

NTPCLIMITED

(A Government of India Enterprise)



VOLUME-I

SECTION II

GENERALPURCHASECONDITIONS

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The Special Purchase Conditions (SPC) will supersede any related conditions anywhere in the Bidding Documents and will prevail for evaluation/ finalization of the tender.

1.0	Definitions & Terminology	<p>Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:</p> <p>“Contract” means the Purchase Order/Service Order signed by the Employer, to which these General Purchase Conditions (GPC) are attached together with all the documents listed in such signed Contract.</p> <p>“Contract Documents” means the documents listed in Article 1.1 (Contract Documents) of the Form of Contract Agreement (including any amendments thereto).</p> <p>“GPC” means the General Purchase Conditions.</p> <p>“SPC” means the Special Purchase Conditions.</p> <p>“Day” means calendar day of the Gregorian Calendar.</p> <p>“Month” means calendar month of the Gregorian Calendar.</p> <p>“Employer” means NTPC Ltd., New Delhi (A Govt. of India Enterprise) and includes the legal successors or permitted assigns of the Employer.</p> <p>“Applicable Law” -This Contract including all matters connected with this Contract shall be governed and construed in accordance with the Indian Law both substantive and procedural and shall be subject to the exclusive jurisdiction of courts at Delhi, India.</p> <p>“Contract Price” means the price to be paid for the performance of the Services, in accordance with the payment terms, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.</p> <p>“Government” means the Government of the Employee’s country INDIA.</p> <p>“Local Currency” means the currency of the Government of India.</p> <p>“Party” means the Employer or the Bidder, as the case may be, and “Parties” means both of them.</p> <p>“Personnel” means persons hired by the Bidder as employees and</p>
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		<p>assigned to the performance of the Services or any part thereof.</p> <p>“Services” means the work to be performed by the Bidder pursuant to this Contract, as described in the detailed Terms of Reference; and</p> <p>Law Governing the Contract: The Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.</p> <p>Throughout these Bidding Documents, the term “Bid “and “Tender” and their derivatives (Bidder/Tenderer, Bidding/Tendering, Bidding Document/Tender Document, etc.); Bill of Quantity / Schedule of Quantity / Schedule of Quantities/ Bill of Quantities; Employer/NTPC; Bid Security/Earnest Money Deposit; Security Deposit/Performance Security/Performance Guarantee; Engineer-in-Charge / Engineer, appearing anywhere in the Bidding Documents shall have the same meaning and are synonymous to each other.</p> <p>Language: English shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.</p>
2.0	Contract Documents	<p>The Employer shall send to the successful Bidder the Purchase Order/Service Order. The Purchase Order/Service Order will constitute the formation of the contract. The contract shall come into effect from the date of issue of Purchase Order/Service Order. The successful bidder shall sign and return the Purchase Order/Service Order as a token of acceptance. Successful bidder on whom Purchase Order/Service Order is placed shall hereinafter be called Supplier.</p>
3.0	Order of the precedence of the Documents	<p>The order of precedence of documents shall be under:</p> <ul style="list-style-type: none"> a) Purchase Order/Service Order along with its annexures. b) Amendment to Bidding Documents c) Special Purchase Conditions d) Technical Specifications & Scope of Work & Field Quality Assurance plan e) General Purchase Conditions f) The Bid and BOQ submitted by the Supplier g) Instructions to bidders <p>Amendment issued after issue of Contract shall take</p>

		Precedent over the formal Contract and all other contract documents.
4.0	Language	All Contract Documents, all correspondence, and communications to be given, and all other documentation to be prepared and supplied under the Contract shall be written in English, and the Contract shall be construed and interpreted in accordance with that language. If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language as above, the English translation of such document, correspondence or communications shall prevail in matters of interpretation.
5.0	Singular and Plural	The singular shall include the plural and the plural the singular, except where the context otherwise requires.
6.0	Headings	The headings and marginal notes in the General Purchase Conditions of Contract are included for ease of reference and shall neither constitute a part of the Contract nor affect its interpretation.
7.0	Incoterms	Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by Incoterms. Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert1er, 75008Paris, France.
8.0	Construction Of Contract	If required, NTPC may place separate Orders for supplies and Services. The award of separate Purchase Orders shall not in any way dilute the responsibility of the Supplier for the successful completion of the Facilities as per Contract documents and a breach in one Purchase Order shall be construed as a breach of the other Purchase Order(s) which will confer a right on the Employer to terminate the other Contract(s) also at the risk and cost of the Supplier. The total value of all the orders shall be the Total Package value.

9.0	Amendment	No amendment or other variation of the Contract (Purchase Order/Service Purchase) shall be effective unless it is in writing, is dated, expressly refers to the Purchase Order/Service Order, and is signed by a duly authorized representative of Employer and accepted by the Supplier.
10.0	Severability	If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.
11.0	Non-Waiver	<p>Subject to GPC clause 11.0 (ii), no relaxation, for be arance, delayer indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.</p> <p>Any waiver of a party's rights, powers or remedies under the Contract must be inwriting, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.</p>
12.0	Notices	<p>Unless otherwise stated in the Purchase Order/Service Order, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile, or Electronic Data Interchange (EDI) to the address of the relevant party set out in the Contract.</p> <p>In case of Purchase Orders, all notices to be given under the Contract shall be addressed to Signatory of the Purchase Order and in case of Service Orders, all notices to be given under the Contract shall be addressed to Engineer-in-charge.</p> <p>Either party may change its postal, cable, telex, facsimile or EDI address or addressee for receipt of such notices by ten (10) days' notice to the other party inwriting.</p>
13.0	Governing Laws	<p>The Contract shall be governed by and interpreted in accordance with laws in force in India.</p> <p>The Courts of Raipur shall have exclusive jurisdiction in all matters arising under the Contract.</p>
14.0	Settlement of Disputes	

