights of the purchaser or Contractor.**

(1) No certificate of the Engineer on account nor any sum paid on account by the purchaser, nor any extension of time granted under clause 31 shall effect or prejudice the rights of the Purchaser against the Contractor either under this agreement or under the law or to relieve the Contractor of his obligations for the due performance of the Contract, or be interpreted as approval of the work done or of the materials supplied.

(2) No certificate of the Engineer shall create liability in the Purchaser to pay for any alteration, amendments, variations or additional work not ordered in writing by the Engineer or absolve the Contractor of his liability for the payment of damages whether due ascertained or certified or not of any sum against the payment of which he is bound to indemnify the purchaser nor shall any such certificate nor the acceptance by him of any sum paid on account or otherwise affect or prejudice the rights of the Contractor against the purchaser under this Agreements or under the law.

**30. Suspension of works**

The Purchaser shall pay to the Contractor all reasonable expenses incurred by the Contractor by reason of suspension of the works or delay in shipment by order in writing of the purchasers of the Engineer unless such suspension shall be due to some default on the part of the Contractor or Sub-Contractor.

**31. Extension of time for completion**

The time given to the contractor for dispatch, delivery, erection or completion, as the case may be, shall be reckoned from the date of receipt by the Contractor or the order, together with all necessary information and drawings to enable the work to be put in hand.

In all cases in which progress shall be delayed by strike, lockouts, fire, accident, defective materials, delay in approval of drawing or cause whatsoever beyond the reasonable Control of the Contractor and whether such delay or impediment shall occur before or after the time or extended time for dispatch, erection or completion, a reasonable extension of time shall be granted.

**32. Damages for delay in completion**

If the Contractor shall fail in the due performance of his Contract within the time fixed by the contract or any extension, thereof, the contractor agrees to accept a reduction of the contract price by ½ (half) percent per week reckoned on the Contract value of such portion only of the plant as can not in consequence of the delay be used commercially and efficiently during each week between the appointed or extended times as the case may be and the actual time of acceptance under clause 35, and such reduction shall be in full satisfaction of the Contractor's liability for delay, but shall not in any case exceed 10(ten)percent of the contract value of such portion of the plant.

**33. Tests of Completion**

Whenever possible all tests shall be carried out before shipment should however, it be necessary for the final tests as to performance and Completion guarantees to be held over until plant is erected at site they shall be carried out in the presence of the Contractor's representative within one month of the completion of

erection. If the result of these tests shall not come within the margin specified, the tests shall, if required be repeated within one month from the date the plant is ready for re-test, and the Contractor shall repay to the Purchaser all reasonable expenses to which he may be put by such tests.

**34. Rejection of Defective Plant**

If the completed plant, or any portion thereof, before it is taken over under clause 35, be found to be defective, or fail to fulfill the requirements of the Contract, the Engineer shall give the contractor notice setting forth particulars of such defects or failure, and the contractor shall forth-with make the defect good; or alter the same to make it, comply, with the requirements of contract. If the Contractor fail to do so with a reasonable time, the purchaser may reject and replace, at the Cost of the contractor, the whole or any portion of the plant, as the case may be which is defective or fails to fulfill the requirements of the contract such replacement shall be carried out by the purchaser within a reasonable time and at reasonable price and where reasonable possible to the same specification and under competitive conditions. In case of such replacement by the Purchaser the Contractor shall be liable to pay to the Purchaser extra cost if any, of such replacement delivered and/or erected as provided for the original Contract, such extra cost being the ascertained difference between the price paid by the purchaser under this provisions above mentioned, for such replacement and the Contract price for the plant so replaced, and also to repay any sum paid by the purchaser to the contractor in respect of such defective plant. If the purchaser does not so replace the rejected plant within a reasonable time, the Contractor shall be liable only to the purchaser all money paid by the purchaser to him in respect of such plant.

In the event of such rejection, the purchaser shall be entitled to the use of the plant in reasonable and proper manner for a time reasonably sufficient to enable him to obtain other replacement plant. During the period the rejected plant is used commercially the contractor shall be entitled to a reasonable sum as payment for such use.

**35. Taking over**

Where the specification calls for performance tests before shipment and these have been successfully carried out, the plant shall be accepted and taken over when it has been satisfactorily put into operation on site or within one month of its being ready to be put into operation, whichever shall be the earlier and the Engineer shall forthwith issue a taking over certificate.

In the event of final or any outstanding tests being held over until the plant is erected such taking over Certificate shall be issued subject to the results of such final or outstanding test shall be carried out in accordance with clause 33.

When the specification calls for tests on site the plant shall be taken over and the Taking over certificate issued immediately after such tests have been satisfactorily carried out.

