

EPC TENDER DOCUMENT

INDEX

VOLUME

DESCRIPTION

VOLUME – I.....COMMERCIAL DOCUMENT

VOLUME – II.....BOILER AND AUXILIARIES

VOLUME – III.....STEAM TURBO-GENERATOR AND
AUXILIARIES

VOLUME – IVBALANCE OF PLANT

VOLUME - I

COMMERCIAL DOCUMENT

REVISION NO.	R0			
ISSUED FOR	FOR TENDERING			
PREPD.BY/DATE	SRN / 10-Jul-18			
CHKD. BY/DATE	SGN / 16-Jul-18			
APPD. BY/ DATE	BRC / 19-Jul-18			

INDEX

SECTION	TITLE
Section-1.0	INSTRUCTION TO BIDDERS (ITB)
Annexure – A (ITB)	Covering Letter for Bid Proposal Annexure – B (ITB)
	Undertaking Form
Annexure – C (ITB)	Proforma for Bank Guarantee (Refer Annexure – B of GCC)
Annexure – D (ITB)	Letter of Authorisation/Power of Attorney for individual to sign on behalf of the Bidder
Annexure – E (ITB)	Summary overview of consortium, if applicable
Annexure – F (ITB)	MOU among consortium members, if applicable
Annexure – G (ITB)	Required Information of the Bidder or each consortium
member Annexure – H (ITB)	Litigation History
Annexure – I (ITB)	Confidentiality Undertaking
Annexure – J (ITB)	Joint Deed of Undertaking
Section-2.0	GENERAL CONDITINS OF CONTRACT (GCC)
Annexure – A (GCC)	Proforma of Bank Guarantee for Contract performance
Annexure – B (GCC)	Proforma of Bank Guarantee for Advance Payment
Annexure – C (GCC)	Proforma of Contract Agreement for Supply
Annexure – D (GCC)	Proforma of Bank Guarantee for Equipment performance
Annexure – E (GCC)	Cash-flow/Payment Schedule
Annexure – F (GCC)	Project Schedule
Annexure – G (GCC)	List of Permits/Clearances
Annexure – H (GCC)	Proforma of Bank Guarantee by Associate
Annexure – I (GCC)	Proforma of Indemnity Bond

SECTION

TITLE

Section-3.0

ERECTION CONDITIONS OF CONTRACT (ECC)

Annexure – A (ECC)

Proforma of Contract Agreement for Services

Section-4.0

SPECIAL CONDITIONS OF CONTRACT (SCC)

INSTRUCTIONS TO BIDDERS (ITB)

SECTION – 1.0

INSTRUCTIONS TO BIDDERS (ITB)

1.0 GENERAL INSTRUCTIONS

1.1 Star Paper Mills Limited (SPML) a company incorporated under the provisions of the Companies Act, 1956 with its registered office at Duncan House 2nd floor, 31, Netaji Subhash road Kolkata, 700001, India (hereinafter referred to as “SPML/Purchaser”), invites Bid Proposal on Engineering, Procurement and Construction (EPC) basis for 15 MW Cogeneration plant for Star Paper Mills Limited (SPML) at , Paper Mill road, Saharanpur, Uttar Pradesh as set-forth in the accompanying Bid Documents.

1.2 Snyder Energo Pvt Limited, Consulting Engineers, Bangalore, are appointed as Consulting Engineers by Star Paper Mills Limited (SPML). Bid Proposals for Engineering, Procurement and Construction Contract as set-forth in the accompanying Technical Documents shall be prepared and submitted in accordance with these instructions.

1.3 Bid Proposals received after the due date and time for receipt of Bid Proposal, will be summarily rejected.

1.4 “Purchaser” reserves the right to itself to accept any Bid Proposal or reject any or all Bid Proposals or cancel/withdraw invitation to Bid without assigning any reason for such decision. Such decision by “Purchaser” shall not be subject to question by any Bidder and “Purchaser” shall bear no liability of any kind whatsoever, consequent upon such a decision.

i) Scope and procedure

The scope of work, the bidding procedures and the Terms and Conditions of Contract are brought out in the Bid Documents.

ii) Transferability

The Bid Document is not transferable under any circumstances.

iii) Misplacement of Bid Document

The Purchaser shall not be responsible for any misplacement or late receipt or non-delivery through post of the Bid Document.

1.5 All the costs and expenses incidental to preparation of the Bidder’s proposal, discussions and conferences if any, including pre-award discussions, technical and other presentation in the Purchaser’s office, etc shall be to the account of the Bidders and Purchaser shall bear no liability whatsoever on such costs and expenses.

1.6 The Bidder(s) shall bear all costs associated with the preparation and submission of the Bid Proposal, and the Purchaser will in no case be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.

2.0 PROJECT INFORMATION

Information regarding the project size, plant capacity, location, approach to the site and meteorological conditions as prevailing at the site etc., are provided in the Technical Specifications – Volume-II, III and IV.

However, no undertaking is given regarding the accuracy of this information and it shall in no way invalidate the bidder's obligations under various clauses and conditions of the Contract in case any variation is encountered during execution stage. The Bidder shall visit the site before quoting to ascertain for himself of all site and local conditions, existing ground levels, location of supply points for construction, power, water etc.

3.0 UNFORESEEABLE SUB-SURFACE CONDITIONS

3.1 Notwithstanding the provisions of clause No 28.0 of Section-3 (ECC), Volume-I of the Bid Document, if during the execution stage, the Contractor encounters on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen by the Contractor on the basis of reasonable examination of the data relating to the Site (including any data as to soil investigation tests) provided by Purchaser and of information which the Contractor could have obtained from a visual inspection of the Site (if access thereto was available) or other data readily available to it relating to the Site, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional costs and expense or require additional time to perform its obligations under the Contract which would not be required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing work or using materials or construction equipment, notify the Purchaser in writing of:

- a) The physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen; and
- b) The work and/or materials and/or construction equipment required including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;
- c) The extent of the anticipated delay; and

3.2 If the Contractor is delayed or impeded in the performance of the Contract due to any such physical conditions or artificial obstructions referred to in Section 3.1 above, the time for completion may be extended by the Purchaser.

4.0 PLANT AND EQUIPMENT

The type and model of equipment(s) as per Volumes-II, III and IV -Technical Specification to be offered for this project should be proven and should be in satisfactory operation at least for five (5) year as on date of bid opening. All the Plant and equipment should be new and first hand. The performance of the offered equipment as claimed by the Bidder should be supported by an end user certificate indicating the date of commissioning, fuel used, year-wise number of hours of operation of identical equipment in operation, down time and maintenance time. The Bidder should furnish a commitment letter for guaranteed and timely supply of Major Plant and equipment offered by them from the manufacturer of the relevant Major Plant and equipment or from the licensee who

have the valid licence from the original manufacturer of the major plant and equipment to manufacture. The Bidder should also furnish the place of manufacture of the offered major equipments and the place of inspection of the same.

SCOPE OF WORK

5.0 The scope of work shall completely cover the activities and services for design, engineering, manufacturing, supply, erection, testing & commissioning work on EPC basis as specified and covered under Volumes II, III and IV – Technical Specifications.

PROJECT SCHEDULE

6.0 **Time is the essence of this Contract.** The unit Commissioning Schedule (i.e.) date of Provisional Taking Over of the Unit by the Purchaser from the effective date of Contract i.e date of issue of Letter of Intent (LOI) shall be within 18 months.

6.1 The Purchaser reserves the right to change in the project schedule during pre-award discussions with the successful Bidder.

6.2 In case any Bidder quotes a time schedule for the Project that is more than that called for, his offer shall be liable for rejection.

7.0 BID CURRENCY

Price shall be quoted in the following currencies:-

7.1 Only Plant and equipment of the foreign origin including mandatory spares may be quoted in US Dollar. Domestic supplies shall be quoted in Indian Rupees. Domestic Bidders while quoting in US Dollar must comply with the requirement as laid down by Govt. Of India from time to time.

7.2 Local transportation, inland transit insurance and other local costs incidental to delivery of the plant and equipment including mandatory spares, Erection, Testing and Commissioning shall be quoted in Indian Rupees only.

7.3 Further if the Bidder wishes to be paid in combinations of Indian Rupees and US Dollar, it may quote its price accordingly.

BID DOCUMENT AND SUBMISSION OF BID PROPOSAL

8.1 The facilities required, Bidding procedures, Contract terms and technical requirements are prescribed in the Bid documents. The Bid documents include the following:

Volume – I	:	Commercial
Volume – II	:	Technical Specification for Boiler and Auxiliaries
Volume – III	:	Technical Specification for Steam Turbo-Generator and Auxiliaries
Volume – IV	:	Technical Specification for Balance of Plant (BOP)

8.2 The Bidder is expected to examine all instructions, forms, terms, specifications and other information in the Bid Documents. Failure to furnish all information required by the Bidding Documents or submission of a Bid Proposal not substantially responsive to the Bidding documents in every respect will be at the Bidder's risk and may result in rejection of its Bid Proposal.

8.3 All Bid Proposals shall be prepared by typing or printing with indelible black ink in the Schedules and Technical Data Sheets enclosed as part of these Bid Documents. Wherever required, Bidder may use additional sheets similar to the ones included in the Bid documents. The Bidder's proposal and the documents attached thereto shall be considered as forming a part of the Contract documents. All corrections, over typing etc in the Bid should be duly attested. After compilation of the Bid Proposal, the Bidder must print by hand /type/frank page numbers on all pages that need to be considered by the Purchaser.

8.4 The Bid Proposal will be divided into two parts and should be submitted in two separate sealed covers named as below:

i) Sealed Cover – 1: Techno-Commercial Proposal along with acceptance of important conditions.

Sealed Cover – 2: The Price Bid strictly as per schedules in Bid documents.

8.5 Sealed cover-1 – should contain the following:

Sealed Cover –1A: The Technical Proposals must be submitted in a sealed envelope super scribed as under:

Technical Proposal for Engineering, Procurement and Construction for 15 MW Cogeneration Plant, Star Paper Mills Limited.

Sealed Cover –1B. The Commercial Terms and Conditions must be submitted in a sealed envelope super scribed as under:

Commercial Terms & Conditions for Engineering, Procurement and Construction for 15 MW Cogeneration Plant, Star Paper Mills Limited.

Separate sealed envelope shall be used for each of the above, enclosing in the main envelope super scribed as under:

Techno-Commercial Proposal (Sealed Cover-1) Engineering, Procurement and Construction for 15 MW Cogeneration Plant, Star Paper Mills Limited.– **Bid due on --/--/2018 at 16:30 Hrs (IST).**

8.6 Sealed Cover–2

8.6.1 The Price Bid Proposal must be submitted in a double sealed envelope super scribed as under and should be addressed to Star Paper Mills Limited.

Price Bid Proposal (Sealed Cover-2) on Engineering, Procurement and Construction basis for 15 MW Cogeneration Plant, Star Paper Mills Limited.

Each of the above two parts shall be separately enclosed in a double sealed cover. Both Sealed Cover-1 and Sealed Cover-2 separately sealed and super scribed as indicated above should be put in an outer cover (overall envelope) duly sealed and super scribed **“Bid Proposal for 15 MW Cogeneration Plant on Engineering, Procurement and Construction basis, Star Paper Mills**

Limited.” **Bid, due on --/--/2018 at 16:30 Hrs (IST)**

The outside of the envelope should also indicate clearly the name of the Bidder and his address.

8.7 The Bidders should submit complete information and schedules of technical particulars and schedule of guaranteed particulars as required under the technical data sheets attached with specification.

8.8 Bid Proposals must be submitted complete with the Bidding schedules, drawings and descriptive write-ups to fully illustrate the equipment/ system offered.

8.9 One (1) original and three (3) copies of all Bid Documents shall be sealed and addressed to Star Paper Mills Limited. at the address given below before the closing time for submission of the Bid Proposals:

Sr. GM (Commercial)

Star Paper Mills Limited,

Paper Mill Road, Saharanpur,

Uttar Pradesh – 247 001, India

The Bidders have the option of sending the Bid Proposal by registered post/Courier or submitting the Bid Proposal in person, so as to ensure that the Bid Proposals are received in the specified office of the Purchaser by the date and time indicated to them.

Price Bid Proposal (Sealed Cover) of the Bid will be opened on separate date to be notified after Technical and Commercial terms negotiations are over.

The technical Bid Proposals will be analysed and wherever essential, technical clarifications and confirmations will be sought from them so as to clarify for fulfilling the requirements of the specification to the satisfaction of the Purchaser. In addition to furnishing of Schedule of deviations, Bidders are required to furnish, all implied/implicit or explicit deviation(s), clarifications/assumptions to the Bid Documents in MS Office format duly marked up to show such deviations, clarifications, assumptions. If no specific deviations are indicated in Schedules of deviation, all other implied/implicit or explicit deviation, clarifications/assumptions/confirmation shall be deemed to have no price repercussions and shall be assumed to be withdrawn. Bidders shall be asked to submit only Supplementary Price Bids commensurate with addition/deletion only if agreed by the Purchaser.

No Post-Bid revised Price Bid Proposal will be entertained.

□□□□ The Purchaser reserves the right to reject any Bid Proposal, which is not submitted according to the instructions, stipulated above and no revised price Bid Proposal will be acceptable.

□□□□ The Bidder shall also submit soft copy in MS office format of the Bid Proposal, including all the schedules of both the Techno-commercial Bid Proposal and Price Bid Proposal, placed in the respective Sealed Covers, though the typed original copy of the Bid Proposal will be considered as the authentic copy and will be considered for evaluation of the Bid-Proposals. The soft copy shall not be made write-protected and can be copied and reformatted if required by the Purchaser. The soft copy of the Bid Proposal is asked only for the convenience of the Purchaser in preparation of the bid related documentation.

QUALIFICATION REQUIREMENT

8.1 Bidders or Bidder with their consortium Partners/Associates meeting all the conditions of the qualifying requirement specified below are eligible to bid for this project.

a) Is a regular manufacturer, manufactures equipment of the type specified and/or has undertaken the type of work specified and has adequate technical knowledge and relevant experience.

b) Has necessary financial stability and status to meet the financial obligations pursuant to the works covered in the Bidding Documents. (The Bidders should submit three (3) copies of their profit and loss account and balance sheet for the last five years.)

To establish the financial capability for performance of the contractual obligations, the Bidder together with its associates must have achieved a minimum average annual turnover of Indian Rupees 150 crores (Rupees One hundred and fifty crores only) and Rs. 25.0 Crores for BOP/ Small Equipments.

c) Has an adequate design, manufacturing and/or fabrication capability and capacity available to perform the work properly and expeditiously within the time period specified. The evidence shall specifically cover, with written details, the installed manufacturing and/or fabrication capacities and present commitments (excluding those anticipated under this specification). If the present commitments are such that the installed capacity results in an inadequacy of manufacturing and/or fabrication capacities to meet the requirements appropriate to the works covered in his bid, then the details of alternative arrangements to be organised by the Bidder and/ or his associate for this purpose and which shall meet the Purchaser's approval shall also be furnished.

d) Has an adequate project management organisation covering the areas related to engineering of equipment/ systems, interface engineering, procurement of equipments and the necessary field services required for successful construction, testing and commissioning of all the power plant equipments and systems covered in the scope of work for this contract and as required by the Bidding Documents.

e) Has established quality systems and organisation designed to achieve high levels of equipment/ system reliability both during his manufacturing and/ or fabrication and field installation activities.

8.2 In addition to the requirements stipulated at para 9.1 above, the Bidder should also meet the qualifying requirements stipulated below:

a) A regular turnkey management and contracting agency, which has executed works on EPC basis for value not less than 150 Crores in any financial year of the last three financial years, would be eligible to bid. Prior to submission of bid, the EPC bidder should associate with the manufacturer of main equipment like steam turbine, steam generator, coal handling, ash handling, water system etc.

Further the bidder shall along with the bid furnish undertakings jointly executed by it and its associate i.e Joint Deed of Undertaking for the successful performance of equipments covered above as per the format enclosed Annexure-J of ITB in the bid documents in which the associate and the bidder are jointly and severally liable to the Purchaser to perform all the contractual obligations. In case of award, the associate will be required to furnish a bank guarantee for 10% of the total contract price in addition to the contract performance guarantee by the bidder.

b) The tenderer shall use major equipment like, steam generator, steam turbine, air cooled condenser, etc, shall be a proven system already operating in other installations successfully for not less than five years

(i.e. 40,000 hours), manufactured by Indian or any International reputed companies.

Qualification Documents

The formats of Bid shall include, but not limited to the following:

c) Covering Letter: A covering letter enclosing the proposal; signed by the designated representative of the Bidding Company

d) Particulars of Bidder: The particulars shall essentially include the following:

☐ Executive information about the Bidding Company indicating name of Company, year of establishment, address, contact person, telephone/fax number, e-mail address, Organizational structure of the Company, details regarding Board of Directors, Senior level Managerial Team & Work Force, Bio-data & Particulars of Managing Director/ Chief Executive Officer, Memorandum of Association/Articles of Association of Bidding Company shall be attached.

In case the Bidding Company has Associate then similar information about each Associate and their respective commitment in development and construction of the Project shall be furnished.

Copies of MOUs/Agreements entered into in this regard shall be attached. Each Associate in the power Sector should be detailed in particular, apart from other details.

☐ A statement of experience/capability (Particularly in Cogeneration plants) of the Bidding Company shall be furnished giving details of past experience/ capability along with the certificates of offered machines. The background of the company and their Associate should be detailed in particular, apart from other details, in terms of:-

- Number of power plants executed as bidder/Associate
- Installed capacity of the power project and total capacity executed as bidder/Associate Worldwide and in India
- For the power plant executed with details of plants, unit size, fuel used, firing technology employed, date of commissioning time taken before & after financial closure and their working results.
- Details of power plant awarded and yet to be executed/project under different stages of execution. Commitment of Bidding company for the on going/awarded projects to be stated in detail vis-à-vis sources from where such commitments are to be met.

☐ Profit & Loss statement and Balance sheet and turn-over certified by company secretary/chartered accountant of the bidder & his associate for the past three (3) years to establish the financial capability. Out of this at least for one year, it should be an audited statement.

☐ Credit rating of the bidding company and their Associate by any renowned Domestic/ International rating agency (if available)

☐ Certificate for up to date clearance of statutory taxes etc.

e) For consideration of Operation & Maintenance (O&M) proposal the bidders should furnish the following:-

a) Track record of the O&M during the last two years.

b) Proposed site organization structure for O&M.

10.0 LANGUAGE OF THE BID PROPOSAL

10.1 All information in the Bid-Proposal shall be in English.

10.2 Information in any other language shall be accompanied by its translation in English. Failure to comply with this may disqualify a Bid Proposal. In the event of any discrepancy in meaning, the English language copy of all documents shall prevail.

10.3 If the certificates of experience etc. are in a language other than English, true copy of the original certificate is to be submitted along with its English translation.

11.0 LOCAL REPRESENTATIVE

Foreign Bidders shall have a local office/representative or consortium partners in India. Bidders shall indicate in their Bid Proposal under a separate covering letter, the name of such person or firm who will be acting as their representative in India for the purpose of their Bid Proposal. They shall also state the service facilities which they or their local office/ consortium partner/representatives have in India. If the foreign Bidders have no representative in India, they should indicate in their Bid Proposal how they would provide the service facilities they intend to provide in India.

SIGNATURE OF BID PROPOSAL

12.1 The Bid Proposal must contain the name, designation and address of business of the person(s) making the Bid Proposal and must be signed and sealed by the Bidder with his usual signature. The names of all persons signing should also be typed/ printed below the signature.

12.2 Bid Proposal by a consortium must be furnished with full names and addresses of all members/partners and be signed with the name, followed by the signature and designation(s) of the authorized member(s)/partner(s) or other authorized representative(s).

12.3 Bid Proposal by Corporation/Company must be signed with the legal name of the Corporation/Company by the President, Managing Director or by the Secretary or other person(s) authorised to bid on behalf of such Corporation/Company in the matter. Bid Proposal by a Corporation/Company should be accompanied by Memorandum and Article of Association of the Company and authorisation.

12.4 A Bid Proposal by a person who affixes to his signature the word “President”, “Managing Director”, “Secretary”, “Agent” or other designation without disclosing his principal will be rejected.

12.5 Satisfactory evidence of authority of the person signing on behalf of the Bidder shall invariably be furnished with the Bid Proposals.

12.6 All Bid Proposals must be accompanied by duly authenticated copies of the documents defining constitution of the Bidder. Power of Attorney and other relevant duly authenticated documents showing by

which person and in what manner Contract may be entered into by or on behalf of the Bidder and also showing who can give valid receipt on behalf of the Bidder and also the extent of his authority and responsibility.

12.7 The said documents must be legalized by the local authorities/Chamber of Commerce at the place of issue and if issued abroad, they must be authenticated by Indian Consulate/ Embassy.

12.8 Any Bid Proposal not containing these documents, or if such documents are incomplete or do not conform to the aforesaid forms may, at the discretion of the Purchaser is liable for rejection.

12.9 Each and every page of the Bid Proposal should be serially numbered and properly signed.

INFORMATION REQUIRED WITH THE BID PROPOSAL

12.10 Letter of capability, including:

☐ Full details of the Bidder's capabilities, experience and facilities for designing, manufacturing, constructing and executing the work as specified.

☐ L-1 network schedule for the design, manufacturing, construction, commissioning and testing activities indicating all critical dates including, for each major item, delivery ex- works, shipment and transport, erection and site commissioning to meet the specified completion dates. Full particulars shall be provided for the methodology that the Bidder proposes to adopt for the management, monitoring and control of his programme.

☐ Head Office and Site project management organization structures and list showing designation of the Bidder's staff and personnel he proposes to employ on the Contract.

12.11 Complete technical schedules of guarantees, anticipated performances, technical particulars and miscellaneous guarantees.

12.12 Details of import component

12.13 Deviations

☐ Deviations, if any, from the commercial terms & conditions and technical specifications of the Bid documents shall be listed in the bid. The Bidder shall also provide the additional price, if any, for withdrawal of these deviations.

☐ Bidders may further note that except for the deviations listed in the bid, shall be deemed to comply with all the requirements of the Bid documents and the bidders shall be required to comply with all terms, conditions and specifications of the Bid documents without any extra cost to the Purchaser irrespective of any mention to the contrary, any where else in the bid, failing which the bid security, of the Bidder may be forfeited.

☐ At the time of Award of Contract, if so desired by the Purchaser, the bidder shall withdraw these deviations at the cost of withdraw stated by him in his bid. or a negotiated lower amount In case the Bidder does not withdraw the deviations proposed by him, if any, at the cost of withdrawal stated in the bid, his bid will be rejected.

12.14 Drawings and documentation as specified. Wherever necessary these shall be accompanied by

pamphlets or catalogues to enable a full appreciation of the Bid Proposal to be made. The drawings to be submitted must include the following: -

- a) Layout drawings with elevations and sections showing arrangement of plant.
- b) Terminal points.
- c) General arrangement drawings of equipment.
- d) System flow diagrams.

12.15 A clear and complete description of each part of the equipment offered, its design, materials of construction, method of operation and maintenance.

12.16 Complete characteristics and performance data, curves etc of the plant and equipment offered as outlined in the Specification and detailed in the Schedules.

12.17 Weights and dimensions of principal equipment, modules and parts, method of unloading, transport to site and handling during erection.

12.18 Quality assurance documentation as specified in Clause no 24.0 of ITB.

12.19 Particulars of all the engineering Contractors/Consultants and Architects who will be associated with the Contract.

12.20 A Bid Proposal which is incomplete or does not include the above, may be considered as non-responsive and Purchaser may decide to reject the same.

CLARIFICATIONS ON DOCUMENTS AND SPECIFICATIONS:

12.21 Pre-Bid Conference (PBC):

- 4.1.1 The bidder or his official representative is invited to attend pre-bid meeting which will take place at the following address:

Sr. GM (Commercial)

Star Paper Mills Limited,

Paper Mill Road , Saharanpur,

Uttar Pradesh – 247 001, India

Date for pre-bid conference shall be intimated later on.

- 2 The purpose of the meeting will be to clarify any issues regarding the bidding documents in general and the technical specifications in particular.

14.1.3 The bidder is requested to submit questions in writing or by E-mail to reach the Consultant at the address indicated above, not later than seven (7) days before the pre-bid meeting.

14.1.4 Record notes of the meeting including the text of the questions raised and responses given will be transmitted without delay to all the bidders. Any modification of the bidding documents which may become necessary as a result of the pre-bid meeting shall be made by the Purchaser exclusively by issuing

clarification/amendment to the bid documents and not through the record notes of the pre-bid meeting.

14.1.5 Non attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.

14.1.6 Bidder is not expected to raise any additional query after pre-bid meeting and Purchaser is not obliged to reply any such queries.

□□□□ The Bidder is advised to visit and examine the site where the facilities are to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid Proposal if required. The costs of visiting the site shall be at the Bidder's own expense.

□□□□ The Bidder and any of its personnel or agents will be granted permission by the Purchaser to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the Bidder, its personnel and agents will release and indemnify the Purchaser and its personnel from and against all liability in respect thereof and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.

AMENDMENTS TO BID DOCUMENTS

□□□□ The Purchaser reserves the right to issue any revision, amendments, clarifications, etc to the specifications and documents to the Bidders to whom the Bid documents were issued, giving reasonable time, prior to the last date of receipt of the Bid Proposal. Purchaser will bear responsibility or liability arising out of non-receipt of the same in time or otherwise.

□□□□ At any time prior to the deadline for submission of Bid Proposals, the Purchaser may, for any reason, whether at its own initiative, or in response to a clarification requested by Bidders, amend the Bid documents.

□□□□ The amendment will be notified in writing and communicated by courier /E-mail to all Bidders who have received the Bid Documents and will be binding on them. Bidders are required to immediately acknowledge receipt of any such amendment and it will be assumed that the information contained therein will have been taken into account by the Bidder in its Bid Proposal.

□□□□ In order to provide the Bidders reasonable time in which to take the amendment into account in preparing their Bid Proposal, the Purchaser may, at its discretion, extend the deadline for the submission of Bid Proposals.

LOCAL CONDITIONS

□□□□ It will be imperative for each Bidder to fully inform himself of all local conditions and factors which may have any effect on the execution of the works covered under these documents and specifications.

□□□□ In their own interest, the Bidders are particularly requested to familiarize themselves with the Income Tax Act, 1962, the Companies Act, 1956, Import – Export Policy 2004-2009 and other related acts and laws of the land as prevalent in India and as amended from time to time.

□□□□ The Purchaser shall not entertain any request for clarifications from the Bidders, regarding such local conditions.

□□□□ The Contractor shall obtain and pay for all permits and licences or other privileges necessary to complete the work, original copies of which shall be delivered to the Purchaser or his authorized representative and will become the property of the Purchaser.

It must be understood and agreed that such factors have properly been understood and considered while submitting the Bid Proposal. No claim whatsoever including those for financial adjustment to the Contract awarded under these specifications and documents will be entertained by the Purchaser, neither any change in the time schedule of the Contract nor any financial adjustments arising thereof shall be permitted by the Purchaser, which are based on the lack of such clear information or its effect on the cost of the works to the Bidder.

The laws, rules and regulations of the Government (Central as well as State) and all Government Authorities in India, having jurisdiction over the work shall govern the work of this Contract with the same force and effect as if incorporated in full into the Contract documents. Where such laws, rules and regulations conflict the Contract documents, the more stringent requirements as interpreted by the Purchaser or his authorized representative shall prevail. Should such conflict require changes in the Contract documents, the Bidder shall notify the Purchaser before the submission of or along with the bid.

PRICE BASIS CURRENCIES AND PAYMENTS

The Bidders shall quote in their proposal, lump sum price for the entire scope of works as required in the Bid Proposal Sheets on firm price basis Bidders quoting a system of pricing other than that so specified run the risk of rejection.

The bidder should quote his price inclusive of all taxes & duties, transport & insurance charges, as applicable on the indigenous as well as on offshore supplies. All taxes & duties on erection work shall be included in the quoted price. The bidders shall furnish the break up of applicable taxes and duties along with the rates as applicable in the price schedule.

The foreign bidder should note that he is required to quote indigenous and non-indigenous supplies on ex-works & FOR Site and CIF & FOR basis respectively including all applicable taxes & duties as applicable in and out side India. The price shall be quoted in Indian rupees or US Dollar. If a bidder quotes his price in U.S. Dollar, then U.S. Dollar shall be converted in Indian rupees at the exchange rate prevailing on the date of price bid opening. For this exchange rate (B.C. Selling) declared by State Bank of India on the date of price bid opening (cover no. 2) shall be considered. The price thus converted in Indian Rupees (INR) shall be used for evaluation purpose.

The price of Erection, Testing & Commissioning and Indian supply shall be quoted in INR only.

Currency of Payment

The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Bid, subject to the general principle that payments will be made in the currency or currencies i.e. (in U.S. Dollar and or Indian Rupees) in which the Contract Price has been stated in the Contractor's bid.

VALIDITY OF THE BID PROPOSAL

The Bid Proposal should be kept valid for acceptance for a period of 180 days from the due date of opening of Bid Proposals. In case any Bidder quotes a lower validity period than that called for, his offer shall be rejected.

In exceptional circumstances, the Purchaser may solicit the Bidder's consent to an extension of the period of the validity. The request and response thereto shall be made in writing (including E-mail). The bid security provided shall also be extended by the same period as the extension in the validity of the Bid.

COMPARISON AND EVALUATION OF BID PROPOSAL

General

The Bid Proposals received and accepted will be evaluated by the Consultant to ascertain the technically and commercially responsive Bid Proposal for the complete scope of the proposal covered under these specifications and documents.

Examination of Techno-commercial proposal

14.18.1 The Purchaser/Consultant will examine the Bid Proposals to determine whether they are complete, whether required guarantees have been furnished, whether the documents have been properly signed and whether the Bid Proposals are generally in order as per Purchaser's specification.

14.18.2 Such of those Bid Proposals received in conformity with the requirement of Bid Document and are technically and commercially responsive, shall be evaluated by the Purchaser/Consultant for the complete Works covered under these Bid Documents.

14.18.3 Arithmetical errors will be rectified on the following basis:

If there is a discrepancy between the unit price and the total price which is obtained by multiplying the unit price and quantity or between sub- totals and the total price, the unit or sub-total price shall prevail and total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. If the Bidder does not accept the correction of the errors as above, his Bid Proposal will be rejected.

The Bidder should ensure that the prices furnished in various price schedules are consistent with each other. In the case of any inconsistency in the prices furnished in the specified price schedules to be identified in Bid proposal sheets for this purpose, the Purchaser shall be entitled to consider the highest price for the purpose of evaluation and lowest of the prices in these schedules for the purpose of award of Contract.

14.18.4 The plant equipment and systems shall be technically evaluated as per the Technical Specifications in Volume-II, III and IV.

19.3 PRICE PREFERENCE

19.3.1 Bidders seeking qualification on the basis of Associate(s) with manufacturer(s) of particular equipment(s) are required to quote the price of such equipment(s) including spares on CIF (Indian port-of-entry) basis, if the items are to be imported by the manufacturer or the bidder and such price of imported equipment are to be indicated in the price schedule. In case, such equipment and spares are not quoted by the bidder on CIF basis, then purchaser shall assess the CIF (Indian Port-of-entry) price of such equipment and mandatory spares for the purpose of evaluation.

19.4 The conversion of US \$ shall be considered at the BC Selling rate of State Bank of India on the date of opening of the price bid.

19.5 The price will be computed to equivalent Indian Rupees on the day of opening the price bid.

19.6 The Guaranteed Parameters for 15 MW Cogeneration plant shall be as per the Volume II, III and IV - Technical Specifications.

19.7 The rates of liquidated damages for shortfall in performance given under clause 1.0 of Volume-I SCC are applicable. The same rates shall also be applicable for evaluation and comparison of bids as mentioned below in clause 19.8.

19.8 Criteria for Evaluation and Comparison of Bids

Purchaser's evaluation of Bidder's proposal will be based on detailed proposal analysis with emphasis on the following:

- a) Quoted Price amount(s) shall mean total price adding all break up prices for complete scope of work including all taxes, duties & levies.
- b) Technical ability, quality and experience of the Bidder.
- c) Project management capabilities.
- d) Proposed execution plan and schedule.
- e) The commencement of cash flow for the contract shall be from the date of issue of L.O.I.
- f) Interest during construction shall be worked out based on the cash flow/payment schedule given by bidder as per Annexure-E of GCC.
- g) Total monthly Cash Flow would be considered to calculate the Interest during construction. For the purpose of calculation of Interest during Construction the cash flows would be assumed to occur at the end of the month and the Rate of Interest shall be taken @ 12% per annum.
- h) The cost of all quantifiable deviations from the general and commercial conditions and the Technical Specifications - as identified in the Bid.
- i) The differential guaranteed parameters for 15 MW Cogeneration plant would be capitalised by taking the most favourable Parameters as the Base parameter and multiplying the difference between the Base Parameter and the Bidders Guaranteed Parameter by the respective figures mentioned in Liquidated Damages as mentioned in SCC to arrive at the Total Differential Loading.
- j) The CIF price of the imported component of Bid price shall be converted to Indian rupees at the BC selling rates of State Bank of India as on date of price bid opening. The CIF value of import content shall be the value of the import content as declared by the bidder in price schedule.
- k) The sum of Quoted price, cost of commercial and Technical deviations, Interest during construction, Price preference and the Total Differential Loading would determine the Equated Price.
- l) The Equated Price for each Bidder would be divided by the Gross Capacity Guaranteed by the Bidder at Generator terminal to arrive at evaluated Cost/MW.

The bidder with the lowest evaluated Cost / MW would be designated L1.

Post-Bid discussion

SPML shall have the right to hold post-Bid discussion with few or all of the Bidders depending on need.

AWARD OF CONTRACT

Acceptance of a Bid Proposal by Purchaser shall be communicated by the issue of a letter accepting the Bid Proposal ('Letter of Intent') by the Purchaser, for the Contract and such letter shall be made in writing to the successful Bidder by the Purchaser.

The type of contracting with the successful bidder will be as per stipulation outlined in GCC Clause 28.0 and briefly indicated below:

In the case of successful Indian Bidder, the contracts shall be awarded as follows:

(i) First Contract: For FOR-Site supply of all equipments and materials including mandatory spares of Indian Origin and FOR-Site supply of all offshore equipments and materials including Mandatory Spares to be supplied from abroad. The above shall include Port handling and Custom clearance for imported items, Inland transportation and Insurance for delivery at site.

(ii) Second Contract: For providing all services i.e. unloading, storage, handling at site, Erection, Testing and Commissioning including performance testing in respect of all the equipments supplied under the 'First Contract' and any other services including Insurance cover for all services specified in the Contract Documents.

Both contracts will contain a cross fall breach clause specifying that breach of one contract will constitute breach of the other.

In the case of successful Foreign Bidder, the award shall be made as follows:

(i) First Contract: For FOR-Site supply of all offshore equipments and materials including mandatory spares to be supplied from abroad and FOR-Site supply of all equipment and materials of Indian origin including mandatory spares of Indian Origin. The above shall include port handling and custom clearance for the imported goods, inland transportation and insurance for delivery at site.

(ii) Second Contract : For providing all services i.e., unloading, storage, handling at site, Erection, Testing and Commissioning including performance testing in respect of all the equipments supplied under the 'First Contract' and any other services including Insurance cover for all the service specified in the Contract Documents.

Both contracts will contain a cross fall breach clause specifying that breach of one contract will constitute breach of the other.

The award of the two Contracts shall not in any way dilute the responsibility of the Contractor for the successful completion of the project as per Specifications on single source responsibility basis and a breach in one Contract shall automatically be construed as a breach of the other contract which will confer a right on the Purchaser to terminate the other contract also at the risk and the cost of the Contractor.

The Contract Agreements shall consist of the following documents and the exhibits, drawings, specifications and other documents referred to therein (the "Contract Documents") all of which are incorporated herein by reference and made part hereof:

□□ Letter of Intent

b) **Volume – I : Commercial Document for Engineering, Procurement and Construction**

Section 1.0 : Instructions to Bidders (ITB)

Annexure – A (ITB) : Covering Letter for Bid Proposal

Annexure – B (ITB) : Undertaking Form

Annexure –C (ITB) : Proforma for Bank Guarantee (Refer Annexure – B of GCC)

Annexure – D (ITB) : Letter of Authorisation/Power of Attorney for individual to sign on behalf of the Bidder

Annexure – E (ITB) : Summary overview of consortium, if applicable

Annexure – F (ITB) : MOU among consortium members, if applicable

Annexure – G (ITB) : Required Information of the Bidder or each consortium member

Annexure – H (ITB) : Litigation History

Annexure – I (ITB): Confidentiality Undertaking

Annexure–J (ITB) : Joint Deed of Undertaking

Section 2.0 : General Conditions of Contract (GCC)

Annexure – A (GCC) : Proforma of Bank Guarantee for Contract performance

Annexure – B (GCC) : Proforma of Bank Guarantee for Advance Payment

Annexure – C (GCC) : Proforma of Contract Agreement for Supply

Annexure – D (GCC) : Proforma of Bank Guarantee for Equipment performance

Annexure – E (GCC) : Cash-flow/Payment Schedule

Annexure – F (GCC) : Project Schedule

Annexure – G (GCC) : List of Permits/Clearances

Annexure-H (GCC) : Proforma of Bank Guarantee by Associate

Annexure-I (GCC) : Proforma of Indemnity Bond

Section 3.0 : Erection Conditions of Contract (ECC)

Annexure – A (ECC) : Proforma of Contract Agreement for Services

Section 4.0 : Special Conditions of Contract (SCC)

c) Volume – II : Technical Specification for Steam Generator Unit and Auxiliaries

d) Volume – III : Technical Specification for Steam Turbo- Generator Unit and Auxiliaries

e) Volume – IV : Technical Specification for Balance of Plant (BOP)

: **Technical Specification for Balance of Plant (BOP)**

□□□□□ The Contract Agreements shall set forth the entire Contract and final agreements between the Parties hereto pertaining to the EPC referred to in the Bid Documents and supersedes any and all earlier verbal or written agreements, if any, along with any amendments, modifications or deviations to the Bid Documents. The Contract Agreements shall prevail over all other Contract documents, if any, executed in respect of this subject matter and shall incorporate deviation(s), if any, to the Bid conditions.

CONSTITUTION OF THE BIDDER

□□□□□ The Bidder and/or individual members of Consortium each should be a Company under the (Indian) Companies Act 1956 or under the laws of any other jurisdiction.