<p>14.1</p>	<p>Mutual Consultation</p> <p>If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the execution of the Facilities, whether during the progress of the Facilities or after their completion and whether before or after the termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation</p> <p>On reference of such a dispute by either party, the Employer shall invite the Contractor for mutual consultation, within seven (07) working days of such reference.</p> <p>Without admitting the Employer’s liability, the Employer may obtain, within 30 days of such reference of the dispute, further details from the Contractor and examine it relating to the dispute. Such examination (if any) by the Employer shall not be construed as or imply acceptance of the claim or liability or accuracy or completeness of the details set forth in such request or reference. The Employer may hold discussions with Contractor with an effort to resolve the dispute.</p> <p>If the parties fail to resolve such a dispute or difference by mutual consultation within a period of forty-five (45) days from the date of receipt of reference of such dispute or within such extended period as the parties shall agree in writing, then the dispute may be settled through Independent Engineer (if applicable) and/ or Mediation through Independent External Monitors (if applicable) and/or through Conciliation and/or Arbitration (if applicable) / other remedies available under the applicable laws.</p> <p>Notwithstanding anything contained in any other law for the time being in force, the parties shall keep confidential all matters relating to the Mutual consultation proceedings. Confidentiality shall extend also to any agreement reached during Mutual consultation, except where its disclosure is necessary for purposes of implementation and enforcement.</p> <p>The parties shall not rely on or treat as evidence in Independent Engineer/ Mediation/ Conciliation/ and in any way Arbitral or Judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Mutual consultation proceedings-</p> <ul style="list-style-type: none"> a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute; b) admissions made by the other party in the course of the mutual consultation proceedings; c) the fact that the other party had indicated his willingness to accept a proposal for mutual settlement.
<p>14.2</p> <p>*Mediation through Independent External</p>	<p>*Mediation through Independent External Monitors (IEMs) (<i>Applicable only for tenders having Integrity Pact provisions- ref SPC for applicability of integrity pact</i>)</p> <p>If the parties fail to resolve a dispute or difference by mutual consultation and through</p>

<p>Monitors (IEMs) (Applicable only for tenders having Integrity Pact provisions) Integrity Pact provisions)</p>	<p>Independent Engineer (if applicable) within a period specified at Cl. 14.1 above, the dispute, if the parties agree, may be referred to the Panel of IEMs for Mediation.</p> <p>The Mediation proceedings shall be completed in a time bound manner, in not more than 45 days from the date of reference to IEMs for Mediation.</p> <p>The IEMs may conduct the Mediation proceedings in the manner, they consider appropriate. In case of 3-member Panel of IEMs, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. However, IEMs recommendations will be signed by all the members.</p> <p>The fees for such meetings shall be as specified in the SCC. The travel and stay arrangement for such meetings shall be equal to that of Independent Board Member of Employer's Organization. However, not more than five meetings shall be held for a particular dispute resolution. The fees/ expenses on dispute resolution shall be equally shared by both the parties.</p> <p>If decision of IEMs is acceptable to both the parties, a Settlement Agreement will be signed to the extent agreed by the parties within 15 days of acceptance by the parties and same shall be authenticated by all the IEMs.</p> <p>Notwithstanding anything contained in any other law for the time being in force, the Mediator and the parties shall keep confidential all matters relating to the Mediation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.</p> <p>The parties shall not rely on or introduce as evidence in Conciliation or Arbitral or Judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Mediation proceedings, —</p> <p>a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute. b) admissions made by the other party during the Mediation proceedings. c) proposals made by the Mediator; and d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the Mediator.</p> <p>* This clause is applicable for tenders having Integrity Pact only</p>
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14.3	<p>Resolution of Dispute through Conciliation</p> <p>If the parties fail to resolve such a dispute or difference by mutual consultation and /or through Mediation (if applicable) within a period as specified at Cl 14.1 & 14.2 above, the dispute if the parties agree, may be referred to Conciliation.</p> <p>(I) For cases where the disputed amount (Claim/ Counter claim, whichever is higher) is up to Rs. 25 Cr. (excluding interest), the matter for conciliation shall be referred to Expert Settlement Council (ESC), constituted by Employer.</p> <p>(ii) For cases where the disputed amount (Claim/ Counter claim, whichever is higher) is above Rs. 25 Cr. (excluding interest), the matter for conciliation shall be referred to Conciliation Committee of Independent Experts (CCIE), constituted by Ministry of Power (Mop).</p> <p>If the claim/Counterclaim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee.</p> <p>The Conciliation process shall be conducted as per Part III of the Arbitration and Conciliation Act, 1996.</p>	
14.3.1	<p>Resolution of Dispute through Expert Settlement Council (ESC), constituted by EMPLOYER {For cases with Disputed amount (Claim/Counter claim, whichever is higher) up to Rs. 25 Crore excl. interest}</p> <p>If the parties fail to resolve such a dispute or difference by mutual consultation and through Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period specified at Cl. 14.1, 14.2 above, the dispute, if the parties agree, may be referred to Conciliation through Expert Settlement Council (ESC), in cases where the Disputed amount (Claim/ Counter claim, whichever is higher) is up to Rs.25crore (excl. interest).</p>	
14.3.1.1	<p>Invitation for Conciliation through ESC</p>	<p>(i) A party shall notify the other party in writing about such a dispute it wishes to refer for Conciliation through ESC within a period of 15 days from the date of failure to resolve the dispute through Mutual Consultation and Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period as specified at Cl. 14.1, 14.2 above. Such Invitation for Conciliation shall contain sufficient information as to the dispute to enable the other party to be fully informed as to the nature of the dispute, amount of the monetary claim, if any, and apparent cause of action.</p> <p>(ii)</p>

		<p>Upon acceptance of the invitation to conciliate, the other party shall submit its counter claim, if any, within a period of 15 days from the date of the invitation to conciliate. If the other party rejects the invitation or Disputed amount (Claim/ Counter claim, whichever is higher) exceeds Rs 25 crore (excl. Interest), there will be no Conciliation proceedings through ESC.</p> <p>There shall be no Conciliation where disputed amount (Claim/ Counter claim, whichever is higher excl. interest) is only up to Rs 5 lakhs.</p>
	(iii)	<p>If the party initiating Conciliation does not receive a reply within fifteen (15) days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it shall treat this as a rejection of the invitation to conciliate from the other party.</p>