If for any reason other than the default of the contractor such last mentioned test on site shall not be carried out within one month of notice by the Contractor to the Purchaser of the plant being ready for test the plant shall be deemed to have been taken over as on the last day of the such period and payments due to the Contractor on taking over shall be made, but nevertheless the contractor shall if called upon so to do by the purchaser, but at the purchaser's expense, make the said tests during the maintenance period and accept as aforesaid under the same obligation as specified in clause 33.

The Engineer shall not delay, the issue of any taking over Certificate contemplated by this clause on account of minor deficiencies of material or defects in the plant which do not materially affect the commercial use thereof provided that the contractor shall undertake to make good the same in due course.

**36. Maintenance**

For a period of 12 (Twelve) calendar months commencing from the date on which the plant is taken over or is deemed to have been taken over under clause 25 (called "the maintenance period") the Contractor shall remain liable to replace any defective parts that may develop in plant of his own manufacture or those of his Sub-Contractors approved in the clause 6 under the conditions provided for by the Contract under proper use and arising solely from faulty design, materials or workmanship provided always that such defective parts are not repairable at site and are not essential in the meantime to the maintenance in commercial use of the plant are promptly returned to the contractor's works at the expenses of the contractor unless otherwise arranged. If it becomes necessary for the Contractor to replace or renew any defective parts of the plant under this clause, the provisions of the first paragraph of this clause shall apply the parts of the plant so replaced or renewed until the expiration of six months from the date of such replacement or renewal or until the end of the above mentioned period of twelve months whichever may be the later. If any defects be not remedied within a reasonable time the purchaser may proceed to do the work at the Contractor's risk and expense but without prejudice to any other rights, which the purchaser may have against the Contractor in respect of such defects. The repaired or new parts will be delivered in accordance with clause 10. The Contractor shall bear reasonable cost of minor repairs carried out on his behalf at site. At the end of the maintenance period the Contractor's liability shall cease in respect of goods

not covered by the first paragraph of this clause, the purchaser shall be entitled to the benefit of any guarantee given to the Contractor by the original supplier or manufacture of such goods.

**37. Regulations of Local Authorities**

The Purchaser shall throughout the Continuance of the Contract and in respect of all matters arising in the performance thereof, serve all notices and obtain all consent, way leaves approvals and permission required in connection with the regulations and by laws of any local or other authority which shall be applicable to the works.

All work shall be executed in accordance the Indian Electricity Rules, 1956 and any statutory modification thereof, wherever are applicable, unless otherwise agreed to in writing by the Engineer.

**38. Arbitration**

If any dispute, difference or controversy shall at any time arise between the contractor on the one hand and the Pashchimanchal Vidyut Vitran Nigam Limited, and the Engineer of the Contract on the other hand touching the contract, or as to the true construction, meaning and intent of any part or condition of the same, or as to manner of execution or as to the quality or description of or payment for the same, or as to the true intent, meaning, interpretation construction or effect of the clause of the contract, specification or drawings or any of them or as to anything to be, done omitted or suffered in pursuance of the contract or specification, or as to the mode of carrying the contract into effect, or as to the breach or alleged breach of the contract, or as to any claims on accounts of such breach or alleged breach, or as to obviation or compensation for the commission of any such breach or as to any other matter or thing whatsoever connected with or arising out of the contract, and whether before or during the progress or after the completion of the contract, such, question, difference or dispute shall be referred for adjudication to the Chairman and Managing Director, UPPCL or any other person nominated by him in this behalf and his decision in writing shall be final binding and conclusive. This submission shall be deemed to be submission to arbitration within the meaning of the Indian arbitration Act 1940 or any statutory modification thereof. The arbitrator may from time to time with consent of the parties; enlarge the time for making and publishing the award.

Upon every or any such reference, the costs of an incidental to the reference and award respectively shall be at the discretion of the arbitrator, who shall be competent to termini the amount thereof or direct the same to be taxed as between solicitor and client or as between party and party and to direct by whom and to whom in what manner the same shall be borne and paid.

Work under the Contractor shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable by the Corporation shall be withheld on account of such proceeding. In case of refusal/neglect by such nominee chairman & Managing Director, P.V.V.N.L. may nominate another person in his place.

**39. Court of Competent Jurisdiction**

Any action taken or proceeding initiated on any of the terms of this agreement shall be only in the court of competent Jurisdiction under the High Court of Judicature at Allahabad. Work under the Contract shall if reasonable possible, continue during the Arbitration proceeding, and no payment due or payable by the Purchaser shall be withheld on account of such proceedings.

**40. Construction of Contract**

The Contract shall in all respects be constructed and operated as a Construction Contract as defined in the Indian Contract Act, 1972, and the payments of Contract there under shall be made in the rupees unless otherwise specified.

**41. Marginal Notes**

The marginal notes to any clause of this contract shall not affect Marginal or control the construction of such clause.

Signature of Tenderes with  
Full Address & Seal

Superintending Engineer