□□□□□ The Bidder may be a single company with or without Associate(s), a consortium of companies, or any other appropriate form. "Consortium" shall mean a group of firms/companies who will supply plant and equipments as set-forth in the accompanying technical documents, as partners in co-operation with each other and party to the Contract for successful execution of the 15 MW Cogeneration Plant for Star Paper Mills Limited. In case the Bidder is a consortium of companies, such consortium shall designate a member performing a key component of the Contract to be their Lead Member. The members of the consortium shall have joint and sever responsibilities for the execution of the 15 MW Cogeneration Plant for Star Paper Mills Limited and such lead member and other members of the consortium shall have to meet the requirement under Sections 21.1 above. A copy of the agreement entered into amongst the members of the consortium should be attached to the Technical Proposal. Unless the lead member wishes to sign the Contract Agreement, a special purpose vehicle comprising of the members may sign the Contract Agreement and appropriate sponsor commitments shall be furnished by the Bidder to the satisfaction of the Purchaser.

For the purposes of this section, the lead member shall

☎□□ have to fulfil the requirement of Sub-clause 21.4 below,

(b) be responsible for the performance of plant equipment including Boiler, Turbine Generator and auxiliary units and packages and

(c) guarantee the plant equipment, in terms of this Bid Document.

□□□□□ A company can only be a member of 1 (one) Bidder in case of a consortium for the purposes of the Bid Proposal.

□□□□□ The Bidder should have achieved a minimum annual average turnover of Rs 150 crores (Rupees One fifty crores only) as evidenced by the last completed and audited financial statements for the past three consecutive years.

□□□□□ The Bid Proposal should be signed by person(s) who has / have been duly authorised on behalf of the Bidder and documentary evidence of such authority should be attached to the Bid Proposal along with a certified true copy of the resolution passed by the board of directors of the Bidder. In case the Bidder is a consortium, a certified true copy of the power of attorney issued by the members of the consortium in favour of the person(s) signing on behalf of the consortium should also be attached to the Bid Proposal.

□□□□□ The bidder shall not be allowed to change its associate(s) mentioned in the Joint Deed of undertaking (JDU) submitted by the bidder. However if, in the opinion of the purchaser, any unavoidable circumstances warrants such change, the purchaser at its sole discretion may permit the bidder to change the associate on such terms and conditions as decided by the purchaser. The decision of the purchaser shall be final and binding in this regard.

CONTRACT PERFORMANCE GUARANTEE

□□□□□ Towards Contract Performance Security, the successful Bidder shall have to furnish a Contract

performance guarantee in the form of Bank Guarantee of ten (10) percent of the total Contract Price for timely completion and the faithful performance of the Contract in accordance with the terms and conditions specified in the Contract and in the Bid documents.

The Contract performance guarantee as per proforma enclosed as Annexure-A (GCC) shall be in the form of an unconditional and irrevocable Bank Guarantee from any scheduled Indian Bank or a Foreign Bank and confirmed by the Indian Bank, operating in India under Reserve Bank of India rules.

The Contract performance guarantee shall be furnished within 30 days from the date of issue of Letter of Intent and shall be kept valid up to 12 Months after Final taking over of the Plant. The Contract performance guarantee will be released on Final Taking Over of the Plant. The Purchaser shall have the right to get the Contract performance guarantee extended till such period the final taking over of the plant is achieved.

□□□□□ In case contract is awarded based on the JDU , then the unconditional bank guarantee as per proforma of Annexure-H (GCC) from associates mentioned in JDU towards contract performance in terms of the JDU for the amount specified in JDU shall be furnished within 30 days of issue LOI. This bank guarantee shall be in addition to contract performance guarantee and valid till 12 Months after the completion of warrantee period.

□□□□□ Failure of the successful Bidder to comply with the requirement of ITB Clause 23.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of his bid security, in which event the Purchaser may make the award to the next lowest evaluated Bidder or call for new bids.

□□□□□ The Contract performance Bank Guarantee and the Bank Guarantee by the Associate shall be in the currency or currencies of the contract.

EQUIPMENT PERFORMANCE GUARANTEE

□□□□□ The Unit(s) shall be guaranteed for trouble free performance for a period of twelve (12) months from the date of Final Taking Over of the Unit/s and should be supported by a Bank Guarantee obtained from (a) any Scheduled Bank or (b) any acceptable Foreign Bank operating in India and confirmed by Indian Bank, under the control of the Reserve Bank of India, for total 10% of the Contract Price.

The Equipment Performance Bank Guarantee shall be valid for a period of 12 Months after completion of warrantee period as per proforma Annexure- D-(GCC). This bank Guarantee shall be submitted before provisional taking over. The contract performance Bank Guarantee submitted as per 22.0 may be extended further for twelve (12) months to cover the equipment performance guarantee. The Bank Guarantee shall be in the currency or currencies of the contract.

□□□□□ The equipment performance guarantee shall cover the following guarantees to the Purchaser:

(a) EPC Contractor has to provide individual equipment performance guarantee as per technical specification (Volume II, III & IV) to Purchaser

(b) Overall guaranteed plant heat rate in kcal/kWh.

(c) Guaranteed auxiliary power consumption for Cogeneration plant in kW

(d) Guaranteed plant availability

i. For first year

ii. For Second year

CONTRACT QUALITY ASSURANCE

□□□□□ The Bidder shall include in his proposal the Quality Assurance Programme containing the overall quality management and procedures that he proposes to follow in the performance of the works during various phases as detailed in relevant clause of the Volumes II, III and IV - Technical Specifications.

□□□□□ At the time of Award of Contract, the detailed Quality Assurance Programme to be followed for the execution of the Contract will be mutually discussed and agreed to and such agreed programme shall form a part of the Contract.

25.0 MAINTENANCE TOOLS AND TACKLES

The Proposal shall include all special tools and tackles required for the operation and maintenance of the equipment in each equipment package. The lump sum price to be quoted by the Bidder shall include prices of these tools and tackles. Unless otherwise specified in the Technical Specifications, these will be delivered along with the main equipment.

OCEAN TRANSPORTATION

26.1 The Contractor shall be responsible for the transport of the plant and equipment from their place of origin to the port of destination. All costs related thereto, such as packaging and the like shall be at the Contractor's expense.

26.2 The Contractor shall check the capacity and availability of the loading / unloading facilities, which will be utilized in connection with the transport operation.

26.3 The shipment of all the consignment relating to equipment, materials and machinery of the Plant will be arranged by the Contractor, through reputed shipping lines and Conference Vessels which are not more than 15 years old and are in the classified list of Lloyds Registrar or its equivalent. The certificate to this effect issued by shipping line should accompany the shipping documents.

26.4 The Contractor shall arrange shipment of all imported material and equipment from the Port of Export to any Indian Port

CHECK LIST

26.5 The Bidders are requested to fully fill in the Technical Data Sheets enclosed with the Volume – II, III and IV - Technical specifications. This checklist gives only certain important items, to facilitate the Bidder to make sure that the necessary data/information is provided by him in his proposal. This, however, does not relieve the Bidder of his responsibility to make sure that this proposal is otherwise complete in all respects.

26.6 The Bidder shall give a checklist of documents/schedules enclosed with his Techno-Commercial Bid and Price Bid, separately in the covering pages of the respective parts for quick check of the enclosures. A complete checklist shall be enclosed with each copy of the bid proposal. Technical/Commercial deviations, if any, on the Bid Documents should be given in the enclosed respective

schedules and except for the deviations given therein it shall be construed that the Bidder shall comply completely with all the other requirements of the Bid documents.

28.0 UNDERTAKING

The Bidders are requested to fill up the Undertaking Form enclosed in Annexure-B (ITB), when submitting their Bid proposal.

29.0 CHANGES IN QUALIFICATION REQUIREMENTS

The Purchaser reserves the right to effect changes in the qualification requirements of the Bidder(s) under this Bid Document at any time before the date of submission of the Bid Proposal. Any change will be notified in writing to all concerned.

30.0 FURTHER INFORMATION

The Purchaser reserves the right to ask for any further information as it may deem necessary in its sole discretion to evaluate the Bid Proposal. Bidders who do not submit additional information or clarification sought by the Purchaser within one (1) week of the receipt of the Purchaser's letter requesting for such additional information and/or clarification will be evaluated based on the information furnished along with the Bid Proposal.

31.0 VERIFICATION

The Purchaser reserves the right to contact and verify Bidder(s)' information, references and data submitted in the Bid Proposal without further reference to the Bidders.

32.0 INTERPRETATION OF BID PROPOSAL

The Purchaser reserves the right to use and interpret the Bid Proposals as it may, in its discretion, consider appropriate, when selecting the Bidders for granting of the LOI for 15 MW Cogeneration plant on EPC basis.

33.0 ADVICE TO BIDDERS

The Bidders are advised to study the Bid Document thoroughly and submit their Bid Proposals in accordance with the instructions contained herein and in conformity with the various conditions laid down in the Bid Document.

34.0 CONFIDENTIALITY

All documents submitted by the Bidder(s) will be treated, as confidential but will not be returned to Bidder(s).

35.0 DISQUALIFICATION OF BID PROPOSAL

The Purchaser may adopt such criteria for disqualification of a Bidder as the Purchaser may consider appropriate. Such criteria may include, without limitation, the following:

- a) Failure by any Bidder(s) to provide all of the information required in the Bid Proposal or any additional information requested by the Purchaser including any supporting document;

- b) Non-Receipt of Bid Proposal before the last date specified in this Bid Document;
- c) Material inconsistencies in the information submitted;
- d) Misrepresentations in the Bid Proposal or any supporting documentation;

Annexure-A (ITB)

Covering Letter for Bid Proposal

(On the letterhead of the Bidder with full postal address, telephone no., e-mail ID address).

Date: _____

To,
Star Paper Mills Limited,
Paper Mill Road,
Saharanpur,
Uttar Pradesh – 247 001, India

Sir(s),

1. Being duly authorised to represent and act on behalf of _____
_____ (hereinafter called the
“Bidder”), and having reviewed and fully understood all information provided in this BID Document,
the undersigned hereby submit their proposal as a potential Contractor for the work for which the Bid
Proposal is invited i.e. the Contract.

2. Attached to this letter is the Bid Proposal comprising the following:

[Bidder to indicate the content of Bid Proposal]

1.

3. This letter will also serve as authorization to any individual or authorized representative of any
institution referred to in the supporting documents, to provide such information deemed necessary and
requested by the Purchaser to verify statements and information provided in the Bid Document, or
with regard to the resources, technical expertise and experience of the Bidder.

4. The Purchaser and its authorized representative may contact the following persons for more
information:

TECHNICAL ENQUIRIES

Contact 1

Telephone 1

Contact 2

Telephone 2

FINANCIAL ENQUIRIES

Contact 1

Telephone 1

Contac 2

Telephone 2

a) This Bid Proposal is made in full understanding that:

Bid will be subject to verification of all information submitted by the bidder from time to time to the Purchaser.

The Purchaser reserves the right to:

a) Amend the scope under this Contract.

b) Reject or accept any Bidder, cancel this short listing process, and reject all Bid Proposals without assigning any reason thereof, and shall not be liable for any compensation / claims whatsoever for such action.

b) The undersigned declare that in the best of their knowledge and belief the statements made and the information provided in the Bid Proposal are complete, true and correct in every detail.

Date

Signature of Authorised Signatory ...

Place

Name of the Authorised Signatory... Designation ...

Name of the Organization

ANNEXURE – B (ITB) UNDERTAKING FORM

Date: _

Specification No. _

To,

Star Paper Mills Limited,

Paper Mill Road, Saharanpur,

Uttar Pradesh – 247 001, India

Dear Sir,

Having examined the Conditions of Contract and Specifications including Amendment Nos. (Insert Numbers), the receipt of which is hereby duly acknowledged, we, the undersigned offer to supply and deliver (Description of Goods and Services) in conformity with the said drawings, Conditions of Contract and Specification for the sum of (Total Bid Amount in words and figures) or such other sums as may be ascertained in accordance with the schedule of prices attached herewith and made part of this Bid.

We, undertake if our Bid is accepted and LOI is issued to commence the delivery within (Number) days and to complete delivery of all the items specified in the Contract within (Number) days calculated from the date of receipt of your Acceptance Letter (LOI).

We agree to abide by this Bid for a period of (Number) days from the date fixed for Bid opening under clause of the Instruction to Bidders and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

In the event, our proposal is accepted, we agree to furnish a Contract Performance Guarantee in the manner acceptable to Star Paper Mills Limited for the sum equal to 10% of Contract price within 30 days of the Contract Agreement .

Until a formal Contract is prepared and executed, this Bid together with your written acceptance (Acceptance Letter) thereof shall constitute a binding Contract between us.

Signed this day of.....2010.

.....

(Signature)

.....

(in the capacity of)

Duly authorized to sign bid for and on behalf of

.....

...

....

(seal of the firm)

WITNESS

ADDRESS

Signature :

Date :

Annexure-D (ITB)

**Letter of Authorization/Board Resolution/Power of Attorney for individual to sign on behalf of the
Bidder**

To,

Star Paper Mills Limited,

Paper Mill Road, Saharanpur,

Uttar Pradesh – 247 001, India

Sir(s),

The Letter of Authorization/Board Resolution/Power of Attorney¹ in respect of the following, authorizing them to sign the Bid Proposal and negotiate and furnish information as and when called by Purchaser, is enclosed herewith:

1.

2.

3.

Date

Signature of Authorised Signatory ...

Place

Name of the Authorised Signatory... Designation ...

Name of the Organization Seal ...

Strike out as not applicable.

Annexure-E (ITB)

Summary Overview of Consortium, if applicable

To,

Star Paper Mills Limited,

Paper Mill Road, Saharanpur,

Uttar Pradesh – 247 001, India

Sir(s),

The following is the summary overview of consortium of companies comprising the Bidder indicating the manner in which the arrangement is proportionately shared between the consortium members:

S.No.	Position	Name	*% of equity proposed to be subscribed by each member of the consortium in relation to total holding by the consortium and brief party-wise proposed execution of the Contract
1.	Lead Member		
2.	Consortium-Member		
3.	Consortium-Member		

Date

Signature of Authorised Signatory ...

Place

Name of the Authorised Signatory... Designation ...

Name of the Organization Seal ...

To be signed by every member in the consortium Note:

* Break-up of equity of the Contractor offered to the consortium members.

Annexure-F (ITB)

MOU among Consortium Members, if applicable

To,

Star Paper Mills Limited,

Paper Mill Road, Saharanpur,

Uttar Pradesh – 247 001, India

Sir(s),

As the Bid Proposal is being furnished by a consortium, a copy of the Memorandum of Understanding (“MoU”) among the consortium members is enclosed herewith. The MoU contains the following:

- a) Equity structure of the consortium members;
- b) Role of the consortium members;
- c) Any other relevant information

It also designates the lead member and authorizes a representative of the lead member to submit the BID Document and Bid Proposal on behalf of the consortium.

Date

Signature of Authorised Signatory

...

Place

Name of the Authorised Signatory... Designation ...

Name of the Organisation Seal ...

To be signed by every member of the consortium

Annexure-G (ITB)

Required Information of the Bidder or each consortium member

To,

Star Paper Mills Limited,

Paper Mill Road, Saharanpur,

Uttar Pradesh – 247 001, India

Sir(s),

General information of our Company/each members of consortium submitting this BID Document is furnished below:

1. Name of the Company:
Contact Person:
2. Head Office Address:
3. Telephone:
4. Fax:
5. E-mail
6. Place of incorporation/registration
7. Year of incorporation/registration

Date

Signature of Authorised Signatory ...

Place

Name of the Authorised Signatory... Designation ...

Name of the Organization Seal ...

Note: The Bidders are requested to furnish the information in the above format

for the Bidder or for each member of consortium.

Annexure-H (ITB) Litigation History

To,

Star Paper Mills Limited,

Paper Mill Road, Saharanpur,

Uttar Pradesh – 247 001, India

Sir(s),

The details in respect of history of litigation or arbitration in the last 10 years of our Company are furnished below:

Date

Signature of Authorised Signatory ...

Place

Name of the Authorised Signatory... Designation ...

Name of the Organisation Seal ...

Note:

- a) Continuation sheets of like size and format may be used as per Bidder's requirements and shall be annexed to these schedules.
- b) Bidder and each member of the consortium should provide information on any history of litigation or arbitration in the last ten years. A separate sheet should be used for each member of the consortium.

Annexure- I (ITB) Confidentiality Undertaking

To,

Star Paper Mills Limited,

Paper Mill Road, Saharanpur,

Uttar Pradesh – 247 001, India

Sir(s),

a) We hereby undertake that we shall ensure that our employees, officers, agents and directors shall make reasonable efforts to ensure that we shall hold in confidence all the information, documentation (including Contract, the Bid Document and documents contemplated hereby), data, or know-how disclosed to us by you and designated in writing as “Confidential” (“Confidential Information”), and will not disclose to any third party or use Confidential Information or any part thereof directly or indirectly without your prior written approval; provided, that Confidential Information may be disclosed to (i) a Competent Authority pursuant to legal requirements and (ii) to financial institutions, bonafide potential Purchasers, our assignee or potential assignees and consultants and Sub-Contractors whose duties reasonably require such disclosure; provided, further, that, except for a bonafide disclosure to independent legal advisers, such Sub-Contractor shall first have agreed not to disclose the relevant Confidential Information to any other person for any purposes whatsoever.

b) These restrictions shall not apply, or shall cease to apply, to any part of the Confidential Information that:

(i) is in the public domain

(ii) was otherwise in the rightful possession of the recipient party or an employee, officer, shareholder, or director of the recipient party, in each case without any obligation to keep such information confidential, at or prior to the time of the disclosure; or

(iii) was obtained by the recipient party in good faith from a third party entitled to disclose it.

c) The restrictions contained herein shall survive the termination or expiry of the Contract.

d) Disclosure required by Law

If we are required by Law to disclose the contents of the Contract or any information or documents relating to the Contract, the Contractor must:

(i) promptly give notice to and consult with Purchaser about the disclosure; and

(ii) Use our reasonable endeavours to minimise any such disclosure.

e) Consent to Announcements No announcement concerning matters contemplated by the Contract or in respect of any activities or actions under the Contract or any ancillary matter can be made by us without Purchasers prior written approval, but that approval cannot be unreasonably withheld or delayed.

Date

Signature of Authorised Signatory ...

Place

Name of the Authorised

Signatory... Designation ...

Name of the Organisation Seal ...

To be signed by every member of the consortium

ANNEXURE – J (ITB) JOINT DEED OF UNDERTAKING

This DEED OF UNDERTAKING (the “Undertaking”) is executed this _____ day of _____ by _____ a company incorporate under the laws of _____ and having its Registered Office at _____ (hereinafter called the “Associate ” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and permitted assigns).

and _____ a company incorporate under the laws of _____ and having its Registered Office at _____ (hereinafter called “Bidder” which expression shall, unless repugnant to the context or meaning thereof, include its successors administrators, executors and permitted assigns) in favour of _____ organized and existing under the laws of India and having its registered office at _____ (hereinafter called “Purchaser” which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators, executors and assigns).

WHEREAS _____ the Purchaser invited bids for Plant vide Bid Notification No. _____ dated _____ for engineering, design, manufacture, erection, testing and putting into satisfactory operation of the Plant of Purchaser’s proposed Cogeneration plant at _____ (hereinafter referred to as “Plant) on a EPC basis (hereinafter referred to as the Invitation to Bid)”.

AND WHEREAS the Invitation to Bid stipulates that the bidding is open to the regular EPC contracting organizations and consortiums regularly supplying Cogeneration generating equipment, who possess the requisite experience.

AND WHEREAS the Bidder is submitting its proposal in response to the aforesaid Invitation to BID for the Plant against the specifications for the Plant as per the specifications set out in the Invitation to Bid.

AND WHEREAS the Bidder not being able to satisfy the requirements of clause (b) _____ of the Invitation to Bid, desired to associate with the -----, who fully meet/s the qualification requirements as specified in the said clause (b) of the Invitation to Bid hereafter referred to as “Associate”.

AND WHEREAS it is a requirement of the bidding documents that the Bidder and the Associate(s) are required to jointly execute and furnish along with the bid an irrevocable Joint Deed of Undertaking and be jointly responsible and bound unto the Purchaser for successful performance of the Plant for which the Association has been entered into (hereinafter called the “Plant”), fully meeting the parameters guaranteed for the aforesaid relevant plant) of the complete system as per the bid specifications, in the event the Bid is accepted by the Purchaser, resulting in a Contract (hereinafter called the “Contract”).

NOW THEREFORE, THIS DEED WITNESSETH AS UNDER:

1) That in consideration of the Award of the Contract by the Purchaser to the Contractor, we the Associate and the Contractor, do hereby declare and undertake that we shall be jointly and severally responsible to the Purchaser for the successful performance of the plant such that it fully meets the guaranteed parameters required as per the Contract specification.

2) In case of any breach of the Contract committed by the Contractor, we the Associate(s) do hereby undertake, declare and confirm that we shall be fully responsible for the successful performance of plant and undertake in order to discharge the Contractor's obligations and responsibilities stipulated in the contract. Further if the Purchaser sustains any loss or damage on account of any breach of the Contract, we the Associate(s) jointly and severally undertake to promptly indemnify, and pay such loss/damages caused to the Purchaser on its written demand without any demur, reservation, contest or protest in any manner whatsoever.

This is without prejudice to any rights of the Purchaser against the Contractor under the Contract and/or guarantees. It shall not be necessary or obligatory for the Purchaser to first proceed against the Associate(s), nor any extension of time or any prejudice any rights of the Purchaser under this Deed of Joint Undertaking to proceed against the Associate(s)

3) Without prejudice to the generality of the undertaking in paragraph "1" above, the manner of achieving the objectives set-forth in paragraph 1 above shall be as follows:

a) The Associate(s) will be fully responsible for design, engineering, supply, installation, putting into satisfactory operation and carrying out the tests for relevant plant to the satisfaction of the Purchaser. Further, the Associate(s), shall depute their technical experts from time to time to the Contractor's works/Purchaser's project site as required by Purchaser and agreed to by the Contractor and the associate to facilitate the successful performance of the plant as stipulated in the aforesaid Contract.

Further, the Associate(s) shall ensure proper design, manufacture, installation, testing and successful performance of the plant in accordance with the Contract Specifications and if necessary the Associate(s) shall advise the Contractor suitable modifications of design and implement necessary corrective measures to discharge the obligations under the contract.

b) In the event the Associate(s) and the Contractor fail to demonstrate successful performance of the plant as set forth in paragraph 1 above, the Associate(s) and the Contractor shall promptly carry out all the measures at their own expense and shall promptly provide corrected design to the Purchaser.

c) Implementation of the corrected designs and all other necessary repairs, replacements, rectifications or modifications to the plant and payments of financial liabilities, penalties and any other obligations as provided under the Contract shall be the joint and several responsibilities of the Contractor and Associate(s).

4) We, the Contractor and the Associate(s) do hereby undertake and confirm that this Undertaking shall be irrevocable and shall not be revoked till the expiry of defect liability/warranty period of the Plant under the Contract and further stipulate that the Undertaking herein contained shall terminate upon satisfactory completion of such warranty/ defect liability period. We further agree that this Undertaking shall be without any prejudice to the various liabilities of the Contractor including Contract Performance Guarantee as well as other obligations of the Contractor in the terms of the Contract.

5) The Contractor and Associate(s) will be fully responsible for the quality of all the equipment/main assemblies/components manufactured at their works or at their Vendors works or constructed at site, and their repair or replacement, if necessary, for incorporation in the Plant equipment and timely delivery thereof to meet the completion schedule under the Contract.

6) In addition to the Contractor's Performance Bank Guarantee, the each Associate(s) shall furnish "as Security" the Performance Bank Guarantees, from any reputed commercial Bank in favour of the Purchaser in a form acceptable to Purchaser. The value of such Bank Guarantees shall be equal to two and half percent (2.5%) / five percent (5%) / seven and half 7.5% (as specified in QR) of the total contract price of the Contract signed between the Contractor and SPML and it shall be towards guaranteeing the faithful performance/compliance of this Deed of Undertaking in accordance with the terms and conditions specified herein. The Bank Guarantee shall be unconditional, irrevocable valid for entire period of contract, i.e., till ninety (90) days beyond the end of the Warrantee period of the plant under the Contract. The bank guarantee amount shall be promptly paid to the Purchaser on demand without any demur, reservation, protest or contest.

7) This Deed of Undertaking shall be construed and interpreted in accordance with the Laws of India and the Courts in Delhi shall have exclusive jurisdiction.

8) We, the Associate(s) and the Contractor agree that this Undertaking shall be irrevocable and shall form an integral part of the Contract. We further agree that this undertaking shall continue to be enforceable till the successful completion of Contract and till the Purchaser discharge it.

9) That this Deed shall be operative from the effective date of the Contract.

IN WITNESS WHEREOF, the Associate(s) and the Contractor, through their authorised representatives, have executed these present and affixed common seals of their respective companies on the Day, Month and Year first mentioned above.

For

M/s _____

(Bidder)

WITNESS

For

1. i) M/s _____

(ASSOCIATOR)

2. _____

GENERAL CONDITIONS OF CONTRACT (GCC)

SECTION – 2.0

GENERAL CONDITIONS OF CONTRACT (GCC)

1.0 SCOPE OF CONTRACT

The scope of the Tenderer shall include design, engineering, material selection, manufacturing, testing at works, supply to site, installation, commissioning, performance testing at site, and other related items of work for the complete plant and equipment inclusive of civil & structural works, mechanical, electrical and instrumentation & control systems as set forth in the accompanying commercial and technical documents, necessary for putting into commercial operation a highly reliable, safe, efficient and environmentally compliant Equipment on EPC basis for 15 MW Cogeneration plant for Star Paper Mills Limited (SPML) at Paper Mill Road, Saharanpur, Uttar Pradesh. The systems and equipment shall conform to the technical requirements specified in separate sections of the specifications.

DEFINITION OF TERMS

2.1 The terms "**Contract Documents**" shall mean and include the following which shall be deemed to form an integral part of the contract:

☐ Letter forwarding Bid documents, Instruction to the Bidders, General Conditions of contract, Erection Conditions of contract, Special Conditions of Contract, General and Detailed Technical Specifications of the Plant Equipment/System/Facility to be supplied and erected under the contract as brought out in the accompanying Volumes – I, II, III and IV of the Bid document.

☐ Contractor's bid proposal and the documents attached thereto, including the letters of clarifications, correspondences and amendments between the Contractor and the Purchaser prior to the award of contract except to the extent of repugnancy.

☐ All the materials, literature, data and information of any sort given by the Contractor along with his Bid Proposal, subject to the approval of the Purchaser.

☐ Letter of Intent and any agreed variations to the conditions of the documents and special terms and conditions of contract, if any.

2.2 "**Applicable Laws**" means the laws of any national, state, local or municipal legislature in India, or of any other Competent Authority, including all laws, acts, judgments, statutes, rules, regulations, ordinances, orders, decrees, injunctions, governmental authorizations, requirements of Applicable Permits and any agreements, decisions, acts, instructions, requirements, directions and notifications of any competent or other Competent Authority or court or tribunal or arbitrator having jurisdiction over the matter in question, including those related to taxes, assessments, expropriation and duties, or authoritative interpretation, as amended, modified, enacted, reinterpreted or revised from time to time hereafter.

3 "**Applicable Permits**" means all permits, licences, authorizations, consents, decrees, waivers, privileges,

acknowledgements, concessions, approvals, rulings, decisions and visas from, filings with or applications submitted to, any Competent Authority or court or tribunal of competent jurisdiction necessary from time to time for or in relation to the performance of the Works, including as detailed in Annexure-G (GCC).

4. **"Auxiliary Power Consumption"** shall mean the sum of total electrical power consumed by the equipment of the plant (bidder to furnish the detailed list of equipment) during 100% MCR of the generating plant guaranteed gross power output when fired with specified performance fuel. "Auxiliary Power Consumption" of the individual unit shall be calculated on the basis of power consumed by the auxiliary equipments of unit as defined.

2.5 **"Agreement"** shall mean the Agreement (entitled "Contract Agreement") executed by the parties to which these Conditions are annexed and also includes supplements & amendments to the Contract.

2.6 **"Associate"** means a company or organisation who is an EPC contractor meeting Qualification Requirements indicated in Clause 9.0 of ITB, with whom bidder associates to fully meet with the Qualification Requirement and along with his bid furnish an undertaking i.e Joint Deed of Undertaking, jointly executed by the Bidder and each of the Associate (s) for the successful performance of the relevant plant/ equipments, and who, along with the bidder will have liability to discharge the entire work of the project.

2.7 **"Change in Work"** shall mean any addition to, deletion from, suspension of or other modification, within the scope of the Work, to the quality, function or intent of the Project as delineated in the contract, including any such addition, deletion, suspension or other modification which requires a change in one or more of the Project Variables.

2.8 **"Change Order"** shall mean a written order to Contractor issued authorizing a Change in Work and, if appropriate, an adjustment in one or more of the Project variables.

2.9 **"Bidder"** shall mean a single company, a consortium of companies, a joint venture or any other appropriate firm. Who qualifies to participate in the process of bidding.

2.10 **"Commissioning"** shall mean the first operation of the equipment after all initial adjustments and completion of trial run of (Thirty) 30 days which includes seventy two (72) hours of continuous run of full load.

2.11 **"Consortium"** shall mean a group of firms/companies who have agreed to work as partners in co-operation with each other and party to the contract for successful execution of the specific project, as explained in clause no 21.2 of ITB.

2.12 **"Contract"** means the Agreement entered into between Purchaser and Contractor as per the 'Contract Agreement' signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

2.13 **"Contractor"** shall mean the Bidder whose Bid Proposal has been accepted by the Purchaser for the award of the contract and shall include bidders' Consortium or Bidder's legal representatives, successors and permitted assigns.

2.14 **"Contract Price"** shall mean the lumpsum price quoted by the Contractor in his Bid Proposal with additions and deletions as may be agreed and incorporated in the Contract Agreement, for the scope of the works shall be treated as the Contract Price.

2.15 **"Contract Master Schedule"** shall mean the schedule detailing how the principal elements of the Work will be completed. This schedule will reflect the key dates as shown on the contract Master Bar

Chart, and shall be revised by Contractor as necessary to reflect how the work will proceed.

2.16 **“Commercial Operation”** shall mean the use of equipment which the contract contemplates or of which it is to be commercially capable. The equipment shall be deemed to have been put to commercial use on the date of its provisional taking over of the unit on completion of trial run and other items of works.

2.17 **"Codes"** shall mean the codes and standards mentioned as covered in Volume-II, III and IV - Technical Specifications following, including the latest amendments and/or replacements, if any:

2.18 **"Change in Law"** means the occurrence of any of the following after the bid opening date:

the enactment of any new Indian law or Directive;

the modification or repeal of any existing Indian law or enactment of any Indian law during the existence of the contract.

2.19 **“Statutory Clearance”** means any consent, licence, approval, permit or other clearances and authorization of whatsoever nature which is required to be granted by any competent authority of the Government.

"Other Clearances" means any consent, approval, permit or other authorization of which is required to be granted by the local district level authorities.

2.20 **"Competent Authority"** means any agency, authority, department, inspectorate, ministry or statutory person (whether autonomous or not) of Government of India (GoI), Government of Uttar Pradesh (GoUP) Ministry of Environment and Forests, any other State of the Republic of India or any local authority.

2.21 **"Conditions"** means these General and Commercial Conditions of contract. In the event of any conflict between the provisions of the General Conditions of contract and the provisions of the Special Conditions of contract, the Special Conditions of contract shall take precedence.

2.22 **"Consulting Engineer" or "Consultant"** refers to Purchaser's Engineer appointed by the Purchaser. Also refers to any other firm(s) or person(s) appointed by the Purchaser from time to time.

2.23 **"Drawings", "Plans"** shall mean all:

☐☐ Drawings furnished by the Purchaser as a basis for bid.

☐☐ Supplementary drawings furnished by the Purchaser to clarify and to define in greater detail the intent of the contract.

☐☐ Drawings submitted by the Contractor with his Bid Proposal provided such drawings are acceptable to the Purchaser.

☐☐ Drawings furnished by the Purchaser/Consultant to the Contractor during the progress of the work, and

☐☐ Engineering data and drawings submitted by the Contractor during the progress of the work provided such drawings are approved by Purchaser.

2.24 **"Day"** means Calendar day.

2.25 **"Directive"** means any requirement, instruction, direction, order, regulation or rule of any Competent Authority which is legally binding and any modification, extension or replacement thereof from time to time in force.

2.26 **"Engineer"** shall mean the officer appointed in writing by the Purchaser to act on their behalf as engineer from time to time for the purposes of the contract.

2.27 **"EPC"** means engineering, procurement and construction.

2.28 The term **"Equipment Contract Price"** shall mean the FOR SPML site value of the imported and indigenous equipment and material and inclusive of packing and forwarding & Transportation charges as furnished by bidders.

2.29 The term **"Erection Contract Price"** shall mean the value of field activities of the works including port clearance, if any, inland transportation, handling and storage, erection, testing and putting into satisfactory operation including successful completion of performance tests to be performed at site by the Contractor.

2.30 **"Effective Date of contract"** shall mean the date of issuance of Letter of Intent (LOI)

2.31 **"Facility/ Plant"** shall mean the plant and equipment to be supplied and installed as well as all the installation services to be carried out by the Contractor under the Contract.

2.32 **"Gross Power Output"** shall mean the total electrical output of the facility as measured at the terminals of the steam turbine generator/s, based on the facility operating under normal conditions at its MCR, while not exceeding the guaranteed emissions and effluent limits, as specified in this contract.

2.33 **"GoI"** shall mean the Government of India.

2.34 **"GoUP"** shall mean the Government of Uttar Pradesh.

2.35 **"Good Industry Practice"** shall mean the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a skilled and experienced Contractor, equipment manufacturer or operator applying the standards generally adopted by global Contractors, global equipment manufacturers and operators in the construction or operation of power generation facilities or the manufacture of equipment therefore, except in so far as inconsistent with any applicable Indian law or Directive.

2.36 **"Guaranteed Performance Parameters"** shall mean the guaranteed parameters of performance of the plant with respect to such performance criteria as are set out in the Technical Specification

2.37 **"Final Handing Over"** shall mean the Purchaser's written acceptance of the works performed under the contract, after successful completion of Performance Tests.

2.38 **"Incoterms"**: shall mean International Rules For Interpreting Trade Terms published by the International Chamber of Commerce. Unless inconsistent with any provisions of the contract, the meaning of any trade term and the rights and obligations of the parties thereunder shall be as prescribed by Incoterms.

2.39 **"Inspector"** shall mean the Purchaser or any person nominated by the Purchaser from time to time, to inspect the equipment of works under the contract and/or the duly authorized representative of the Purchaser.

2.40 **"Latent Defect"** shall be the defects inherently lying within the material or arising out of design

deficiency which do not manifest themselves during the warranty period in this GCC clause no. 35.0.

2.41 **"Letter of Intent"** shall mean the official letter issued by the Purchaser notifying the contractor that his Bid Proposal has been accepted.

2.42 **"Manufacturer's Works"** or **"Contractor's Works"** shall mean the place used by the manufacturer, the Contractor, their Associates or Sub-contractors for the performance of the Works.

2.43 **"Month"** shall mean the calendar month. "Day" or "days" unless herein otherwise expressly defined shall mean calendar day or days of 24 hours each. A "week" shall mean continuous period of seven (7) days.

2.44 a) **"MCR"** - Maximum Continuous Rating is defined as the capacity of the equipment to deliver the maximum possible gross steam output utilising the range of fuels as specified.

b) **"BMCR"** – Boiler Maximum Continuous Rating is defined as the capacity of the Boiler to deliver the maximum continuous steam output at the rated parameters corresponding to the minimum ambient temperature and utilizing the specified performance fuels available at site as specified.

c) **"EMCR"** – Economic Maximum Continuous Rating is defined as the capacity of the Steam Generator to deliver the maximum possible steam output at maximum efficiency of generation for the whole unit on continuous basis corresponding to the maximum ambient temperature and utilizing the specified performance fuels available at site as specified.

d) **"TMCR"** shall mean Turbine Maximum Continuous Rating is defined as the capacity of the steam turbine generator to deliver the maximum possible gross power output corresponding to the maximum ambient temperature and utilizing the specified performance fuels available at site as specified.

2.45 **"Purchaser"** shall mean Star Paper Mills Limited (SPML) and shall include their legal representatives, successors and permitted assigns.

2.46 **"Plant"** shall mean the Cogeneration plant unit along with equipment, accessories and auxiliary systems and utilities.

2.47 **"Performance Guarantee Tests"** shall mean all operational checks and tests required to determine and demonstrate the guaranteed performance parameters of the equipments / Unit / Plant.

2.48 **"Person"** shall mean any natural person, firm, corporation, company, voluntary association, partnership, joint venture, trust, incorporated organization, unincorporated organization, Competent Authority or other entity.

2.49 **"Plant and Equipment"** means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract including the spares parts to be supplied by the Contractor, but does not include Contractors equipment.

2.50 **"Project Manager"** shall mean the person to be nominated by the Contractor to act as the Contractor's Manager for the purposes of the contract.

2.51 **"Project In-charge"** shall mean the person to be nominated by the Purchaser to act as the Purchaser's manager for the purpose of the Contract.

2.52 **“Sub-contractor”** shall mean the Company/Firm named in the Contract for any part of the Works or any firm to whom any part of the Contract has been sub-let by the Contractor with the consent in writing of the Purchaser and will include the legal representatives, successors and permitted assigns of such company/firm.

2.53 **“Specification”** shall mean the Specifications and Bid Documents forming a part of the Contract and such other Schedules and drawings as may be mutually agreed upon.

2.54 **“Site”** shall mean and include the land and other places on, into or through which the Power Plant and the related facilities are to be constructed and any adjacent land, path, street or reservoir which may be allocated by Purchaser and used by the Contractor for the Contract Performance.

2.55 **“Start-up”** shall mean the time period required to bring the equipment covered under the Contract from an inactive condition, when construction is essentially complete, to the state ready for trial operation. The start-up period shall include preliminary inspection and check out of equipment and supporting sub-systems, initial operation of the complete equipment covered under the contract to obtain necessary pre-trial operation data, perform calibration and corrective action, shut down, inspection and adjustment prior to the trial operation period.

2.56 **“Bider”/“Bidder”** shall mean a Firm/Company who has submitted their Bid Proposal in response to the bid invitation.

2.57 The terms **“Equipment”** and **“Materials”** shall mean and include plant and materials to be provided by the contractor under the contract.