14.3.2	Conciliation through ESC:	<p>Where Invitation for Conciliation has been furnished under GCC sub clause 14.3.1 the parties shall attempt to settle such dispute through Expert Settlement Council (ESC) which shall be constituted by CMD/Chairman of Employer.</p> <p>ii. ESC will be formed from experts comprising three members from the panel of Conciliators maintained by EMPLOYER. However, there will be single member ESC for disputes involving disputed amount (Claim/ Counter claim, whichever is higher excl. interest) is up to Rs. 1 crore.</p> <p>CMD/ Chairman of Employer shall have the authority to reconstitute the ESC to fill any vacancy.</p> <p>iii. The ESC shall be amongst Civil Servants of Govt. of India retired from the level of Joint Secretary and above, Retired Judges, Officers retired from the level of Executive Director and above of any Maharatna / Navaratnam company in India, other than NTPC Ltd, Retired Independent Directors who have served on the Board of any Maharatna / Navaratnam company in India, other than NTPC Ltd.</p>																
14.3.3	Proceedings before ESC	<p>I The claimant shall submit its Statement of Claims (SOC) along with relevant documents to ESC members, and to the party(s) indicated in the appointment letter within 15 days of appointment of ESC. The respondent shall file its reply/Statement of Defence (SOD) and counter claim (if any) within 15 days of the receipt of the Statement of claims. Each party shall send a copy of such Statement along with relevant documents to the other party.</p> <p>Parties may file their rejoinder/additional documents if any in support of their Claim/Counterclaim within next 7 days. No documents shall be allowed thereafter, except with the permission of ESC.</p> <p>(ii) The parties shall file their claim and counterclaim in the following format</p> <ol style="list-style-type: none"> Chronology of the dispute Brief of the contract Brief history of the dispute Issues <table border="1" data-bbox="683 1593 1401 1835"> <thead> <tr> <th>Sl. No.</th> <th>Description of Claims/ Counterclaims</th> <th>Amount (in foreign currency/INR)</th> <th>Relevant Contract Clause</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> <p>e. Details of Claim(s)/Counterclaim(s)</p>	Sl. No.	Description of Claims/ Counterclaims	Amount (in foreign currency/INR)	Relevant Contract Clause												
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		<p>f. Basis/Ground of claim(s)/counter claim(s) along with relevant clause of contract.</p> <p>Note: Statement of claims shall be restricted to maximum limit of 20 pages.</p>
		<p>(iii) In case of 3 members ESC, 2 members will constitute a valid quorum and the meeting can take place to proceed in the matter after seeking consent from the member who is not available. However, ESC recommendations will be signed by all the members.</p> <p>If required, meetings can be conducted through video conferencing/other digital means subject to the agreement between the parties and the ESC.</p>
		<p>(iv) The parties shall be represented by their in house employees. No party shall be allowed to bring any advocate or outside consultant/advisor/agent to contest on their behalf. Ex-officers of Employer's Organization who have handled the subject matter in any capacity shall not be allowed to attend and present the case before ESC on behalf of contractor. However, ex-employees of parties may represent their respective organizations. Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Conciliation till execution of settlement agreement, if so arrived. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking Conciliation till the date of ESC recommendations and 30 days thereafter in any further proceeding.</p>
		<p>(v) <i>ESC will conclude its proceedings in maximum 5 meetings and give its recommendations within 90 days from the date of reference to ESC. ESC will give its recommendations to both the parties recommending possible terms of settlement. CMD/Chairman of Employer may extend the time/number of meetings, in exceptional cases, if ESC requests for the same with sufficient reasons and as agreed by the parties.</i></p>
		<p>(vi) 6.4.1.3.6. Depending upon the location of ESC members and the parties, the venue of the ESC meeting shall be either Delhi/Mumbai/Kolkata/Chennai or any other city whichever is most economical from the point of view of travel and stay etc. All the expenditure incurred in ESC proceedings shall be shared by the parties in equal proportion.</p>



14.3.4	Fees & Facilities to the Members of the ESC	The cost of Conciliation proceedings including but not limited to fees for Conciliator, Airfare, Local transport, Accommodation, cost towards conference facility. shall be as provided herein below:
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Sl	Fees/Facility	Entitlement
1	Fees	<i>Lumpsum fee of Rs. 2,50,000 per conciliator irrespective of the no. of meetings. *</i>
2	Secretarial	<i>Rs. 10,000 lump um (to 1 member only).</i>
3	Transportation in the city of the meeting	Car as per entitlement or Rs. 2,000 per day
4	Venue for meeting	<i>Employer's conference rooms</i>
Facilities to be provided to the out-stationed member		
5	Travel from the city of residence to the city of meeting	As per entitlement of Independent Directors. Executive class air tickets/first class AC train tickets/ Luxury car/ reimbursement of actual fare. However, entitlement of air travel by Business class shall Be subject to austerity measures, if any, ordered by Govt of India.
6	Transport to and fro airport/railway station in the City of residence	Car as per entitlement or Rs.3,000
7	Stay for out stationed members	As per entitlement of Independent Directors.

		<table border="1"> <tr> <td data-bbox="607 191 680 344">8</td> <td data-bbox="680 191 924 344">Transport in the city of meeting</td> <td data-bbox="924 191 1416 344">Car as per entitlement or Rs.2000 per day</td> </tr> </table>	8	Transport in the city of meeting	Car as per entitlement or Rs.2000 per day	
8	Transport in the city of meeting	Car as per entitlement or Rs.2000 per day				
		<p>* Due to unavoidable circumstances, if there is requirement of more than 5 meeting to conclude the Conciliation proceedings, the same may be done at the discretion of ESC within the capping of fee of Rs 2.5 Lakhs per conciliator. However, logistic arrangements, including travel, etc. may be provided as per the extant Policy for such additional sittings.</p> <p>Aforesaid fees is subject to revision by Employer from time to time and subject to government guidelines on austerity measures, if any. All the expenditure incurred in the ESC proceedings shall be shared by the parties in equal proportions. The Parties shall maintain the account of expenditure and present to the other for the purpose of sharing on conclusion of the ESC proceedings</p>				
14.3.5	<p>If recommendations/ report of ESC is acceptable to both the parties, a Settlement Agreement under Section 73 of the Arbitration and Conciliation Act, 1996 will be signed to the extent agreed by the parties within 15 days of acceptance by the parties and same shall be authenticated by all the ESC members.</p> <p>Parties are free to terminate Conciliation proceedings at any stage as provided under the Arbitration and Conciliation Act 1996.</p>					
14.3.6	<p>Notwithstanding anything contained in any other law for the time being in force, the Conciliator and the parties shall keep confidential all matters relating to the Conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.</p> <p>The parties shall not rely on or introduce as evidence in Arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the Conciliation proceedings,—</p> <ol style="list-style-type: none"> views expressed or suggestions made by the other party in respect of a possible settlement of the dispute; admissions made by the other party in the course of the Conciliation proceedings; proposals made by the Conciliator; and the fact that the other party had indicated his willingness to accept a proposal for settlement made by the Conciliator 					
14.4	<p>6.4.2. Resolution of Dispute through Conciliation Committee of Independent Experts (CCIE), constituted by Ministry of Power (MoP) {For cases with Disputed amount (Claim/ Counter claim whichever is higher) above Rs. 25 Crore excl. interest}</p> <p>If the parties fail to resolve such a dispute or difference by mutual consultation and through</p>					

