

## SECTION - 12.2

### **Addendum to General Conditions of Contract:**

**A. The provisions under the various clauses hereunder shall override the terms and conditions which appear elsewhere in this tender documents (changes/additions or deletions), as applicable for Works and Service contracts / tenders.**

**B. GCC stands for General Contract Conditions.**

#### **1. Order of Precedence in General Conditions of Contract (GCC) for works / Services Contracts:**

The order of precedence as applicable shall be specified in the GCC as follows:-

1. Contract Agreement (in GCC)
2. Detailed letter of Acceptance along with its enclosures
3. Letter of Award / Fax of Acceptance
4. Job Specifications (specific to particular job only)
5. Drawings
6. Special Conditions of Contract (SCC)
7. Technical Specifications
8. Instructions to Bidders
9. General Conditions of Contract (in GCC)
10. Other Documents

Additionally, any variation or amendment / change order issued after signing of formal contract shall take precedence over respective clauses of the formal contract and its Annexures.

#### **2. Security Deposit (SD) / Contract cum Performance Guarantee (PBG) clause in GCC:**

The following changes in the percentage of SD shall be applicable:

- In case of LSTK (Lump sum contracts) / EPC: PBG @ 10% within 15 days of notification of award (as against 30 days as per our current GCC)
- In case of Annual Rate Contracts (ARCs): Submission of PBG @ 10% of total Contract Value (TCV) **or** submission of initial security deposit @ 2.5% of TCV within 15 days of notification of award. In cases where only 2.5% of TCV has been submitted, 7.5% of individual release order shall be subsequently deducted from RA bills.

### **3. Limitation of Liability in GCC :**

The aggregate total liability of the Contractor to Owner under the Contract shall not exceed the total Contract Price, except that this Clause shall not limit the liability of the Contractor for following:

- (a) In the event of breach of any Applicable Law;
- (b) In the event of fraud, willful misconduct or illegal or unlawful acts, or gross negligence of the Contractor or any person acting on behalf of the Contractor; or
- (c) In the event of acts or omissions of the Contractor which are contrary to the most elementary rules of diligence which a conscientious Contractor would have followed in similar circumstances; or
- (d) In the event of any claim or loss or damage arising out of infringement of Intellectual Property; or
- (e) For any damage to any third party, including death or injury of any third party caused by the Contractor or any person or firm acting on behalf of the Contractor in executing the Works.

Neither Party shall be liable to the other Party for any kind of indirect or consequential loss or damage like, loss of use, loss of profit, loss of production or business interruption which is connected with any claim arising under the Contract.

### **4. Termination for convenience under GCC :**

BPCL shall, in addition to any other right enabling it to terminate the contract, have the right to terminate the contract at any time by giving prior written notice of at least 14 days to the contractor. Such termination shall be without prejudice to the rights of the parties that have accrued on or before the date of termination of the contract.

If the contract is terminated under this provision, the contractor is entitled to be compensated as under:-

- a. the contract price attributable to the works performed as at the date of termination

**and**

- b. the reasonable costs incurred by the contractor for termination of subcontractors or the repatriation of the contractors' and subcontractors' employees

**less**

the aggregate of all previous payments allocated to the works.

Any sums due to BPCL from the contractor accruing prior to the date of termination will be deducted from the amount to be paid to the contractor under the contract.

If, as a result of any such deductions, there is a negative amount payable to the contractor, then the contractor must pay an amount equal to such negative sum to BPCL within 15 days of BPCL intimating the contractor.

## **5. Variation in Contract Value under GCC :**

Compensation for Reduction in Contract value due to change in quantity:

- Up to & inclusive of (-) 25% of Total Contract Value (TCV): No cost compensation.
- Beyond (-) 25% of TCV: Cost compensation @ 10% of reduction in the contract value from (-) 25% of TCV (i.e. 75% of TCV).

Discount to be obtained for Increase in contract value due to change in quantity:

- Up to & inclusive of (+) 50% of TCV: No discount.
- Beyond (+) 50% of TCV: Reduction @ 10% of increase in the contract value beyond (+) 50% of TCV.

## **6. Delay in Security Deposit Submission (GCC)**

Vendors/contractors shall be asked to submit the SD within 15 days from the date of notification of award and in the event of delay in submission of SD, the contract can be terminated. However, if termination of contract is not in the interest of the work/ BPCL, an additional time up to 30 days can be allowed for submission of SD with the approval of the concerned GM/CGM, beyond which the contract may be terminated with subsequent actions following termination as per tender/procedure.

## **7. Force Majeure Clause (Existing clause replaced with the new one- GCC)**

### ***Circumstances leading to force majeure***

(a) Act of terrorism;

(b) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection of military or usurped power;

(c) Ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;

(d) epidemics, earthquakes, flood, fire, hurricanes, typhoons or other physical natural disaster, but excluding weather conditions regardless of severity; and

(e) freight embargoes, strikes at national or state-wide level or industrial disputes at a national or state-wide level in any country where Works are performed, and which affect an essential portion of the Works but excluding any industrial dispute which is specific to the performance of the Works or the Contract.

For the avoidance of doubt, inclement weather, third party breach, delay in supply of materials (other than due to a nationwide transporters' strike) or commercial hardship shall not constitute a Force Majeure event.

• ***Notification of Force Majeure***

Contractor shall notify within [10(ten)] days of becoming aware of or the date it ought to have become aware of the occurrence of an event of Force Majeure giving full particulars of the event of Force Majeure and the reasons for the event of Force Majeure preventing the Affected Party from, or delaying the Affected Party in performing its obligations under the Contract.

• ***Right of either party to terminate***

If an event of Force Majeure occurs and its effect continues for a period of 180 (one hundred eighty days) or more in a continuous period of 365 (three hundred sixty five) days after notice has been given under this clause, either Party may terminate the Contract by issuing a written notice of 30 (thirty) days to the other Party.

• ***Payment in case of termination due to Force Majeure***

The Contract Price attributable to the Works performed as at the date of the commencement of the relevant event of Force Majeure.

The Contractor has no entitlement and Owner has no liability for:

- a) Any costs, losses, expenses, damages or the payment of any part of the Contract Price during an event of Force Majeure; and
- b) Any delay costs in any way incurred by the Contractor due to an event of Force Majeure.

Time extension for such cases will be worked out appropriately.

**8. Defect Liability Period in Works & Services Contracts (Changes to existing clause-GCC)**

The current clause provides for a Defect Liability Period (DLP) as under:-

- i. 12 months from the date of completion of works / services

In case the defect arises within the abovementioned DLPs and the same is repaired / replaced, the DLP for the repaired/replaced job/item will be extended suitably so as to cover the original DLP. However, in no case, such extension will exceed 24 months from date of start of initial DLP.

#### **9. Progressive Payments for works & services contracts (Changes to existing clause - GCC)**

Currently, our normal payment terms are on the 30<sup>th</sup> day after GR date unless specific stage-wise payment terms are included in the tender. However, for services / works contract, this needs a review to have a better liquidity /cash flow for contractors.

The following provisions shall be applicable in the progressive payment terms uniformly by the OPSUs:

- 75% payment of the Running Account bill (RA bill) shall be released within 15 calendar days of receipt of RA bill duly certified by Engineer-in-charge (EIC) and the balance payment shall be released within 30 days of receipt of RA bill by EIC after detailed scrutiny.

-----