2.58 **“Trial Operation”** shall mean the period of 30 days continuous operation at various operating modes when firing with specified fuels. During this trial operation period, the unit shall be operated continuously for 30 days at loads as provided by the Purchaser. Out of this, 72 hours of operation must be at full Load. In case of any interruption of up to 4 hours in period of 30 days operation (Other than 72 hours on full load), the period of interruption shall be ignored. However, if the period of interruption is more than 4 hours, then 24 hours will be added to 30 days.

2.59 **“Technical Specification”** shall mean the document, setting out a description and specification of the Works and statement of the technical and other standards to which the Works are to be performed including any modifications thereto made in accordance with the Conditions.

2.60 **“Unit”** shall mean and include the equipment necessary to operate the unit at full load.

2.61 The term **“variation”** means:

(i) any alteration of the Purchaser’s requirements for the works and the plant as stated in the contract specifications whether by way of addition, modification or deletion which gives rise to a change in the works as described in the contract; and

(ii) any change requested by the Purchaser to any drawing or document submitted to the Purchaser for approval or for information.

2.62 **“Warranty Period”** shall mean the period during which the Contractor shall remain liable for repair or replacement of any defective part of the works performed under the contract, free of cost.

2.63 **“Works”** shall mean and include the furnishing of equipment, labour & services, transport, handling, unloading and storage at site, testing, commissioning putting into satisfactory operation and completion of Trial operation and of successful performance Guarantee tests, reliability tests and any other

guaranteed parameters as defined in the Contract, replacement, modification, repair of defective parts or equipment during warranty period and rectification of latent defects during latent defect period.

2.64 **"Writing"** or **"Written"** shall include any manuscript, type-written or printed statement, under or over signature and/or seal as the case may be.

2.65 **"Corrupt practice"** means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in Contract execution.

2.66 **"Fraudulent practice"** means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Purchaser and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non competitive levels and to deprive the Purchaser of the benefits of free and open competition

2.67 When the words "Approved", "Subject to Approval", "Satisfactory", "Equal to", "Proper", "Requested", "As Directed", "Where Directed", "When Directed", "Determined by", "Accepted", "Permitted", or words and phrases of like importance are used, the approval, judgment, direction, etc is understood to be a function of the Purchaser.

2.68 Words imparting the singular only shall also include the plural and vice-versa where the context so requires.

2.69 Terms and expressions not herein defined shall have the same meaning as are assigned to them in the Indian Sale of Goods Act (1930), failing that in the Indian contract Act (1872) and failing that in the General Clauses Act (1897) including amendments thereof, if any.

¹ **"Hazardous Materials"** means (i) any material which by reason of its composition or characteristics is defined in Applicable Law as hazardous waste or hazardous material, or (ii) any other material which any Competent Authority shall determine from time to time is harmful, toxic, or dangerous, or otherwise ineligible for handling, storage or disposal by unregulated means;

² **"Lien"** means any lien, security interest, mortgage, trust arrangement, judgment, charge, easement, encumbrance, title retention, preferential right or any other security agreement, arrangement or similar right in favor of any person. This part belongs elsewhere has nothing to do with this para

Interpretation

In this contract:

- a) References to the laws of India including the applicable laws of any State forming part of the Union of India.
- b) References to a particular clause, paragraph, sub-paragraph or attachment shall, except where the context otherwise requires, be a reference to that clause, paragraph, sub- paragraph or attachment in or to these conditions.
- c) The headings are inserted for convenience and are to be ignored for the purposes of construction.
- d) The words "include" and "including" are to be construed without limitation.
- e) The attachments to these conditions form part of this contract and shall be of full force and effect as though they were expressly set out in the body of these conditions.
- f) Whenever provision is made for the giving of notice, approval or consent by any person, unless

otherwise specified such notice, approval or consent shall be in writing and the words "notify" and "approve" shall be construed accordingly.

g) The invalidity or unenforceability of any portion or provision of this contract shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this contract. The parties agree in such circumstances to interpret and to negotiate an equitable amendment to the provision of this contract to give effect to the underlying purposes of this contract.

REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

Contractor represents and warrants as of the date hereof as follows:

h) Contractor is duly organised, validly existing and in good standing under the laws of the jurisdiction of its formation and is authorized to do business in India and in the Uttar Pradesh State. Contractor has full power, authority and legal right to execute and deliver and perform its obligations under the Contract Agreement. The Contract Agreement has been duly authorised, has been duly executed and delivered by its legal representative and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms.

i) The execution and delivery of, and performance by Contractor of its obligations under the Contract Agreement will not result in a violation of, or be in conflict with, any provision of its organizational or authorizing documents or constitute a default under any contract, agreement or other instrument to which it is a party or by which it is bound, or result in a violation of, or be in conflict with, any term or provision of any Applicable Laws.

j) Contractor is not in default under any mortgage, loan agreement, deed of trust, indenture or other agreement evidencing indebtedness to which it is party or by which it is bound, or in violation of, or in default under, any Applicable Law, which default or violation would materially and adversely affect its ability to perform its obligations under the Contract Agreement.

k) There is no pending action, suit, proceeding, inquiry or investigation against Contractor at law or in equity or before or by any Competent Authority of which it has received notice, or which to its knowledge is threatened, which would materially and adversely affect its ability to perform its obligations under the Contract Agreement.

l) Contractor, or its affiliates, has or have experience in the engineering, procurement and construction of electric generating facilities comparable to the Project and is or are fully qualified to perform the Works in accordance with the Contract Agreement.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants as of the date hereof as follows:

m) Purchaser has full authority and legal right to execute and deliver and perform its obligations under the Contract Agreement. The Contract Agreement has been duly authorised by Purchaser's board of directors, has been duly executed by its legal representative and constitutes a legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms.

n) The execution and delivery of, and performance by Purchaser of its obligations under, the Contract Agreement will not result in a violation of, or be in conflict with, any provision of Purchaser's organisational or authorizing documents, or constitute a default under any contract, agreement or other

instrument to which Purchaser is a party or by which it is bound, or result in a violation of, or be in conflict with, any term or provision of any Applicable Law.

o) Purchaser is not in default under any mortgage, loan agreement, deed of trust, indenture or other agreement evidencing indebtedness to which it is party or by which it is bound, or in violation of, or in default under, any Applicable Law, which default or violation would materially and adversely affect its ability to perform its obligations under the Contract Agreement.

p) There is no pending action, suit, proceeding, inquiry or investigation against Purchaser at law or in equity or before or by any Competent Authority of which Purchaser has received notice, or which to Purchaser's knowledge is threatened, which would materially and adversely affect its ability to perform its obligations under the Contract Agreement.

CONTRACTOR TO INFORM HIMSELF FULLY

2.70 Regarding Bid Document

The Contractor shall be deemed to have carefully examined all Contract Documents to his entire satisfaction. If he has any doubt as to the meaning of any portion of the Contract Document, he shall, before signing the Contract, set forth the particulars thereof, and submit them to the Purchaser in writing, in order that such doubt may be removed. The Purchaser will provide such clarifications as may be necessary, in writing to the Contractor. Any information otherwise obtained from the Purchaser or the Engineer, shall not in any way relieve the Contractor of his responsibility to fulfil his obligations under the Contract.

No decision, instruction or order given by the Purchaser shall be effective until written confirmation thereof has been received by the Contractor. Provided that, in any emergency involving the risk of injury to persons or damage to property, the Purchaser may issue oral instructions with which the Contractor shall immediately comply. The Purchaser shall confirm any such oral instructions in writing within 24 hours of its issue.

The Contractor shall proceed with the works in accordance with the written decisions, instructions and orders given by the Purchaser subject to and in accordance with the Contract, including provisions for variations as set out in the General Conditions of Contract.

Regarding Site Conditions

The Contractor shall be deemed to have inspected the site and its surroundings and to have satisfied itself as to the conditions of and all circumstances affecting the site and the works including the nature of the ground and sub-soil, the form and nature of the site, the extent and nature of the work and materials necessary for the carrying out and completion of the works, the means of communication with and transportation and access to the site, the accommodation it may require and in general all risks and contingencies influencing or affecting the works. The Contractor shall not, except as expressly provided in these conditions be entitled to any extension to any guaranteed completion date or to any adjustment of the Contract price on grounds of misinterpretation or misunderstanding of any such matter, nor shall except as so provided, it be released from any of the risks accepted or obligations undertaken by it under the Contract on the ground that it did not or could not reasonably have foreseen any matter which affects the execution of the works. Site conditions shall not relinquish the Contractor from any of his obligations/responsibilities to be discharged and performed under the Contract as per schedule within the Contract price.

USE OF CONTRACT DOCUMENT AND INFORMATION

2.71 The Contractor shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

2.72 The Contractor shall not, without the Purchaser's prior written consent, make use of any document or information enumerated in various Contract documents except for purpose of performing the Contract.

2.73 Any document, other than the Contract itself, enumerated in various Contract documents shall remain the property of the Purchaser and shall be returned (in all copies) to the Purchaser on completion of the Contract.

CONTRACT AGREEMENT

2.74 The Contractor shall enter into a Contract Agreement with the Purchaser as per proforma enclosed at Annexure-C (GCC) and Annexure-J (ECC), within thirty (30) days from the date of issue of the Letter of Intent or within such extended time as may be granted by the Purchaser. The Contract language as well as day-to-day communications shall be in English.

Agreement and Conditions

a) Unless otherwise provided in the Contract, the Contract Agreement and the conditions shall prevail over any other document forming part of the Contract and in the case of conflict between the Contract Agreement and the conditions, the Contract Agreement shall prevail. In the event that there is a conflict in the provisions of these conditions, all provisions in the body of the conditions shall take precedence over the attachments, exhibits or appendices to these conditions.

b) The special conditions shall in all respects and for all purposes prevail and take precedence over any general conditions of Contract as described and included in the technical specification, except and only to the extent that such general conditions of Contract concern matters not dealt with in the Contract.

c) In the event of any ambiguity or discrepancy between the technical specification and the data sheets prepared by the Contractor the provisions of the technical specification shall prevail. In the event of any ambiguity or discrepancy between different parts of the technical specification the Contractor shall submit to the Purchaser for approval its proposal for dealing with such ambiguity or discrepancy. The decision of the Purchaser shall be final.

d) Subject to clauses (a) & (b) above, the several documents forming part of the Contract are to be taken as mutually explanatory of one another and in the case of ambiguities or discrepancies within or between such documents, the same shall be explained and adjusted by the issue of an instruction by the Purchaser.

2.75 The Contractor shall treat the details of the Contract and any information made available in relation thereto as private and confidential and shall not publish or disclose the same or any particulars thereof (save in so far as may be necessary for the purposes of the Contract), without the previous written consent of the Purchaser provided that nothing in this clause shall prevent the publication or disclosure of any information that has come within the public domain otherwise than by breach of this clause.

2.76 Either party shall be entitled to disclose the terms & conditions of this Contract and any data or information acquired by it under or pursuant to this Contract without the prior written consent of the other party:

- a) to any affiliate of such party or to the Purchaser;
- b) to any outside consultants or advisers engaged by or on behalf of such party in connection with the works or the financing or operation of the facility and acting in that capacity;
- c) to any persons from whom the Contractor intends to invite Bids in respect of the sub-contracting of any element of the works;
- d) to any security trustee, any bank or other financial institutions and its advisers from which such party is seeking or obtaining finance;
- e) to the extent required by the rules of a relevant and recognized stock exchange;
- f) to the extent required by law or pursuant to an order of any court of competent jurisdiction, provided that the original disclosing party is given notice and adequate time to seek a protective order applicable to the information before it is disclosed;
- g) to any insurer under a policy of insurance required to be taken out by either party under the Contract, or
- h) to directors, employees and officers of such part; provided that:

2.76.h.1 the disclosing party determines in good faith that the recipient has a legitimate need to see such data or information;

2.76.h.2 the recipient is not a competitor in the business of turnkey power plant construction, or in the business of power station development; and

2.76.h.3 the recipient has been made award of and has agreed to be bound by the requirements of this clause.

Exchange of Information and Publication

The parties shall:

- i) make available to each other without charge such materials, documents and data as would normally be made available to the other party in connection with the works (except any internal cost accounting or cost reporting data or any materials, documents and data protected by legal privilege or which is subject to any duty of confidentiality to any third party) acquired or brought into existence in any manner whatsoever by each of them in connection with the works as the other may reasonably request for the purposes of exercising its rights or carrying out its duties in respect of the works or performing its obligations under this Contract; and
- j) use all reasonable endeavours to make available to the other such materials, documents and data acquired or brought into existence by third parties as the other may reasonably request for the purposes referred to in sub-paragraph (a) above, and as would normally be made available by persons acting in accordance with good industry practice.
- k) Neither party shall, without the prior written authority of the other, publish, alone or in conjunction with any other person, any article or other material relating to any dispute arising under the

Contract nor impart to any radio or television programme or any other medium any information regarding any such dispute.

1) The Contractor may use information concerning the signing of the Contract, the general nature of the works and the extent of the Contractor's involvement in the works, without the prior approval of the Purchaser in sales brochures, qualification and experience documents and similar external announcements and publications and with the prior approval of the Purchaser (which approval shall not be unreasonably withheld or delayed) in press releases and similar external announcements and publications.

MANNER OF EXECUTION OF CONTRACT

8.1 The Agreement, unless otherwise agreed to shall be signed within thirty (30) days of the date of issue of the Letter of Intent, at the Office of the Purchaser on a date and time to be mutually agreed. The Contractor shall provide for signing of the Contract, appropriate power of attorney and other requisite materials. Unless and until a formal agreement is prepared and executed, the Letter of Intent read in conjunction with the Bid Document / Bid Proposal will constitute a binding Contract.

8.2 The Agreement will be signed in four (4) originals and the Contractor shall be provided with one (1) signed original and the rest will be retained by the Purchaser.

2.77 The Contractor shall provide immediately after issue of LOI free of cost to the Purchaser all the engineering data, drawings and descriptive materials submitted with the Bid Proposal, in at least five (5) copies to form a part of the Contract.

2.78 Subsequent to signing of the Contract, the Contractor at his own cost shall provide the Purchaser with at least five (5) true copies of Agreement.

2.79 The Contractor shall be required to arrange and bear the charges for obtaining all required statutory approvals, which he has to lawfully obtain as a Contractor.

2.80 The Purchaser shall arrange and bear the charges for obtaining all required statutory approvals which he has to lawfully obtain as a promoter of the Cogeneration Plant.

Annexure-G (GCC) gives a list of permits/approvals that have to be obtained and the follow- up responsibility for each.

2.81 Any Contractual notice, report, certificate or other communication to be given to the Purchaser under the Contract shall be served by sending the same by e-mail (with a confirmation copy by courier or by hand delivery) to, or by leaving the same at, the respective address set out below or such other addresses as may be nominated for that purpose in writing to the Contractor:

Purchaser:

Sr. General Manager Commercial,

Star Paper Mills Limited,

Paper Mill Road,Saharanpur,

Uttar Pradesh – 247 001, India

2.82 All certificates, notices or decisions, instructions and orders to be given by the Purchaser under

Consultant:
Snyder Energo Private Limited
Bangalore

the Contract shall be served by sending the same by e-mail (with a confirmation copy by courier or by hand delivery) to or by leaving the same, at the Contractor's address or such other address as the Contractor shall nominate in writing for that purposes:

Contractor:

2.83 Any notice sent by e-mail shall be deemed to have been served at the time of receipt, provided that a positive transmission report from the sender's machine will be conclusive evidence of receipt in the absence of evidence to the contrary.

2.84 All other communications pertaining to the works not referred to above shall be made between the Project Incharge and the Contractor or other representatives nominated by the Project Incharge and Contractor from time to time in respect of such categories of communication and subject to such limits of authority as may be agreed as part of the project coordination procedures referred to above or as may be notified from time to time.

2.85 The Contractor shall within 60 days of date of signature of the Contract submit to the Purchaser for pursuant to clause 6.0, 'Contractor's Documents, Drawings and Instruction Manuals', a draft project coordination procedures document setting out procedures for communications between the Contractor and the Purchaser in connection with this Contract including details relating to correspondence, circulation of notices and documentation, meetings and other interfaces.

2.86 The parties shall comply with the requirements of such project coordination procedures once approved by the Purchaser; as such procedures may be amended from time to time by agreement between them.

Commencement of Engineering Work prior to Award of Contract

The Purchaser recognises that in order to meet the overall programme for “Taking over” of the power project unit/s within the period indicated in para above, the engineering of the power project unit/s shall have to progress sufficiently.

Scheduling Information

a) The Contractor shall perform the works in accordance with the Project Schedule. The progress of the works against the Project Schedule shall be monitored by the Contractor and reported using the Contractor's standard measurement as part of each monthly progress report. The Contractor shall, as and when required by the Purchaser, give the Purchaser access to all scheduling information prepared by the Contractor in respect of the works and shall permit the Purchaser to attend and fully participate in scheduling and progress meetings.

b) The Contractor shall update, prepare and submit to the Purchaser for information as the work progresses updated milestone summary schedules, retaining the Project Schedule as a baseline, on monthly basis. The Project Schedule shall be amended only in the event and to the extent of an extension of time granted by Purchaser.

c) The programme shall be in the form of LEVEL-1 precedence network identifying the key phases in the scope of work; typically it shall contain sections covering the design, procurement, manufacture & field activities as appropriate to this project. In addition, key milestone dates shall also be

identified covering the above areas.

d) The network, milestones, dependencies and interfaces as well as the engineering drawings and data submission schedule referred to above shall also be discussed and agreed before signing of Contract Agreement.

e) After the award of the Contract, the Contractor shall submit a detailed Level-2 Precedence Contract Master Bar Chart/Contract Master Schedule, consisting of adequate number of activities covering various key phases of the works such as engineering, design, procurement, manufacturing, shipment and field erection activities within thirty (30) days after the date of Contract Agreement. The schedule of engineering drawings and documents submission should detail when approval will be sought, together with proposed submission dates. This shall also indicate the interface facilities to be provided by the Purchaser and the dates by which such facilities are needed.

f) The Contractor shall discuss the chart so submitted with the Purchaser and agreed chart which may be in the form as submitted or in revised form in line with the outcome of discussions shall form part of the Contract documents. During the performance of the Contract, if in the opinion of the Purchaser proper progress is not maintained, suitable changes shall be made in the Contractor's operations to ensure proper progress.

g) The Contractor shall execute, complete and maintain the works including statutory requirements strictly in accordance with the Contract to the satisfaction of the /Purchaser and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter (whether mentioned in the Contract or not) connected with or concerning the works. The Contractor shall take instructions and directions only from the Purchaser/ their representative.

h) At any given point in the project if the deviation is beyond 60 days from the schedule, SPML shall have the right to take alternate corrective measure to bring back the activity(s) to the schedule at Contractor's risk and cost.

Detailed Manufacturing Programme

A detailed manufacturing programme for all the activities at Contractor's/Associators/Sub- Contractor's works shall also be furnished within 60 days of Contract Agreement. The manufacturing network shall be supported by a detailed procurement programme for critical bought out items/raw materials and shall be verified by subjection to a complete and rigorous resource analysis.

Pre-Erection Activity Programme

The erection network shall be supported by a detailed Pre-erection activity programme covering the following:

- i) Project Management and Site Organization chart with Manpower Deployment details.
- j) Tools & Plant Mobilization plan.
- k) Project Management Methodology and Detailed Site Mobilization Plan.

2.87 Within one week of approval of the network schedule, the Contractor shall forward to the Purchaser copies of the computer initial run Data. This will become the base line schedule against which progress will be measured. The type (which may be in electronic form) and format of network schedule

together with the number of copies of each to be provided by the Contractor shall be discussed and agreed with the Purchaser.

2.88 All the programmes and schedules shall be updated with progress information every month or at a frequency mutually agreed upon. Within seven days following the monthly review, a progress meeting shall be held, whenever possible at the works, wherein the major items of the plant or equipment are being produced. This meeting shall be attended by the Contractor and responsible representatives of their Sub-Contractors that the Purchaser considers necessary for the meeting.

2.89 Access to the Contractor's/ Associators and Sub-contractor's work shall be granted to Purchaser at all reasonable times for the purpose of ascertaining the progress.

EFFECT AND JURISDICTION OF CONTRACT

□□□ The Contract shall be considered as having come into force from the date of issue of Letter of Intent by the Purchaser and acceptance by the Contractor.

□□□ The laws applicable to the Contract shall be the laws in force in India. The District Courts of Sharanpur Uttar Pradesh shall have sole and exclusive jurisdiction in all matters arising under this Contract.

SCOPE OF WORK

10.1 The scope of work shall completely cover the activities covered under Volume – II, III and IV - Technical Specifications.

10.2 The Contractor shall, unless specifically excluded in the Contract, perform all such works and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining completion and performance of the facilities as if such work and/or items and materials were expressly mentioned in the Contract.

ASSIGNMENT AND SUBLETTING OF PART OF CONTRACT

□□□ The contractor may, after informing the Purchaser and getting his written approval, assign or sub-let any part of the contract other than for main equipment, for minor details or for any part of the plant for which makes are identified in the contract. Suppliers of the equipment not identified in the contract or any change in the identified supplier shall be subject to approval by the Purchaser. The experience list of equipment vendors under consideration by the contractor for this contract shall be furnished to the Purchaser/ for approval prior to procurement of all such items/equipment. Such assignments/subletting shall not relieve the contractor from any obligation, duty or responsibility under the contract. Any assignment as above without prior written approval of Purchaser shall be void.

□□□ The bidder shall not be allowed to change its associate(s) mentioned in the Joint Deed of Undertaking (JDU) submitted by the bidder. However if, in the opinion of the purchaser, any unavoidable circumstances warrants such change, the purchaser at its sole discretion may permit the bidder to change the associate on such terms and conditions as decided by the purchaser. The decision of the purchaser shall be final and binding in this regard.

□□□ For components/equipment procured by the contractor for the purposes of the contract, after obtaining the written approval of the Purchaser, the contractor's purchase specifications and enquiries shall call for quality plans to be submitted by the suppliers along with their proposals. The quality plans called for from the vendors shall set out, during the various stages of manufacture and installation, the quality practices and procedures followed by the vendor's quality control organization, the relevant reference documents/standards used, acceptance level, inspection, documentation raised etc.

Contractor shall have to obtain specific approval from the Purchaser to sublet unloading, storage and erection works of this project. The contractor shall be responsible for the acts, defaults and neglects of all Sub-contractors and all agents, servants or workmen of any of

them as fully as if they were the acts, defaults or neglects of the contractor under the terms of this contract. The contractor shall continue to be responsible for all contractual obligations under the contract.

The contractor shall not without the prior written consent of the Purchaser assign to any Person any benefit of or obligation under the contract in whole or in part. The contractor shall provide to the Purchaser unpriced copies of all contracts between sub-contractors and themselves. The contractor shall ensure that all such sub-contracts are made in writing.

The sub-contractor shall cause all warranties provided to the contractor under any sub- contract to be assignable to the Purchaser or its designee and shall assign to the Purchaser the benefit of all unexpired sub-contract warranties (excluding performance or schedule guarantees for which liquidated damages are provided as a remedy) upon the expiration of the warranty period, or earlier, at the Purchaser request, provided the contractor shall continue to be responsible for all contractual obligations under the contract.

12.0 PATENT RIGHTS AND ROYALTIES

Royalties and fees for patents covering materials, articles, apparatus, devices, equipment or processes used in the works shall be deemed to have been included in the contract Price. The contractor shall satisfy all demands that may be made at any time for such royalties or fees; and he alone shall be liable for any damages or claims for patent infringements and shall keep the Purchaser indemnified in that regard. The contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted for alleged infringement of any patents involved in the works, and in case of an award of damages, the contractor shall pay for such award. In the event of any suit or other proceedings instituted against the Purchaser, the same shall be defended at the cost and expenses of the contractor who shall also satisfy/comply with decree, order or award made against the Purchaser. Final payment to the contractor by the Purchaser will not be made while any such suit or claim remains unsettled. In the event any apparatus or equipment of any part thereof furnished by the contractor, is in such suit or proceedings held to constitute infringement, and its use is prohibited, then contractor shall, at his option, and at his own expense, either procure for the Purchaser, the right to continue use of said apparatus, equipment or part thereof, replace it with non-infringing apparatus or equipment or modify it, so it becomes non-infringing as acceptable to Purchaser.

13.0 CONTRACT PRICE

13.1 The price quoted by the contractor in his Bid Proposal with additions and deletions as given in the supplementary Price Bid Proposal and incorporated in the Letter of Intent, for the entire scope of the works shall be treated as the contract Price. The above contract price shall be firm except for statutory variation in taxes and duties as per clause No. 47.0 of this section.

Taxes and Duties

13.2.1 The contractor shall bear and pay all taxes, duties, levies and charges assessed on the contractor,

its sub-contractor's or their employees by all municipal, state or national Government authorities in connection with the contract in and outside of the country where the site is located. Any variation in Taxes & Duties against foreign supplies shall be to the contractor's account.

13.2.2 The Purchaser will issue the requisite sales tax declaration form in order to enable the contractor to get the benefit of any concession in the rate of sales tax.

13.2.3 In case of Indian Contractor the purchaser shall issue the project authority certificate for the value of import declared in the Bid to enable the contractor to avail the exemptions in the custom duty against the materials being imported by him. The Contractor shall be responsible for taking the import licence in its own name and clearance of the goods at port and pay all fees and expenses whatsoever in this regards.

13.2.4 In case of foreign contractor SPML as a Consignee shall furnish necessary certificate and documents as may be required to be furnished by the consignee for the purpose of custom clearance. However, all the expenditure whatsoever as required in this regard and necessary follow-up shall be made by the foreign contractor and its Indian representative.

13.2.5 If any tax exemption/refunds is available to the Indian Contractor / Indian Associate of Foreign contractor's in India the Purchaser shall use its best endeavors to enable the Contractor to benefit from any such tax exemptions/ refund being desired by the contractor. However, the Purchaser shall not be liable in any manner whatsoever for such benefit.

13.2.6 In respect of equipment/materials to be repaired or replaced in terms of the guarantee/warranty provisions under the Contract, unless otherwise specifically agreed to in the Contract, the Contractor shall be liable for payment of applicable taxes and duties and other expenses till such components/parts are delivered/ installed in the equipment at the project site and the Purchaser shall not bear any liability in this regard, whatsoever.

13.2.7 Notwithstanding above, any stamp duty and import license fee (including custom duties) levied by the Government of India or any State Government in India on the equipment and materials to be provided by the Contractor in pursuance of any guarantees/warranties under the Contract including any replacements and/or repairs to be carried out under the said guarantee/warranty provisions, which the contractor is required to supply to the Purchaser, shall be to the Contractor's account irrespective of whether the import license, custom clearance permit etc for such items is provided by the Purchaser or arranged by the Contractor himself. At the request of the Contractor, the Purchaser may issue recommendatory letter to the Concerned Authorities for custom duty exemption if applicable on replacements and/or repairs in pursuance of guarantee/warranty provisions. However, the Purchaser shall not be liable in any manner, whatsoever, for such benefit being denied to the Contractor by the concerned authorities.

13.2.8 Further, all such import and custom duties in respect of erection tools and tackles, testing instruments, transportation equipment etc which may be imported by the Contractor for performing any portion of the work to be done in India and which are not envisaged to become the property of the Purchaser in terms of the Contract, shall be to the Contractor's account and the Purchaser shall not accept any liability in this regard, whatsoever. However on the request of Purchaser, Contractor shall hand over certain erection tools and tackles and testing instruments, transportation equipment etc. at mutually agreeable price.

13.2.9 Notwithstanding anything stated elsewhere in the Bid documents, the mode of contracting with the successful Bidder will be as outlined in General and Commercial Conditions of Contract.

13.2.10 As regards the Indian Income Tax, Income Tax , surcharge on Income tax , any Cess thereof and any other similar tax etc, the Purchaser shall not bear any liability whatsoever, irrespective of the mode of contracting. The Bidder shall be liable and responsible for payment of all such tax, if attracted under the provisions of the law.

13.2.11 In case, any deduction of tax is required to be made at source by the Purchaser, from any payments made to the contractor under any applicable statute, no reimbursement of such tax will be made by the Purchaser. However, necessary Tax Deduction Certificate will be provided to the contractor.

13.2.12 For Erection, Testing and Commissioning, the Purchaser shall make tax deduction at source as per the rules prevailing at the time of execution of the works. Necessary tax deduction certificate shall be issued by the Purchaser.

13.2.13 If the State or Central Govt. brings any other tax deduction at source into effect, during the validity of the Contract then the same shall be deducted at source as per the prevailing rules.

Purchaser's Power to Vary or Omit Work

13.2.14 The Purchaser shall have the power by written notice to the contractor from time to time during the execution of the contract to instruct the contractor to carry out and complete the works in accordance with any variations it so requires, provided that the Purchaser shall not be entitled to instruct a variation which

α) has a material adverse effect upon the contractor's ability to meet the Performance Guarantee(s) ; or

β) is not technically feasible.

13.2.15 The contractor shall, subject to the provisions of this clause, comply with such variations. The contractor shall carry out the instructed variations to the best of good engineering practices for the well functioning, safety and protection of the unit / plant during engineering, construction, testing and commissioning stages of the Contract.

13.2.16 When ordering any variation in respect of any part of the plant, the Purchaser shall wherever possible give the contractor such reasonable notice as will enable it to make its arrangements accordingly.

a) No alterations, amendments, omissions, additions, suspensions or variations of the work hereinafter referred to as 'Variations' under the contract shall be made by the contractor except as directed in writing by the Purchaser, but the Purchaser 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 the contractor to make such variation without prejudice to the contract and the contractor shall carry out such variations and be bound by the same conditions as far as applicable, as though the said variations occurred in the contract.

b) 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 Purchaser thereof in writing and the Purchaser shall decide forthwith whether or not the same shall be carried out and if the Purchaser confirms his instructions, the contractor's obligations and guarantees shall be modified to such an extent as may be justified.

c) The difference in cost, if any, occasioned by such variations, shall be added to or deducted from the contract price as the case may be. The amount of such difference if any, shall be ascertained and determined in accordance with the rates specified in the schedules of prices, so far as the same may be applicable and where the rates are not given in the said schedules, or are not applicable, they shall be settled by the Purchaser and the contractor jointly.

d) In any case, in which the contractor has received instruction from the Purchaser as to carrying out the variation which, either then or later will in the opinion of the contractor involve a claim for additional payment for extra work and/or for extra materials, the contractor shall, as soon as reasonably possible after

receipt of such instructions, advise the Purchaser to that effect. But the Purchaser shall not be liable for payment of any charge in respect of any such variations, unless instructions for making the same shall have been given in writing by the Purchaser after receipt of such advice from the contractor.

e) In case the Purchaser refuses to admit that any variation directed by him involved extra work or extra materials entitling the contractor to claim extra payment, the contractor shall, nevertheless if so required by the Purchaser, carry out the same and the matter in difference shall be decided by Arbitration as provided in the contract.

f) In the event of the Purchaser requiring any variation, such reasonable and proper notice shall be given to the contractor as will enable him to make the arrangements accordingly and in cases where goods or materials are already prepared, or any design, drawings, or patterns made or work done that require to be altered, a reasonable sum in respect thereof shall be allowed by the Purchaser.

DEDUCTIONS FROM CONTRACT PRICE

□□□□ All costs, damages or expenses which the Purchaser may have paid, for which under the Contract, the Contractor is liable, will be claimed by the Purchaser. All such claims shall be deducted by the Purchaser from any money due or becoming due to the Contractor by Purchaser under the Contract or may be recovered by actions of law or otherwise, if the Contractor fails to satisfy the Purchaser of such claims.

□□□□ In addition to the provision of clause above, which relates to the recovery by the Purchaser of any amounts that the Purchaser may have paid for which the Contractor is liable under the Contract, the Purchaser shall also be entitled to recover all dues in terms of the Contract including Liquidated Damages for delay, penalties for shortfall in the guaranteed performance parameters, etc. by way of deductions from the payments due to the Contractor or that may become due to the Contractor in future or from any securities/guarantees under the Contract and/or otherwise.

□□□□ Without prejudice to any other rights or remedies of the Purchaser either under the Contract or otherwise, the Purchaser shall be entitled to set-off against any payment otherwise due under the Contract, the amount of any claim for loss, damage or expense which has actually been or is reasonably expected to be incurred by the Purchaser or any of its other sub-Contractors by reason of any breach of or failure to observe the provisions of the Contract or the sub-Contract by the Contractor or sub-Contractor.

PACKING, FORWARDING AND SHIPMENT

15.1 Imported Equipment

□□□□□□ The Contractor, wherever applicable shall, after proper painting, pack and crate all equipment for sea shipment in a manner suitable for shipment to tropical, humid climate region in accordance with the internationally accepted export practices and in such a manner so as to protect it from damage and deterioration in transit by road, rail and/or sea and during storage at the site till the time of erection. The Contractor shall be held responsible for all damages due to improper packing.

□□□□□□ The Contractor shall notify the Purchaser of the date of each shipment from the port of embarkation as well as the expected date of arrival of such shipment at the designated port of arrival.

□□□□□□ The Contractor shall give complete shipping information concerning the weight, size, content of each package including any other information the Purchaser may require.

□□□□□□ The following documents shall be couriered to the Purchaser within seven (7) days from the date of shipment:

- Bill of lading (4 non-negotiable copies)
- Invoice (4 copies)
- Packing list (4 copies)
- Inspection certificate (4 copies)
- Test certificate, wherever applicable (4 copies)
- Invoice for Ocean freight (4 copies)
- Certificate of Country of Origin (4 copies)
- Any other document as required by Bank (4 copies)
- Phyto sanitary certificate for the Packing wood.

□□□□□□ The distribution of copies of the above documents shall be as follows:-

- Project Department, SPML, Head Office - 1 copy
- Finance Department, SPML, Head Office - 1 copies
- Project Site, SPML - 1 copies
- Consultant, - 1 copy

Indigenous Equipment

□□□□□□ The Contractor shall after proper painting, pack and crate all equipment in such a manner so as to protect them from deterioration and damage during rail and road transportation to the site and storage at the site till the time of erection. The Contractor shall be held responsible for all damages due to improper packing.

□□□□□□ The Contractor shall notify the Purchaser of the date of each consignment from his works, and the expected date of arrival at the site for the information of the Purchaser.

□□□□□□ The Contractor shall also give all information concerning the weight, size and content of each consignment including any other information the Purchaser may require.

□□□□□□ The following documents shall be sent by courier to the Purchaser within three (3) days from the date of despatch of each consignment:-

- Invoice (4 copies)
- Packing list (4 copies)
- Inspection certificate (3 copies)

☐☐ Test certificate, wherever applicable (3 copies)

☐☐☐☐ The Contractor shall prepare detailed packing list of all packages and containers, bundles and loose material forming each and every consignment despatched to site. The Contractor shall further be responsible for making all necessary arrangements for loading, unloading and other handling right from his works till the site and also till the equipment is erected, tested and commissioned, he shall be solely responsible for proper storage and safe custody of all equipment.

☐☐☐☐ The Contractor shall send at least Four (4) copies of "Model Packing Lists" of various equipment/materials within fifteen (15) days of finalisation of the Project schedule. These lists shall be used as Check Lists and for despatch of all the equipment and materials to be supplied under the Contract. These lists shall be periodically updated by the Contractor based on the changes on subsequent detailed engineering. However, the Contractor's responsibility with respect to the model packing list shall be final while the final engineering layout designs are approved by the Purchaser; and based on that, the list shall be finally updated by the Contractor.

16.0 DEMURRAGE, WHARFAGE ETC.

All demurrage, wharfage and other expenses, incurred due to delayed clearance of the material shall be to the account of the Contractor.

17.0 INSURANCE

17.1 The Contractor will arrange for INSURANCE of equipment and materials included under the scope of Contract, to cover under marine-cum-storage-cum-erection insurance policy, which guarantee the following risks:

- a) risks in transit from Contractor's warehouse to Contractor's port of shipment / airport;
- b) risks in transit by ship/air between Contractor's port of shipment /airport and Indian port of entry from warehouse to warehouse basis..
- c) risks in transit by rail/road during inland transportation upto the Project site.
- d) risks during storage and erection at the Project site till the plant is fully commissioned and tested and till final taking over by the Purchaser.

17.2 The Contractor at its own cost shall also arrange, secure and maintain the following insurance covers including in respect of his sub- contractors.

☐☐ Workmen Compensation Insurance.

☐☐ Comprehensive Automobile Insurance for the vehicles used by the Contractor(s) on or off Site Operations, irrespective of the ownership of these vehicles.

☐☐ Comprehensive General Liability Insurance.

☐☐ Cover against damage to Contractor's construction equipment (purchased/hired which are brought temporarily to the Project site).

Proof of above insurance shall be submitted to the Purchaser.

17.3 The above are only illustrative list of insurance covers normally required and it will be responsibility of each party, on whom a Contract is awarded by Purchaser to maintain all necessary insurance covers, to the extent both in time and amount, to take care of all its liabilities, either direct or indirect in pursuance of its Contract with Purchaser.

17.4 For equipment, goods that are being taken out of site for repair/refurbishment during the currency of the contract, the insurance shall be to the Contractor's account.

17.5 The Contractor shall furnish despatch particulars of each consignment including its value immediately to the Insurance Company. If for any delay in intimating of despatch particulars to the Insurance Company on the part of the Contractor, the claims for damages are rejected, the Contractor shall be fully responsible for replacement of the damaged equipment.

17.6 The risks that are to be covered under the insurance shall include, but not be limited to, the loss or damage in transit, storage, erection and commissioning, theft, pilferage, riot, weather conditions, accidents of all kinds, fire, war, risk etc. The scope of such insurance shall cover the entire value of the works from time to time.

17.7 In respect of equipment damaged, lost in transit or during erection and commissioning, the Contractor shall replace them expeditiously without waiting for receipt of claim from the Insurance Company.

17.8 In case of consignment received at the project site in outwardly sound condition of package but found shortage/damaged on being opened the liability for free replacement shall be accepted by the Contractor.

17.9 It is a responsibility of the Contractor to lodge a claim on the insurance company and pursue the matter with the insurance company for settlement.

17.10 Further, in case the Contractor does not replace/rectify the damaged goods within the stipulated time and there is a delay in Contractor meeting its overall Contract schedule then the provision of Liquidated damage as per clause no19.0 of this GCC shall be applicable.

17.11 If the Project gets delayed due to the Contractor, the extra premium on insurance in the delayed period shall be borne by the Contractor.

LIABILITY FOR ACCIDENTS AND DAMAGES

18.1 Under the Contract, the Contractor shall be responsible for loss or damage to the plant and equipment until taking over of unit by Purchaser.

18.2 The Contractor shall be responsible for the care of all plant, goods and materials to be supplied under the Contract until "Taking-Over" of the section of the power plant to which they relate. In the event of termination of the Contract in accordance with these conditions, whether by the Purchaser or by the Contractor, possession of such plant, goods and materials shall pass to the Purchaser.