	<p>Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period specified at Cl. 14.1 14..2, above, the dispute, if the parties agree, may be referred to Conciliation Committee of Independent Experts (CCIE), in cases where the Disputed amount (Claim/ Counter claim whichever is higher) is above Rs. 25 crore excl. interest.</p>
14.4.1	<p>Invitation for Conciliation through CCIE:</p> <p>i) A party shall notify the other party in writing about such a dispute it wishes to refer for CCIE within a period of 15 days from the date of failure to resolve the dispute through Mutual Consultation and Independent Engineer (if applicable) and/or through Mediation (if applicable) within a period as specified at Cl. 14.1, 14.2 above. Such Invitation for Conciliation shall contain sufficient information as to the dispute to enable the other party to be fully informed as to the nature of the dispute, amount of the monetary claim, if any, and apparent cause of action</p> <p>ii. If the party initiating Conciliation does not receive a reply within fifteen (15) days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it shall treat this as a rejection of the invitation to conciliate from the other party.</p>
14.4.2	<p>Conciliation Committee of Independent Experts:</p> <p>i. Where Invitation for Conciliation has been consented to under GCC sub clause 14.3.1 , the same shall be referred to the Conciliation Committee of Independent Experts (CCIE) within 30 days.</p> <p>Conciliation Committees of Independent Experts (CCIE) have been constituted and notified by MoP for settlement of disputes arising in the Contract. There are three CCIEs, as specified in Special Conditions of Contract</p> <p>ii. The Contractor may select three CCIEs, in priority order, from the list of CCIEs enclosed with the Special Conditions of Contract, for finalization by Central Electricity Authority (CEA).</p> <p>There shall not be any conflict of interest for the members of the CCIE due to their past assignments. Individuals CCIE members shall submit an undertaking in this regard to the Employer, prior to appointment. It shall be ensured that they have not been engaged for providing any services to any of the parties i.e. either Employer or the Contractor in the last five years. An Undertaking in this regard, shall also be furnished by the Contractor for the purpose of avoiding any conflict of interest.</p>
14.4.3	<p>Proceedings before CCIE:</p> <p>i. The procedure of CCIE shall not be treated as alternate arbitration proceedings where both parties come with Statement of claims/defence, arguments/counter arguments, rejoinders, written submissions etc., aided by their respective lawyers.</p> <p>ii. The parties shall be brief and to the point before the Committee with regard to their respective stance and view the exercise in the spirit of conciliation/settlement.</p> <p>iii. The possibility of non-availability of any one of the members of CCIE in any proceedings cannot be ruled out. As such, the Committee comprising the other two members shall be competent to proceed in the matter. The proceedings of the Committee shall not be vitiated if one of the three members of CCIE is not present in the deliberations of the Committee. When</p>

	<p>the parties sign the settlement agreement, at least two members of CCIE shall authenticate the same. Such conciliation proceedings shall be considered valid, and the settlement agreement will be binding on the parties.</p> <p>iv. The parties shall be represented by their in-house employees. No party shall be allowed to bring any advocate or outside consultant/advisor/agent to contest on their behalf. Ex-officers of Employer's Organization who have handled the subject matter in any capacity shall not be allowed to attend and present the case before CCIE on behalf of contractor. However, ex-employees of parties may represent their respective organizations.</p> <p>v. The Conciliation proceedings shall be completed in each case through 5 sittings in a period of not more than three months from the date the reference made to the CCIE. In exceptional cases, if any dispute so merits, the time period may be extended at the discretion of Conciliation Committee (with reasons to be recorded in writing), for a further period of three months.</p> <p>Vi The CCIE shall hold day to day sitting at a suitable place (preferably the headquarter of the Employer or New Delhi) and may hold as many sittings every month as it deems appropriate keeping in view the volume of work.</p>
14.4.4	<p>Fees & Facilities to the Members of the CCIE</p> <p>Each member of CCIE would be paid a sum of Rs. 50,000/- as sitting fee per sitting. In addition, Rs. 5,000/- per sitting will be paid for local transport charges for each day of proceeding</p> <p>In case, a particular dispute requires more than 5 sittings, the same may be held at the discretion of the CCIE but with a cap on payment of fee for 5 sittings only. The local transport charges shall, however, be paid as provided for each day of sitting beyond the 5 sittings.</p> <p>All expenditure incurred on the conciliation proceedings including payment of fees to the Conciliators, office space, logistic, secretarial assistance and other incidental expenses etc. shall be borne by the Employer initially. Thereafter it shall be shared equally by both parties on completion of the conciliation process.</p>
14.4.5	<p>The Parties shall maintain the account of expenditure and present to the other for the purpose of sharing on conclusion of the CCIE proceedings.</p> <p>The Conciliation process shall be conducted under Part III of the Arbitration and Conciliation Act, 1996.</p> <p>In case of failure of the conciliation process at the level of the Conciliation Committee, the parties may withdraw from conciliation process and take recourse to remedies as may be available to them under the applicable laws other than Arbitration.</p>

	<p>In the event of the conciliation proceedings being successful, the parties to the dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the parties in terms of Section 73 of the Arbitration and Conciliation Act, 1996.</p> <p>After successful conclusion of proceedings, the Parties to the conciliation process, have to undertake and complete all necessary actions for implementation of the terms of settlement within a period of 30 days from execution of settlement agreement, unless a different timeline not exceeding 60 days is agreed upon in settlement agreement. All pending claims of parties, in connection with the dispute, before any other legal forum are to be withdrawn within the said 30 days in pursuance of the settlement agreement.</p>
14.4.6	<p>Notwithstanding anything contained in any other law for the time being in force, the Conciliator and the parties shall keep confidential all matters relating to the Conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.</p> <p>The parties shall not rely on or introduce as evidence in Arbitral or judicial proceedings, whether such proceedings relate to the dispute that is the subject of the Conciliation proceedings, —</p> <ul style="list-style-type: none"> a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute. b) admissions made by the other party during the Conciliation proceedings. c) proposals made by the Conciliator; and d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the Conciliator.
14.5	<p># Arbitration</p>
14.5.1	<p>*If the process of mutual consultation and IE (if applicable)and/or Mediation (if applicable) and/or ESC fails to arrive at a settlement between the parties, Employer or the Contractor may, within Thirty (30) days of such failure, 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. The mechanism of settling the disputes through arbitration shall be applicable only in cases where the disputed amount (i.e. Claim/ Counter claim, whichever is higher, excluding interest) is less than Rs. 10 crores.</p> <p>If the claim/ counter claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee</p> <p>In case the disputed amount (Claim/ Counter claim, whichever is higher, excl. interest) is Rs. 10 Crores or above, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration</p>

after prior intimation to the other party. There shall be no arbitration where the disputed amount (Claim/ counter claim, whichever is higher) is only up to Rs. 5 lakhs.

The parties at the time of invocation of arbitration shall submit all the details of the claims and the counterclaims including the Heads/Sub-heads of the Claims/Counterclaims and the documents relied upon by the parties for their respective claims and counterclaims. The parties shall not file any documents/details of the claims and counterclaims thereafter.

The claims and the counter claims raised by the parties at the time of invocation of the arbitration shall be final and binding on the parties and no further change shall be allowed in the same at any stage during arbitration under any circumstances whatsoever.

In case, multiple arbitrations are invoked (whether sub-judice or arbitral award passed) by any party under this contract, then the cumulative disputed amount (i.e. Claim/ Counter claim, whichever is higher, excluding interest) in all such arbitrations shall be taken into account while arriving at the total disputed amount for the subject contract. Disputes having cumulative value less than Rs 10 crores shall be resolved through arbitration. In case the disputed amount (Claim/Counter claim, whichever is higher, excluding interest) is Rs 10 crores and above, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party.