Making Good Loss or Damage to the Works

a) In the event that any part of any plant, goods or materials to be supplied under the Contract shall suffer loss or damage whilst the Contractor has responsibility thereof, the same shall be made good by the Contractor at its own expense.

b) In the event that any part of any such plant, goods or materials shall suffer loss or damage whilst the Contractor has responsibility for the care thereof as provided in sub-clause 18.2 which is caused by any of the Purchaser risk the Contractor shall, unless instructed by the Purchaser to do otherwise, make good the same and the requirement for such making good shall be deemed to have arisen pursuant to an instruction.

c) For the purposes of this sub-clause 18.3, the Purchaser's risks are the act, neglect or omission or breach of Contract or of statutory duty of the Purchaser, its agents or servants or other persons for whom the Purchaser is responsible (but excluding the Purchaser's operations and maintenance personnel whilst performing duties in accordance with the Contractor's directions.

Injury to Persons and Property other than the Works

Except as otherwise stated in this sub-clause 18.4, the Contractor shall be liable for and shall indemnify, protect, defend and hold harmless the Purchaser and their respective directors, officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements incurred in connection therewith (including court costs and attorney's fees incurred by the Purchaser if and only if the Contractor fails to address such claim by its own attorney having received notice of the claim) in respect of personnel injury to or death of third parties and in respect of loss of or damage to any third party property to the extent that the same arises out of or in consequence of any negligent, reckless or tortious act or omission (including strict or absolute liability) or any breach of statutory activities under this Contract except to the extent that such injury, death or damage is caused or contributed to by the Purchaser.

Accidents or Injury to Workmen

The Contractor shall indemnify, protect, defend and hold harmless the Purchaser, the Purchaser Affiliates and their respective directors, officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements incurred in connection therewith (including court costs and attorney's fees incurred by the Purchaser if and only if the Contractor fails to address such claim by its own attorney having received notice of the claim) arising in connection with the death of or injury to any person employed by the Contractor or its sub-Contractors in connection with the works.

Claims in Respect of Damage to Person or Property

In the event of any claim being made against any person (the 'indemnified party') arising out of the matters referred to in respect of which it appears that the Contractor may be liable to indemnify the indemnified party under this clause 18.0, the Contractor shall be promptly notified thereof and may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise in relation thereto, subject to compliance with the terms of the claims procedures under any applicable insurance policy. The indemnified party shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation, agree to any settlement of such negotiations or litigation or make any admission which might be prejudicial thereto. The indemnified party shall at the request of the Contractor afford all available assistance for any such purpose and shall be repaid all costs reasonably incurred in so doing.

LIQUIDATED DAMAGES/INCENTIVES

18.3 LIQUIDATED DAMAGES (LD) FOR DELAY IN COMPLETION

19.1.1 Liquidated Damages (LD) for Delay in Unit(s) completion: The Contractor guarantees that it shall attain completion of facilities within the time of completion specified in the contract. If the Contractor fails to successfully hand over the unit/s within stipulated period indicated vide in SCC, the Contractor shall pay to the Purchaser Liquidated damages for the delayed period as indicated in SCC.

19.1.2 The total amount of liquidated damages for delay shall be subject to a maximum of ten percent (10%) of the Total Contract price. It is agreed that liquidated damages are a genuine pre- estimate of damages and not by way of penalty.

19.1.3 However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the facilities or from any other obligations and liabilities of the contractor under the Contract.

19.1.4 For the purpose of this clause, the delivery of all mandatory spares, special tools and tackles, etc. meant for all the offered plant equipment, and associated auxiliaries at the Purchaser's project site stores, shall be completed before the successful completion of the Trial operation of the above unit.

19.1.5 Notwithstanding the above, in the event the Contractor fails to complete trial operations including provisional taking over of the power plant unit/s as per the schedule; and delays the Purchaser 'Provisional Taking Over' of the plant/ unit(s) up to a period for which the liquidated damage for time delay becomes more than ten percent (10%) of the Contract Price, then the Purchaser at his sole discretion, shall be entitled to treat the failure as an act of default by the contractor and same shall entitle the Purchaser to terminate the Contract and proceed in accordance with clause 23.2 below.

19.1.6 The liquidated damages for delay will be recovered at the sole discretion of the Purchaser from the Contract Price or from other securities available with the Purchaser or jointly.

19.2 LIQUIDATED DAMAGE FOR SHORTFALL IN GUARANTEED PERFORMANCE PARAMETERS

19.2.1 Liquidated Damages for not meeting performance guarantees during the Performance tests shall be assessed and recovered by the Purchaser from the Contractor as detailed in the Special Conditions of Contract and/or of Technical Specifications. Such liquidated damages which are in addition to any other damages provided for in these General Conditions of Contract shall be assessed at the rates and subject to the other conditions set forth in the Technical Specifications and Special Conditions of Contract.

19.2.2 If the total liquidated damage for short fall in guaranteed performance is less than or upto ten percent (10%) of Contract Price, the plant/system will be accepted after levying the liquidated damage as specified. If the total liquidated damage for shortfall in performance guarantee exceeds ten percent (10%) of the Contract Price, the Contractor shall carry out necessary modification to make the system comply with guaranteed requirement. However, if the Contractor is not able to demonstrate guarantee even after the modification within 90 days of notification by the Purchaser, the Purchaser may at his discretion reject the plant and recover the payment already made for the entire Contract or accept the equipment after levying the liquidated damage at actuals.

19.3 Contractor's aggregate liability to pay liquidated damages for delay in completion of project and for shortfall in guaranteed performance parameters cumulatively shall not exceed ten percent 20% of the Contract Price, which is a genuine pre-estimate of damages and not by way of penalty.

CONTRACTOR'S DEFAULT

20.1 If the Contractor

- a) neglects to execute the works with due diligence and expedition
- b) refuses or neglects to comply with any reasonable orders given to him, in writing by the Engineer in connection with the works
- c) contravenes the provisions of the Contract,

the Purchaser may give notice in writing to the Contractor to make good the failure, neglect or contravention complained of. Should the Contractor fail to comply with the notice within thirty (30) days from the date of service thereof, then and in such case the Purchaser shall be at liberty to employ other workmen directly or through another contractor and forthwith execute such part of the works as the Contractor may have neglected to do or if the Purchaser shall think fit, it shall be lawful for him, without prejudice to any other right he may have under the Contract, to take the works wholly or in part out of the Contractor's hands and re-contract with any other person or persons to complete the works or any part thereof and in that event the Purchaser shall have free use of all Contractor's equipment that may have been at the time on the site in connection with the works without being responsible to the Contractor for fair wear and tear thereof and 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 otherwise be 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 the said part of the works or of completing the works as the case may be. If the cost of completing the works or executing a part thereof as aforesaid shall exceed the balance due to the Contractor, the Contractor shall pay such excess. Such payment of excess amount shall be independent of the liquidated damages for delay which the Contractor shall have to pay if the completion of works is delayed.

20.1.1 In addition, such action by the Purchaser as aforesaid shall not relieve the Contractor of his liability to pay liquidated damages for delay in completion of works as defined in clause 19.0 of this Section and shall not entitle the Contractor to reduce the value of the Contract Performance Guarantee nor the time thereof. The Contract Performance Guarantee shall be valid for the full value and for the full period of the Contract guarantee period

20.1.2 The Purchaser may also terminate the Contract due to Contractor's default as described in Clause 20.1. In the event of termination of Contract, the provisions of GCC Sub-clause 23.2 shall apply.

Contractor's Default Leading To Termination of Contract

If the Contractor

- α) becomes bankrupt or insolvent, has a receiving order issued against it compounds with its creditors, or if the Contractor is a corporation a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) a receiver is appointed over any part of its undertaking or assets or if the Contractor takes or suffers any other analogous action in consequence of debt.
- β) assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC clause 11.0 (assignment)
- χ) in the judgement of the Purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

- δ) has abandoned or repudiated the Contract
- ε) has without valid reason failed to commence work on the Facilities promptly or has suspended (other than pursuant to GCC sub Clause 23.1.2, the progress of Contract performance for more than twenty eight (28) days after receiving a written instruction from the Purchaser to proceed.
- φ) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause.
- γ) refuses or is unable to provide sufficient materials services or labour to execute and complete the Facilities in the manner specified in the program furnished and at rate of progress that give reasonable assurance to the Purchaser that the Contractor can attain completion of the Facilities by the time for completion .

then the Purchaser may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice then the Purchaser may terminate the Contract forthwith by giving a notice of termination to the Contractor.

FORCE MAJEURE

The Parties shall ensure due compliance with the terms of this Contract, except where a Party (“the Affected Party”) is unable to perform its obligations/liabilities under this Contract on account of Force Majeure. Force Majeure shall mean any event or circumstance, or combination of events or circumstances that materially and adversely prevents or delays any Party in the performance of its obligations in accordance with this Contract, but only if and to the extent that such events and circumstances are not within the Affected Party’s reasonable control (directly or indirectly), and the effects of which the Affected Party could not have prevented through prudent utility practices including through the expenditure of reasonable sums of money. With reference to this Article, if a causing event is within the reasonable control of the Affected Party, the direct consequences shall also be deemed to be within such Party’s reasonable Control.

Force Majeure Events

Force Majeure Events shall include the following events:-

- d) any natural disasters or other acts of God, including but not limited to any storm, flood, lightning, earthquake, cyclone, epidemic or other natural disasters;
- e) fire or explosion, not being due to (i) inherent defects in the power plant/ generating unit,
• the failure to operate the power plant/ generating unit in accordance with prudent utility practices, or
(iii) circumstances within reasonable control of the Affected Party;
- f) acts of war (declared or undeclared), invasion, sabotage, terrorism, acts of belligerents, civil disturbance, revolution, rebellion or insurrection; or a GoI legal authority’s unreasonable delay, denial or refusal to grant/renew, or unreasonable revocation of any license, approval or authorization required under the applicable Law, provided that such adverse action or inaction did not result from the Affected Party’s non-

compliance with any applicable law (other than in case of a Change in Law) or any conditions imposed under grant or maintenance of any such applicable permit, license, approval or authorization;

g) any Change in Law except tax laws after the date hereof adversely affecting the performance by either Party of its obligations hereunder.

18.4 Notwithstanding the foregoing, none of the following shall constitute an event of Force Majeure hereunder:

a) the failure of any Sub-contractor, supplier or vendor to perform its obligations to Contractor, which failure is not itself caused by Force Majeure with respect to such Sub-contractor, supplier or vendor;

b) financial difficulty suffered by Contractor or any supplier, Sub-contractor, supplier or vendor in performing its obligations;

c) failure of any equipment, system or component related to the Project, which failure is not itself caused by Force Majeure; or

d) strikes or labour disturbances at site or at the Contractor's / Sub-Contractor's works;

e) unforeseen sub-surface conditions as per Clause no 3.0 of ITB.

18.5 The following events and circumstances shall be considered to be Force Majeure for purposes of the Contract Agreement to the extent that such events or circumstances or their consequences satisfy the requirements of Section 21.1 above:

a) embargo or other act after the date hereof of a national government agency (other than the GoI) with applicable jurisdiction or authority that prevents performance by supplier (off-shore supplies) of its obligation under any supply agreement (Off-Shore) to export off-shore supplies to India or performance by Contractor of its obligations pursuant to the Contract Agreement to deliver to Indian ports and introduce into India off-shore supplies received from the supplier (off-shore supplies);

b) unreasonable delay, denial or refusal by a national government agency (other than the GoI) with applicable jurisdiction or authority over the subject matter thereof to grant or renew, or unreasonable revocation by such a national government agency of, any required permit, license, approval or authorization after the date hereof required for the supplier (off-shore supplies) to export supplies of the same or similar nature for use in India, provided that such adverse governmental action or inaction did not result from the non-compliance by Contractor or the supplier (off-shore supplies) with any applicable law or any conditions to the granting or maintenance of any such permit, license, approval or authorization that was in effect on the Effective Date; and

c) discovery of historically significant arte facts at the Site if and to the extent that compliance by Contractor with the Ancient Monuments and Archaeological Sites and Remains Act of India with respect to such artefacts materially and adversely affects Contractor's performance of its obligations under the Contract Agreement.

Notification Obligations

d) Before the Affected Party can avail of any relaxation or suspension of its obligations under this Contract, the Affected Party shall notify the other Party ("the Aggrieved Party") of the Force Majeure Event, with confirmation in writing, as soon as possible after occurrence of Force Majeure. Such notice

shall specify (i) the details of the Force Majeure Event, (ii) provide an estimate of the duration of the Force Majeure Event, and

- describe the actions being undertaken to eliminate or overcome the effect and consequence of the Force Majeure Event.

e) The Affected Party shall thereafter furnish weekly progress reports to overcome the adverse effects of such event/circumstance, and as soon as reasonably practicable, submit to the other Party information supporting the claim for relief under this Article.

f) The Affected Party shall notify the Aggrieved Party of cessation of the Force Majeure Events and of its effect on the Affected Party's performance of its obligations, as soon as practicable.

Consequences of Force Majeure

g) Upon the occurrence of Force Majeure, the obligations of the Affected Party shall be suspended during the continuation of the Force Majeure to the extent and for the time that the suspension justified by the impact of the Force Majeure Event on the Affected Party. Except as otherwise provided herein, Parties shall be excused from any breach or deemed breach of this Contract due to its failure or delay in performing its obligations hereunder due to a Force Majeure Event for such period as the Force Majeure Event continues.

h) Any time period specified for the performance of any obligations hereunder by the Affected Party shall be extended by a period equal to the duration of the Force Majeure

Events, provided that the Affected Party shall not be entitled to any extension to the extent that such delay or failure to perform would have occurred irrespective of the Force Majeure event or circumstance.

i) The Affected Party shall be entitled to the suspension so long as it uses reasonable efforts to remedy and mitigate its inability to perform and to alleviate its effects on the performance of its obligations under this Contract, and the Force Majeure Event is not caused by the Affected Party's negligent or intentional acts, errors or omissions, or by its negligent failure to comply with any applicable Law, or by any material breach or default under this Contract.

j) In no event shall a Force Majeure Event excuse the obligations of such Party that are required to be performed prior to the occurrence of a Force Majeure Event.

k) The Affected Party's obligations to make payments of money due and payable under this Agreement shall not be suspended or excused due to the occurrence of a Force Majeure Event affecting the Affected Party's facilities.

Duty to Mitigate

The Parties shall make reasonable efforts in good faith to eliminate, mitigate or overcome the effect and consequence of any Force Majeure Event. The Parties shall cooperate to develop and implement a plan of remedial and reasonable alternative measures to remove the Force Majeure Event. Upon the cessation of the Force Majeure Event, the Affected Party shall make its best efforts to resume normal performance of its obligations under this Agreement as soon as possible.

22.0 DELAYS BY PURCHASER OR HIS AUTHORISED AGENTS

In case the Contractor's performance is delayed due to any act or omission on the part of

the Purchaser or his authorised agents, then the Contractor shall be given due extension of time for the completion of the works to the extent such omission on the part of the Purchaser has caused delay in the Contractor's performance of his work, for which no compensation will be payable for idle labour, shift and machineries or for any other financial loss.

TERMINATION

23.1 Termination with cause

In the events of Contractor's Default as detailed in Clause no 20.0, the Purchaser may, without prejudice to any other rights or remedies it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fifteen (15) days of its receipt of such notice then the Purchaser may terminate the Contract forthwith by giving a notice of termination ("Notice of Termination with cause") to the Contractor.

In such circumstances, Contractor shall forthwith refund the payments made by Purchaser to contractor under this contract alongwith interest @10% P.A. Further, contractor shall be responsible for all the damages, costs and expenses suffered/incurred by Purchaser on account of the said termination. The contractor shall also take back all his equipments and materials after making the full payments and reimbursements to the purchaser as calculated as per this clause.

- a) Upon receipt of the Notice of Termination with cause, the Contractor shall, either immediately or upon such date as is specified in the Notice of Termination with cause:
- a) cease all further work except for such work as the Purchaser may specify in the Notice of Termination for the sole purpose of protecting that part of the facilities already executed, or any work required to leave the Site in a clean and safe condition.
- b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to paragraph (d) below
- c) deliver to the Purchaser the parts of the facilities executed by the Contractor up to the date of termination.
- d) assign to the Purchaser all right, title and benefit of the Contractor to the Works and to the plant and equipment as at the date of termination and as may be required by the Purchaser in any sub contracts concluded between the Contractor and its sub Contractors.
- e) Deliver to the Purchaser all drawings, specifications and other documents prepared by the Contractor or its sub Contractors as at the date of termination in connection with the Facilities.
- b) Upon issuance of the Notice of Termination by the Purchaser to the Contractor, the Purchaser may enter upon the site, expel the Contractor and complete the facilities itself or by employing any third party. The Purchaser may to the exclusion of any right of the Contractor over the same take over and use with the payment of a fair rental rate to the Contractor with all the maintenance costs to the account of the Purchaser and with an indemnification by the Purchaser for all liability including damage or injury to persons arising out of the Purchaser's use of such equipment. Any Contractor's equipment owned by the Contractor and on the site in connection with the Facilities for such reasonable period as the Purchaser

considers expedient for the supply and installation of the facilities.

c) Upon completion of the Facilities or at such earlier date as the Purchaser thinks appropriate the Purchaser shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contract at or near the site and shall return such Contractor's equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

d) Subject to GCC, sub-clause 23.1.5, the Contractor shall be entitled to be paid the Contract price attributable to the facilities executed as at the date of termination, the value of any unused or partially used plant and equipment on the site pursuant to paragraph (a) of GCC Sub-clause 23.1.1. Any sums due to the Purchaser from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

e) If the Purchaser completes the Facilities, the cost of completing the facilities by the Purchaser shall be determined. If the sum that the Contractor is entitled to be paid plus the reasonable costs incurred by the Purchaser in completing the Facilities, exceeds the Contract price, the Contractor shall be liable for such excess; if such excess is greater than the sums due to the Contractor the Contractor shall pay the balance to the Purchaser and if such excess is less than the sums due to the Contractor, the Purchaser shall pay the balance to the Contractor.

The Purchaser and the Contractor shall agree, in writing on the computation described above and the manner in which any sums shall be paid.

Mitigation

In the event of any termination of the Contract pursuant to Clause 23.1 each Party shall exercise all reasonable efforts to mitigate or limit any damage, cost or expense caused to the other Party.

Continuing Payment Obligation

Upon Termination of the Contract Agreement, the Contractor shall not be relieved of any of its liabilities or obligations hereunder, including, without limitation, its liability for payment or reimbursement of the amounts in default, as well as for the payment or reimbursement of any amounts becoming due and payable after Contractor's Default in accordance with this clause 23.4, and the Purchaser shall have the right to recover from the Contractor any such amounts.

Surviving Obligations

Termination of the Contract

f) shall not relieve the Contractor of its obligations with respect to the confidentiality of information as set forth in the Bid Document,

g) shall not relieve the Contractor of any obligation hereunder that is expressly stated to survive termination,

h) shall not limit or affect any provision of the Contract expressly limiting the liability of the Contractor or releasing the Contractor from any liability, and

i) shall not relieve the Contractor of any obligations or liabilities arising under the Contract on or before the date of such termination. Without limiting the foregoing, the obligations of the Contractor

under the Contract shall expressly survive the expiration of the term or earlier termination of the Contract.

Contractor's Other Responsibilities Upon Termination

Upon termination of the Contract, the Contractor shall, at Contractor's expense if the Contract is terminated following a Contractor's Default or without cause, within thirty (30) days of such termination:

- a) prepare an inventory of all equipment and work, materials, Supplies of equipment and other items in use or in storage at Project Site or elsewhere and intended for use in connection with the Project or the performance of the Services;
- b) transfer to Purchaser all Key Sub-contracts as may be designated by Purchaser, provided that Purchaser shall assume and become responsible for all obligations arising under such Key Sub-contracts after the date of such transfer; and
- c) where not notified by Purchaser as required for achieving Final Completion, remove from the Project Site all such work, materials, supplies, Contractor's Equipment and other equipment, which are not a permanent part of the Project and which may be reasonably removed, excluding always any part of the Supplies and equipment for which payment has been made to Contractor.

24.0 NO WAIVER OF RIGHTS

Neither the inspection by the Purchaser or the Engineer or any of their officials, employees, or agents nor any order by the Purchaser or the Engineer for payment of money or any payment for or acceptance of, the whole or any part of the works by the Purchaser or the Engineer, nor any extension of time, nor any possession taken by the Engineer shall operate as a waiver of any provision of the Contract.

The Contract shall be construed in accordance with and governed by the laws of India. This Contract is subject to jurisdiction of District Court at Saharanpur, Uttar pradesh

SETTLEMENT OF DISPUTES/ARBITRATION

Any dispute(s) or differences arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the parties.

All unsettled dispute(s) or difference(s) arising out of or in connection with the Contract shall be decided by the Engineer whose decision shall be final and binding on the parties.

if any dispute of difference of any kind whatsoever is to arise between the Purchaser and the Contractor on the following matters viz.,

14.39.1 The meaning of the specification, designs, drawings and instructions.

14.39.2 The quality of workmanship or materials used.

14.39.3 any other question, claim, right, matter, thing whatsoever in anyway arising out of or relating to the contract, estimates, orders or those conditions or failure to execute the same whether arising during the progress of the work or after the completion, termination or abandonment thereof, the dispute shall be referred to the concerned "Engineer".

The “Engineer” shall within a period of 90 days from the date of being requested by the contractor to do so, give written notice of his decision to the Contractor.

Subject to other form of settlement hereafter provided, the “Engineer” decision in respect of every dispute or difference so referred shall be final and binding upon the contractor. The said decision shall forthwith be given effect to and contractor shall proceed with the execution of the work with all due diligence.

If amicable settlement can not be arrived at, the dispute shall be settled by the arbitration of a Sole Arbitrators, to be appointed by MD of Star Paper Mills The arbitration shall be in accordance with the Arbitration & Reconciliation Act 1996 or any subsequent amendment there of. The venue of arbitration shall be at Saharanpur and the language of arbitration shall be English. The arbitration shall be subject to jurisdiction of District Court at Saharanpur only.

26.0 UNIT OF MEASUREMENT

The SI system of measurement shall be used exclusively in the Contract.

27.0 RELEASE OF INFORMATION

The Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium photographs or other reproduction of the works under this Contract, or description of the site, dimensions, quantity, quality or other information, concerning the works unless prior written permission has been obtained from the Purchaser.

TYPE OF CONTRACT

26.7 Notwithstanding anything stated elsewhere in the Bid Document Contract shall be awarded on EPC basis for Design, Engineering, Manufacturing, supply, erection, testing & commissioning covering the entire scope of plant and equipment as mentioned in the technical documents (Volume – II, III and IV) for this 15 MW Cogeneration plant.

The contracts to be entered between the purchaser and the contractor shall be as under:

26.8 In the case of successful Domestic Bidder, the contracts shall be awarded as follows:

(i) First Contract: For FOR Site Ex-works supply of all equipments and materials including mandatory spares of Indian Origin and CIF FOR Site supply of all offshore equipments and materials including Mandatory Spares to be supplied from abroad. The above shall include Port handling and Custom clearance incase of imported items, Inland transportation and Insurance for delivery at site.

(ii) Second Contract : For providing all services including of civil work i.e., unloading, storage, handling at site, Erection, Testing and Commissioning including performance testing in respect of all the equipments supplied under the ‘First Contract’ and any other services including Insurance cover for all services.

Both contracts will contain a cross fall breach clause specifying that breach of one contract will constitute breach of the other.

26.9 In the case of successful Foreign Bidder, the award shall be made as follows:

(i) First Contract: For FOR Site CIF/FOB supply of all offshore equipments and materials including mandatory spares to be supplied from abroad and Ex-work FOR Site supply of all equipment and materials of Indian origin. The above shall include port handling and clearance for the imported goods, inland transportation and insurance for delivery at site.

(ii) Second Contract : For providing all services and including of Civil Works i.e, unloading, storage, handling at site, Erection, Testing and Commissioning including performance testing in respect of all the equipments supplied under the 'First Contract' and any other services including Insurance cover for all the service.

Both contracts will contain a cross fall breach clause specifying that breach of one contract will constitute breach of the other.

26.10 The award of the two Contracts shall not in any way dilute the responsibility of the Contractor for the successful completion of the project as per Specifications on single source responsibility basis and a breach in one Contract shall automatically be construed as a breach of the other contract which will confer a right on the purchaser to terminate the other contract also at the risk and the cost of the Contractor.

26.11 The award of two Contracts shall cover both the supply & services and in any way not dilute the responsibility of the Contractor for the successful commissioning of the plant/equipment as per the Bid Document.

26.12 Transfer of Title, in respect of equipment and materials supplied by the Contractor to SPML pursuant to the terms of the Contract shall pass on to SPML with negotiation of shipping documents at foreign port of embarkation of that equipment and materials for the Foreign Contractor (i.e. port) and on negotiation of the despatch documents for an Indian Contractor. (Ex-work at Indian factory for local goods).

28.6.1 This Transfer of Title shall not be construed to mean the acceptance and the consequent "Taking over" of equipment and material. The Contractor shall continue to be responsible for the quality and performance of such equipment and material and for their compliance with the specifications until "Taking Over" and the fulfillment of warranty provisions of this Contract.

28.6.2 This Transfer of Title shall not relieve the Contractor from the responsibility for all risks of loss or damage to the equipment and material as specified under the clause entitled "Insurance" of this Section.

28.7 It is clearly understood that the total consideration for the Contract Price has been broken into various components only for the convenience of progressive payment.

COMPLETION OF CONTRACT

Unless otherwise terminated under the provisions of any other relevant clause, this Contract shall be deemed to have been completed at the expiration of the warranty period as provided for under the clause entitled "Warranty" in this Section.

26.13 As soon as the Contractor is of the opinion that the conditions set out in sub-clause 29.2 have been satisfied, it shall so notify the Purchaser and the Purchaser shall within 7 days of receipt of such notice, if given properly in accordance with the requirements of the Contract

and not prematurely, issue a certificate to that effect certifying the date upon which such conditions were satisfied. Final completion shall be deemed to have occurred upon the date named in such certificate.

26.14 The conditions for “Final Completion” are as follows:

- (i) Taking-Over of the Unit / plant as per Clause no 4. 0 of SCC shall have occurred;
- (ii) A performance certificate to be issued after the completion of warranty period, shall have been issued.
- (iii) The Contractor shall have provided all outstanding final drawings and documentation as per Contract.

26.15 The equipment shall be complete in every respect with first fill of lubricants including flushing lubricants, all mountings, fixtures and standard accessories which are required for installation and satisfactory performance of the equipment as per established engineering practice even though not specifically detailed in the specifications. The Contractor shall not be eligible for any extra payment in respect of supply of such items. Similar components/parts of all similar equipment supplied shall be interchangeable with one another.

ENFORCEMENT OF TERMS

26.16 The failure of either party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either party of any of its rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have here under.

Engineer’s Decision

- (i) In respect of all matters which are left to the decision of the Engineer including the granting or withholding of the certificates, the Engineer shall, if required to do so by the Contractor, give in writing a decision thereon.
- (ii) If in the opinion of the Contractor, a decision made by the Engineer is not in accordance with the meaning and intent of the Contract, the Contractor may file with the Engineer within fifteen (15) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time engineer's decision shall become final and binding.

INDEMNIFICATION

26.17 The Contractor shall fully indemnify, save harmless and defend Purchaser, Purchaser’s directors, shareholders, officers, agents and employees (the “Purchaser Indemnified Parties”) from and against damages arising from claims by third parties for

- (i) any damage to or destruction of property, or death or bodily injury to any person, to the extent resulting from Contractor’s or any Sub-Contractor’s negligence, intentional acts or strict liability in the performance of the Works, and
- (ii) damages resulting from material breach of the Contract Agreement by Contractor, including failure to comply with Applicable Laws, failure in paying taxes and duties for which Contractor is responsible hereunder or non-payment of amounts due in connection with work, services, materials, equipment or supplies furnished to Contractor or any other amounts due and payable by Contractor.

26.18 The Contractor shall fully indemnify, save harmless and defend the Purchaser Indemnified Parties from and against any damages arising out of or resulting from

(i) the presence, handling, removal, disposal or release of any Hazardous Materials¹ which are used, generated or brought onto the Site or in the performance of the Works by Contractor or any Sub-Contractor, or

(ii) the discharge or release of any Hazardous Materials at the Site or Works area caused by the negligence or willful misconduct of Contractor or any Sub-Contractor.

26.19 The Contractor shall fully indemnify and save harmless and defend Purchaser Indemnified Parties from and against any and all damages that Purchaser Indemnified Parties may suffer, incur or pay in connection with infringement (or assertions of infringement) of any patent rights, copyrights or other intellectual property, proprietary confidentiality rights with respect of materials, designs, supplies, techniques, processes and information designed or used by Contractor or any Sub-Contractor in performing or forming a part of the Works hereunder or under any Sub-Contract other than any such materials, designs, techniques, processes and information provided by Purchaser Indemnified Parties.

26.20 Promptly after receipt by Purchaser of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnities provided for in Section 31.1 may apply, Purchaser shall notify the Contractor in writing of such fact, provided that the failure of Purchaser to give any such notice promptly shall not excuse the Contractor from its indemnification obligations hereunder except and to the extent any such failure actually prejudices the Contractor in the defense of such matters. The Contractor shall assume on behalf of the Purchaser and conduct with due diligence and in good faith the defense thereof with counsel reasonably satisfactory to the Purchaser; provided that the Purchaser shall have the right to be represented therein by advisory counsel of its own selection and at expense of the contractor; and provided, further that if the defendants in any such action include both the Contractor and the Purchaser and Purchaser shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Contractor, the Purchaser shall have the right to select separate counsel to participate in the defense of such action on its own behalf at the Contractor's expense. The Purchaser shall at the request of the Contractor, provide all reasonably available assistance in the defense or settlement of any such claim, action, proceeding or investigation and all reasonable costs and expenses incurred by the Purchaser in connection with the defense or settlement of any such claim, action, proceeding or investigation shall be reimbursed by the Contractor promptly upon demand therefore.

26.21 If any claim, action, proceeding or investigation arises as to which the indemnities provided for in Section 31.1 may apply, and the Contractor fails diligently and expeditiously to assume and conduct the defense of such claim, action proceeding or investigation then the

Purchaser may at the Contractor's expense contest settle such claim.

26.22 Subject to Section 31.5 above, in the event of any claim being made or action brought against the Purchaser which is covered by the indemnity set out, the contractor shall be promptly notify thereof and may at its own expense conduct all negotiations for the settlement of the same, and any litigation that may arise therefrom. The Purchaser shall not, unless and until the contractor shall have failed to take over the conduct of the negotiations or litigation, agree to any settlement of such negotiations or litigation or make any admission which might be prejudicial thereto. The conduct by the contractor of such negotiations or litigation shall be conditional upon the contractor having first given to the Purchaser such reasonable security

as shall from time to time be required by the Purchaser to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses, and costs for which the Purchaser may become liable. The Purchaser shall, at the request of the contractor, afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.

26.23 The Contractor shall indemnify and hold harmless Purchaser from any and all Liens² for labor, materials and services furnished by Contractor or any Sub-Contractors, or other Contractor suppliers or vendors, and shall commence all appropriate actions to discharge such Liens, by bond or otherwise, within fifteen (15) days after the earlier to occur of the date upon which Contractor obtains knowledge of the same or the date of a request of Purchaser that such Liens be discharged, and Contractor shall continue diligently to take all necessary actions so that such Lien is discharged, or security satisfactory to Purchaser is provided to Purchaser, no later than thirty (30) days after such date, and so that in any event any such Lien is discharged within one hundred eighty (180) days after such date. If Contractor fails to discharge such Liens within such period, Purchaser at its option may, but shall not be required to, discharge such Liens, and upon such an election by Purchaser Contractor shall pay to Purchaser on demand (or Purchaser may set-off the same against amounts otherwise owing to Contractor under the Contract Agreement) all costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such discharge.

26.24 Without limiting the foregoing, Contractor shall give notice to Purchaser promptly, but in no event later than five (5) days after Contractor's representative or another responsible officer of Contractor becomes aware thereof, of the filing of any Lien claim with respect to the Works or the Project. A copy of any notice of intention to file a Lien shall be delivered immediately to Purchaser by Contractor.

26.25 The provisions of this Section 31.0 shall survive termination of the Contract Agreement, earlier expiry and Final Completion, provided that neither Party shall have any indemnity obligations pursuant to this Section 31.0 for any claim arising out of or resulting from events or circumstances occurring after the termination of the Contract Agreement. No new claims shall be made under or in relation to this Agreement following the expiry of 5 years after (i) Final Completion, or (ii) the earlier expiry or termination of the Contract Agreement.

26.26 The indemnification obligations of Contractor under this Section 31.0 shall not be applicable to the extent that Purchaser Indemnified Parties are contributory to the cause of

such claims for damages, and the indemnification obligations of Purchaser under this Agreement shall not be applicable to the extent that Contractor Indemnified Parties are contributory to the cause of such claims for Damages.

The format of the Indemnity Bond is enclosed at Annexure-I of GCC.

Infringement Preventing Performance

If, in consequence of any infringement of letters patent, registered design, copyright, trade mark or trade name, the Contractor is prevented from executing the works, or the Purchaser is prevented from using the Facility, the Contractor shall at its own expense and at its option :

- procure for Purchaser the right to continue using the relevant plant or part;
- replace the relevant plant or part with a non-infringing plant or part; or modify the relevant

plant or part so it becomes non-infringing.

26.27 Royalties and fees for patents covering materials, articles, apparatus, devices, equipments or processes used in the works shall be deemed to have been included in the Contract price. The Contractor shall satisfy all demands that may be made at any time for such royalties or fees and he alone shall be liable for any damage or claim for patent infringements and shall keep the Purchaser indemnified in that regard. The Contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted for alleged infringement of any patents involved in the works, and in the case of an award of damages, the Contractor shall pay for such award. In the event of any suit or other proceedings instituted against the Purchaser, the same shall be defended at the cost and expense of the Contractor who shall also satisfy/comply with any decree, order or award made against the Purchaser. But it shall be understood that no such machine, plant, work, material or thing has been used by the Purchaser for any purpose or any manner other than that for which they have been furnished and installed by the Contractor and specified under these specifications. Final payment to the Contractor by the Purchaser will not be made while any such suit or claim remains unsettled. In the event any apparatus of equipment, or any part thereof furnished by the Contractor, is in such suit or proceedings held to constitute infringement, and its use is enjoined, the Contractor shall, at his option, and at this own expense, either procure for the Purchaser, the right to continue the use of the said apparatus, equipment or part thereof, replace it with non- infringing apparatus of equipment or modify it, so it becomes non-infringing.

26.28 The Contractor shall indemnify the Purchaser against every liability which the Purchaser may incur to any other person or corporate organization whatsoever and against all claims, demands, proceedings, damages, costs and expenses made against or incurred by the Purchaser by reason of any breach by the Contractor of the Contract (including failure to complete the relevant section of the works by the relevant Guaranteed completion date).

The Contractor hereby acknowledges that any breach by him of the Contract may result in the Purchaser committing breaches of and becoming liable in damages under the Contract and other Contracts made by him in connection with the works and may occasion further loss or expense to the Purchaser in connection with the works and all such damages, loss and expense are hereby agreed to be within the contemplation of the parties as being probable results of any such breach by the Contractor.

If by any reason of any breach by the Contractor of this Contract, the Purchaser is prevented from recovering any sum under the Contract in respect of the works, then without prejudice to any other remedy of the Purchaser for such breach, the Purchaser shall deduct such sum from monies otherwise due to the Contractor under this Contract.

26.29 In no event shall the Purchaser be liable to the Contractor by way of indemnity or by reason of any breach of the Contract or of statutory duty or by reason of tort (including negligence) or otherwise for any loss of profit, loss of use, loss of Contract or for any financial or economic loss or for any indirect or consequential damages whatsoever that may be suffered by the Contractor under or relating to this Contract.

SUSPENSION OF WORK

26.30 The Purchaser reserves the right to suspend and reinstate execution of the whole or any part of the work without invalidating the provision of the Contract. Orders for suspension or reinstatement of the work will be issued by the Purchaser to the Contractor in writing. The time for completion of the work will be extended for a period equal to duration of the suspension.

26.31 The Purchaser may at any time instruct the Contractor to suspend the delivery of any plant or the carrying out of any other work under the Contract, whereupon the Contractor shall:

- (i) suspend the works to the extent specified by the Purchaser and store, preserve, protect and otherwise secure the works and/or plant affected to the extent reasonably practicable in the circumstances;
- (ii) place no further Contracts or purchase orders for materials, services, work or facilities with respect to those parts of the works suspended except to the extent expressly requested by the Purchaser;
- (iii) use all reasonable endeavours to suspend on the most favourable terms available to the Contractor all purchase orders, sub-contracts and rental agreements to the extent affected by such suspension and otherwise to minimise the additional costs associated with such suspension.

26.32 At any time after suspension under sub-clause 32.2, the Purchaser may instruct the Contractor to proceed with the delivery of plant and/or work the subject of suspension under sub-clause

32.2. Upon receipt of such instructions, the Contractor shall examine the plant and work affected by the suspension and shall remedy any deterioration or defect in or loss of such plant or work that may have occurred during the suspension.

26.33 The Purchaser's instructions under sub-clauses 32.2 & 32.3 shall be treated as instructions to carry out a variation except to the extent that the suspension instructed by the Purchaser is necessary by reason of default on the part of the Contractor.

CHANGES IN WORK

Certain identified technical parameters and the quantity of certain identified items as stipulated in the Technical Specification may undergo changes at the time of Contract award/during detailed engineering/execution of the work. The Contract price will be adjusted for such changes to mutual satisfaction.

Purchaser - Initiated Changes in Work

Purchaser shall be and is hereby authorized at any time by written order designated as a Change Order to make any Change in work including ordering additions within the general scope of the work, or deletions or revisions in the work, including, but not limited to, changes:

- (i) In the specification (including drawings and designs)
- (ii) In the method or manner of performance of the work
- (iii) In directing acceleration of work

Said additions, deletions or revisions shall not, in any way, invalidate this Contract and Contractor agrees to accept payment for such changes and changes to other Project Variables according to the procedures outlined herein and as if the altered work has been part of the original Contract. Contractor shall promptly proceed with all such orders upon the receipt thereof.

Contractor - Requested Changes Orders

The Contractor shall not seek any Change Orders for its own convenience which (a) adversely affect the completion of the Project in accordance with this Contract, (b) to Purchaser's detriment (i) change any of the Project Variables or (ii) modify the Guaranteed Values, (c) adversely affect Contractor's ability to meet the Guaranteed Values during the performance tests, or (d) materially deviate from the plans, drawings and specifications included in this Contract. Also, no

Change Order shall be issued, no increase of this Contract Amount and no adjustment to the specified time schedule, this Contract Master Schedule or the Guaranteed Values shall be made in connection with any correction of errors, omissions, Defects and Deficiencies or improper or Defective work on the part of the Contractor or any Sub- contractors in the performance of the work. Purchaser may in its sole discretion approve or reject any Contractor initiated Change Order.

Compliance with Contract

Changes in the work shall be performed within the applicable provisions of this Contract. Upon receipt of a Change Order, Contractor shall proceed expeditiously unless otherwise provided for in the Change Order. Contractor shall perform no extra or changed work unless specifically authorised by Purchaser.

Initiation

Either party may request a Change Order. For Purchaser initiated changes, Purchaser may require a proposal from Contractor to complete the changed work prior to authorizing any change to this Contract. Within fifteen (15) days of receipt of such request for a proposal, Contractor shall provide a written proposal to Purchaser setting forth any anticipated adjustments to the Project Variables and this Contract Master Schedule that such Change order may require. If a Change Order is requested by Contractor, the request must include a description of the change in work, its effect on the Project Variables, the effect on this Contract Master Schedule any other information necessary for Purchaser to evaluate making the change. Costs associated with the requested change shall be broken down in detail in a manner acceptable to Purchaser and submitted in the request contemplated. Costs incurred by Contractor with respect to Purchaser initiated Change Orders (except for Change Orders resulting from Events of Force Majeure or Purchaser Caused Delays) in preparing the proposal shall be borne solely by Purchaser, provided, however, that Contractor shall have previously notified Purchaser in writing of the estimated costs of preparing such request and Purchaser shall have authorized Contractor to proceed with such preparations, and provided that Purchaser reimbursement obligation shall not exceed Contractor's estimate without Purchaser's prior written approval of such additional expense. All costs in preparing Contractor requested Change Orders and Change Orders resulting from Events of Force Majeure or Purchaser Caused Delay shall be borne exclusively by Contractor.

Notification of Change Order

Contractor shall immediately advise the Purchaser in writing of any request by the Purchaser that it believes constitutes as Change Order and will not perform such work until properly authorized by Purchaser.

Valuation and Payment of Change Orders

Changes Orders that impact the Contract Price will result in lumpsum increase or decrease to the Contract Price. If work is deleted Purchaser and Contractor will agree on a lumpsum deduction from this Contract Price.

Conditions for Change Orders

Contractor shall only be entitled to an increase in this Contract Price or an extension of

the Guaranteed Performance Dates with respect to any work performed if such work is included in one of the following:-

- (iv) A formal written amendment; or
- (v) A change order

Deletion from Work

The Purchaser may delete from the work any item by Change Order. Any deletion of an item shall not invalidate any Contract provision or other requirement and Contractor will complete the work not so deleted under this Contract. Such deletions from the work may include Purchaser procurement of plant, materials and equipment which Contractor is otherwise obligated to purchase thereunder. If work is deleted Purchaser and Contractor will agree on a lumpsum deduction from this Contract Price.

Change in Applicable Laws

In the event any change in applicable Laws, applicable Permits or the technical requirements of this Contract entitles Contractor to a Change Order pursuant to this Section Contractor's obligation to perform the work in compliance with such Applicable Laws, Applicable Permits or the technical requirements of this Contract shall be subject to Purchaser's execution of such Change Order.

WARRANTY

26.34 The Contractor hereby warrants to the Purchaser that the plant and each section have been and will be carried out and that it shall otherwise perform its obligations under this Contract:

- (i) using the skill, care and diligence to be expected of appropriately qualified and experienced professional engineers and constructors with experience in works of type, nature and complexity similar to the works;
- (ii) in accordance with good modern engineering principles and practices of a standard equivalent to those adopted for power projects using similar technology internationally;
- (iii) using only materials and goods for incorporation into the plant which are new and unused and so that such materials and goods and the standards of all workmanship, manufacture and fabrication shall conform in all respects to the standards and codes of practice referred to in the Technical Specification and existing as at the date of the Contract;
- (iv) so that each item of plant shall, upon Final Completion, be in accordance with all relevant requirements of the Contract unless otherwise agreed in writing by the Purchaser, or altered in accordance with a Variation instructed by the Purchaser;
- (v) so that the plant shall be capable of being operated in accordance with the requirements of the Contract and Good Industry Practice consistent with the Contractor's operating and maintenance manuals; and so that the plant shall comply with the provisions of any applicable Indian law or Directive in effect on the date of "Taking-Over" of the last section.

26.35 The Contractor shall warrant the equipment to be new and in accordance with the Contract documents and free from defects in design, material and workmanship for a period of twelve (12) calendar months commencing immediately upon provisional taking over of Unit. The Contractor's liability shall be limited to the replacement of any defective parts in the equipment/system during the warranty period. Such replaced defective parts shall be returned to the Contractor at site after replacement parts installed satisfactorily by the contractor.

26.36 In the event of an emergency, where in the judgement of the Purchaser, delay would cause serious loss or damage, repairs or adjustments may be made by the Purchaser or a third party chosen by the Purchaser with notice to the Contractor and the cost of such work shall be paid by the Contractor. In the event such action is taken by the Purchaser, the Contractor will be notified promptly and he shall assist wherever possible in making necessary corrections. This shall not relieve the Contractor's liability under the terms and conditions of the Contract.

26.37 If it becomes necessary for the Contractor to replace or renew any defective portions of the plant under this clause, the provisions of this clause shall apply to the portions of the plant so replaced or renewed until the expiration of twelve (12) months from the date of such replacement or renewal. If any defects are not remedied within a reasonable time, the Engineer may proceed to do the work at the Contractor's risk and cost, but without prejudice to any other rights which the Purchaser may have against the Contractor in respect of such defects.

26.38 The repaired or new parts shall be furnished and erected free of cost by the Contractor. If any repair is carried out on his behalf at the site, the Contractor shall bear the cost for such repair.

26.39 The cost of any special or general overhaul rendered necessary during the guarantee period due to defects in the plant or defective work carried out by the Contractor, the same shall be borne by the Contractor.

26.40 The acceptance of the equipment by the Engineer shall in no way relieve the Contractor of his obligation under this clause.

26.41 In case of those defective parts which are not repairable at site but are essential for the commercial operation of the equipment, the Contractor and the Engineer shall mutually agree to a programme of replacement or renewal which will minimise interruption/dislocation to the maximum extent, in the operation of the plant and equipment.

26.42 At the end of the Warranty Period, the Contractor's liability ceases except for latent defects. In respect of goods supplied by Sub-contractors to the Contractor where a longer warrantee (more than 12 months) is provided by such Sub-Contractors, the Purchaser shall be entitled to benefit of such longer guarantees.

26.43 It should be clearly understood that all expenses in respect of replacement/repair during the warranty period including but not limited to transportation cost, all taxes, duties and levies as applicable, etc. till such spare parts are installed in the plant after necessary repairs/replacement and the plant is put back into operation, shall also be to the Contractor's account.

26.44 The Contractor shall submit a Bank Guarantee of Ten Percent (10%) of the Contract price as security for successful performance of the Power plant, in conformity with the various guarantees and warrantees contained in the Contract as per proforma enclosed at Annexure-D (GCC). The Bank Guarantee shall be valid till the warranty period is over.

26.45 The release of this Bank Guarantee shall in no way relieve the Contractor of his obligation.

26.46 The Contractor shall be responsible for making good by replacement, repair and/or modification (at its sole option) with all possible speed at its expense any defect in any part of the plant which may appear during the warranty period in relation thereto and which arises from any failure to comply with the spec provisions.

The carrying out of such replacement, repair and/or modification shall include, where necessary, the correct re-performance of any engineering services or construction services found not to have been performed in accordance with the provisions of the Technical Specification, with Good Industry Practice and with applicable directives, if any.

26.47 If any, such defect is detected, the Purchaser shall promptly inform the Contractor thereof stating in writing the nature of the defect. The Contractor should respond to attend to such defects at site within a period of two days.

26.48 The unexpired warranty period for the plant or any part shall be extended by a period equal to the period during which the plant or relevant part cannot be used by reason of any defect. The spec provisions shall apply to all repairs, replacements or modifications carried out by the Contractor to remedy defects as if the component replaced, repaired or modified had been taken over on the date they were completed. In no event, however, shall the warranty period for any section or part thereof the power plant extend, in the case of the electrical generators and all other plant manufactured by the Contractor beyond four years from the date of "Taking-Over" of the relevant section of the power plant and in respect of any other equipment and plant, beyond three years from the date thereof..

26.49 If the Contractor fails to commence the work necessary and proceed diligently to remedy such defect or any damage to the Facility caused by such defect within a reasonable time (which shall in no event be considered to be not more than two (2) days), the Purchaser may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Purchaser in connection therewith shall be paid to the Purchaser by the Contractor or may be deducted by the Purchaser from any monies due to the Contractor or claimed under the Performance security

26.50 The Contractor may with the consent of the Purchaser, shall remove from the site at his own cost any part of the plant which is defective, if the nature of the defect is such that repairs cannot be expeditiously carried out on the site.

26.51 If any replacement, repair or modification if of such a character as may affect the subsequent performance of the Facility or any part thereof in accordance with the Guaranteed Performance Parameters, the Purchaser may within 30 days after such replacement, repair or modification give to the Contractor notice requiring that such further tests to be conducted in respect of the relevant part as may be necessary to demonstrate the adequacy of the replacement, repair or modification. If the Purchaser's notice is given more than 15 days after the replacement, repair or modification the Purchaser shall reimburse to the Contractor any additional travel costs and out-of-pocket expenses of the Contractor's personnel who are required to attend at the Site for the purposes of such tests.

26.52 During the warranty period, the Contractor shall, if required by the Purchaser in writing, assist the Purchaser in investigating the cause of any problem or abnormality in the plant which the Purchaser reasonably believes is due to a defect in the works.

REPLACEMENT OF DEFECTIVE PARTS AND MATERIALS

26.53 If during the progress of the works, the Purchaser shall decide and inform in writing to the Contractor, that the Contractor has manufactured any plant or part of the plant unsound and imperfect or has furnished any plant inferior to the quality specified, the Contractor on receiving details of such defects or deficiencies shall at his own expense within seven (7) days of his receiving the notice, or otherwise, within

such time as may be reasonably necessary for making it good proceed to alter, reconstruct or remove such work and furnish fresh equipment up to the standards of the specifications. In case the Contractor fails to do so, the Engineer may on giving the Contractor seven (7) days notice in writing of his intentions to do so, proceed to remove the portion of the works so complained of and at the cost of the Contractor perform all such work or furnish all such equipment provided that noting in this clause shall be deemed to deprive the Purchaser or affect any rights under the Contract which the Purchaser may otherwise have in respect of such defects and deficiencies.

26.54 The Contractor's full and extreme liability under this clause shall be satisfied by the payment to the Purchaser of the extra cost, of such replacement procured including erection as provided for in the Contract. Such extra cost being the ascertained difference between the price paid by the Purchaser for such replacements and the Contract Price portion for such defective plants and repayments of any sum paid by the Purchaser to the Contractor in respect of such defective plant. Should the Purchaser so replace the defective plant the Contractor's extreme liability under this clause shall be limited to repayment of all sums paid by the Purchaser.

26.55 In case of any damages (unrepairable at site) of any equipment; or in case of any defective materials or equipment or spare parts not complying to specified quality parameters; or in case of any short supply of materials or additional supply of materials are required to enable the plant equipment comply with its functional requirements, the total replacement cost including all charges such as freight, duties, taxes, clearances etc shall be borne by the Contractor.

36.0 DEFENCE OF SUITS

If any action in Court is brought against the Purchaser or Engineer or an officer or agent of the Purchaser, for the failure or neglect on the part of the Contractor to perform any acts, matters, covenants or things under the Contract, or for damage or injury caused by the alleged omission or negligence on the part of the Contractor, his agents, representatives or his sub- contractors, or in connection with any claim based on lawful demands of sub-contractors, workmen, suppliers or employees, the Contractor shall in all such cases indemnify and keep the Purchaser, and the Engineer and/or his representative harmless from all losses, damages, expenses or decrees arising of such action.

37.0 LIMITATIONS OF LIABILITIES

37.1 Except in respect of latent defects liability, the long term availability of spares and other specific liabilities identified in the Contract, the Contractor shall be released from his liabilities under the Contract at the end of the warranty period. The Contractor shall be released from his liability in respect of latent defects on expiry of five (5) years after successful completion of warrantee period of the respective unit/plant.

7.2 The total liability of the Contractor under the clause shall be limited to an amount equivalent to the total Contract price. However, the Contractor shall not be liable for remote and consequential damages such as loss of profit, cost of capital, cost of replacement power or increased cost of operation.f

38.0 FOREIGN FIELD PERSONNEL

The Contractor shall submit to the Engineer, a complete list of foreign field personnel (including necessary data as may be required by Engineer), required for the performance of the works in India. He shall also intimate the programme of their visit to India and departure from India during the pendency of the Contract. The Engineer will have the right to review the list of such personnel and ask for increase in the strength or reschedule the visits of such personnel if in the opinion of the

Engineer, the list of personnel mentioned is not sufficient for effective performance of the Contract.

39.0 HEADING AND MARGINAL NOTES

The headings and marginal notes to any clause of the Contract shall not affect or control the construction of such clause.

TAXES, PERMITS AND LICENCES

40.1 The Contractor shall be liable and pay all non-Indian and indian taxes, duties, levies, lawfully assessed against the Purchaser or the Contractor in pursuance of the Contract. In addition the Contractor shall be responsible for payment of all Indian duties, levies and taxes lawfully assessed against the Contractor for his personal income and property only. This clause shall be read in conjunction with relevant clause of Instruction to Bidder.

Import and Export Permits and Licences

The Contractor shall be responsible for obtaining all import permits and licences required for the import of any plant. The Contractor shall be responsible, within the Contract price, for obtaining all permits and licences required for import of any plant equipment, Contractor's equipment or other goods or materials that the Contractor desires to import. The Indian Contractor shall take all licence including import licence, permit etc in its own name and own expenses. The Purchaser shall issue the certificate as necessary to facilitate the issue of Import licence.

In case of Foreign Contractor only if applicable laws or regulations require any application or act to be made by or in the name of the SPML, the SPML shall take all necessary steps to comply with such laws and regulations. However, all the expenditures and necessary follow-up shall be made by the foreign contractor and its Indian representative.

PROGRESS REPORTS AND PHOTOGRAPHS

40.1 During the various stages of the works in the pursuance of the Contract, the Contractor shall at his own cost submit periodic progress reports as may be reasonably required by the Engineer with such materials as charts, networks, photographs, test certificates, etc. Such progress reports shall be in the form and size as may be required by the Engineer and shall be submitted in adequate number of copies to be notified in the Contract documents.

40.2 The quantitative progress report of the works by reference to the project schedule in sufficient detail should permit the Purchaser to assess performance, plan witness dates and evaluate forecasts, including reports on key sub-Contracts (as applicable). Within 10 days of the submission of each such report and at such other times as the Purchaser may reasonably request, the Contractor and the Purchaser shall meet to discuss progress. Each monthly progress report shall be submitted not later than the 3rd day of the month following that in respect of which it is made, but may report on actual progress only upto the 25th day of the month and anticipated progress thereafter. Monthly progress reports shall include the following sections:

- a) executive summary
- b) description of the work and services performed and goods and materials delivered during the proceeding month

- c) photographs of work done in the manufacturer's shop which shall be taken when and where indicated by the Purchaser. Photographs shall be approximately 100 x 125 mm in size including a margin of 5 mm side for fixing. Adequate numbers of photographs shall be submitted indicating various stages of manufacture. Each photograph shall contain the date, the name of the Contractor and the title of the view taken
- d) updated project schedule showing progress to the end of the month (as percentages complete of the Contractor's activities broken down into significant elements of the works), and the current schedule of activities and the targets for the next month
- e) identification of areas with foreseeable problems relating to scope, claims for adjustments to the Contract price, or changes in the project schedule
- f) updated scope change log
- g) such other information and supporting documentation as the Purchaser may require to satisfy himself about the timely manufacture and delivery of equipment and timely construction and erection work to suit the commissioning schedule.

The Purchaser shall advise the Contractor about the number of copies of progress reports and, where relevant, photographs he has to submit each month together with the names and addresses of persons to whom they are to be sent.

SPARES

40.3 The Contractor shall agree that the spare parts recommended by him as specified in Volumes – II, III and IV - Technical Specifications and quoted in the Bid Proposal shall be supplied by him at the same terms and conditions as otherwise applicable to this Contract.

42.1.1 The warranty of spares that are not used within 24 months from their respective dates of the delivery at site covered above shall be however subject to condition that all such spares being stored/maintained/preserved in accordance with Contractor's standard recommended practice, if any, and the same has been furnished by Contractor to the Purchaser.

PAYMENT

40.4 The payment to the Contractor for the performance of the works under the Contract shall be made by the Purchaser as per the guidelines and conditions specified herein. The final payment shall be made on completion of all the works and on fulfillment by the Contractor of all his liabilities under the Contract.

Due Dates for Payment

The initial amount of advance payment shall be payable after fulfillment of all the conditions laid down in "Terms of Payment" clause 43.6 and on receipt of the Contractor's invoice along with all necessary supporting documents for such payment. Purchaser shall make progressive payment as and when the payment is due as per the terms set forth in "Terms of Payment". The Progressive payments shall be released through financial institution or directly by the Purchaser within thirty (30) days from the date of receipt of Contractor's bill/invoice/debit note and on verification by the Purchaser, provided the documents submitted are complete in all respects.

Payment Schedule/Cash Flow Schedule

The Contractor shall prepare and submit to the Purchaser/Engineer for approval, a break-up of the Contract Price. The Contract Price break-up and Cash Flow Schedule shall be inter linked with the agreed detailed Contract Master Bar Chart/Contract Master Schedule network of the Contractor setting forth his starting and completion dates for the various key phases of works prepared as per condition in relevant Clause of this GCC. Any payment under the Contract shall be made only after the Contractor's price break-up is approved by the Purchaser/ Engineer. The materials should be supplied sequentially as per agreed Contract schedule. The aggregate sum of the Contractor's price break-up shall be equal to the lumpsum Contract Price. A price break-up over valuing those items of supply which will be supplied first shall not be accepted. The format for the payment/cash flow schedule is as given in Annexure-E (GCC).

Application for Payments

43.4.1 The Contractor shall submit application for the payment in the agreed proforma by the Purchaser.

43.4.2 Each such application shall state the amount claimed and shall set forth in details, the order of the Payment Schedule particulars of the work executed at site and of the equipment **shipped**/brought on to the site pursuant to the Contract up to the date mentioned in the application and for the period covered since the last proceeding certificate, if any.

43.4.3 Every interim payment certificate shall certify the Contract value of the works executed upon the date mentioned in the application for the payment certificate, provided that no sum shall be included in any interim payment certificate in respect of the works that according to the decision of the Purchaser/Engineer, does not comply with the Contract, or has been performed, at the date of certificate prematurely.

43.4.4 The Purchaser may withhold the whole or part of any payment for the work claimed by the Contractor, which in the opinion of the Purchaser is necessary to protect himself from loss on account of -

- α) Defective work not remedied or guarantees not met;
- β) Failure by the Contractor to make due payments for materials or labour employed by him.
- χ) Claims filed against the Contractor;
- δ) Loss to another Contractor directly employed by the Purchaser;
- ε) Insufficient progress;
- φ) Damage or loss of property of equipment of the Purchaser
- γ) Non-return of material/equipment supplied by the Purchaser when the same is due; and
- η) If legal cases instituted by the local government for default of the Contractor.

Mode of Payment

Unless otherwise modified as per the Terms of Financing, the Purchaser will make payment in Indian Rupees/US Dollar through financial institution with whom the finance is tied up for payments due under the Contract as per the cash flow schedule for each quarter and valid for the

quarter. It will be the responsibility of the Contractor to utilise the available fund to the fullest extent. In case, the available fund is not fully utilized, the commitment charges to the financial institution shall be to the Contractor's account.

Terms of Payment

The terms of payment for the price components of the Equipment Supply, Spares and Special tools & tackles; and erection and commissioning **excluding civil works** are detailed herein, which may be further discussed mutually and settled accordingly.

43.4.5 The payments linked with the despatch of materials shall only be as per clause 2.1 of SCC.

43.4.6 In case of Erection and services, progressive payments shall only be made as per clause 2.2 of SCC.

44.0 ADVANCE PAYMENT BANK GUARANTEE

The Advance BG shall be in the form of an unconditional bank guarantee as per the proforma provided. The advance payment BG shall be reduced prorata every six (6) months after First Running Account Bill/Stage Payment under the Contract based on the value of the respective equipment/plant/facilities received. The cumulative amount of reduction at any point of time shall not exceed seventy five percent (75%) of the advance corresponding to cumulative value of the respective equipment/plant/facilities supplied and received as per certificate issued by the Chief Engineer. The balance of 25% shall be released on Completion of plant. It should be clearly understood that reduction in the value of BG for advance shall not in any way dilute the Contractor's responsibility and liabilities under the Contract including in respect of the equipment/plant/ Facilities for which the reduction in the value of BG is allowed.

TAXES AND DUTIES (COMPONENT OF THE TOTAL CONTRACT PRICE)

100% applicable taxes & duties only on direct transactions between the contractor and purchaser as included and shown in the Bid price shall be reimbursed by the Purchaser at actuals to the contractor upon receipt of equipments at site on production of satisfactorily documentary evidence by the contractor.

Note:

- a) In case of inspection of equipment/materials at Contractor's works, prior to despatch, the intimation regarding readiness of materials for inspection should be sent two weeks in advance.
- b) Further break-up of erection as well as construction activities of the above identified equipment for progressive payments shall be mutually discussed and agreed prior to Contract finalisation.

BANKRUPTCY

If the Contractor shall become bankrupt or have a receiving order made against him or compound with his creditors, or being a Corporation commence to be wound up, not being voluntary winding up for the purpose only of amalgamation/reconstruction, or carry on its business under a receiver for the benefit of its creditors or any of them, the Purchaser will be at liberty -

- (i) to terminate the Contract forthwith by notice in writing to the liquidator or receiver or to any person in whom the Contract may become vested and to act in the manner provided in Clause entitled "Contractor's Default" above as though the last mentioned notice has been the notice referred to in such clause and the equipment and materials have been taken out of the Contractor's hands;
- (ii) to give such liquidator, receiver, or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract, up to an amount to be determined by the Purchaser.

47.0 STATUTORY VARIATION IN TAXES & DUTIES

If any rates of tax are increased, or decreased, or a new tax is introduced, or an existing tax is abolished, or any change in interpretation or application of any Indian taxes and duties occurs during the contractual period which was or will be assessed on the contractor in connection with performance of the contract, the variation in taxes and duties at actual against documentary evidence shall be reimbursed/adjusted/recovered by the Purchaser as the case may be. However, the statutory variations in taxes and duties would be restricted to direct transactions between the Purchaser and the Contractor. These adjustments shall not be applicable on procurement of raw materials, intermediate components etc. by the Contractor and on the bought out items dispatched directly from sub vendor's works to site. Further, no adjustment of the contract price and /or payment/reimbursement of taxes, duties or levies shall be made on account of variation in or withdrawal of deemed export benefits. Also no statutory variation shall be payable against foreign supplies.

CONTRACTOR'S DOCUMENTS, DRAWINGS & INSTRUCTION MANUALS

48.1 The general requirements for drawings, documents, data and instruction manuals to be submitted by the successful Contractor are given below. In addition to this, the Contractor shall also adhere to the submission instruction of above items as highlighted in the Technical Specification.

48.2 The Contractor shall be responsible for developing detail drawings to illustrate that his equipment and materials meet the requirements set out in the Technical Specification.

48.3 A Contract submission schedule listing all drawings, calculations and other submissions to be made by the Contractor throughout the duration of the Contract is to be provided to the Purchaser by the Contractor. These submissions shall include but not be limited to the documents set out in the Technical Specification. The schedule shall indicate the date by which each submission is to be made. The schedule shall also indicate the latest date by which the Contractor shall furnish all design calculations. The schedule shall be

amended or extended by the Contractor only with the Purchaser's express permission following discussion between both parties.

48.4 The Contract Submission schedule shall be proposed by the Contractor and agreed with the Purchaser before the Award of Contract.

48.5 Within one (1) week of signing of Contract Agreement, the Contractor shall provide the Purchaser with the following drawings and data:

- a) Six (6) copies of technical particulars to make them conform to accepted proposals.
- b) Outline drawings of all equipment together with weights and sufficient overall dimensions. Within this submission the Contractor shall provide, as a minimum requirement, the following:
 - Plant loads accurate to $\pm 10\%$ including distribution of load, temporary loading, fault condition loads, test or overload conditions.
 - Dimensions and positions of plant loads.
 - Principal dimensions, of major plant and operating and erection clearances required around plant.
 - List of cast in items to be provided by the Contractor.
 - Details of special requirements, if any, i.e, differential settlement allowance, vibration considerations, erection and lifting requirements etc.

48.6 Within thirty (30) days of the date of signing of Contract Agreement, the Contractor shall submit for approval of the Purchaser the following drawings and technical data:

- a) Dimensional layout drawings of the plant and equipment to be supplied under the Contract.
- b) Dimensional drawings showing individual equipment being supplied under the Contract, method and sizes and connections to the Purchaser's other equipment giving also the limited of variations of the dimensions.
- c) All efficiency and characteristic curves required under the specification.
- d) Necessary structural and other calculations and data required for demonstrating fully that all parts of the equipment to be furnished shall conform to the provisions and intent of the Contract.
- e) All civil Drawings for all equipments.

Other submissions shall be made within the period stated in the approved Contract submission schedule.

48.7 The Contractor shall submit six (6) prints of each drawing to the Purchaser for approval. Comments on the submissions will be generated by the Purchaser and forwarded to the Contractor. When the prints of drawings have been marked "Resubmission required" the

Contractor shall make necessary alterations and resubmit amended copies for further review and, if appropriate, approval as per details stipulated above.

Upon receipt of the prints which have been marked "Approved" or "Approved subject to Comments", the Contractor shall furnish within seven (7) days six (6) additional prints of each of the drawings amended as required.

Before commencement of manufacture of any part or equipment coming under the purview of any Indian statutory regulations, manufacturing drawings of such parts or equipment with materials specifications and such documents as required shall be approved by an authority recognized under the statutory regulations.

Any manufacturing work done in connection with the equipment prior to the approval of drawings shall be at the Contractor's risk. The Contractor shall make changes in the design which are necessary to make the equipment conform to the provisions and intents of the Contract, with approval of the Purchaser, without additional cost to the Purchaser. Approval of Contractor's drawings shall not relieve the Contractor of any part of Contractor's obligation to meet all the requirements of the Contract or of the responsibility for the correctness of the Contractor's drawings.

48.8 Details to be furnished to the Purchaser by Contractor thirty (30) days prior to the schedule receipt of materials at site shall include, but not be restricted to the following:-

- a) Assembly, sub-assembly and sectional drawings of every equipment.
- b) Complete cabling drawings giving details of cables required, terminal details, layout of trenches etc.
- c) Detail wiring diagrams and arrangement of conduits for wiring various control and instruments up to the required points.
- d) Shop drawing of all parts of equipment requiring repair or replacement/ adjustment during service.
- e) A complete list of special erection tools and tackles required for complete assembly.

48.9 Complete spare parts handbooks with details and diagrams.

48.10 The Contractor shall furnish six (6) sets of assembly and erection instructions within a reasonable time after signing of the Contract but at least three (3) months before start of erection including the following:-

- a) Descriptive literature and drawings to illustrate the working principles and method of assembly and dismantling.
- b) Erection manual for proper erection and assembly of all equipment and necessary instructions for checking and ensuring proper assembly of the plant.
- c) Instruction sheets for proper balancing, alignment, adjustment, checking and calibrations, and other activities as may be necessary.

d) Instructions for commissioning the equipment.

48.11 Final As-built drawings and operation manuals.

48.12 All drawings and technical data are to be furnished in English language only.

Before completion of the work, the Contractor shall furnish four (4) complete sets of prints and two (2) reproducible transparency of all detailed drawings of the equipment actually supplied. In addition four (4) sets of comprehensive manuals for use in the operation and maintenance including spare parts manuals of each plant shall be supplied at least six (6) months before the plant or equipment is scheduled to be commissioned.

TRAINING OF PURCHASER'S PERSONNEL

49.1 The Contractor shall undertake to train at site installation, operation and maintenance of the offered plant equipment, free of cost, engineering personnel selected by the Purchaser. The period and the nature of training for the individual personnel shall be agreed upon mutually between the Contractor and the Purchaser, in order to enable these personnel to individually take the responsibility of operating and maintaining the power station in a manner acceptable to the Purchaser:

The training shall include all the related areas like design familiarization, training on product design features and product design softwares of major equipment and systems, engineering, manufacturing, erection, commissioning, training on operating features of equipment, quality assurance and testing, exposure to various kinds of operation and maintenance problems.

The Contractor shall furnish complete details of the package-wise training at site in all disciplines (viz.) electrical, mechanical, control & instrumentation etc for Purchaser's approval. The engineering personnel shall be given special training at site through class room lectures of the equipment manufactured and/or by the Associators. The engineering personnel should become familiar with the equipment being supplied by the Contractor. The Contractor shall also make necessary arrangements for the trainees to get trained on simulators. The exact format of training course shall be mutually discussed and finally subject to approval of the Purchaser.

It shall be clearly understood that it shall be the duty of the Contractor to train the Purchaser's engineers and operators such as to make them fully fit and proficient to operate and maintain the entire equipment completely satisfactorily during its running. The training shall also cover minor repair works and maintenance works like lubrication, overhauling adjustments, testing and replacement procedures to be adopted for the equipment offered.

49.2 The following groups of engineering personnel shall receive training:-

a) Plant Management

- b) Operation Management
- c) Mechanical Maintenance Personnel
- d) Electrical Maintenance Personnel
- e) Shift Engineers
- f) C&I Maintenance Engineers
- g) Other groups as may be indicated by the Purchaser

49.3 Total period for above training shall not be less than sixty (60) man-months at manufacturers' works & facilities. To and Fro rail/road/air fare of trainees between the place of posting of the trainees and place of training shall be borne by the Purchaser. Local transport during the training period, lodging and boarding expenses and other incidental expenses shall be borne by the Contractor during the total period of training. The number of trainees in each group shall be decided in mutual consultation with the Contractor.

49.4 The Contractor shall provide the training equipment and material during training period. All the software, films, video cassettes, transparencies, notes etc. used in the training programme shall remain the property of the Purchaser at the end of the Contract.

49.5 The Contractor shall draw up a preliminary training programme both at site and manufacturer's works to be included in the offer. The detailed training programme shall be submitted after award of the Contract and shall be subject to the Purchaser's approval.

The Contractor's supervisory and erection personnel deputed to site works shall continuously and intensively instruct and train the Purchaser's personnel engaged in erection or operation and maintenance of the plant at site during erection, testing and commissioning as well as during operation and maintenance. This shall cover all aspects of site work on the plant including special instructions and care required in attending to various jobs, whether or not they are incorporated in the relevant manuals.

49.6 In the event of the Purchaser failing to avail of the training facilities in full or part, the Purchaser will be entitled to adjust the Contract price by an equivalent amount.

49.7 The methodology of imparting training shall be supplemented with computer based training including supply of software packages, etc. shall be indicated in the Bid Proposal and shall be subject to the Purchaser's approval.

49.8 While quoting the price, the training cost built-up in the project cost shall be indicated separately specifying the number of man-months, boarding, lodging, etc., cost of in-house personnel to be engaged in training etc. Exact details, extent of training and the training schedule shall be finalized based on the Bidder's proposal within two (2) months from placement of award.

ANNEXURE – A (GCC)

PROFORMA OF BANK GUARANTEE FOR CONTRACT PERFORMANCE

WHEREAS Star Paper Mills Limited (SPML), a Company incorporated under the Companies Act, 1956, having its Registered Office at Duncan House 2nd floor, 31, Netaji Subhash road Kolkata, 700001 (India) (Hereinafter referred to as the “Purchaser” which expression shall unless repugnant to the context include its successors, executors, administrators, legal representatives and assigns) is setting-up a 15 MW Cogeneration Plant on EPC basis, at Saharanpur, Uttar Pradesh (India) (Hereinafter referred to as ‘Power Plant’).

WHEREAS the Purchaser has placed a Letter of Intent No..... dated

..... as also a Contract dated (hereinafter called the CONTRACT) on M/s.....registered in India under the Companies Act, 1956, having its Registered Office (hereinafter referred to as “the Contractor”) for setting up of the said power project on the terms, specifications and conditions specified therein, which has been unequivocally accepted by the Contractor.

AND WHEREAS in conformity with the provisions of Clause of the said CONTRACT, the Contractor has agreed to furnish an unconditional Bank Guarantee for an amount equivalent to 10% of the Contract Price i.e. Rs. /US\$...
..... for the timely completion and faithful execution of the Contract and successful completion of the performance guarantee tests of plant equipment to demonstrate the guaranteed values.

AND WHEREAS the Purchaser has agreed to accept a Bank Guarantee for Rs/US\$ from Bank having its Head Office at..... Through its Branch (hereinafter referred to as “the Bank” which expression shall unless repugnant to the context include its successors and permitted assigns).

In consideration of the above, the BANK hereby unconditionally and irrevocably guarantees and undertakes as a direct responsibility, to pay to the Purchaser merely on demand any amount not exceeding Rs. without any demure, reservation, recourse, contest or protest and/or without reference to the Contractor.

Any such demand made by the Purchaser on Bank shall be conclusive and binding notwithstanding any difference between Purchaser and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The bank undertakes not to revoke this guarantee herein contained and shall continue to be enforceable till the Purchaser discharge this guarantee.

The decision of the Purchaser as to whether the Contractor has fulfilled its obligation or not under the Contract shall be final and binding on the Bank and the Contractor.

The Purchaser shall have the fullest liberty without affecting in any way the liability of the bank

under this guarantee from time to time to extend the time for performance of the Contract by the Contractor. The Purchaser shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner, and either to enforce or to forebear to enforce any covenants contained or implied in the Contract between the Purchaser and the Contractor or any other course of remedy or security available to the Purchaser. The Bank shall not be released of its obligations under these presents by any exercise by the Purchaser of its liberty with reference to matters aforesaid or any of them or by reason of any other act or forbearance to other acts of omission or commission on the part of the Purchaser of any other indulgence shown by the Purchaser or by any other matter or thing whatsoever which under the law would, but for this provision, have the effect of relieving the Bank.

The bank also agrees that the Purchaser at its opinion shall be entitled to enforce this guarantee against the Bank as a principle debtor, in the first instance without proceeding against the Contractor, and notwithstanding any security or other guarantee that the Purchaser may have in relation to the Contractor's liabilities.

This Guarantee shall be valid for a period of months from
i.e. up to..... The Guarantee herein contained shall be a continuing Guarantee and shall not be affected by any change in the constitution of the Bank or of the Contractor. This Guarantee shall be in addition to and shall not affect or be affected by any other security now or hereafter held by the Purchaser and Purchaser at its discretion and without any further consent from the BANK and without affecting the liability of "the Bank" and other indulgence to or make other arrangements with the Contractor and nothing done or omitted to be done by the Purchaser in pursuance of any authority contained in this guarantee shall affect or discharge the liability of the BANK.

NOTWITHSTANDING anything herein before above contained, the liability of the BANK under this Guarantee shall be restricted to Rs. /US\$.....and the Guarantee shall remain inforce upto and including-

This Bank Guarantee shall be revalidated automatically till the Contract Performance Guarantee is extended.

Bank undertakes not to revoke this guarantee during its currency except with the pervious express consent of the purchaser in writing and agrees that any change in the constitution of the Bank or the contractor shall not discharge our liability hereunder.

IN WITNESS WHEREOF we have set our hands and seal hereunder at this day of At

ANNEXURE – B (GCC)

PROFORMA OF BANK GUARANTEE FOR ADVANCE PAYMENT

WHEREAS Star Paper Mills Limited (SPML), a Company incorporated under the Companies Act, 1956, having its Registered Office at Duncan House 2nd floor, 31, Netaji Subhash road Kolkata, 700001 (India) (Hereinafter referred to as the “Purchaser” which expression shall unless repugnant to the context include its successors, executors, administrators, legal representatives and assigns) is setting-up a 15 MW Cogeneration Plant on EPC basis, at Saharanpur, Uttar Pradesh (India) (Hereinafter referred to as ‘Power Plant’).

AND WHEREAS the Purchaser has placed a Letter of Intent No.....dated as also a Contract dated.....(hereinafter called the CONTRACT) on M/s.....registered in India under The Companies Act, 1956, having its Registered Office (hereinafter referred to as “the Contractor”) for setting up of the said power project on the terms, specifications and conditions specified therein, which has been unequivocally accepted by the Contractor.

AND WHEREAS in conformity with the provisions of Clauseof the said Contract, the Contractor has agreed to furnish a Bank Guarantee for an amount equivalent to the First Initial Advance Payment of Rs..... and the Second Initial Advance Payment (‘Advance Payment’) of Rs..... extended by the Purchaser to the Contractor for the faithful execution of the Contract in terms of Section 8.0

AND WHEREAS the Purchaser has agreed to accept a Bank Guarantee for Rs/US\$..... from Bank having its Head Office at..... through its Branch (hereinafter referred to as “the Bank” which expression shall unless repugnant to the context include its successors and assigns).

In consideration of the above, the Bank hereby unconditionally and irrevocably guarantees and undertakes as a direct responsibility, to pay to the Purchaser on demand any and all moneys payable by the Contractor on account of Advance Payment extended by the Purchaser to the Contractor without any demure, reservation, recourse, contest or protest and / or without reference to the Contractor.

Any such demand made by the Purchaser on Bank shall be conclusive and binding notwithstanding any difference between Purchaser and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. The Bank undertakes not to revoke this guarantee herein contained and this guarantee shall continue to be enforceable till the Contractor discharges its obligation under the Contract.

The decision of the Purchaser as to whether the Contractor has fulfilled its obligation or not towards set-off of Advance Payment extended by the Purchaser to the Contractor shall be final and binding on the Bank and the Contractor.

The Purchaser shall have the fullest liberty without affecting in any way the liability of the bank under this guarantee from time to time to extend the time for performance of the Contract by the Contractor. The Purchaser shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner, and either to enforce or to forebear to enforce any covenants contained or implied in the Contract between the Purchaser and the Contractor or any other course of remedy or security available to the Purchaser.