***[The above clause is applicable for tenders on DCB basis and not applicable for ICB].**

14.5.2

*If the process of mutual consultation and IE (if applicable) and/or Mediation (if applicable) and/or ESC fails to arrive at a settlement between the parties, Employer or the Contractor may, within Thirty (30) days of such failure, 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. The mechanism of settling the disputes through arbitration shall be applicable only in cases where the disputed amount (i.e. Claim/ Counter claim, whichever is higher, excluding interest) does not exceed Rs. 25 crores.

If the claim/ counter claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee

In case the disputed amount (Claim/ Counter claim, whichever is higher, excl. interest) exceeds Rs. 25 Crores, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party. There shall be no arbitration where the disputed amount (Claim/ counter claim, whichever is higher) is only up to Rs. 5 lakhs.

The parties at the time of invocation of arbitration shall submit all the details of the claims and the counter-claims including the Heads/Sub-heads of the Claims/Counter-Claims and the documents relied upon by the parties for their respective claims and counter-claims. The parties shall not file any documents/details of the claims and counter-claims thereafter.

The claims and the counter claims raised by the parties at the time of invocation of the arbitration shall be final and binding on the parties and no further change shall be allowed in the same at any stage during arbitration under any circumstances whatsoever

In case, multiple arbitrations are invoked (whether sub-judice or arbitral award passed) by any party under this contract, then the cumulative disputed amount (i.e. Claim/ Counter claim, whichever is higher, excluding interest) in all such arbitrations shall be taken into account while arriving at the total disputed amount for the subject contract. Disputes having cumulative value up to Rs 25 crores shall be resolved through arbitration. In case the disputed amount (Claim/Counter claim, whichever is higher, excluding interest) exceeds Rs 25 crores, the parties shall be within their rights to take recourse to remedies as may be available to them under the applicable laws other than Arbitration after prior intimation to the other party.

***[The above clause is applicable for tenders on ICB basis only and not**

	<p style="text-align: center;">applicable for tenders on DCB basis].</p> <p>Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Sub Clause 14.5.2, shall be finally settled by arbitration.</p>
14.5.3	<p><i>It is agreed between the parties that the Arbitration proceedings shall be conducted as per the provisions of Fast Track Procedure as provided under The Arbitration and Conciliation Act, 1996, as amended from time to time.</i></p> <p>Any dispute or difference raised by a party to arbitration shall be adjudicated by an arbitral tribunal consisting of three arbitrators, in the following manner:</p>
	<p>a) A party willing to commence arbitration proceeding shall invoke Arbitration Clause by giving 60 days' notice to the other party.</p>
	<p>b) <i>The EMPLOYER and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator within 30 days, who shall act as presiding arbitrator of the arbitral tribunal. If the two arbitrators do not succeed in appointing a third arbitrator within 30 days of the latter of the two arbitrators has been appointed, the third arbitrator shall be appointed by the High Court of Delhi.</i></p>
	<p>c) <i>If one party fails to appoint its arbitrator within 30 days after the other party has named its arbitrator, the party which has named its arbitrator may approach the High Court of Delhi to appoint the second arbitrator.</i></p>
	<p>d) If any member of the arbitral tribunal dies, resigns, becomes incapacitated or withdraws for any reason from the proceedings or his mandate is terminated by the Court, a substitute shall be appointed in the same manner as the arbitrator whose mandate has terminated as above. After substitution of new member, the arbitration tribunal shall proceed with reference from the stage where the mandate of the arbitrator has been terminated.</p>
	<p>e) Arbitrator tribunal shall be paid fees as per the Fee Schedule (presently Fourth Schedule) provided in 'The Arbitration and Conciliation Act, 1996' as amended from time to time. If the claim/ counter claim is in foreign currency, the SBI Bills Selling Exchange rate prevailing on the date of claim shall be used for the purpose of converting the claim in Indian Rupee which may be used for determining the arbitration fee.</p>
	<p>f) If after commencement of the Arbitration proceedings, the parties agree to settle the dispute mutually or refer the dispute to mediation or Conciliation, the arbitrator shall put the proceedings in abeyance until such period as requested by the parties. Where the proceedings are put in abeyance or terminated on account of mutual settlement of dispute by the parties, the fees payable to the arbitrator shall be determined as under:</p> <p>(i) 40% of the fees if the Pleadings are complete. (ii) 60% of the fees if the Hearing has commenced. (iii) 80% of the fees if the Hearing is concluded but the Award is yet to be passed.</p>

	<p>G Each party shall pay its share of arbitrator's fees in stages as under or as per the directions of Arbitrator:</p> <p>(i) 40 % of the fees on Completion of Pleadings.</p> <p>(ii) 40% of the fees on Conclusion of the Final Hearing.</p> <p>(iii) 20% at the time when arbitrator notifies the date of final award.</p>
	<p>h The Claimant shall be responsible for making all necessary arrangements for the travel/ stay of the Arbitrator including venue of arbitration, hearings. The parties shall share the expenses for the same equally</p>
	<p>The Arbitration shall be held at Delhi only.</p>
	<p>J The Arbitrator shall give reasoned and speaking award and it shall be final and binding on the parties.</p>
	<p>K Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof as amended from time to time, shall apply to the arbitration proceedings under this clause.</p>
14.5.4	<p>In the event of any dispute or difference relating to the interpretation and application of the provisions of commercial contract (s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and between CPSEs and Government Departments/ Organizations (excluding taxation matters), such disputes or difference shall be taken up by either party for resolution through Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) as mentioned in DPE Office Memorandum No. 4(1)/2013- DPE(GM)/FTS-1835 dated 22.05.2018 issued by Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Government of India and its further clarifications, modifications, and amendments, issued from time to time.</p> <p><i>The limit on disputed amount as mentioned at clause 6.5.1 above shall not be applicable and matter may be referred to AMRCD irrespective of the amount involved in dispute, if the dispute could not be resolved through Mutual Consultation and IE (if applicable) as brought out at GCC Sub Clause 14.1 above.</i></p>
14.6	<p>Notwithstanding any reference to the Independent Engineer or Mediation or Conciliation or Arbitration herein,</p> <p>(a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree.</p> <p>(b) the Employer shall pay the Contractor any monies due to the Contractor.</p> <p>Settlement of Dispute clause cannot be invoked by the Contractor if the Contract</p>



has been mutually closed or 'No Demand Certificate' has been furnished by the Contractor or any Settlement Agreement has been signed between the Employers and the Contractor.

#[clauses 14.5.1 to 14.5.3 above are not applicable for contracts/tenders invited on DCB basis with cost estimate more than Rs. 1000 crore].