The Bank shall not be released of its obligations under these presents by any exercise by the

Purchaser of its liberty with reference to matters aforesaid or any of them or by reason of any other act or forbearance to other acts of omission or commission on the part of the Purchaser of any other indulgence shown by the Purchaser or by any other matter or thing whatsoever which under the law would, but for this provision, have the effect of relieving the Bank.

The bank also agrees that the Purchaser at its opinion shall be entitled to enforce this guarantee against the Bank as a principle debtor, in the first instance without proceeding against the Contractor, and notwithstanding any security or other guarantee that the Purchaser may have in relation to the Contractor's liabilities.

This Guarantee shall be valid for a period of months from.....i.e. upto The Guarantee herein contained shall be a continuing Guarantee and shall not be affected by any change in the constitution of the Bank or of the Contractor. This Guarantee shall be in addition to and shall not affect or be affected by any other security now or hereafter held by the Purchaser and Purchaser at its discretion and without any further consent from the BANK and without affecting the liability of "the Bank" and other indulgence to or make other arrangements with the Contractor and nothing done or omitted to be done by the Purchaser in pursuance of any authority contained in this guarantee shall affect or discharge the liability of the Bank.

Notwithstanding anything herein before above contained, the liability of the BANK under this Guarantee shall be restricted to Rs./US\$.....being the amount of Advance Payment extended by the Purchaser to the Contractor and the Guarantee shall remain in force upto and including_.

This Bank Guarantee shall be revalidated automatically till the set-off in full of the Advance Payment by the Purchaser.

The Bank undertakes not to revoke this Guarantee during its currency except with the previous consent of the Purchaser in writing.

IN WITNESS WHEREOF we have set our hands and seal hereunder at this day of
..... At

ANNEXURE – C (GCC)

PROFORMA OF CONTRACT AGREEMENT FOR SUPPLY

[To be on stamp paper in accordance with Stamp Act]

This Agreement made this day of two thousand
between

Star Paper Mills Limited (SPML) registered in India, under the Companies Act 1956, having its registered office at Kolkata, (India) (hereinafter referred to as "Purchaser" or "SPML" which expression shall include its administrators, executors, assigns) of the one part and
a company incorporated under the Companies Act, 1956 having its registered office at.....
(hereinafter referred to as the "Contractor" or
Contractor (brief name of Contracting company), which expression shall include its administrators, successors, executors and permitted assigns) of the other part.

WHEREAS SPML desirous of setting up its 15 MW Cogeneration Plant on EPC basis, at Saharanpur, Uttar Pradesh (India) (hereinafter called the "Project") has invited Bid Proposals for Design, Engineering, manufacture, Shop fabrication, Assembly, Testing and Inspection at suppliers works, packing, Dispatch, Shipping, Inland transportation to site, Insurance, Delivery at site, Receipt, Unloading, handling, Storage and in-plant transportation at site, installation, testing and commissioning including trial operation and performance guarantee tests and handing over to the Purchaser, the complete plant and equipment with all Auxiliary equipments as per Volume – II, III and IV - Technical Specification.

Contractor has obtained all the clarifications on technical and commercial aspects, inspected the site and surroundings of the Project and has examined and considered all other matters conditions and things, probable contingencies, and all matters incidental thereto and ancillary thereof, affecting the execution and completion of the "Project" without any further recourse and liability whatsoever to SPML except their rights set out in contracts mentioned here- in- below, and

AND WHEREAS the Contractor had participated in the above-referred Bid vide their offer dated -----

and SPML after examining the offer, accepted their aforesaid offer and awarded the Contract to the contractor on terms and conditions contained in its detailed Letter of Intent No. ----- dated -----

and the documents referred to therein, which have been unequivocally accepted by the Contractor resulting into a concluding "Contract" (hereinafter called the "Contract")

NOW THEREFORE THIS DEED WITNESSETH AS UNDER:-

Article 1.0 Award of Contract

Consultant:
Snyder Energo Private Limited
Bangalore

SPML has awarded the Contract to the Contractor for the work of design, engineering, manufacture, shop testing, inspection at manufacturer's works including packing, forwarding and shipping/dispatch, from manufacturing works/place of shipment/dispatch of equipment/ materials, inland transportation to site including associated accessories of the complete plant and equipment on EPC basis for 15 MW Cogeneration Plant, on the terms and conditions contained in its detailed Letter of Intent No.-----

dated ----- and the documents referred to therein. The Contract has taken effect from-----, i.e.,

the date of issue of the LOI. The terms and expressions used in this Agreement shall have the same meaning as are assigned to them in the "Contract Documents" referred to in the succeeding Article.

CONTRACT DOCUMENTS

□□□ The Contract shall be performed strictly as per the terms and conditions stipulated herein and in the following documents attached herewith (hereinafter referred to as "Contract Documents").

(i) SPML's Bidding Documents in respect of specification No. issued vide its Letter No. dated of consisting of , Instructions to Bidders, General Conditions of Contract , Erection condition of Contract, Special condition of contract and all other sections entitled "Conditions of Contract" including all amendments/clarifications issued vide its letter(s) No.(s)..... dated (Volume-I)

(ii) Technical Specification (including Amendments issued vide its Letter No. dated)(Volume-II, III and IV)

(iii) Schedules (including amendments issued vide their letter No. Dated

iv) Bidder's proposal No. dated along with proposal sheets, Data Requirements, payment terms and Work Schedules submitted by Contractor entitled as

v) Agreed minutes of the meeting held on..... between SPML and Contractor.....

vi) SPML's Letter of intent No. datedduly accepted

vii) Quality Plans for manufacturing and field activities entitled as "Quality Plans"

viii) Contract Network

In case of any conflict between the conditions of the same documents or any two documents, the severest of the two shall prevail.

2.2 All the aforesaid Contract Documents including the Letter of Intent shall form an integral part of this Contract Agreement, in so far as the same or any part thereof conforms to the Invitation to Bid and what has been specifically agreed to by the Purchaser in its Letter of Intent. Any matter inconsistent therewith, contrary or repugnant thereto or any deviation(s) taken by the Contractor in their “Offer” but not agreed to specifically by the Purchaser in its Letter of Intent, shall be deemed to have been withdrawn by the Contractor without any cost implications to PURCHASER. For the sake of brevity, this Contract Agreement along with all its annexure/Appendices and all the aforesaid “Contract Documents” presently annexed or mutually agreed documents intended to be annexed at a later date and forming an integral part of the “Contract documents” and Letter of Intent shall be referred as the “Contract Agreement”.

Article 3.0 Conditions and Covenants

3.1 The scope of Contract, consideration, Terms of Payment, Advance, Taxes wherever applicable, Agreed Time Schedules, Penalty, Performance Guarantee and all other terms and conditions are contained in Purchaser’s Letter of Intent No. ----- dated ----- read in conjunction with other aforesaid contract Documents. The Contract shall be successfully performed by the contractor strictly and faithfully in accordance with the terms of this Contract Agreement.

3.2 The scope of work under the contract shall also include all such materials which are not specifically mentioned in the Bid Documents read in conjunction with the offer, letters and Minutes of Meeting as referred in the detailed Letter of Intent but are required to complete the Project as well as for the successful, efficient, safe and reliable operation of the Power Station under the contract. All such materials shall be provided by Contractor under the contract without any extra cost to SPML.

3.3 It is expressly agreed and understood that this contract is awarded on single source responsibility basis and the contractor is bound to perform the total contract in its entirety and non- performance of any part or portion of the contract shall be deemed to be a breach of the entire contract.

3.4 Cross Fall Breach Clause: As mutually agreed, SPML has also placed on Contractor another Contract vide SPML Letter of Intent No.----- dated----- (hereinafter called the ‘Second

Contract’) which interalia covers port handling, Custom clearance, receiving at site, unloading, handling , opening, inspection and storage at site of all equipment and materials including associated accessories, transportation at site up to foundations, installations, testing and successful commissioning including putting the plant into successful operation and Performance and Guarantee Testing of equipment/materials including associated accessories, Operation & Maintenance, till final taking over of complete power project, to be supplied under this first Contract for 15 MW Cogeneration Plant on EPC basis, at Saharanpur, Uttar Pradesh (India) as per Technical specifications (Volume II, III and IV) and the correspondence exchanged on the subject .

Contractor shall also be fully responsible for the works to be executed under the Second Contract and it is expressly understood and agreed by Contractor that any breach under the Second Contract shall automatically be deemed as a breach of this First contract and vice versa and any such breach or occurrence or default giving PURCHASER a right to terminate the Second contract and/or recover damages thereunder, shall give PURCHASER an absolute right to terminate this contract and/or recover damages under this First contract as well and vice versa. However, such breach or default or occurrence in the Second contract shall not automatically relieve Contractor of any of

their responsibility/obligations under the first contract. It is also expressly understood and agreed that the materials/equipment supplied by Contractor under this first contract when erected and commissioned under the second contract shall give satisfactory performance in accordance with the provisions of the contract.

3.5 Time Schedule

3.5.1 It is expressly agreed that Time is the essence of the Contract and the agreed schedules shall be strictly adhered to. The Contractor shall complete the work of Design, Engineering, Manufacturing, Supply & transportation to site within ----- Months from -----

3.6 Quality Plans

3.6.1 The Contractor is responsible for the proper execution of the Quality Plans. The work beyond the Customer's hold points will progress only with the Purchaser's consent. The Purchaser will also undertake quality surveillance and quality audit of the Contractor's/sub-Contractor's works, systems and procedures and quality control activities. The Contractor further agrees that any change in the Quality Plans will be made only with the Purchaser's approval. The Contractor shall also perform all quality control activities, inspection and tests agreed with the Purchaser to demonstrate full compliance with the Contract requirements.

3.6.2 The Contractor also agrees to provide the Purchaser with the necessary facilities for carrying out inspection, quality audit and quality surveillance of Contractor's and its Sub-contractor's quality Assurance Systems and manufacturing activities.

These shall include but not limited to the following:

- a) Relevant plant standards, drawing and procedures;
- b) Detailed Quality Assurance System manuals for manufacturing activities.
- c) Storage procedures and instructions, weld, NDT, Heat Treatment prior to commencement of manufacture;
- d) Complete set of log sheets (blank) mentioned in the Quality Plan.

3.6.3 It is expressly agreed to by the Contractor that the Quality tests and Inspection by the Purchaser shall not in any way relieve the Contractor of its responsibilities for quality standards, and performance guarantee and their other obligations under the Agreement.

3.6.4 Contractor agrees to submit Quality Assurance Documents package to SPML for review and record after completion and within three weeks of despatch of material.

The package will include the following:

- a) Factory test result/inspection reports for testing required by this Contract or applicable codes and standards;
- b) Two copies of Inspection reports duly signed by Quality Assurance personnel of both SPML and Contractor for the agreed customer hold points;
- c) Report of the rectification works where and if applicable.

3.8 7 The Contractor guarantees that the equipment package under the Contract shall meet the ratings and performance parameters, as stipulated in the Technical Specifications and in the event of any deficiencies found in the requisite performance figures, the Purchaser may at its option reject the equipment package or alternatively accept it on the terms and conditions and subject to levy of the penalty in terms of Contract Documents. The amount of penalties so leviable shall be in accordance with the Contract Documents and without any limitation.

Article 4.0 CONTRACT PRICE

The total Contract price for the entire scope of this contract as detailed in clause no

of Letter of Intent is Rs.-----/- (Rupees -----

Which shall be firm till completion of the contract.

Article 5.0 Contract Performance Guarantee(s)

5.1 Contractor agrees to submit within 30 days of issue of Letter of Intent.

□□□□□□ Bank Guarantee for Contract Performance Guarantee which shall be valid till 12 months after final taking over of equipment's of all unit. In addition Equipment Performance Bank Guarantee shall be submitted on successful completion of the performance tests and before final taking over and will be valid till completion of the warranty period and completion of all Contractual obligations under the Contract.

It is further agreed by the Contractor that the Contract Performance Guarantee shall in no way be construed to limit or restrict the Purchaser's right to recover the damages/compensation due to short-fall in the equipment performance figures as stated in clause 3.8 above or under any other clause of the Agreement. The amount of damages/compensation shall be recoverable either by way of deduction from the Contract Price, Bank Guarantee for Contract Performance Guarantee, **Bank Guarantee in lieu of LD for delay in timely completion** of the Contract and Equipment Performance Bank Guarantee and/or otherwise.

The Bank Guarantee for Contract performance guarantee, Bank guarantee in lieu of LD for delay in **timely completion of the Control** and Equipment Performance Guarantee furnished by the Contractor are irrevocable and unconditional and the Purchaser shall have the powers to invoke it notwithstanding any dispute or difference between the Purchaser and the Contractor pending before any court, tribunal, arbitrator or any other authority.

It is expressly understood and agreed by and between the Contractor and the Purchaser that the Purchaser is entering into this agreement solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this agreement and has no liabilities, obligations or rights here under. It is expressly understood and agreed that the Purchaser is an independent legal entity with power and authority to enter into Contracts solely on its own behalf under the applicable laws of India and the general principles of Contract Law. The Contractor expressly agrees, acknowledges and understands that the Purchaser is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, commissions, breaches or other wrongs arising out of the Contract.

5.2 This Agreement constitutes full and complete understanding between the parties and terms of the presents. It shall supersede all prior correspondence to the extent of Inconsistency or repugnance to the terms

and conditions contained in the Agreement. Any modification of the Agreement shall be effected only by a written instrument signed by the authorised representative of both the parties.

Article 6.0 Settlement of Disputes and Arbitration

6.1 It is specifically agreed by and between the parties that all the differences or disputes arising out of the Agreement or touching the subject matter of the Agreement shall be decided by process of Settlement of Disputes and Arbitration as referred in Clause 25 of General Terms and Conditions to Supply.

6.2 Governing Laws: The Contract shall be governed by Indian Laws and Rules as amended from time to time. The Saharanpur Uttar Pradesh Courts alone shall have the exclusive jurisdiction in all matters arising under this Agreement.

Article 7.0 NOTICE OF DEFAULTS

7.1 Notice of default given by either party to the other party under Agreement shall be in writing and shall be deemed to have been duly and properly served upon the parties hereto if delivered against acknowledgement or fax or by registered mail or courier duly addressed to the signatories at the addresses mentioned herein above.

IN WITNESS WHEREOF, the parties through their duly authorised representatives have executed these presents (execution whereof has been approved by the competent authorities of both the parties) on the day, month and year first above mentioned at

--.

(Contractor's Signature)

(Purchaser's Signature)

(Printed Name)

(Printed Name)

(Designation)

(Designation)

(Company's Stamp)

(Company's Stamp)

WITNESS

1.

2.

ANNEXURE – D (GCC)

PROFORMA OF BANK GUARANTEE FOR EQUIPMENT PERFORMANCE GUARANTEE

Bank Guarantee No. _

Date: _

WHEREAS Star Paper Mills Limited (SPML) a Company incorporated under the Companies Act, 1956, having its Registered office at Duncan House 2nd floor, 31, Netaji Subhash road Kolkata, 700001 (India) (hereinafter referred to as the 'Purchaser' which expression shall unless repugnant to the context include its successors, executors, administrators, legal representatives and assigns) is setting-up a 15 MW Cogeneration Plant on EPC basis, at Saharanpur, Uttar Pradesh (India) (hereinafter referred to as 'Power Plant').

WHEREAS the Purchaser had placed a Contract dated _____ (hereinafter called the CONTRACT) on M/s. _____ registered in India under the Companies Act, 1956, having its Registered Office

_____ (hereinafter referred to as "the Contractor") for setting up of the said power project on the terms, specifications and conditions specified therein.

AND WHEREAS the Clause No. _____ of the said Contract stipulates that the Contractor shall submit a Bank Guarantee as herein contained for an amount of Rs./US\$ _____ being the 10% of the Contract Price as security for successful performance of the said Power Plant setup by the Contractor, in conformity with the various guarantees and warranties contained in the said Contract and the Contractor has agreed to furnish such Bank Guarantee.

AND WHEREAS the Purchaser has agreed to accept a Bank Guarantee for an amount equivalent to 10% of the Contract Price i.e. Rs./US\$ _____ from _____ Bank having its head office at _____ through its branch _____ (hereinafter referred to as "the Bank" which expression shall unless repugnant to the context include its successors and assigns).

In consideration of the above, the BANK hereby unconditionally and irrevocably guarantees and undertakes as a direct responsibility, to pay to the Purchaser any amount upto a total sum of Rs. _____ (Rupees _____ only).

The BANK shall effect payment under this Guarantee immediately without any protest or demur and without any reference to the Contractor upon the Purchaser's written request stating that the Power Plant as set up by the Contractor is not performing satisfactorily as per the stipulations made in the Contract, without being entitled to enquire whether this payment is lawfully asked for or not. In any case, however, the BANK's responsibility under this Guarantee is limited to the above mentioned total sum of Rs./US\$ _____.

The decision of the Purchaser as to whether the said power plant is performing satisfactorily or not shall be final and binding on the Bank and the Contractor.

The Purchaser shall have the fullest liberty without affecting in any way the liability of the bank under this guarantee from time to time to extend the time for performance guarantee of the plant equipment by the Contractor. The Purchaser shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor, and to exercise the same at any time in any manner, and either to enforce or to forebear to enforce any covenants contained or implied in the Contract between the Purchaser and the Contractor or any other course of remedy or security available to the Purchaser. The Bank shall not be released of its obligations under these presents by any exercise by the Purchaser of its liberty with reference to matters aforesaid or any of them or by reason of any other act or forbearance to other acts of omission or commission on the part of the Purchaser of any other indulgence shown by the Purchaser or by any other matter or thing whatsoever which under the law would, but for this provision, have the effect of relieving the Bank.

The bank also agrees that the Purchaser at its opinion shall be entitled to enforce this guarantee against the Bank as a principle debtor, in the first instance without proceeding against the Contractor, and notwithstanding any security or other guarantee that the Purchaser may have in relation to the Contractor's liabilities.

The Guarantee shall be valid for a period of _____
months from _____

_____. The Guarantee herein contained shall be a continuing guarantee and shall not be affected by any change in the constitution of the Bank or of the Contractor. This Guarantee shall be in addition to and shall not affect or be affected by any other security now or hereafter held by the Purchaser and the Purchaser at its discretion and without any further consent from the BANK and without affecting the liability of the BANK and other indulgence to, or make other arrangements with the Contractor and nothing done or omitted to be done by the Purchaser in pursuance of any authority contained in this guarantee shall affect or discharge the liability of the BANK.

NOTWITHSTANDING anything herein before above contained the liability of the BANK under this guarantee shall be restricted to Rs.____and the guarantee shall remain in force upto and including_____.

This Bank Guarantee shall be revalidated automatically till the Equipment Performance Guarantee is extended.

IN WITNESS WHEREOF we have set our hands and seal hereunder at this____
_____day of_____

_____, 2010_____ at_____

_____.

ANNEXURE – E (GCC)

CASH FLOW/PAYMENT SCHEDULE

- Payment shall be made in Indian rupees for Indian Portion and US Dollar for imported portion.
- Payment will be based on physical milestones, which can be audited. Contractor shall propose the physical milestones to be used for payment validation.
- CONTRACTOR shall propose a schedule for monthly payments in the table below.
- Certain important mile stones shall have to be identified by the contractor and agreed to by purchaser for the purpose of monitoring the progress of the project, which shall be essentially incorporated in this “draw down schedule”.
- Last mile stone payment in the cash flow/ payment schedule shall be at least 10% of contract cost, which will be payable after Take over.

Month	Physical Milestones	Invoice Amount in Indian Rupees	Invoice Amount in US Dollar
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

Month	Physical Milestones	Invoice Amount in Indian Rupees	Invoice Amount in US Dollar
16			
17			
18			
	TOTAL CONTRACT PRICE		

PHYSICAL MILESTONE APPROVAL MILESTONE NO.....

Description of milestone: _____

CONTRACTOR hereby represents that all WORK schedule to be completed for the MILESTONE has been successfully completed in accordance with all requirements set forth in the CONTRACT.

Issued by CONTRACTOR

Date

Accepted by PURCHASER ☐ YES ☐ NO _____

Date _____

(PURCHASER will provide list of deficiencies if “NO” is checked)

ANNEXURE- F (GCC) PROJECT SCHEDULE

The Contractor shall furnish a L-1 net Work Schedule in accordance with the following for inclusion in its Bid Proposal. L-1 Net Work Schedule will be negotiated with the successful Bidder.

The successful Contractor shall prepare and maintain the L-1 Network Schedule as described below, during the course of the work.

General

1.1 The Contractor shall be responsible for planning and scheduling the work and reporting its progress in a manner, format and level of detail acceptable to Purchaser. These plans shall be in accordance with the intermediate milestones and the completion dates as specified by and agreed in the Contract.

1.2 The Contractor shall be responsible for reporting progress to Purchaser on a weekly and monthly basis. The cut-off day and reporting day shall be intimated by Purchaser at Contract award. Progress reports shall be presented in a clear and logical fashion preferably through a software disc and in PDS format mutually agreed between Purchaser and Contractor.

2.0 L-1 Network Schedule

□□□ The L-1 Network Schedule shall be a calendarized bar chart consisting of approximately 100 activities clearly identifying the key milestone dates and Contract completion date. The activities shall be definitive, discrete and measurable work elements and shall be selected such that they depict the full scope of the work including project management, engineering, procurement, construction and commissioning and start-up of the facility, illustrating how the work will be executed with the critical path clearly identified. It shall clearly identify key milestone dates and the Project completion date, and shall identify the required input from Purchaser or other parties (i.e. approvals, vendor date, the Utility, etc.). It shall be agreed between Purchaser and Contractor prior to Contract Award and shall become a prime Contract document against which Purchaser shall formally assess progress of the work and shall be revised only with Purchaser's prior approval through an Approved Change Order.

□□□ Within thirty (30) days of the letter of intent date, Contractor shall submit to Purchaser the L-1 Network Schedule package for approval. It shall be the working level document demonstrating Contractor's ability and methods of completing the work within the key milestones identified in the L-1 Network Schedule.

□□□ L-1 Network Schedule shall be based on a computerized logic network. The level of detail shall be sufficient to break down the work scope into manageable and measurable activities acceptable to Purchaser. All activities shall have durations in days.

□□□ The Contractor shall provide a detailed activity bar chart based on the resource scheduled logic network. The bar chart shall contain activity descriptions, planned start and finish dates with the critical path activities clearly identified. The bar chart shall be updated weekly to indicate actual progress, showing comparison with the original Plan.

□□□ It shall include the required dates for supply to Contractor of all external input required to execute the plan. In addition it shall clearly show all Sub-contract award dates and Sub- contractor activities.

□□□ In addition Contractor shall furnish percentage - based progress 'S' Curve indicating, the required

rate of progress necessary to complete the work according to the L-1 Network Schedule The 'S' Curve shall be updated weekly to plot actual progress against planned.

Progress Measurement and Monitoring

□□□ The Contractor shall measure progress of the work using its own methods and procedures.

Reporting

□□□ The Contractor shall submit weekly progress reports to Purchaser in the agreed formats submitted in adequate number of signed originals. The report shall include -

- Brief narrative of work performed during the week
- L-1 Network Schedule showing progress at activity level
- Updated progress 'S' Curves showing actual progress
- Milestones achieved and new activities started
- Status of critical activities

□□□ The Contractor shall submit monthly progress reports to Purchaser in the agreed formats submitted in adequate number of signed originals. The report shall include the weekly report content and shall be supplemented with the following:-

- Safety report
- Narrative of work carried out throughout the month
- Change order status
- Updated L-1 Network Schedule indicating status.

ANNEXURE- G (GCC)

LIST OF PERMITS/CLEARANCES

GUIDE TO STATUTORY CLEARANCES- PURCHASER'S RESPONSIBILITY

Sl. No.	Clearance	Authority			
1.	Publication/Notification in Gazette (Required under Section 29 clause (2), (3), (4) and (6) Electricity Supply Act, 1948)	State Government			
2.	Land Reclassification	Director of Agriculture			
3.	Pollution clearance, including emission, chimney height and water discharge approval. 1) Required under The water (Prevention & Control of Pollution) Act 1974 and as amended in 1978. 2) Required under the Air (Prevention & Control of Pollution) Act 1981 and as amended in 1987)	State Pollution Control Board			
4.	Forest Clearance (Required under The Forest Conservation Act, 1980)	Ministry of Environment and Forest, Government of India			
5.	Environment Clearance, including Environment Impact Clearance (Required under The Environment Protection Act, 1986).	Ministry of Environment and Forest, Government of India			
6.	Civil Aviation Clearance	National Airport Authority			

GUIDE TO STATUTORY CLEARANCES*- CONTRACTOR'S RESPONSIBILITY

Sl. No.	Clearance	Authority	Submittals	Requirement	
1.	License from Labour Commissioner for construction labours pursuant to Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970.	Labour Commissioner, State Government	Letter to be submitted along with other details as required.	Before start of construction.	
2.	Registration of workers required pursuant to Section 2A of the Employees State Insurance Act, 1984, or exemption to be claimed if other group insurance is taken (for Contractor's personnel).	Labour Commissioner, State Government	Letter to be submitted along with other details as required.	Before start of construction/ erection.	
3.	Consent for the possession and use of explosives for the purpose of land blasting (Required under the Explosives Rules, 1983).	Chief Comptroller of Explosives	Letter to be submitted along with other details as required.	Before start of construction/ erection.	
4.	In principle, clearance for storage of Hazardous materials (Required under the Petroleum Rules, 1976).	Chief Comptroller of Explosives	Letter to be submitted along with other details as required.	Before start of construction/ erection.	
5.	Boiler and other pressure parts including pipes and valves (Required under Indian Boiler Regulation (IBR), 1950).	Chief Inspectorate of Boilers, State Government/C ent ral Government	All relevant drawings with calculation details and other details as required.	Design and drawings approval before start of manufacturing. Stages of various inspection during manufacturing before dispatch. Stages of various inspection during Hydrotest and before light-up.	
6.	Fire Fighting/Protection System (Required as per TAC norms)	Insurance agency	Drawings with calculation details and other details as required.	During manufacturing/ before manufacturing.	

GUIDE TO STATUTORY CLEARANCES*- CONTRACTOR'S RESPONSIBILITY

Sl. No.	Clearance	Authority	Submittals	Requirement
7.	Electrical plant and equipment installation like Switchyard, Transformers, Switchgears, Lightning Arresters etc., including back charging & synchronizing clearance (Required under Section 6, Rule 3 of the New Factories Act, 1987), including construction power	The Chief Electrical Inspectorate, State Government	Drawings to be submitted along with other details required.	Before commencement of erection.
8.	Occupation of Building (for construction)	Director of Health Services, Directorate of Public Health & Preventive Medicine	Drawings to be submitted along with other details as required.	Before completion of the construction.
9.	Post installation approval for buildings, pipe layout cable routes, acid & other chemicals storage (Required under Section 6, Rule 4 of the New Factories Act, 1987)	Chief Inspectorate of Factories, State Government, concerned Municipality	Drawings to be submitted along with other details as required.	Before completion of the construction.
10.	Import licences & formalities/allowing concessional customs duty (Required under The Customs Tariff Act, 1975, and as amended in 1996).	Controller of Imports & Exports, Customs Authorities	List of items to be imported is to be submitted along with Detailed Project Report and letter along with other details as required.	Immediately on receipt of order from SPML.

* The above is for Contractor's guidance but cannot be treated as exhaustive. Contractor shall however be responsible to keep in place all the clearances & consents valid during the Contract period & till handover of unit.

ANNEXURE- H (GCC)

PROFORMA FOR BANK GUARANTEE

TO BE FURNISHED BY THE ASSOCIATE

(To be stamped in accordance with the Stamp Act, if any, of the Country of the issuing Bank) :

Bank Guarantee No.....

Date

In consideration of Star Paper Mills Limited (SPML) (hereinafter referred to as “Purchaser” which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to.....with its Registered Head Office at (herein after referred to as or“Contractor”) a Contract for Package for its(Name of Project) vide Contract No.dated.....and the same having been unequivocally accepted by the Contractor resulting in a “Contract”, which award is on the strength of Deed of Joint Undertaking dated.....(hereinafter referred to as “Undertaking”) given by M/s * (Contractor) and by (ASSOCIATE) having its registered office at..... (hereinafter called or ASSOCIATE) and the Contractor having further executed with(ASSOCIATE) a Sub-Contract dated and the same having been unequivocally accepted by the Associate/ - resulting in a Sub-Contract Agreement valued at.....for (hereinafter called “Sub-Contract Agreement”) and..... (ASSOCIATE) having agreed to provide a Performance Guarantee amounting to.....to the Purchaser on the terms & conditions specified in the undertaking.

We Bank, having its Head Office at.....(hereinafter after referred to as the “Bank”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay to the Purchaser on demand any and all monies to the extent of (Specify currency and amount in words and figures) only as aforesaid at any time upto @ without any demur, reservation, context, recourse or protest and/or without any references to “ASSOCIATE” or “Contractor”. Any such demand made by the Purchaser on the

Bank shall be conclusive and binding, notwithstanding any difference between the Purchaser and Contractor and/or between the Purchaser and ASSOCIATE or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority. The Bank undertakes not to revoke this guarantee during its currency without previous consent of the Purchaser and further agrees that the guarantee herein contained shall be enforceable till ninety (90) days after expiry of warrantee period.

* Brief name of the Contractor.

The Purchaser shall have the fullest liberty, without affecting in any way the liability of the Bank under this guarantee, from time to time to extend the time for performance of the Contract or the Sub- Contract Agreement by the Associate. The Purchaser shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the ASSOCIATE and to exercise the same at any time, in any manner,

and either to enforce or to forbear to enforce any covenants, contained or implied, in the Contract or Undertaking or any other course or remedy or security available to the Purchaser. The Bank shall not be released of its obligations under these presents by any exercise of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Purchaser or any other indulgence shown by the Purchaser or by any other matter or thing whatsoever which under law would, but for this provision have the effect of relieving the Bank from its obligations.

The Bank also agrees that the Purchaser at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against Contractor or ASSOCIATE and notwithstanding any security or other guarantee that the Purchaser may have in relation to Contractor's or Associate's liabilities.

Notwithstanding anything contained hereinabove our liability under this guarantee is restricted to.....and, it shall remain in force upto and including..... @ and shall be extended from time to time for such period as may be desired by M/s (ASSOCIATE) on whose behalf this guarantee has been given.

Date this Day of 2011..... at

WITNESS

(Signature)

(Signature)

(Name)

(Name & Designation)

(Official Address)

(Bank's Seal)

Authorised vide Power of

Attorney No.

Date

@ The date shall be till 90 days beyond the warrantee period

ANNEXURE- I (GCC) INDEMNITY BOND

THIS **DEED OF INDEMNITY** is made on this the _____ day of _____ 2018 BY AND

BETWEEN

(Name of Contractor), a public company limited by shares and duly incorporated and registered under the _____ Companies Act, 1956 with its Registered Office at _____

_____ (hereinafter alternatively referred to as the “promissory” / _____/”Contractor”) Which includes its heirs, successor and legal assigns AND

Star Paper Mills Limited (SPML), a company incorporated under the provisions of the Companies Act, 1956 with its registered Office at hereinafter alternatively referred to as the “Promisee”/ “SPML”/”Purchaser”} which includes its heirs, successors and legal assigns

THAT WHEREAS

SPML had invited bid proposals for Design, Engineering, Manufacturing, supply; erection, testing & commissioning contract on EPC basis for Cogeneration Plant at at Saharanpur, Uttar Pradesh as more particularly detailed in the Bid documents

AND WHEREAS

The promissory had submitted bid proposals for the said EPC contract AND WHEREAS

Pursuant to the aforesaid bid proposal, the bid of the promissory had been accepted AND WHEREAS

Clause No31.0 of General & Commercial Conditions (Vol-I) provided that

i) The Contractor shall fully indemnify, save harmless and defend Purchaser, Purchaser’s directors, shareholders, officers, agents and employees (the “Purchaser Indemnified Parties”) from and against damages arising from claims by third parties for (a) any damage to or destruction of property, or death or bodily injury to any person, to the extent resulting from Contractor’s or any Sub-Contractor’s negligence, intentional acts or strict liability in the performance of the Works, and (b) damages resulting from material breach of the Contract Agreement by Contractor, including failure to comply with Applicable Laws, failure in paying taxes and duties for which Contractor is responsible hereunder or non-payment of amounts due in connection with work, services, materials, equipment or supplies furnished to Contractor or any other amounts due and payable by Contractor.

AND THAT

□□□□□□ The Contractor shall fully indemnify, save harmless and defend the Purchaser Indemnified Parties from and against any damages arising out of or resulting from (i) the presence, handling, removal,

disposal or release of any Hazardous Materials³ which are used, generated or brought onto the Site or in the performance of the Works by Contractor or any Sub- Contractor, or (ii) the discharge or release of any Hazardous Materials at the Site or Works area caused by the negligence or willful misconduct of Contractor or any Sub-Contractor.

AND THAT

□□□□□□ The Contractor shall fully indemnify and save harmless and defend Purchaser Indemnified Parties from and against any and all damages that Purchaser Indemnified Parties may suffer, incur or pay in connection with infringement (or assertions of infringement) of any patent rights, copyrights or other intellectual property, proprietary confidentiality rights with respect of materials, designs, supplies, techniques, processes and information designed or used by Contractor or any Sub-Contractor in performing or forming a part of the Works hereunder or under any Sub-Contract other than any such materials, designs, techniques, processes and information provided by Purchaser Indemnified Parties.

AND THAT

□□□□□□ The Contractor shall indemnify and hold harmless Purchaser from any and all Liens⁴ for labor, materials and services furnished by Contractor or any Sub-Contractors, or other Contractor suppliers or vendors, and shall commence all appropriate actions to discharge such Liens, by bond or otherwise, within fifteen (15) days after the earlier to occur of the date upon which Contractor obtains knowledge of the same or the date of a request of Purchaser that such Liens be discharged, and Contractor shall continue diligently to take all necessary actions so that such Lien is discharged, or security satisfactory to Purchaser is provided to Purchaser, no later than thirty (30) days after such date, and so that in any event any such Lien is discharged within one hundred eighty (180) days after such date. If Contractor fails to discharge such Liens within such period, Purchaser at its option may, but shall not be required to, discharge such Liens, and upon such an election by Purchaser Contractor shall pay to Purchaser on demand (or Purchaser may set-off the same against amounts otherwise owing to Contractor under the Contract Agreement) all costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such discharge.

AND THAT

□□□□□□ The Contractor shall indemnify the Purchaser against every liability which the Purchaser may incur to any other person or corporate organization whatsoever and against all claims, demands, proceedings, damages, costs and expenses made against or incurred by the Purchaser by reason of any breach by the Contractor of the Contract (including failure to complete the relevant section of the works by the relevant Guaranteed completion date).

AND WHEREAS

Pursuant to the above, the said promissory, hereby furnishes this indemnity bond to the promisee, Star Paper Mills Limited (SPML), in fulfillment inter-alia of condition Nos. (i),(ii),(iii),(iv) and (v) referred to above

NOW THIS INDEMNITY BOND WITNESSES AND THE PROMISSOR
HEREBY UNDERTAKES AS FOLLOWS

THAT

1. The promissory hereby irrevocably indemnifies and releases SPML, its affiliated companies, officers, Directors, employees, agents, authorized representatives, etc, as also the Government for the State of Uttar Pradesh and its officers, harmless and free of all liabilities, claims, litigations and expenses and other costs and expenses against any possible claim or litigation arising from a claim by affected party (ies) and/or any financial repercussions arising thereof.

AND THAT

2. The promissory hereby agrees that SPML shall have the right but not the obligation to, at its own expense assume the exclusive defence and control of or cause any claim or litigation of and/or by affected party (s) to be defended which shall otherwise be subject to clause 1 above and the promissory shall be liable to make good all fees, expense, and costs incurred in connection therewith.

IN WITNESS WHEREOF, the promissory and promise have signed this indemnity bond on the date, month and year first mentioned above in the presence of the under-mentioned witnesses.

(NAME OF CONTRACTOR) PROMISSOR

for

Star Paper Mills Limited (SPML)

PROMISEE WITNESSES:

1.

2.

ERECTION CONDITIONS OF CONTRACT (ECC)

SECTION – 3.0

ERECTION CONDITIONS OF CONTRACT (ECC)

1.0 GENERAL

1.1 The following conditions shall govern that portion of the work under the Contract Agreement which is to be performed at site.

1.2 The Contractor upon signing of the Contract Agreement shall, in addition to a Project Coordinator, nominate another responsible officer as its representative at site suitably designated for the purposes of overall responsibility and coordination of the works to be performed at site. Such person shall function from the site office established by the Contractor, during the term of the Contract Agreement.

2.0 COMPLIANCE WITH APPLICABLE LAWS

2.1 The Contractor shall comply with and shall perform the Works in accordance with all Applicable Laws as they may be in effect from time to time during the Contractor's performance hereunder. Notwithstanding the foregoing, the Contractor shall ensure the compliance with all applicable industrial and labour laws or any other Applicable Law as they may be in effect from time to time during the Contractor's performance hereunder in respect of any employee or workman employed or engaged by the Contractor or its Sub-Contractor.

□□□ The Contractor shall be liable for any and all registration and statutory inspection fees with respect to the Contractor's work pursuant to the Contract Agreement including without limitation any registration and statutory inspection fees lawfully payable by the Contractor in respect of the plant and equipment. Contractor should any such inspection or registration needs to be rearranged due to the fault of the Contractor or its Sub-Contractor, the additional fees for such inspection and/or registration shall be borne by the Contractor.

3.0 PURCHASER'S LIEN ON EQUIPMENT

The Purchaser shall have lien on all equipment including those of the Contractors' brought to the site for the purpose of erection, testing and commissioning of the plant. The Purchaser shall continue to hold lien on all such equipment till the final acceptance and Handing Over of the plant and equipment. No material brought to the site shall be removed from the site by the Contractor and/or his Sub-Contractors without the prior written approval of the Engineer.

4.0 RE INSPECTION OF EQUIPMENT

Notwithstanding the applicability of Section 3.0 to Section 3 of the Bid Documents, the Engineer shall have the right to re-inspect the Equipment/the Facility though previously inspected and approved by him, at the Contractor's Works, before and after the equipment(s) are erected at site. In the event pursuant to such re-inspection, if the Engineer rejects any equipment(s), the Contractor shall promptly, but in no case later than 45 days from the date of such rejection, make good for such rejections either by replacement or modifications/repairs as may be necessary, to the satisfaction of the Engineer. Such replacements shall also include the replacements or re-execution of such of those Works of other Contractors and/or agencies, which might have got damaged or affected by the replacements or re-work done to the Contractor's work.