15.0	Scope	<p>The Goods and related Services to be supplied shall be as specified in the technical specification and Price Schedule. The Supplier shall supply all the Goods and related Services included in the Scope of Supply, as per the Delivery and Completion Schedule specified in the SPC.</p> <p>a. The Supplier shall ensure that the Goods and related Services comply with the technical specifications and other provisions of the Contract.</p> <p>b. The Goods and related Services supplied under this Contract shall conform to the standards mentioned in Technical Specifications and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate.</p>
16.0	Price Basis	As detailed in SPC.
17.0	Insurance	As detailed in SPC.
18.0	Freight	As detailed in SPC.
19.0	Delivery schedule	The delivery Period shall commence from date of the Purchase



		<p>Order/Service Order unless stated otherwise in the SPC.</p> <p>The Delivery of the Goods and Completion of the related Services shall be in accordance with the Delivery and Completion Schedule as per SPC.</p>
20.0	Contract price	<p>The Contract Price shall be as specified in the Purchase Order/Service Order.</p>
21.0	Payment terms	<p>Payment will be made to the account of the successful bidder as per the payment terms mentioned in the PO / LOA based on the certification of Engineer. The payments shall be made after the conditions listed for such payment have been met, and the successful bidder has submitted an invoice to the Employer specifying the amount due.</p> <p>For supply contracts: Payment shall be released within thirty (30) days of receipt of materials and submission of invoice in all respect as per Payment terms mentioned in SPC or as mentioned in the PO / LOA, subject to acceptance of the materials.</p> <p>In cases of any discrepancy observed by the Employer in Supplier's bill, clarifications shall be sought in writing by the Employer within ten (10) days from the date of receipt of Supplier's bill/invoice/debit note by the Employer. The Supplier shall be required to submit the requisite clarifications within ten (10) days from the date of issuance of queries by the Employer. In case, no mutual agreement is reached between the Employer and the Supplier on any part of the bill/invoice, within ten (10) days of submission of clarification by the Supplier, the Supplier shall issue a revised bill/invoice to avoid mismatch in GST returns of the Employer and the Supplier. Payment against agreed and admissible part shall be processed as per payment procedure within ten (10) days after receipt of the revised bill/invoice. The bill/invoice for the balance amount under question may be separately submitted for consideration of the Employer after resolution of issues of payment by the Employer. In case of non-submission of satisfactory clarification by the Supplier within the stipulated period, NTPC shall not be liable for the delay in making payment. If the bill submitted by Supplier is incorrect and has gross discrepancies, the bill shall be summarily rejected and returned to the Supplier.</p> <p>Further, in case of rejection of part material against a particular P.O., the Payment against part accepted material shall be processed as per payment procedure and Supplier shall be intimated regarding reasons and details of rejected material. Credit notes (as defined in GST act) as applicable for such part may be issued based on original invoice already issued. The original invoice value will get reduced to the extent of such credit notes. The bill for the replaced material shall be separately submitted for future consideration of the Employer.</p> <p>In the event of dispute, the same shall be dealt as per contract provisions of dispute resolution.</p>

		<p>The Employer has established a Vendor Bill tracking System where vendor can submit their bill/invoice and track its status.</p> <p>For AMC/CMS: The Annual Maintenance Service Contract wherever applicable, shall commence after completion of the warranty period. The payment of the annual maintenance service contract shall be made on quarterly basis and the amount will be due for payment on the certification by NTPC at the end of each quarter. The quarterly amount shall be worked out by dividing the total service contract value by the number of quarters in the maintenance contract period</p>
22.0	Procedure of payment	Payment shall be released on submission of invoice in quadruplicate along with supporting documents on certification by the Engineer-in-Charge.
23.0	Tax deduction at source	Tax deduction at source shall be governed as per prevailing rules.
24.0	Contract performance Guarantee (CPG)/PBG	<p>a. Within thirty (30) days of the receipt of Purchase Order/Service Order from the Employer, the Supplier shall furnish the Contract Performance Guarantee, if applicable, for due performance of the Contract(s)/Order(s) in any form acceptable to the Employees mentioned below.</p> <p>b. CPG may be submitted in any of the following forms:</p>



		<ul style="list-style-type: none">• A crossed Demand Draft/Bankers cheque drawn in favor of NTPC Ltd. Payable at (station inviting tender or as per SPC)• An irrevocable Bank Guarantee as per the NTPC standard format from any Nationalized bank / Scheduled Bank as acceptable to NTPC as per list enclosed. <p>Failure of the supplier to submit the above-mentioned Contract Performance Guarantee shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security.</p> <p>d. FOR WARRANTY PERIOD-</p> <p>The successful bidder shall be required to furnish the Contract Performance Guarantee (CPG) for an amount equal to 5% of total order value. CPG should be valid for a period of three months(3months) beyond the expiry of warranty period.</p> <p>The CPG should be submitted within 30 days of placement of award.</p> <p>e. FOR AMC/CMS PERIOD</p> <p>The bidder shall be required to furnish a CPG equivalent to 5%of the total order value towards AMC/CMS valid for AMC/CMS Period plus a period of 3months beyond the Annual Maintenance /Comprehensive Maintenance Services Contract period.</p> <p>This CPG shall be furnished before the expiry date of 10% CPG submitted earlier covering the warranty period of one year.</p> <p>The CPG for 10% shall be released only after receipt of BG for AMC/CMS period.</p> <p>Note: -</p> <p>CPG, Warranty, guarantee clause as specified in the SPC shall prevail.</p> <p><i>Incase CPG is submitted by way of Bank Guarantee, while issuing the physical BGs, the Supplier's Bank shall also send electronic message through secure SFMS (in case of BGs issued from within India) or SWIFT (in case of BGs issued from outside India) to Employees Beneficiary Bank whose details are provided in the Special Purchase Conditions.</i></p>
25.0	Taxes & duties	i. "Goods and Services Tax" or "GST" means taxes or cess levied under the Central Goods and Services Tax Act, Integrated Goods and Services Tax Act, Goods and Services Tax