ACCESS TO SITE AND WORKS ON SITE

□□□□ The Purchaser undertakes to procure or permit, as relevant, all necessary access to the Site and other places where the Works are to be performed as required to be provided by the Purchaser to the Contractor for the performance by the Contractor of its obligations under the Contract.

□□□□ In the execution of Works, no persons other than the Contractor or its duly authorised representative, Sub-Contractor and workmen, shall be allowed access to and to do work on the site, except by the special permission, in writing, of the Engineer or his representative.

6.0 CONTRACTOR'S SITE OFFICE ESTABLISHMENT

The Contractor shall establish a site office and keep posted an authorized representative for the purpose of the Contract. Any written order or instruction of the Engineer or his duly authorized representative shall be communicated to the Contractor at the site office and same shall be deemed to have been communicated to the Contractor at his legal address & head office so as to fulfill the requirements of Applicable Laws including without limitation the Code of Civil Procedure, 1908 pertaining to service of documents.

7.0 CONTRACTOR'S FIELD PERSONNEL

7.1 Subject to the prior approval of the Purchaser, the Contractor shall deploy only competent and experienced personnel in each field of Work. In order to seek such approval of the Purchaser the Contractor shall furnish to the Purchaser the resume and other necessary details of such personnel to be deployed by the Contractor for the Works. The Contractor shall forthwith upon the date of issue of the Letter of Award appoint suitably qualified and experienced persons acceptable to the Purchaser to fill the posts needed for the works. The Contractor shall keep the key personnel employed in connection with the Works as long as reasonably necessary to fulfill the Contractor's obligations under this Contract and such personnel shall, for so long as they may be engaged in connection with the Works, give substantially the whole of their time to the superintendence of the Works and shall not be removed from their posts or replaced without the prior written approval of the Purchaser, which approval shall not be unreasonably withheld or delayed.

7.2 The person appointed as the Project Manager for the Works shall have full authority to act on behalf of the Contractor for all purposes in connection with the Contract. The Project Manager shall not be engaged in any project other than the Works and shall not be replaced or removed without the prior consent of the Purchaser, which consent shall not be unreasonably withheld or delayed. The Contractor shall notify the Purchaser of the Project Manager's normal place or places of work.

8.0 DISCIPLINE OF WORKMEN

Subject to Section 7.0 above, the Contractor shall adhere to the disciplinary procedure set by the Purchaser/Engineer in respect of the Contractor's employees and workmen at Site. The Engineer shall be at liberty to object to the presence of any representative or employee of the Contractor at the Site, if in the opinion of the Engineer such employee has misconducted himself or is incompetent or negligent or otherwise undesirable and in such an event the Contractor shall remove such a person objected to and provide in his place a competent personnel.

9.0 CONTRACTOR'S FIELD OPERATION

9.1 The Contractor shall keep the Engineer informed in advance regarding his field activity plans and schedules for carrying out each part of the work. Any review of such plan or schedule or method of work by the Engineer shall not relieve the Contractor of any of its responsibility (ies) towards the field activities. Such reviews shall also not be considered as an assumption of any risk or liability by the Engineer or the Purchaser or any of his representatives and no claim of the Contractor will be entertained because of the failure or inefficiency of any such plan or schedule or method of work reviewed. The Contractor shall be solely responsible for the safety, adequacy and efficiency of plant equipment and its erection methods.

9.2 The Contractor shall have complete responsibility for the conditions of the Site including the safety of all persons employed by the Contractor or its Sub-Contractor and all the properties under the Contractor's custody during the performance of the Work. The foregoing requirement(s) shall apply continuously till the completion of the Contract and shall not be limited to normal working hours. The constructions reviewed by the Engineer is not intended to include review of Contractor's safety measures in, on or near the Site, and their adequacy or otherwise.

PHOTOGRAPHS AND PROGRESS REPORT

10.1 The Contractor shall furnish three (3) prints each to the Engineer of progress photographs of the work done at Site. Photographs shall be taken as and when indicated by the Engineer or his representative. Photographs shall be adequate in size and number to indicate various stages of erection. Each photograph shall contain the date, the name of the Contractor, its Sub- Contractors and the title of the photograph.

10.2 The above photographs shall accompany the monthly progress report detailing out the progress achieved on all erection activities as compared to the schedules. The report shall also indicate the reasons for the variance between the schedule and actual progress and the action proposed for correction wherever necessary.

10.3 No later than [10 days] after the end of each month, the Contractor shall submit to the Purchaser a Progress Report in respect of the period up to the end of such month. The Contractor shall in each such report supply information including: (i) identification and evaluation of all material problems and deficiencies in the Works or the supplies and full details of remedial actions planned with respect thereto and of any remedial action to be or being implemented; (ii) the extent of the Works performed and remaining to be performed, the status of construction activities as against the Time Schedule; (iii) details and explanations of any delay in meeting the Time Schedule along with remedial action planned with respect thereto and the extent to which payments have been received and remain outstanding; (iv) a record of meetings and material communications for the month; (v) specific progress in relation to start-up and any testing; (vi) schedule of key activities for the following three months; (vii) schedule of meetings for the following three months; (viii) details of any health and safety issues; (ix) schedule of outstanding correspondence and an action list therefore; (x) description of status of documents submitted for approval; (xi) schedule of proposed changes and Change Orders and their status; and (xii) photographs taken that month of the Units and the Site, showing progress made.

MANPOWER REPORT

8.3 The Contractor shall submit to the Engineer, on the first day of every month, a manpower schedule for the next month, detailing the manpower schedule for the month, skill wise and area wise.

8.4 The Contractor shall also submit to the Engineer on the first day of every month, a man power report of the previous month detailing the number of persons scheduled to have been employed and actually employed, skill-wise and the areas of employment of such labour.

PROTECTION OF WORK

8.5 The Contractor shall have total responsibility for protecting its works till it is finally taken over by the Engineer. No claim will be entertained by the Purchaser or the Engineer for any damage or loss to the Contractor's Works and the Contractor shall be responsible for the complete restoration of the damaged works to its original condition to comply with the specifications and drawings.

8.6 The Contractor shall include and provide for securely protecting and packing the equipment so as to avoid damage in transit and the Contractor shall be responsible for all losses or damages caused or occasioned by any defect in packing. All equipments shall be packaged in accordance with packing specifications as approved by the Purchaser.

8.7 All equipment and parts shall be appropriately protected against damage arising from exposure to moisture, heat, light or vibration during transit and storage as dictated by the nature of the equipment, the journey to site and the storage available at site. The Purchaser will take no responsibility for any damage done to the equipment enroute to the 'site of work' or 'place of delivery' whichever may occur due to the packing being faulty. Special packing with identification marks on packages should be provided for fragile materials. The identification marking indicating the name and address of the consignee shall be clearly marked by indelible ink on two opposite sides and on top of each of the packages. In addition, the Contractor shall include in the marking, gross and net weights, outer dimensions and cubic measurements.

8.8 Each bale or package shall be accompanied by a packing note quoting specifically the name of the Contractor, the number and date of the contract, the name of the office placing the contract, nomenclature of contents and any other information reasonably required by the Contractor to effectively handle each bale or package i.e. Reference Nos.

8.9 Dimensions of each package shall not exceed the maximum dimensions of packages that can be accepted for transport over the 'broad gauge system' of the railways concerned.

8.10 Notification of delivery or dispatch after obtaining Purchaser's approval to this effect in regard to each and every consignment shall be made to the Purchaser immediately after dispatch or delivery. The Contractor shall further supply to the consignee a priced invoice and packing account of all stores, containers, bundles and loose materials forming part of each and every consignment which 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.

EMPLOYMENT OF LABOUR

8.11 The Contractor shall employ for the Work at the Site only its regular skilled employees with relevant experience. No female labour shall be employed after darkness for the Work at the Site. No person below the age of eighteen years shall be employed by the Contractor for the Work at the Site.

Contractor's Employees

The Contractor shall provide and employ on the site in connection with the execution and maintenance of the works the following:-

- a) Technical personnel, skilled and experienced in their respective trades and are competent to give proper supervision to the work they are required to supervise and execute.
- b) Such skilled, semi-skilled and un-skilled labour as is necessary for the proper work strictly as per specification and timely execution and maintenance of the works.
- c) Where required by Applicable Law or Regulation of local or other authority, such personnel shall be duly licensed by the Competent Authority to practice their trades, professions and callings.
- d) The same technical personnel of the Contractor shall continue till completion of Work and if at all it is necessary to withdraw any of the technical personnel of the Contractor to any other site, the same shall be done with the written approval of the Engineer or Purchaser unless it is a case of resignation.

The Contractor shall be responsible for payment of salaries to the said labour/employees. The Contractor shall also be liable to extend/provide all the benefits admissible to said labour/employee under various Applicable Laws in force and as amended from time to time.

8.12 All traveling expenses including provisions of all necessary transport to and from site, lodging allowances and other payments to the Contractor's employees shall be the sole responsibility of the Contractor.

8.13 The Contractor's employees shall wear identification badges, safety helmets and applicable protective gear while on working at the Site.

8.14 All costs, damages or expenses towards any wages or dues to labour or to any Competent Authority under any labour or industrial laws or any other Applicable Law which the Purchaser may have paid due to act of omission of the Contractor, for which under the Contract the Contractor is liable, may be claimed by the Purchaser.

8.15 It is expressly agreed by the Parties that on the Contractor's failure to pay any amount due and payable by the Contractor to the Purchaser under the Contract, including liquidated damages, the Purchaser shall have the right to recover the same by set-off or deduction against amounts otherwise owing to the Contractor under the Contract, or by drawing against the Contract Performance Guarantee, retainage or any other security provided by the Contractor for performance of its obligations hereunder.

Labour Welfare

a) The Contractor shall provide and maintain such temporary accommodation and amenities as may be reasonably necessary for all its and its Sub-Contractor's staff and labour employed at the Site, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, fire prevention and fire fighting equipment, air- conditioning and other agreed requirements in connection with such accommodation or amenities.

b) The Contractor shall in all dealings with its and its Sub-Contractors' staff and labour have due regard to all recognized festivals, days of rest and religious or other customs.

c) The Contractor shall at all times take all reasonable precautions to prevent any unlawful riotous or disorderly conduct by or amongst its or its sub-Contractors' staff and labour and for the preservation of peace and protection of persons and property in the neighborhood of the Site against the same.

8.16 The Contractor shall be responsible for complying with all statutory obligations including without limitation under the following along with the rules and regulations frames there under so long as the same is applicable to the Contractor and the Contractor is bound by them:

- a) Apprentices Act, 1961;
- b) Child Labour Act, 1986;
- c) Contract Labour Act, 1970,
- d) Employment of Children Act, 1938;
- e) Employees' State Insurance Act, 1950,
- f) Employees' Pension Scheme, 1995;
- g) Employees' Provident Funds Act, 1952;
- h) Factories Act, 1948;
- i) Industrial Disputes Act, 1947;
- j) Industrial Employment Act, 1946;
- k) Minimum Wages Act, 1948;
- l) Payment of Bonus Act, 1965'
- m) Payment of Gratuity Act, 1972;
- n) Payment of Wages Act, 1936; and
- o) Workman's Compensation Act, 1923
- p) The Sexual Harassment of women at workplace

or any other relevant Government of India or State enactments as applicable, for their labour and staff engaged in executing this work.

8.17 The Contractor shall also keep the Purchaser indemnified against all claims and disputes arising out of death or injury to their workmen and staff. It will be necessary for the Contractor to ensure that proper safety measures are followed by their workmen to avoid accident, damage, loss to life and property. Approved safety belts must be used by their workmen when working at any height. Charges for the above are deemed to be included in the quoted rates and accepted amount.

8.18 As Generating Stations are declared as "Prohibited Place" under the Official Secrets Act, 1923 or other relevant Acts, strict security measures must be followed.

FACILITIES TO BE PROVIDED BY THE PURCHASER

Unless otherwise agreed, the following works and services shall be provided by the Purchaser at no cost to the Contractor for carrying out complete erection work under the Contract:

Space

Access road will be provided up to the plant boundary only. Any clearing of Site, including jungle cutting levelling, rerouting of inside road / drain, earth excavation, cutting of rocks if any and backfilling, concrete works, main roads to plant buildings required in connection with erection work shall be the Contractor's responsibility. The Contractor, shall provide, if necessary, or if required on the site, all temporary access thereto and shall alter, adapt and maintain the same as required from time to time and shall take up and clear them away as and when no longer required and as and when directed by the Purchaser and make good all damages done to the site.

The Contractor shall advise the Purchaser within thirty (30) days from the date of acceptance of the Letter of Intent, for allotment of its exact requirement of space for temporary construction facilities such as office, canteen, storage [open; covered; and semi-covered etc] area, pre-assembly and fabrication areas, toilets, etc. The above requirement shall be reviewed by the Engineer and open space will be allotted to the Contractor for construction of its temporary structures like office, storage sheds, and other utilities, etc for its own as well as its Subcontractor's use. No space will be provided by the Purchaser for the Contractor's labour inside the power plant area. All facilities for labour housing shall be the sole responsibility of the Contractor.

Electricity

The Purchaser shall provide Construction power to Contractor at one point within plant boundary on chargeable basis. Further distribution of the construction power as per the requirement shall be carried out by the Contractor. The Contractor shall make its own arrangement for temporary lighting and other facilities needed.

All temporary wiring must comply with local regulations and shall be subject to the Engineer's inspection/approval before connection to supply. The Purchaser shall not be responsible for any inconvenience for delay caused due to interruption in power supply and no compensation for such failure or delay in Works on this account can be claimed by the Contractor. The Contractor shall make its own arrangement for alternative source of power supply through deployment of adequate number of DG sets.

Water

The Purchaser shall provide Construction water to Contractor at one point within plant boundary on free of cost. Further distribution of the construction water as per the requirement shall be carried out by the Contractor.

Construction Tools and Equipment

The Purchaser shall not be responsible or held liable for any damage to person or property consequent upon the use, misuse or failure of any construction tools and equipment used by the Contractor or any of its Subcontractors. The acceptance and/or use of any such construction tools

and equipment by the Contractor or its Subcontractors shall be construed to mean that the Contractor accepts all responsibilities for and agrees to indemnify and save harmless the Purchaser from any and all claims for the said damages resulting from the said use, misuse or failure of such construction tools and equipment.

Medical Facilities

The Purchaser's medical facilities available at Site will be extended for the use of the Contractor, only if and when available. For the services of the Doctor all associated staff and the medicines made available, the Contractor shall have to pay at Site rates prescribed by the Purchaser.

Work Permits

The Purchaser shall provide assistance to the Contractor in obtaining (a) Indian visas, residential or working permits for the personnel, if necessary; and (b) priorities for transportation and customs permit.

Fuel for start-up/trial run

The fuel as may be required for the initial starting-up/trial run of the plant equipment will be arranged by Purchaser.

8.19 The Purchaser will ensure that the Purchaser's Operation & Maintenance Engineers, Operators and other personnel are associated with Contractor's Engineers & Operators during start-up, running and acceptance tests of the plant equipment.

8.20 Subject to Annexure-G (GCC), the Purchaser shall obtain and maintain in effect to the extent necessary all Applicable Permits that are necessary in connection with the Purchaser's performance of its obligations under the Contract. The Purchaser shall use reasonable efforts to assist the Contractor in obtaining Applicable Permits which are required to be obtained by the Contractor under the Contract, including providing any signatures or other documentation required from the Purchaser as importer of record for Off-shore Supplies.

FACILITIES TO BE PROVIDED BY THE CONTRACTOR

8.21 The Contractor shall, subject to and in accordance with the provisions of the Contract, engineer, procure and deliver the plant and perform such work and services as may be required for the execution of the Works together with all such other things, whether of a temporary or permanent nature, required in connection with the Works in so far as the necessity for providing the same is specified in or reasonably be inferred from the Contract.

8.22 Without prejudice to the above, the Contractor shall cooperate with the Purchaser in the coordination of the Works with the work of other sub-Contractors engaged by the Purchaser/Consultant and other persons to whose systems the Facility is to be connected or with whom an interface otherwise exists, provided that such cooperation is reasonably required and shall not unreasonably interfere with the carrying out of the Works.

Unless otherwise agreed upon, the following work and services shall be provided by the Contractor:

General Aspects

a) Clearing and unloading the equipment from the rail or road transport at Contractor's storage areas and proper stacking there at. Demurrage charges, if incurred at rail head or at site or at dock for default of the Contractor shall be paid by him.

- b) Opening of packing cases, inspection and checking of materials. Repair and replacement of contracted material damaged or lost in transit or at site including lodging of claims to the insurance underwriters under advice to the Purchaser for such items. Proper store keeping of the plant equipment, if any under the custody of the Contractor in covered storage to be provided in accordance with clause 22.0.
- c) Final adjustment of foundation levels by chipping and dressing, checking location, elevation etc of anchor bolts and grouting of anchor bolts and base plates.
- d) Complete erection of the equipment covered under the Contract, final preparation for testing, trial run and acceptance tests and putting the plant into satisfactory operation.
- e) All consumable stores required for the above work, except those mentioned under sub- clause 14.7 above.
- f) Watch and ward to ensure security and safety of materials under his custody.
- g) Residential accommodation for erection labour and other personnel. Purchaser will not provide any accommodation to Contractor's supervisors' engineers and labourers. Construction of any labour quarter or residential accommodation within the plant boundary shall not be permitted.
- h) The Contractor shall employ only competent and skilled workmen fully experienced and capable of performing duties assigned to them. When local laws require, the employees shall be required to acquire certificate of competency for their work from the Competent Authority.
- i) All site test facilities including test instruments for site test of equipment, piping, cabling, gauges, insulation testers etc shall be supplied by the Contractor.

Erection and Putting into satisfactory operation of Plant and Materials

- j) Unless otherwise mutually agreed to, the provision of the clause shall apply only where the services for erection of plant and materials supplied by the Contractor are included in the scope of work. The Contractor shall unload all imported/indigenous equipment at Site in areas to be identified by the Purchaser. The Contractor shall be responsible for complete installation of the equipment, start-up and testing at site, putting into trouble free operation and helping the Purchaser to carry out performance testing. All equipment and tools for transportation and erection shall be provided by the Contractor. No materials and/or equipment pertaining to the Contract shall be removed from site without the consent in writing of the Purchaser. The Contractor shall be responsible for obtaining the correct reference lines and levels for purposes of fixing and alignment of various equipment.
- k) In the execution of the work no person other than the Contractor, or his appointed representatives, sub-Contractors and workmen shall be allowed to do work at site, except by the special permission in writing of the Purchaser or his representative, but access to the works at all times shall be accorded to the Purchaser and his representative and other authorized officials or representatives of the Purchaser.

Nevertheless, the Contractor shall not object to the execution of work by other Contractors or tradesmen whose names shall have been previously communicated in writing to the Contractor by the Purchaser, and afford them every facility for the execution of their works simultaneously with his own.

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 female labour shall be employed after sunset.

The Contractor shall not employ for the purpose of the Contract any person who is below the age of eighteen years and shall pay to each labourer, for the work done by such labourer, wages not less than the wages paid for similar work as per the provision of Minimum Wage Act, 1948. The Purchaser shall have the right to enquire into and decide any complaint alleging that the wages paid by the Contractor to any labourer for the work done by such labour is less than the wages as per Minimum Wage Act, 1948 as in force and amended from time to time, and to refuse appointment of labour less than eighteen years of age.

The Contractor shall make regular and prompt payment of wages to the labourers engaged on the work and in no case shall the payment be delayed more than seven (7) days following the period for which the wages are due. If it is found that workers are not paid regularly the Contract shall be liable to be rescinded. The Contractor shall comply strictly with the provision of labour laws in this respect applicable to the Site.

l) The Contractor shall be required to work under the supervision of the manufacturer's engineers, where the Contractor is not the manufacturer. However, this shall not relieve the Contractor of his responsibility of the correctness or quality of workmanship.

m) Erection of cabling work shall be carried out in such a way as to provide a reliable and assured electric power supply system to all Power Station auxiliaries.

n) Erection of grounding system similarly shall ensure an effective & efficient system for dissipation of short circuit current to station grounding system in case of faults in H.V./L.V. systems thereby ensuring personnel safety and reducing risk of damages to important equipment .

o) Entire erection of grounding work shall be carried out in such a way as to be capable of withstanding the intended service of carrying full short circuit level currents to ground mat without any damage/ deformation.

p) Erection of cabling work shall be executed keeping in view all necessities and requirements of fire fighting codes for generating stations having an adverse industrial environment.

q) Details of grounding and lighting protection included in notes.

Tools, Tackles and Scaffoldings

The Contractor shall provide at his own expense, all the construction equipment, erection tools, machine tools, power tools, tackles, hoists, cranes, derricks, cables, slings, skids, scaffolding, work benches, tools for rigging, cribbing and blocking, welding machines, preheating and stress relieving equipment, X-ray and all associated protection equipment, instruments, appliances, materials and supplies required for unloading, transporting, storing, erection, testing and commissioning that may be required to accomplish the work under the contract. He shall submit a list of all such material to the Purchaser/Engineer before the commencement of pre-assembly at 'site'. These tools and tackles shall not be removed from the 'site' without the written permission of the Purchaser/Engineer.

The Contractor shall also furnish all necessary expandable devices like anchors, grinding and abrasive wheels, hacksaw blades, taps, dies, drills, reamers, chisels, files, carborundum stones, wire brushes, necessary scaffolding, ladders, wooden planks, timbers, sleepers and consumable materials like oxygen, acetylene, argon, lubricating oils, greases, cleaning fluids, graphite powder and flakes, fasteners, gaskets, temporary supports, stainless steel shims of various thickness as required, cotton waste, cheese cloth and all other miscellaneous supplies of every kind required for carrying out the work under the 'contract'.

The Contractor shall provide all reasonable facilities including tools, personnel, etc and ensure co-ordination with the Purchaser/Engineer's erection supervisors to enable them to carry out all supervision, measurements, checks etc in a satisfactory manner.

The Contractor shall inform the Purchaser about arrival of all tools, tackles and scaffoldings. The Contractor shall not dispose or transport or withdraw any tools, tackles, equipment and material provided by him for the 'contract' without taking prior written approval from the Purchaser/Engineer; and the Purchaser/Engineer at all times shall have right to refuse permission for disposal, transport or withdrawal of tools, tackles, equipment and material, if in his opinion, the same will adversely affect the efficient and expeditious completion of the 'Project'.

The Contractor shall supply with the plant one complete set of all special tools and tackles for the erection, assembly, disassembly, operation and maintenance of the equipment. The Contractor shall furnish a list giving therein the description and quality of each items. The contract price shall include prices of these tools and tackles. These tools and tackles shall be separately packed and delivered to site along with main equipment.

Lubricants and First Fills

Unless specified in the Scope of Work, the Contractor shall be responsible for, within the contract price, the cost of purchase and delivery to the site of all chemicals, lubricants, H₂, O₂, N₂, CO₂, gases and other consumables required for the start-up, commissioning, testing and operation of the power plant until final "Taking-Over" and shall ensure that, at final Taking- Over, the quantities of such chemicals, lubricants and other consumables in the tanks, reservoirs, sumps and other points of storage within the works forming part of the power plant are such as to permit the operation of the power Plant after final "Taking-Over" in accordance with Good Industry Practice and without unnecessary interruption.

Communication

The Contractor shall make his own arrangement for all his communication needs such as telephone, facsimile, printing, etc at his site office. The Purchaser shall provide to the Contractor all reasonable assistance in this regard.

First Aid

The Contractor shall provide necessary first aid facilities for all his employees, representatives and workmen working at the site. Sufficient number of Contractor's personnel shall be trained in administering first-aid.

Cleanliness and Establishment of Green Belt Area

The Contractor shall be responsible for keeping the entire area allotted to him clean and free from rubbish, debris etc during the period of contract. The Contractor shall employ enough number of special personnel to thoroughly clean his work-area at least once in a day. All such rubbish and scrap material shall be stacked or disposed in a place to be identified by the Engineer. Materials and stores shall be so arranged to permit easy cleaning of the area. In areas where equipment might drip oil and cause damage to the floor surface, a suitable protective cover of a flame resistant, oil proof sheet shall be provided to protect the floor from such damage.

Similarly the offices of the Contractor shall be kept clean and neat to the entire satisfaction of the Engineer. Proper sanitary arrangements shall be provided by the Contractor, in the work- areas and office of the Contractor.

Unless specified in the Scope of Work, the Contractor shall be responsible for planting and maintenance of saplings to provide a green belt area within the boundary to meet the requirements of the Ministry of Environment and Forest.

Site Operations and Safety Regulations

The Contractor shall be solely responsible for the adequacy, stability and safety of its operations on the site. The Contractor shall, prior to the commencement of work at the site, review the comprehensive set of safety regulations agreed between the Purchaser and the Contractor that will form the basis for all the Contractor's operations at the site. The Contractor shall comply with and shall ensure that all of its employees, agents and sub-Contractors engaged in work at the site comply with the provisions of such safety regulations. It is the duty of the Contractor to ensure the health, safety and welfare at work of all its employees, including travel to and from the place of work if organized by the Contractor.

Safety Supervisor

The Contractor shall have on its staff at the site a person dealing with the safety and protection against accidents of all staff and labour. This person shall be appropriately qualified for this work and shall have the authority to issue instructions and to take protective measures in connection with the prevention of accidents.

Health and Safety Records and Reports

The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons at the site and damage to property at the site as the Purchaser shall from time to time reasonably require consistent with Good Industry Practice. The Contractor shall in any event report to the Purchaser details of any accident occurring on the site or, if occurring elsewhere, which causes damage to any plant intended for incorporation in the Facility, as soon as reasonably practicable after its occurrence.

Health and Safety Precautions

Without prejudice to its general obligation to comply with all Indian Laws and Directives concerning health and safety precautions, the Contractor shall at its own cost take all due precautions to ensure the safety of its staff and labour and, in collaboration with and to the requirements of the local health authorities where appropriate, shall ensure that staff with adequate medical training, first aid equipment and stores are available at the Site at all times throughout the period of the contract

and that suitable arrangements are made for the prevention of epidemics including all necessary welfare and hygiene requirements. In the event of the outbreak of any illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements of any Competent Authority for the purpose of dealing with an overcoming the same. Safety helmets of a quality specified and/or agreed by the Purchaser shall be provided by the Contractor for all his staff and labour force, free of charge or cost and it shall be compulsory for such helmet to be worn at all times when on site.

Insects and Pest Nuisance

The Contractor shall at all times take all reasonably necessary precautions to protect all staff and labour employed on the site from insect nuisance, vermin and other pests and reduce the dangers to health and the general nuisance occasioned by the same.

Radioactive Materials

If there are radioactive isotopes on Site, then radiation workers must have

- r) undergone a complete medical check-up at the Contractor's cost; and
- s) arrangements made for the carrying and inspection of dose meters at the Contractor's cost.

LINES AND GRADES

All the works shall be performed to the lines, grades and elevation indicated on the drawings. The Contractor shall be responsible to locate and layout of the works. Basic horizontal and vertical control points will be established and marked by the Engineer at site at suitable points. The Contractor shall inform the Engineer well in advance of the times and places at which he wishes to do work in the area allotted to him so that suitable datum points may be established and checked by the Engineer to enable the Contractor to proceed with his works. Any work done without being properly located may be removed and/or dismantled by the Engineer at Contractor's expense.

FIRE PROTECTION

8.23 The work procedures that are to be used during the erection shall be those which minimize fire hazards to the extent practicable. Combustible materials, combustible waste and rubbish shall be collected and removed from the site at least once each day. Fuels, oils and volatile or flammable materials shall be stored away from the construction equipment and materials storage areas in safe containers. Untreated canvas paper, plastic or other flammable flexible materials shall not at all be used at site for any other purposes unless otherwise specified. If any such materials are received with the equipment at the site, the same shall be removed and replaced with acceptable material before moving into the construction area or storage.

8.24 Similarly corrugated paper fabricated cartons; etc shall not be permitted in the construction area either for storage or for handling of materials. All such materials used shall be of waterproof and flame resistant type. All the other materials such as working drawings, plans etc, which are combustible but essential, shall be protected against combustion resulting from welding sparks, cutting flames and other similar fire sources.

8.25 The entire Contractor's supervisory personnel and sufficient number of workers shall be trained for fire-fighting and shall be assigned specific fire protection duties. Enough of such trained personnel must be available at the site during the entire period of the contract.

8.26 The Contractor shall provide enough fire protection equipment of the types and number for the warehouses, office, temporary structures, labour colony area, etc. Access to such fire protection equipment

shall be easy and kept open at all times. The compliance of the above requirements under fire protection shall in no way relieve the Contractor of any of his responsibilities and liabilities due to fire accidents occurring either to his materials and equipment or to those of others working in the area.

SECURITY

8.27 The Contractor shall have total responsibility for all equipment and materials in his custody stored, loose, semi-assembled and/or erected by him at site. The Contractor shall make suitable security arrangements including employment of security personnel to ensure the protection of all materials, equipment and works from theft, fire, pilferage and any other damages and loss. All materials of the Contractor shall enter and leave the project site with the written permission of the Engineer in the prescribed manner.

Fencing, Guarding, Lighting etc

The Contractor shall be responsible for the proper fencing, guarding, lighting and security of all the works on the site and for the proper provision of temporary roadways, footways, guards and fences on the site as far as may be necessary for the works and so as not to endanger the Purchaser and occupiers of adjacent property, the public and others all in accordance with Good Industry Practice.

In the event that the Contractor is in default of his obligations, the Purchaser may provide such fencing, guarding, lighting, security, temporary roadways, footways, guards and fences as he may deem necessary and charge the cost thereof to the Contractor.

Site Work

The Contractor shall provide needed apparatus for the use of such supplies of electricity, water and other works as are made available for the Contractor's use by the Purchaser pursuant to sub-clause 14.0.

Clearance of Site

On a continuous basis consistent with Good Industry Practice during the progress of the works, the Contractor shall clear away and remove from the site all surplus materials and, on completion, all Contractor's equipment, provided that :

- a) The Contractor shall give to the Purchaser the first right of refusal to purchase any surplus materials on the same terms as the Contractor would otherwise have disposed of them to a third party or, if such terms are not readily ascertainable, on such terms as may be reasonable in all the circumstances; and
- b) The Contractor shall, unless otherwise instructed by the Purchaser, leave on the site for the Purchaser such temporary works as may be agreed with the Purchaser.

The Contractor shall at all times keep the site and the Facility in a clean, safe and workmanlike condition and shall dispose of all rubbish (other than hazardous materials or other materials which may contaminate ground water, for which other arrangements shall be made) in a properly prepared landfill site in accordance with Good Industry Practice.

19.0 CONTRACTOR'S AREA LIMITS

The Engineer will mark out the boundary limits of access roads, parking spaces, storage and

construction areas for the Contractor; and the Contractor shall not trespass the areas not so marked out for him. The Contractor shall be responsible to ensure that none of his personnel move out of the areas marked out for his operations. In case of such a need for the Contractor's personnel to work, out of the areas marked out for him, the same shall be done only with the written permission of the Engineer.

20.0 CONTRACTOR'S COOPERATION WITH THE PURCHASER

20.1 The Contractor shall cooperate with the Purchaser's other sub-Contractors and Engineers for associated equipment and freely exchange with them such technical information as is necessary to obtain the most efficient and economical design and to avoid unnecessary duplication of equipment. No remuneration shall be claimed from the Purchaser for such technical cooperation. The Purchaser/Engineer shall be provided with copies each of all correspondence addressed by the Contractor to the other Contractors with respect to such exchanges of technical information.

20.2 If any part of the Contractor's work depends for proper execution or results, upon the work of any other Contractor, the Contractor shall inspect and promptly report in writing to the Purchaser any defects in such works that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other sub- Contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other Contractor's work after the proper execution of his work.

20.2 In cases where the performance of the erection work by the Contractor affects the operation of the system facilities of the Purchaser, such erection work of the Contractor shall be scheduled to be performed only in the manner stipulated by the Engineer and the same shall be acceptable at all times to the Contractor. The Engineer may impose such restrictions on the facilities provided to the Contractor such as electricity, water, etc as he may think fit in the interest of the Purchaser; and the Contractor shall strictly adhere to such restrictions and cooperate with the Engineer. It shall be the responsibility of the Contractor to provide all necessary temporary instrumentation and other measuring devices required during startup and operation of the equipment systems that are erected by him.

21.0 PRE-COMMISSIONING ACTIVITIES AND TRIAL OPERATIONS

The pre-commissioning trials and initial operations of the equipment furnished and erected by the Contractor shall be the responsibility of the Contractor. The Contractor shall provide, in addition, test instruments, calibration devices, etc and the labour required for the successful performance of these trials. If it is anticipated that the above test may prolong for a long time, the Contractor's workmen required for the above test shall always be present at site during such trials.

22.0 MATERIALS HANDLING AND STORAGE

22.1 All the equipment furnished under the contract and arriving at site shall be promptly received, unloaded and transported and stored in the storage spaces by the Contractor.

18.6 The Contractor shall be responsible for examining all the consignments and notify the Engineer immediately of any damage, shortage, discrepancy etc. The Contractor shall submit to the Engineer every week a report detailing all the receipts during the week. However, the Contractor shall be solely responsible for any shortages or damage in transit, handling and/or in storage and erection of the equipment at the site. Any demurrage, wharfage and other such charges claimed by the transporters, railways etc shall be to the account of the Contractor.

18.7 The Contractor shall maintain an accurate and exhaustive record detailing out the list of all equipment received by him for the purpose of erection and keep such record open for the inspection of the Engineer at any time.

18.8 All equipment shall be handled very carefully to prevent any damage or loss. The equipment stored shall be properly protected to prevent damage either to the equipment or to the floor where they are stored. The equipment from the storage shall be moved to the actual location at an appropriate time so as to avoid damage of such equipment at site.

18.9 All electrical panels, control gears, motors and such other devices shall be properly dried by heating before they are installed and energized. Motor bearings, slip rings, commutators and other exposed parts shall be protected against moisture ingress and corrosion during storage and periodically treated to prevent corrosion due to prolonged storage.

18.10 All the electrical equipment, such as motors, generator etc shall be tested for insulation resistance at least once in three months from the date of receipt till the date of commissioning and a record of such measured insulation values shall be maintained by the Contractor. Such records shall be open for inspection by the Engineer.

18.11 The Contractor shall ensure that all the packing materials, and protection devices used for the various equipment during transit and storage are removed before the equipment are installed. The packing materials and protection devices shall remain the property of the Purchaser and shall be handed over to him by the Contractor after the completion of works.

18.12 The consumables and other supplies likely to deteriorate due to storage must be thoroughly protected and stored in a suitable manner to prevent damage or deterioration in quality by storage.

18.13 All the materials stored in the open or dusty location must be covered with suitable weather proof and flameproof covering material wherever applicable.

18.14 If the materials belonging to the Contractor are stored in areas other than those earmarked for him, the Engineer will have the right to get them moved to the area earmarked for the Contractor at the Contractor's cost.

18.15 The Contractor shall be responsible for making suitable indoor storage facilities to store all equipment that require indoor storage. Normally, all the electrical equipment such as motors, control gears, generators, exciters and consumables like electrodes, and lubricants, etc. shall be stored in the closed storage space. The Engineer, in addition, may direct the Contractor to move certain other materials that in his opinion will require indoor storage to the designated indoor storage areas, which the Contractor shall strictly comply with.

18.16 In addition to the above, the following safety aspects should be ensured during construction and erection:

- a) Working platforms to be fenced and to have means of access.
- b) Ladders as per safety rules for construction & erection. Rungs shall not be welded to columns. Stairs shall be provided with handrails immediately after its erection.

CONSTRUCTION MANAGEMENT

18.17 The Engineer will hold weekly meetings of all the Contractors working at site, at a time and a place to be designated by the Engineer. The Contractor shall attend meetings and take notes of discussions during the meeting as well as the decisions of the Engineer; and shall strictly adhere to those decisions in performing his works.

18.18 Time is the essence of the contract; and the Contractor shall be responsible for performance of his works in accordance with the specified construction schedule. If at any time, the Contractor is falling behind the schedule, he shall take necessary action to make good for such delays by increasing his work force or by

working overtime or otherwise accelerate the progress of the work to comply with the schedule; and shall communicate such actions in writing to the Engineer, satisfying that his action will compensate for the delay. The Contractor shall not be allowed any extra compensation for such action.

FIELD OFFICE RECORDS

The Contractor shall maintain at his site office up to date copies of all drawings, specifications, other contract documents and any other supplementary data complete with all the latest revisions there to. The Contractor shall also maintain in addition the continuous record of all changes to the above contract documents drawings, specifications, supplementary data, etc effected at the field; and on completion of his total assignment under the contract shall incorporate all such changes on the drawings and other engineering data to indicate as installed conditions of the equipment furnished and erected under the contract. Such drawings and Engineering data shall be submitted to the Engineer in required number of copies.

CONTRACTOR'S MATERIALS BROUGHT ON TO SITE

18.19 The Contractor shall bring to site all equipment components, parts, materials, including construction equipment, tools and tackles for the purpose of the works under intimation to the Engineer. The right on all such goods shall, from the time of their being brought to site shall rest with the Purchaser but may be used for the purpose of the works only and shall not on any account be removed or taken away by the Contractor without the written permission of the Engineer. The Contractor shall be solely liable and responsible for any loss or destruction thereof and damage thereto.

Transportation

The Contractor shall at its own risk and expense transport all the Plant and Equipment and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.

Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport by any person to carry the Plant and Equipment and the Contractor's Equipment.

Upon despatch of each shipment of the Plant and Equipment and the Contractor's Equipment, the Contractor shall notify the Employer by courier, post or by telefax followed by post confirmation of the description of the Plant and Equipment and of the Contractor's Equipment, the point and means of despatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the parties.

The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Plant and Equipment and the Contractor's Equipment to the Site. The Employer shall use its best endeavours in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damaged to roads, bridges or any other traffic facilities that may be caused by the transport of the Plant and Equipment and the Contractor's Equipment to the Site.

Customs Clearance

The Contractor shall, at its own expense, handle all imported Plant and Equipment including spares and Contractor's Equipment at the point(s) of import and shall handle all formalities for customs clearance, including liability for port charges etc.

18.20 After the completion of the works, the Contractor shall remove from the site under the direction of the Engineer, the materials such as construction equipment, erection tools and tackles, scaffolding, etc with the written permission of the Engineer. If the Contractor fails to remove such materials, within fifteen (15) days of a notice by the Engineer to do so, then the Engineer shall have the liberty to dispose of such materials as detailed in above clause and credit the proceeds thereof to the account of the Contractor.