		<p>(Compensation to States) Act and various State/Union Territory Goods and Services Tax Laws and applicable cesses, if any under the laws in force (hereinafter referred to as relevant GST Laws), which shall be fully complied with by the Bidder.</p> <p>ii. The Bidder shall quote the prices giving breakup in the manners specified in the Price Schedule. The Bidders shall quote the applicable rate of GST in the Price Schedule.</p> <p>iii. For Evaluation, GST quoted in the Bid shall only be considered.</p> <p>iv. The Bidder shall indicate the taxes and duties applicable seven (7) days prior to last date of Bid Submission.</p> <p>The Bidder is required to quote the rate of GST applicable under GST Law in the Price Schedule while giving the breakup of price.</p> <p>v. In case GST registered Bidder has quoted GST rate as '0' (Zero), the quoted price shall be considered to be inclusive of GST as applicable.</p> <p>In case of bid received from dealers who have opted for the composition scheme under GST Law, the Bidder shall specifically mention the same in his Bid. Employer shall not be liable to pay/reimburse any GST on the supplies made by such dealers under the Order/Contract.</p> <p>vi. In case of bid received from unregistered dealer, for evaluation their bid shall be cost compensated as per the GST rate applicable in view of Reverse Charge Mechanism (RCM) as per GST Law.</p> <p>vii. In case of all materials identified by the Supplier and Employer to be dispatched directly from the sub-vendor's work to Employer's site, the Supplier shall ensure that his sub-vendors raise Tax invoices as per the provisions of GST Law, billed to the Supplier and shipped to the Employer's site. The Supplier shall further ensure that he raises his corresponding Tax Invoices in the name of Employer during transit of the materials before the delivery of materials is taken by Employer.</p> <p>viii. For items not covered under GST, the Bidder is required to quote Excise Duty/VAT/CST as applicable in the Price Schedule while giving the breakup of price.</p> <p>ix. Notwithstanding anything contrary contained in the Purchase Order/Contract, the Supplier's right to payment</p>
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under the Order/Contract is subject to issuance of valid tax invoice/bill of supply as the case maybe, payment of applicable GST to the credit of appropriate Government and submission of valid particulars of tax invoice under GST returns in accordance with GST Law.

- xii. Employer shall deduct GST at source at the applicable rates incase transactions under the Order/Contract are liable to GST deduction at source.

Unless expressly stated otherwise, a common mechanism for reconciliation of input credit mismatch, to be followed by both NTPC and Supplier, shall be mutually agreed so that both parties follow the same procedure for disclosing the transactions in their respective returns. Notwithstanding anything in the Order/Contract, penalty /damages shall be recovered in case the Supplier makes a default in following the agreed procedure.

- xiii. The implications of GST on return of goods will be as per the provisions of the relevant GST Laws.
- xiv. The Supplier shall issue tax invoices/bill of supply as applicable, file appropriate returns, and deposit the applicable GST to the account of appropriate government within the time limit prescribed under the GST Law. In the event of any default, Supplier shall be liable to pay the amount which may be imposed on NTPC due to such default.
- xv. Supplier should comply with the provisions of e-way bill notified by appropriate authorities from time to time. The existing provisions regarding road permit will continue till such time if applicable.

The Employer shall make necessary tax deductions under Income Tax Act or any other laws, if applicable.

Provisions of GST law in respect of Related Persons/Parties may appropriately be taken into consideration by Bidders while submitting the bid.

If any rates of tax are increased or decreased, a new tax is introduced, an existing tax is abolished, or any change in interpretation or application of any tax occurs in the course of the performance Fodder /Contract, which was or will be assessed on the Supplier in connection with performance of the Oder/Contract, an equitable adjustment shall be made to take into account any such change.



		xx. The payment/reimbursement of statutory variation in the rates of tax and/or of new tax, duty or levy imposed under statute or law in India as above would be restricted only to direct transactions between the Employer and the Bidder.
26.0	Entry tax	Subsumed in GST.
27.0	Road permit	Supplier shall comply with the provisions of e-way bill notified by appropriate authorities from time to time. The Supplier shall be responsible for issuance of e-way bill and other compliances relating to e-way bill as per GST Law.
28.0	Authorized representative	Any action required or permitted to be taken, and any document required or permitted to be executed, under the Contract by the Employer or the Bidder may be taken or executed by the official authorized for the purpose.
29.0	Packing	<p>The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their destination, handling, and storage.</p> <p>The Supplier will be responsible for any loss or damage during transportation, handling and storage due to improper packing.</p> <p>All packages should be marked with Purchase Order/Service Order no. and date. Each package must contain packing slip and literature, if any.</p>
30.0	Warranty	<p>The provision of Warranty shall be as per SPC /Technical Specifications.</p> <p>Our general terms are:</p> <p>The Supplier shall warrant that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use conditions.</p> <p>a) The warranty shall remain valid for the period of one year from the date of installation and commissioning or as specified in the Technical Specifications/SPC.</p> <p>b) If having been notified, the Supplier fail store med the defect, the Employer may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Employer may have against the Supplier under the Contract.</p>

31.0	Patents	<p>All royalties and fees for patents covering material/equipment/software or processes used in executing the work shall be to the account of the bidder. The supplier shall satisfy all demands that may be made at any time for such royalties and fees.</p> <p>The Supplier shall hold harmless and indemnify the Employer from and against damage, loss and expenses arising from any claim for infringement of patent, copy right, design and other such rights inexistence or to be granted on and application published prior to the completion of this engagement with respect to or arising out of the use or supply of design or any work in accordance with the specification and plans furnished or recommended by the Contractor.</p> <p>The Supplier shall promptly notify the Employer in writing if the Supplier has or has acquired knowledge of any patent under which claim or suit for infringement could reasonably be brought because of the use by the Employer of any information, recommendation or specifications, services rendered by the Contractor.</p> <p>The Supplier, in such case, shall furnish at its own cost make and furnish to the Employer alternative specifications or recommendations to avoid the same without putting the Employer to any additional cost.</p>
32.0	Indemnification	<p>The Supplier shall, at its own expense, defend and indemnify the Employer against all third-party claims of infringement of Intellectual Property Rights, including patent, trademark, copyright, trade secret or industrial design rules arising from use of the products or any part thereof.</p> <p>The Supplier shall expeditiously extinguish any such claims and shall have full rights to defend itself there from. The Employer shall not pay any compensation to a third party resulting from such infringement and the Supplier shall be fully responsible for the same, including all expenses and court and legal fees.</p> <p>The Employer will give notice to the Supplier of any such claim without delay, shall provide reasonable assistance to the Contractor in disposing of the claim, and shall at no time admit any liability for or express any intent to settle the claim.</p> <p>Final payment to the Supplier by the Employer will not be made while any such suitor claim remains unsettled.</p>
33.0	Inspection and tests	<p>All materials shall be inspected as per provisions of SPC/Technical Specification. The Supplier shall execute the Purchase</p>