PROTECTION OF PROPERTY AND CONTRACTOR'S LIABILITY

18.21 The Contractor shall be responsible for any damage resulting from his operation. He shall also be responsible for protection of all persons including members of public; and employees of the Purchaser & the Engineer; employees of the Contractors & Subcontractors; and all public and private property including structures, buildings, other plants and equipment and utilities either above or below the ground.

18.22 The Contractor shall ensure provision of necessary safety equipment such as barriers, sign boards, warning lights and alarms, etc to provide adequate protection to persons and property. The Contractor shall be responsible to give reasonable notice to the Engineer & the Purchaser of public or private property and utilities when such property and utilities are likely to get damaged or injured during the performance of his works and shall make all necessary arrangements with such Purchaser, related to removal and/or replacement or protection of such property and utilities.

INSURANCE

18.23 The Comprehensive insurance of Contractor's/Subcontractors' equipment during erection and commissioning, Workmen's Compensation Insurance, Comprehensive Automobile Insurance and Comprehensive General Liability Insurance shall be the responsibility of the Contractor.

Workmen's Compensation Insurance

The insurance shall protect the Contractor against all claims applicable under the Workmen's Compensation Act 1924 (Government of India). This policy shall also cover the Contractor against claims for injury, disability, disease or death of his or his Subcontractor's employees, which for any reason are not covered under the Workmen's Compensation Act, 1924. The liabilities shall not be less than

- | | | |
|----|-------------------------|-----------------------------|
| a) | Workmen's compensation: | As per statutory provisions |
| b) | Employee's liability: | As per statutory provisions |

Recoveries will be made from Contractor's bills for any liability for the accident and refund shall be considered later after the claim is fully settled by the insurance authorities.

Comprehensive Automobile Insurance

The insurance shall be in such a form to protect the Contractor against all claims for injuries, disability and death to members of public including the Purchaser's men and damage to the property of others arising from the use of motor vehicles during on or off the site operations, irrespective of the Purchaser of such vehicles.

Comprehensive General Liability Insurance

This insurance shall protect the Contractor against all claims arising from injuries, disabilities, diseases or death of members of public or damage to property of others, due to any act or omission on the part of the Contractor, his agents, his employees, his representative and Subcontractors or from riots, strikes and civil commotion. This insurance shall also cover all the liabilities of the Contractor arising out of the clause entitled "Defence of Suits" under General Terms and Conditions of contract.

The hazards to be covered will pertain to all the works and areas where, the Contractor, his Subcontractors, his agents and his employees have to perform work pursuant to the contract.

The above are only illustrative list of insurance covers normally required and it shall be the responsibility of the Contractor to maintain all necessary insurance coverage to the extent both in time and amount to take care of all his liabilities either direct or indirect, in pursuance of the contract.

Fire Insurance

Unless otherwise instructed by the Purchaser/Engineer, the Contractor shall, on signing the 'contract', insure the works and keep them insured until the completion of the 'contract' against loss or damage by fire, with the Company to be approved by the Purchaser/Engineer, in the joint names of the Purchaser and the Contractor for such amount and for any further sum, if called upon to do so by the Purchaser/Engineer, the premium of such further sum being allowed to the Contractor as an authorized extra. Such policy shall cover the property of the Purchaser only and shall not cover any property of the Contractor or any Subcontractor, or his employees. The Contractor shall deposit the policy receipts for the premium with the Purchaser/Engineer within twenty one (21) days from the date of signing the 'contract' unless otherwise instructed by the Purchaser/Engineer. In default of the Contractor insuring as provided above, the Purchaser may so insure and may deduct the premiums paid from any moneys due, or which may become due to the Contractor. The Contractor shall, as soon as the claim under the policy is settled, or the work reinstated by the Insurance Office should they elect to do so, proceed with all due diligence with the completion of the works in the same manner as though the fire had not occurred and in all respects under the same conditions of 'contract'. The Contractor shall arrange all the replacement materials damaged during fire accident if any without for finalization of his claim with insurance company. The claim received if any will be passed on to the Contractor.

18.24 The Purchaser may consider excluding the total insurance cover responsibility from the Contractor's scope. However, the Contractor shall furnish the detailed price break-up of insurance in the price schedule. The insurance coverage and payment for insurance shall be as per the new insurance regulations and subjected to RBI regulations as erection cum storage insurance may not be permitted to be covered through the foreign company.

UNFAVOURABLE WORKING CONDITIONS

The Contractor shall confine all his field operations to those works which can be performed without subjecting the equipment and materials to adverse effects during inclement weather conditions, like monsoon, storms etc and during other unfavourable construction conditions. No field activities shall be performed by the Contractor under conditions that might adversely affect the quality and efficiency thereof, unless special precautions or measures are taken by Contractor in a proper and

satisfactory manner in the performance of such works and with the concurrence of the Engineer. Such unfavourable construction conditions will in no way relieve the Contractor of his responsibility to perform the works as per the schedule.

PROTECTION OF MONUMENTS AND REFERENCE POINTS

The Contractor shall ensure that any finds such as relic, antiquity, coins, fossils, etc which he may come across during the course of performance of his works either during excavation or elsewhere, are properly protected and handed over to the Engineer. Similarly the Contractor shall ensure that the bench marks, reference points etc which are marked out either with the help of Engineer or by the Engineer shall not be disturbed in any way during the performance of his works. If any work is to be performed which may disturb such references, the same shall be done only after these are transferred to other suitable location under the direction of the Engineer. The Contractor shall provide all necessary materials and assistance for such relocation of reference points etc.

WORK & SAFETY REGULATIONS

30.1 The Contractor shall ensure the safety of all the workmen, materials and equipment either belonging to him or to others working at site.

30.2 The Contractor shall notify the Engineer of his intention to bring on to site any equipment or any container, with liquid or gaseous fuel or other substance which may create hazard. The Engineer shall have the right to prescribe the conditions under which such equipment or container may be handled and used, during the performance of the works; and the Contractor shall strictly adhere to such instructions. The Engineer shall have the right to inspect any construction plant and to forbid its use, if in his opinion it is unsafe. No claim due to such prohibition shall be entertained by the Purchaser.

30.3 Where it is necessary to provide and/or store petroleum products or petroleum mixture and explosive, the Contractor shall be, responsible for carrying out such provisions and/or storage in accordance with the rules and regulations laid down in Petroleum Act 1933, Explosive Act 1938, and Petroleum and Carbide of Calcium Manual published by the Chief Inspector of Explosives of India. All such storage shall have prior approval of the Engineer. In case any approvals are necessary from the Chief Inspector of Explosives or any statutory authorities, the Contractor shall be responsible for obtaining the same.

30.4 The Contractor shall be responsible for provision of all safety notices and safety equipment required both by the relevant legislations and the Engineer as he may deem necessary.

30.5 The Contractor shall be responsible for the storage of his and his Subcontractor's radioactive sources, if any.

ELECTRICAL SAFETY REGULATIONS

18.25 In no circumstances, the Contractor shall interfere with fuses and electrical equipment belonging to the Purchaser.

18.26 Before the Contractor connects any electrical appliances to any plug or socket belonging to the Purchaser, he shall -

- a) Satisfy the Engineer that the appliances are in good working condition.
- b) Inform the Engineer of the maximum current rating voltage and phases of the appliances.

c) Obtain permission of the Engineer detailing the socket to which the appliances may be connected.

The Engineer will not grant permission to connect until he is satisfied that:

- (i) The appliance is in good condition and is fitted with a suitable plug.
- (ii) The appliance is fitted with a suitable cable having two earth conductors, one of which shall be an earthed metal sheath surrounding the cores.

18.27 No electric cable in use by the Contractor/Purchaser shall be disturbed without prior permission. No weight of any description shall be imposed on any such cable; and no ladder or similar equipment shall rest against or be attached to it.

18.28 No work shall be carried out on any live equipment. The equipment must be made safe; and a permit to work issued by the Engineer should be obtained before any work is carried out.

18.29 The Contractor shall employ the necessary number of qualified, full time electricians to maintain his temporary electrical installation.

FOREIGN PERSONNEL

18.30 The Contractor shall submit to the Purchaser data on all foreign personnel he proposes to deploy for the performance of the works under the contract, at least sixty (60) days prior to their departure to India. Such data shall include for each person, the name, his present address, his assignment and responsibility in connection with the works, and a short resume of his qualification, experience, etc in relation to the work to be performed by him.

18.31 Any person unsuitable and unacceptable by the Purchaser shall not be deployed at site. Any person deployed at site if found unsuitable or unacceptable by the Purchaser, the Contractor shall within a reasonable time but not exceeding 7 days make alternative arrangements for providing a suitable replacement and repatriation of such unsuitable personnel.

18.32 No person deployed at site for the purpose of the works shall be repatriated without the consent of the Purchaser in writing based on a written request from the Contractor for such repatriation giving reasons for such an action to the Engineer. The Purchaser may give permission for such repatriation provided he is satisfied that the progress of work will not suffer due to such repatriation.

18.33 The Contractor shall pay all taxes due in India for the personnel employed by the Contractor for work arising out of the services of the foreign personnel in connection with the contract and obtaining at his (Contractor's) own cost 'Work Permits' from competent authorities to enable foreign personnel to work in India.

The Contractor shall be responsible for all formalities in connection with passports, obtaining of visas, policy permits and expenses for customs duties related to personal goods of foreign personnel to be employed in the erection work. However, the Purchaser shall, if requested, assist the Contractor in obtaining visas and 'work permits' for the foreign personnel to be deputed for the erection work.

The cost for passports, visas and all other travel expenses to and from India incurred by the Contractor shall be to his account. The Purchaser will not provide any residential accommodation and/or furniture for any of the Contractor's personnel including foreign personnel;

and the Contractor shall make his own arrangements for such facilities.

18.34 The Contractor and his expatriate personnel shall comply with all Applicable Laws and shall not in any way, interfere with Indian political and religious affairs; and shall conform to any other rules and regulations the Government of India, the Purchaser and the Engineer may establish from time to time on them. The Contractor's expatriate personnel shall work and live in close cooperation and coordination with their coworkers and the community and shall not engage themselves in any other employment either part time or full time nor shall they take part in any local politics.

18.35 The Purchaser will assist the Contractor, to the extent possible in obtaining necessary permits to travel to India and back, by issuing necessary certificates and other information needed by the Government of India.

CODE REQUIREMENT

The erection requirements and procedures to be followed during the installation of the equipment shall be in accordance with the ASME codes and accepted good engineering practice, the Engineer's drawings and other applicable Indian recognized codes and the laws and regulations of the Government of India.

DEFECTIVE WORKS

If the work or any portion thereof be damaged in any way excepting by the acts of the Purchaser, or if defects not readily detected by prior inspection be developed before the final completion and acceptance of the whole work, the Contractor shall forthwith make good, without compensation, such damage or defects in a manner satisfactory to the Purchaser/Engineer. In no case shall defective or imperfect work be retained.

PROGRESSIVE PAYMENT FOR SITE WORK

All progressive payments for construction and erection works shall be based on milestone progress achieved. The Contractor shall submit a detailed schedule for such milestones, which shall be mutually discussed and agreed between Purchaser and Contractor.

The Contractor shall not demand nor be entitled to receive payment for the work or portion thereof, except in the manner set-forth in the Contract Agreement and only after the Purchaser/Engineer certification for such payment.

ADHERENCE TO MANUFACTURER'S INSTRUCTION

Adherence to instructions of the manufacturer's supervisory engineers, where provided, is compulsory. The Contractor shall work under the guidance of the manufacturer's supervisors to ensure that erection procedure adopted by the Contractor as well as completed erection of equipment is such as not to interfere with or prevent equipment from functioning as intended, as well as to the entire satisfaction of the manufacturer's supervisor/Purchaser/Engineer. The Contractor shall also permit and provide all facilities for the manufacturer's erection supervisors to carry out all checks that they may wish to and approve any erection procedure and/or final setting and alignment of component, in order to satisfy themselves that erection has been carried out as intended by them. This shall, however, in no way relieve the Contractor of his responsibility for providing adequate and competent supervision and quality workmanship. In case of any dispute, the decision of the

Purchaser/ Engineer/Manufacturer's erection supervisor shall be final.

MODIFICATIONS

The Contractor shall carry out all modifications at site as directed by the Purchaser/Engineer to complete the work covered in this contract. It is the responsibility of the Contractor to get the prior approval for such modifications from the Purchaser/Engineer before such works are taken final.

HANDING OVER

In the event of the Contractor being prevented by causes not attributable to him from proceeding with erection or from completing erection before he withdraws from the site, he shall hand over to the Purchaser for safe keeping during his absence such contract materials that he is unable to erect, and the Purchaser will furnish a receipt for material so handed over.

ANNEXURE – J (ECC)

PROFORMA OF CONTRACT AGREEMENT for SERVICES

[To be on stamp paper in accordance with Stamp Act]

This Agreement made this day of two thousand... ..
between Star Paper Mills Limited (SPML) registered in India, under the Companies Act 1956, having its registered office at ----- (India) (hereinafter referred to as "Purchaser" or "SPML" which expression shall include its administrators, executors, assigns) of the one part and a company incorporated under the Companies Act, 1956 having its.....registered office at
(hereinafter referred to as the "Contractor" or Contractor
..... (brief name of Contracting company), which expression shall include its administrators, successors, executors and permitted assigns) of the other part.

WHEREAS, SPML desirous of setting up its Cogeneration plant at Saharanpur, Uttar Pradesh (India) (hereinafter called the “ Project”) has invited Bid Proposals for transportation to site, installation, commissioning, performance testing at site, and other related items of work for the main plant equipment on EPC basis inclusive of all civil construction, mechanical, electrical, instrumentation & control systems, civil design interface (including civil works) and structural works on EPC basis as set forth in the accompanying technical documents, necessary for putting into commercial operation a highly reliable, safe, efficient and environmentally compliant Main Plant Equipment for 15 MW Go generation plant, at Saharanpur, Uttar Pradesh.

Contractor has obtained all the clarifications on technical and commercial aspects, inspected the site and surroundings of the Project and has examined and considered all other matters conditions and things, probable contingencies, and all matters incidental thereto and ancillary thereof, affecting the execution and completion of the “Project” without any further recourse and liability whatsoever to SPML except their rights set out in contracts mentioned here- in- below, and

AND WHEREAS the Contractor had participated in the above-referred Bid vide their offer dated ----- and SPML after examining the offer, accepted their aforesaid offer and awarded the Contract on Turnkey basis to the contractor on terms and conditions contained in its detailed Letter of Intent No. ----- dated ----- and the documents referred to therein, which have been unequivocally accepted by the Contractor resulting into a concluding “Contract” (hereinafter called the “Contract”).)

NOW THEREFORE THIS DEED WITNESSETH AS UNDER:-

Article 1.0 Award of Contract

SPML has awarded the Contract to the Contractor for the work of port handling, Custom clearance, receiving at site, unloading, handling, opening, inspection and storage at site of all equipment and materials including associated accessories, transportation at site up to foundations,

installations, testing and successful commissioning including putting the plant into successful operation and Performance and Guarantee Testing of equipment/materials including associated accessories, Operation & Maintenance, till final taking over of complete Power Plant of 15 MW Co generation plant, at SPML Site, Saharanpur, Uttar Pradesh as set forth in the accompanying Technical documents and the correspondence exchanged on the subject on the terms and conditions contained in its detailed Letter of Intent No.----- dated ----- and the documents referred to therein. The Contract has taken effect from -----, i.e., the date of issue of the LOI. The terms and expressions used in this Agreement shall have the same meaning as are assigned to them in the "Contract Documents" referred to in the succeeding Article.

2.0 CONTRACT DOCUMENTS

2.1 The Contract shall be performed strictly as per the terms and conditions stipulated herein and in the following documents attached herewith (hereinafter referred to as "Contract Documents").

(i) SPML's Bidding Documents in respect of specification No.....issued vide its Letter No. dated of consisting of, Instructions to Bidders, General Conditions of Contract, Erection condition of Contract, Special condition of contract and all other sections entitled "Conditions of Contract" including all amendments/clarifications issued vide its letter(s) No.(s)..... dated.....(Volume-I)
.....

(ii) Technical Specification (including Amendments issued vide its Letter No..... dated

(iii) Schedules (including amendments issued vide their letter No.....Dated

(iv) Bidder's proposal No. dated along with proposal sheets, Data Requirements, payment terms and Work Schedules submitted by Contractor entitled as

(v) Agreed minutes of the meeting held on between SPML and Contractor

(vi) SPML's Letter of intent No.....dated..... duly accepted

(vii) Quality Plans for manufacturing and field activities entitled as "Quality Plans" viii) Contract Network.....

In case of any conflict between the conditions of the same documents or any two documents, the severest of the two shall prevail.

2.2 All the aforesaid Contract Documents including the Letter of Intent shall form an integral part of this Contract Agreement, in so far as the same or any part thereof conforms to the Invitation to Bid and what has been specifically agreed to by the Purchaser in its Letter of Intent. Any matter inconsistent therewith, contrary or repugnant thereto or any deviation(s) taken by the

Contractor in their “Offer ” but not agreed to specifically by the Purchaser in its Letter of Intent, shall be deemed to have been withdrawn by the Contractor without any cost implications to PURCHASER, For the sake of brevity, this Contract Agreement along with all its annexure/Appendices and all the aforesaid “Contract Documents” presently annexed or mutually agreed documents intended to be annexed at a later date and forming an integral part of the “Contract documents” and Letter of Intent shall be referred as the “Contract Agreement”.

Article 3.0 Conditions and Covenants

3.1 The scope of Contract, consideration, Terms of Payment, Advance, Taxes wherever applicable, Agreed Time Schedules, Penalty, Performance Guarantee and all other terms and conditions are contained in Purchaser’s Letter of Intent No. ----- dated ----- read in conjunction with other aforesaid contract Documents. The Contract shall be successfully performed by the contractor strictly and faithfully in accordance with the terms of this Contract Agreement.

3.2 The scope of work under the contract shall also include all such works which are not specifically mentioned in the Bid Documents read in conjunction with the offer, letters and Minutes of Meeting as referred in the detailed Letter of Intent but are required to complete the Project as well as for the successful, efficient, safe and reliable operation of the Power Station under the contract. All such works shall be performed by Contractor under the contract without any extra cost to SPML.

3.3 It is expressly agreed and understood that this contract is awarded on single source responsibility basis and the contractor is bound to perform the total contract in its entirety and non-performance of any part or portion of the contract shall be deemed to be a breach of the entire contract.

3.4 **Cross Fall Breach Clause:** As mutually agreed, SPML has also placed on **Contractor**

another Contract vide SPML Letter of Intent No. dated.....(hereinafter
-----called the ‘First Contract’) which interalia covers the work of design, engineering manufacture, shop testing, inspection at manufacturer’s works including packing, forwarding and shipping/dispatch, from manufacturing work/place of shipment/dispatch of equipment/materials, Inland Transportation of entire equipment and materials to Power Plant of SPML including associated accessories of the complete Power Plant, 15 MW Co generation plant at Uttar Pradesh on the terms and conditions contained in its detailed Letter of Intent No.----- dated-----and the documents referred to therein. The Contract has-----taken effect from-----, i.e., the date of issue of the LOI. The terms and expressions used in this Agreement shall have the same meaning as are assigned to them in the “Contract Documents” referred to in the succeeding Article.

Contractor shall also be fully responsible for the works to be executed under the first Contract and it is expressly understood and agreed by **Contractor** that any breach under the first Contract shall automatically be deemed as a breach of this Second contract and vice versa and any such breach or occurrence or default giving **PURCHASER** a right to terminate the first contract and/or recover damages there under, shall give **PURCHASER** an absolute right to terminate this contract and/or recover damages under this Second contract as well and vice versa. However, such breach or default or occurrence in the First contract shall not automatically relieve **Contractor** of any of their responsibility/obligations under the Second contract. It is also expressly understood and agreed that the materials/equipment supplied by **Contractor** under the first contract when erected

and commissioned under the second contract shall give satisfactory performance in accordance with the provisions of the contract.

Time Schedule

3.5.1 It is expressly agreed that Time is the essence of the Contract and the agreed schedules shall be strictly adhered to. The Contractor shall complete the work of Erection, Testing and Commissioning and provisional taking over of the plant in 18 months from the date of issue of LOI.

Quality Plans

3.4.1 The Contractor is responsible for the proper execution of the Field Quality Plans as submitted along with Bid. The work beyond the Customer's hold points will progress only with the Purchaser's consent. The Purchaser will also undertake quality surveillance and quality audit at site, systems and procedures and quality control activities. The Contractor further agrees that any change in the Field Quality Plans will be made only with the Purchaser's approval. The Contractor shall also perform all quality control activities, inspection and tests agreed with the Purchaser to demonstrate full compliance with the Contract requirements.

3.4.2 The Contractor also agrees to provide the Purchaser with the necessary facilities for carrying out inspection, quality audit and quality surveillance of Contractor's and its Sub-contractor's quality Assurance Systems and site activities.

These shall include but not limited to the following:

- α) Relevant plant standards, drawing and procedures;
- β) Detailed Quality Assurance System manuals for site activities.
- γ) Storage procedures and instructions, weld, etc.
- δ) Complete set of log sheets (blank).

3.4.3 It is expressly agreed to by the Contractor that the Quality tests and Inspection by the Purchaser shall not in any way relieve the Contractor of its responsibilities for quality standards, and performance guarantee and their other obligations under the Agreement.

3.4.4 Contractor agrees to submit Quality Assurance Documents package to SPML for review and record after completion works.

The package will include the following:

- α) Two copies of Inspection reports duly signed by Quality Assurance personnel of both SPML and Contractor for the agreed customer hold points;
- β) Report of the rectification works where and if applicable.

3.5 It is expressly agreed by the Contractor that notwithstanding the fact that the Contract is termed as Design, engineering, manufacturing, supply, testing & commissioning Contract or indicates the break-up of the Contract consideration, or awarded two contracts for convenience of operation and for payment of Sales Tax on supply portion, it is in fact one composite Contract on single source responsibility basis and the Contractor is bound to perform the total Contract in its entirety and non-performance of any part or portion of the Contract shall be deemed to be a breach of the entire Contract.

3.6 The Contractor guarantees that the equipment package under the Contract shall meet the ratings and performance parameters, as stipulated in the Technical Specifications and in the event of any deficiencies found in the requisite performance figures, the Purchaser may at its option reject the equipment package or alternatively accept it on the terms and conditions and subject to levy of the penalty in terms of Contract Documents. The amount of penalties so leviable shall be in accordance with the Contract Documents and without any limitation.


Article 4.0 CONTRACT PRICE

The total Contract price for the entire scope of this contract as detailed in clause no. ----- of Letter of Intent is Rs.-----/- (Rupees -----)

Which shall be firm till completion of the contract.

Article 5.0 Contract Performance Guarantee(s)

5.1 Contractor agrees to submit within 30 days from the date of issue of LOI

 Bank Guarantee for Contract Performance Guarantee which shall be valid till 12 months after final taking over of equipment's of all units. In addition Equipment Performance Bank Guarantee shall be submitted on successful completion of the performance tests and before final taking over and will be valid till completion of the warranty period and completion of all Contractual obligations under the Contract.

5.2 It is further agreed by the Contractor that the Contract Performance Guarantee shall in no way be construed to limit or restrict the Purchaser's right to recover the damages/compensation due to short-fall in the equipment performance figures as stated in clause 3.8 above or under any other clause of the Agreement. The amount of damages/compensation shall be recoverable either by way of deduction from the Contract Price, Bank Guarantee for Performance Guarantee, Bank Guarantee in lieu of LD for delay in timely completion of the Contract and Equipment Performance Bank Guarantee and/or otherwise.

The Bank Guarantee for Contract performance guarantee, Bank guarantee in lieu of LD for delay in timely completion of the Contract, and Equipment Performance Guarantee furnished by the Contractor are irrevocable and unconditional and the Purchaser shall have the powers to invoke it notwithstanding any dispute or difference between the Purchaser and the Contractor pending before any court, tribunal, arbitrator or any other authority.

It is expressly understood and agreed by and between the Contractor and the Purchaser that the Purchaser is entering into this agreement solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this agreement and has no liabilities, obligations or rights here under. It is expressly understood and agreed that the Purchaser is an independent legal entity with power and authority to enter into Contracts solely on its own behalf under the applicable laws of India and the general

principles of Contract Law. The Contractor expressly agrees, acknowledges and understands that the Purchaser is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, commissions, breaches or other wrongs arising out of the Contract.

5.3 This Agreement constitutes full and complete understanding between the parties and terms of the presents. It shall supersede all prior correspondence to the extent of Inconsistency or repugnance to the terms and conditions contained in the Agreement. Any modification of the Agreement shall be effected only by a written instrument signed by the authorised representative of both the parties.

Article 6.0 Settlement of Disputes and Arbitration

6.1 It is specifically agreed by and between the parties that all the differences or disputes arising out of the Agreement or touching the subject matter of the Agreement shall be decided by process of Settlement of Disputes and Arbitration as referred in Clause 9 and 25 of Section 2 - General Conditions of Contract.

6.2 **Governing Laws:** The Contract shall be governed by Indian Laws and Rules as amended from time to time. District Courts of Saharapur, Uttar Pradesh, alone shall have the exclusive jurisdiction in all matters arising under this Agreement.

Article 7.0 NOTICE OF DEFAULTS

7.1 Notice of default given by either party to the other party under Agreement shall be in writing and shall be deemed to have been duly and properly served upon the parties hereto if delivered against acknowledgement or fax or by registered mail /courier duly addressed to the signatories at the addresses mentioned herein above.

IN WITNESS WHEREOF, the parties through their duly authorised representatives have executed these presents (execution whereof has been approved by the competent authorities of both the parties) on the day, month and year first above mentioned at

(Contractor's Signature)

(Purchaser's Signature)

(Printed Name)

(Printed Name)

(Designation)

(Designation)

(Company's Stamp)

(Company's Stamp) WITNESS

1.

.....

2.

.....

SPECIAL CONDITIONS OF CONTRACT (SCC)

SECTION – 4.0

SPECIAL CONDITIONS OF CONTRACT (SCC)

The following Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

1.0 LIQUIDATED DAMAGES (LD)

1.1 Goods will be deemed to have been delivered only when all the components and part are also delivered including spare parts and tools and tackles. If certain components are not delivered in time, the Goods will be considered as delayed until such time the missing parts are also delivered.

1.2 In the event of delayed delivery/Commissioning of the Goods under the scope of the Contract (excluding mandatory & recommended spares) due to the reason attributable to the Contractor, the Contractor shall be liable to pay LD @ 1% of the Contract Price (excluding mandatory & recommended spares) for each completed week of delay or part thereof subject to a maximum of 10% of the Contract Price (excluding mandatory & recommended spares).

1.3 In the event of delay in supply of mandatory & recommended spares under the scope of the Contract due to the reason attributable to the Contractor, the Contractor shall be liable to pay LD @ 1% of the Contract Price of mandatory & recommended spares for each completed week of delay or part thereof subject to a maximum of 10% of the Contract Price of mandatory & recommended spares.

1.4 LD for shortfall in Performance Guarantees shall be levied for gross output, Station Heat Rate and Auxiliary Power Consumption, reduction in steam generator output and plant availability subject to a maximum of 15% of the Contract Price as indicated in Annexure for Liquidated Damages for shortfall in performance for total EPC contract.

1.5 In the event of delay in conducting PG Test due to the reason attributable to the Contractor, the Contractor shall be liable to pay LD @ 0.5% of the Contract Price (excluding mandatory & recommended spares) for each completed week of delay or part thereof subject to a maximum of 5% of the Contract Price (excluding mandatory & recommended spares) for total EPC contract.

1.6 The combined maximum ceiling of LD on account of delayed delivery/Commissioning, delay in supply of mandatory and recommended spares, delay in conducting PG tests and on account of shortfall in performance shall be limited to 20% of the Contract Price.

1.7 Contractor shall undertake to pay the LD at the rates stipulated above without requiring the Purchaser to prove actual loss or damage.

1.8 LD payable by the Contractor shall be deducted by the Purchaser from any outstanding payments due to the Contractor or Bank Guarantees provided by the contractor.

2.0 TERMS OF PAYMENT

2.1 For Supply Contract

2.1.1 10% of the Contract Price of Goods shall be paid as an initial advance directly by the Purchaser to the Contractor within 30 days from the date of receipt of following documents from the Contractor:

Invoice of 10% of the Contract Price of Goods.

Advance Bank Guarantee (ABG) of 10% of the Contract Price of Goods. The format of ABG is attached herewith as Annexure. ABG shall remain valid till successful Commissioning of Goods.

Contract Performance Guarantee (CPG) of 10% of the Contract Price of Goods. The format of CPG is attached herewith as Annexure. CPG shall remain valid till successful Commissioning of Goods.

2.1.1 50% of the Contract Price of Goods shall be paid Prorata as per mutually agreed billing schedule by irrevocable, without recourse, Letter of Credit (LC) against shipment of equipment. On receipt of material at site, This payment will be made on submission of following documents:

This payment will be made on submission of following documents:

Full set of bills of Lading: 3 set original

Or LR/GR/RR : 1 set original and 2 copies (in case of indigenous supplies)

Commercial Invoice: 1 set of original + 3 copies

Certificate of Country of Origin: 3 copies (in case of imports)

Test Certificates: 3 copies

Packing list: 3 copies

Material dispatch clearance certificate (MDCC) issued by the Purchaser Prior to effective dispatch : 2 copies

Marine Insurance Policy /Certificate: 1 Original

2.1.2 10% of the Contract Price of the Goods shall be paid on successful completion of the Boiler Hydro Test of the unit on prorata basis within 30 days on receipt of the completion certificate duly signed by Purchaser or Purchaser's Representative.

2.1.3 10% of the Contract Price of the Goods shall be paid on successful completion of Reliability Run of 28 days for the unit on prorata basis within 30 days on receipt of the completion certificate duly signed by Purchaser or Purchaser's Representative.

2.1.4 10 % of the Contract Price of the Goods shall be paid on successful completion of PG Test and submission of the following documents.

Invoice

Performance Bank Guarantee (PBG) of equivalent amount, which shall remain valid up to the Defects Liability Period of Goods. The format of PBG is attached herewith as Annexure.

PG Acceptance Certificate duly signed by the Purchaser or Purchaser's Representative This payment shall be released within 90 days after receipt of Invoice and PBG from the Contractor.

2.1.5 10% of the Contract Price of the Goods shall be paid on Final Acceptance Test on submission of the following documents.

Invoice

Performance Bank Guarantee (PBG) of equivalent amount, which shall remain valid up to the Defects Liability Period of Goods. The format of PBG is attached herewith as Annexure.

PG Acceptance Certificate duly signed by the Purchaser. This payment shall be released within 90 days after receipt of Invoice and PBG from the Contractor

OPTION 2

2.1.6 Purchaser shall establish an irrevocable LC for 100% value of EPC (Basic value + applicable GST) which can be discounted by the contractor from their Bank as per the actual deliveries as per contract.

90% value of EPC project along with Applicable GST shall be paid through Letter of credit after 1 month from the date of successful commissioning and verifications of performance parameters to be achieved against the Certificates to be issued by the Purchaser in this regard.

Balance 10% value of EPC project along with Applicable GST shall be paid through Letter of credit after 12 Months from the date of successful performance trial of the complete plant.

For Construction /Erection & Commissioning/Services Contract

2.1.7 Civil Works:

- (i) 10% of the Contract Price for Civil works as Advance on mobilization at site against submission of Advance BG of same amount and Contract Performance Guarantee of 10% of the Contract Price.
- (ii) 10% on completion of all ABCD row main column foundations
- (iii) 2.5% on completion of Chimney up to ground level
- (iv) 2.5% on completion of Chimney shell up to +--- m level
- (v) 2.5% on completion of Chimney shell up to + m level
- (vi) 2.5% on completion of Chimney including inside flues
- (vii) 7.5% on completion of Turbine pedestals
- (viii) 5% on completion of all UAT & GT and Station transformer foundations

- (ix) 5% on completion of foundations for Boiler and ESP
- (x) 5% on completion of entire track hopper / reclaim hopper in case of truck.
- (xi) 5% on completion of crusher house building
- (xii) 10% on completion of operating floor slab of AB bay
- (xiii) 5% on completion of control rooms (prorated for each room)
- (xiv) 7.5% against completion of Cooling Tower (prorated for each cell)

- (xv) 10% against successful completion of PG test and submission of equivalent amount of Performance Bank Guarantee (PBG), which shall remain valid up to the Defects Liability Period of Goods. The format of PBG is attached herewith as Annexure. This payment shall be released within 90 days after receipt of Invoice and PBG from the Contractor

- (xvi) 10% against successful completion of Final Acceptance Test for the Unit in an integrated manner and on submission of Performance Bank Guarantee. The format of PBG is attached herewith as Annexure.

This payment shall be released within 90 days after receipt of Invoice and PBG from the Contractor

ANNEXURE

**PROFORMA FOR BANK GUARANTEE FOR PLANT PERFORMANCE GUARANTEE (TO BE
STAMPED IN ACCORDANCE WITH STAMP ACT, IF ANY, OF
THE COUNTRY OF THE ISSUING BANK)**

Ref. _____
No. _____

Bank Guarantee

Date: Star Paper Mills Limited, Paper Mill road, Saharanpur, Uttar Pradesh – 247 001.

1. In consideration of Star Paper Mills Limited (SPML) having its Registered Office at Kolkata, India (hereafter called “Purchaser”, which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) having entered into a contract No. _____ dated with _____ having its Registered Office at _____ (Address) (hereinafter referred to as “Contractor”, which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and permitted assigns) for the supply of _____ (Name of the “Goods”) (which contract is hereinafter referred to as “Contract”) and “Contractor” having agreed to provide a Guarantee for performance and functioning of the Goods in terms of clause _____ of the “Contract” for an amount of _____ in the form of Bank Guarantee, we _____ (Name & address of Banker) (hereinafter referred to as “Bank” which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors and assigns) do hereby unconditionally and irrevocably guarantee and undertake to indemnify and keep indemnified the “Purchaser” to the extent of Rs. (Rupees) _____ at any time against any loss, damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by the “Purchaser” by reason of any breach by the “Contractor” of any of the terms and conditions of the “Contract” including but not limited to faulty design, faulty materials and bad workmanship on its mere written demand and without any demur, reservations, recourse, contest or protest and without any reference to the “Contractor”.

2. We the said “Bank”, further agree that “Purchaser” shall be the sole judge of and as to whether the said “Contractor” has committed any breach or breaches of any of the terms and conditions of “Contract” and the extent of loss, damage, costs and expenses caused to or suffered by the “Purchaser” on account thereof and the decision of the “Purchaser” that the said “Contractor” has committed such breach or breaches and as to the amount or amounts of loss, damages, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by the “Purchaser” by reason of any breach by the “Contractor” of any of the terms and conditions of the “Contract” including but not limited to faulty design, faulty materials and bad workmanship from time to time shall be final and binding on us notwithstanding any difference between the “Purchaser” and the

“Contractor” or any dispute pending before any court, Tribunal Application or any other authority to form.

3. We the said “Bank” further agree that this guarantee shall come into force from date hereof _____ and shall remain valid and in force up to _____, (*) Unless a notice or claim under this guarantee has been served on the “Bank” before _____ @ _____ in which case this guarantee shall be enforceable against the said “Bank” notwithstanding the fact that the same is enforced after expiry

of the said period of validity.

4. The “Purchaser” shall have the fullest liberty without affecting in any way the liability of the “Bank” under this Guarantee from time to time to vary any of the terms and conditions of the said “Contract” or to extend the time for performance thereof by the said “Contractor”. The “Purchaser” shall have the fullest liberty, without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the “Contractor”, and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in Contract between the “Purchaser” and the “Contractor” or any other course or remedy or security available to the “Purchaser”. The “Bank” shall not be released of its obligations under these presents by any exercise by the “Purchaser” of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or omission on the part of the “Purchaser” or any other indulgence shown by the “Purchaser” or by any other matter or thing whatsoever which under law relating to Sureties would, but for this provision, have the effect of relieving the “Bank”.

5. Our obligation to pay hereunder is as principal debtor and not as surety and it shall not be necessary for the “Purchaser” to proceed against the said “Contractor” before proceeding against the “Bank” and the guarantee herein contained shall be enforceable against the “Bank” notwithstanding any other security which the “Purchaser” may have obtained or obtain from the “Contractor” at the time when proceedings are taken against the said “Bank” in any manner whatsoever.

6. Unless extended, this guarantee shall remain in force till _____(*) provided however that, should it be necessary to extend, we shall extend forthwith the period of this guarantee on your request till such time as may be required by you.

7. We, the said “Bank” further undertake not to revoke the guarantee during its currency except with the previous consent of the “Purchaser” in writing and agree that any change in the constitution of the said “Contractor” or the “Bank” shall not discharge our liability hereunder in any manner whatsoever.

8. Our liability under this guarantee is limited to Rs. _____ Rupees . _____).

9. We have power to issue this Guarantee in your favour and the undersigned who are executing this Guarantee have the necessary power to do so on behalf of the “Bank” under the (name of Bank & Act).

10. This guarantee shall come into force immediately on release of payment of Rs. _____ (Rupees) by the “Purchaser” to the “Contractor”. “ Notwithstanding anything contained herein: i) Our liability under this Bank Guarantee shall not exceed Rs. _____ (Rupees _____); ii) this Bank Guarantee shall be valid only up to (*) or up to the period extended under clause 6 whichever is later; and iii) we are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve us a written claim or demand on or before “-----/--/ “. @

Dated _____ day _____ 2018
this _____ at _____

WITNESS:

(Signature)

(Signature)

(Name)

(Name)

(Address)
Stamp)

(Designation with Bank

Attorney as per Power Of Attorney No. _____ Date _____

(*) The date will be expiry of Scheduled Defect Liability Period

@ The date will be ninety (90) days after the completion of Defects Liability Period.

Note:

1) The Stamp paper of appropriate value shall be purchased in the name of Bank who issues the “Bank Guarantee”.

2) In case of domestic Bidders, the Bank Guarantee shall be from an Indian Nationalised Bank or from following schedule Private Banks:

- a) PNB-----Bank
- b) BOB-----Bank
- c) SBI-----Bank

3) In case of foreign Bidders, the Bank Guarantee shall be from the foreign branch of the Indian Nationalised Bank/scheduled Private Bank as stated above. Alternatively, foreign Bidder may also, if he so desire, submit the Bank Guarantee from the foreign bank provided such Bank Guarantee is confirmed by International Bank such as HSBC, Standard Chartered Bank, Citibank, etc or an Indian Nationalised Bank/ Schedule Private Bank as stated above