		<p>Order/ Services in compliance with the provisions of the Contract. For all cases where pre-dispatch inspection is stipulated, materials shall be inspected prior to dispatch by an authorized representative of NTPC for which an advance notice of 15 days shall be given by the supplier. In such cases no material shall be dispatched without inspection unless specific waiver/exemption is communicated inwriting to the supplier. In all cases necessary test certificates, guarantee certificate in respect of material/equipment performance shall be furnished along with dispatch documents. However, the final inspection of material shall be done at our site only and acceptance of materials is subject to such final inspection only.</p>
34.0	Removal of rejected goods and replacement	<p>If upon delivery, whether inspected and approved earlier or otherwise, the material/equipment is not in conformity with the specifications, the same shall be rejected by the Employer or his duly authorized representative and notification to this effect will be issued to the Supplier within 30 days from the date of receipt of the material at site. The supplier shall arrange for removal of the rejected item(s)within 15 days from the date of notification. In the event, the supplier fails to lift the materials within the said 15 days, the Employer shall be at liberty to dispose of such rejected item(s) in any manner he may think fit and recover all the expenses from the Supplier.</p>
35.0	Liquidated damages	<p>The timely delivery of the material is the essence of the contract. In the event of Supplier failure to deliver the material of acceptable quality within the stipulated delivery period, the liquidated damages are payable by the Supplier @ 0.5% (one half of one percent) per week of delay or part thereof, of the unexecuted order value. However, the total liability of the Bidder under this clause shall not exceed5% of the Order value as awarded.</p>
36.0	Amendment/modification of contract	<p>Modification of the terms and conditions of the Contract, including any modification of the Scope of the Services or of the Contract price may only be made by written agreement between the.</p>
37.0	Payment at reduced rates	<p>If the goods supplied are not according to specifications stipulated in the order, NTPC may retain the goods at its discretion after negotiations and agreement with the supplier and pay at reduced rates to be fixed by NTPC.</p>

38.0	Change in laws and regulations	If, after the dates even (7) days prior to the last date of Bid submission, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Supplier and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Supplier has thereby been affected in the performance of any its obligations under the Contract. However, these adjustments would be restricted to items in respect of both direct transactions between the Employer and Supplier.
39.0	No breach of contract	<p>The failure of a party to fulfill any of its obligations under the Contract shall not be considered to be a breach of or default under the Contract of arras such inability arises from an event of Force Majeure, provided that the Party affected by such an event</p> <p>(a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract and</p> <p>(b) has informed the other Party as soon as possible about the occurrence of such an event.</p>
40.0	Obligations of the Supplier	The Supplier shall supply the Goods perform the Services and carry out their obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Supplier shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Employer and shall always support and safeguard the Employer's legitimate interest in any dealings with Sub-bidder or third parties.
41.0	Force majeure	<p>"Force Majeure" shall mean any event beyond the reasonable control of the Employer or the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and which substantially affect the performance of the Contract. Notwithstanding the generality of the above, the following events shall be termed as Force Majeure events in respect of the Order</p> <p>1. terrorist acts,</p>

confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or rules or any other act of failure to act of any local state or national government authority, national/sectoral/illegals trike, sabotage, lockout embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, epidemics, quarantine, and plague.

If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances there of within fourteen (14) days after the occurrence of such event.

(b) The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Completion shall be extended by a reasonable time.

(c) The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect there of upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the contract under clause (f) hereunder.

(d) Delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall not

- i. constitute a default or breach of the Contract
- ii. give rise to any claim for damages or additional cost or expense occasioned thereby

If and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days Or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which the dispute shall be resolved in accordance with Clause 14.0 (Settlement Of Disputes)



		<p>(g) Notwithstanding clause (e) above, Force Majeure shall not apply to any obligation of the Employer to make payments to the Supplier herein.</p>
42.0	Termination	<p>The Employer may terminate the Order/Contract, by not less than thirty (30) days' written notice of termination to the Supplier, to be given after the occurrence of any of the events specified in paragraphs(a) to (d) of this Clause and sixty (60) days' in the case of the event referred to in(e) below:</p> <ul style="list-style-type: none">(a) if the Supplier does not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in writing.(b) If the Supplier becomes insolvent or bankrupt;(c) If as a result of Force Majeure, the Supplier is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or(d) if the Supplier, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing or in executing the Contract. <p>For the purpose of this clause:</p> <p>“Corrupt Practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.</p> <p>“Fraudulent Practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Employer.</p> <ul style="list-style-type: none">(e) If the Employer, at its sole discretion, decides to terminate his Contract. <p>In event of termination of Order/Contract, the Employer shall pay to the Supplier/Contractor the Contract Price, properly attributable to the works/supplies executed by the Supplier/Contractor as on the date of termination. However, any sums due to the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Supplier under this Order/Contract.</p>



43.0	Risk purchase	In the event of Suppliers failure to supply the material of acceptable quality in scheduled delivery period, NTPC reserves the right to procure the materials from any other source at the Suppliers risk and cost and the difference in cost shall be borne by the Supplier. Further, NTPC shall retain the right of forfeiture of CPG and or any other action as deemed fit.
44.0	Limitation of Liability	<p>Except in cases of criminal negligence or willful misconduct,</p> <p>(a) neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and</p> <p>(b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.</p> <p>(c) the aggregate liability of the Employer to the Contractor/vendor, whether under the Contract, in tort or otherwise, at any point of time during the execution/performance of the Contract, shall not exceed the 'total Contract Price less payments already released to the Contractor'.</p>
45.0	Fraud Prevention Policy	The Supplier along with their associate/collaborator/subcontractors / sub-vendors / consultants / service providers shall strictly adhere to the Fraud Prevention policy of the Employer displayed on its tender website http://www.ntpctender.com . The Supplier along with their associate / collaborator / subcontractors /sub-vendors/consultants/service providers shall observe the highest standard of ethics and shall not indulge or allow anybody else working in their organization to indulge in fraudulent activities during execution of the Contract (Purchase Order/Service Order).The Supplier shall immediately apprise the Employer about any fraud or suspected fraud as soon as it comes to their notice.

46.0	Integrity Pact	<p>NTPC has in place an Integrity Pact details of which are displayed on its Tender website http://www.ntpctender.com.</p> <p>The Integrity Pact (IP) envisages an agreement between the prospective vendors /bidders and the buyer, committing the persons / officials of both the parties, not to exercise any corrupt influence on any aspect of the contract. The Bidder along with its associate/collaborator/sub-contractors/sub-vendors/consultants / service providers shall strictly adhere to the Integrity Pact displayed on Employers tender website http://www.ntpctender.com.</p> <p>Note: In case Integrity Pact is applicable for the particular tender, the same shall be specified in the SPC.</p>
47.0	Interest on money due to the contractor	<p>a. Contractor shall not be entitled to any interest or damage in case of any delay on the part of the Employer to pay the amount due upon measurement or as per Contract or otherwise. Contractor shall also not be entitled to interest upon any guarantee/ security/ retention money or payments in arrears or upon any balance which may on the final settlement of his account be due to him.</p> <p>b. No claim for interest or damage: No claim for interest or damage will be entertained or be payable by the Employer in respect of any amount or balance which may be lying with the Employer or may become due upon settlement/adjudication of any dispute, difference or misunderstanding between the parties by way of arbitration or court proceedings or otherwise or in respect of any delay or omission on the part of the Employer in making intermediate or final payment or in respect of any amount/damage which may be claimed through arbitration or court proceedings or in any other respect whatsoever.</p>
Important Note		<p>The Special Purchase Conditions will supersede any other related conditions anywhere in the tender documents and will prevail for evaluation/finalization of the tender.</p>