



STC-ERE-R01;28-04-2020

STANDARD TERMS & CONDITIONS OF ERECTION & COMMISSIONING

1 GENERAL

In this document, 'Terms and Conditions of Erection & Commissioning', the following terms shall have the following respective meanings.

1.1.0 FACT means The Fertilizers And Chemicals Travancore Ltd., a company registered under Indian Companies Act, with registered office at Floor, Udyogamandal, Kerala State, India.

1.2.0 WORK ORDER means this WORK ORDER and all attached Annexure and documents referred to therein and all terms and conditions thereof together with any subsequent modifications thereto.

1.3.0 CONTRACTOR/VENDOR means the person, firm or company with whom WORK ORDER is placed by FACT for carrying out the erection or other services at the site.

2 REPRESENTATIVE OF FACT

The Resident Project Manager appointed by FACT at site shall be their representative for all matters concerning this order during Site Erection, except as otherwise provided herein. All instructions and directions at Site shall be issued by the Resident Project Manager or an Engineer-in-Charge nominated by him and communicated in writing to Contractor his representative at Site, if any. Contractor shall carry out the work under the direction of and to the satisfaction of the Engineer-in-Charge, all in accordance with the provisions herein.

3 CONTRACTOR'S REPRESENTATIVE

3.1 Contractor shall be represented by a technically qualified, competent and experienced Engineer whose name, qualification, experience shall be intimated in writing to FACT Resident Project Manager at site, with copy to Purchase Manager, at least two weeks prior to commencement of Contractors activities at site for approval by FACT. The said representative shall be present at site during working hours and any instructions / directions or other communications delivered to him by the Resident Project Manager or Engineer-in-charge shall be deemed to have been received by Contractor.

3.2 Any communication received by FACT from Contractors Representative shall be deemed issued by Contractor and shall be binding on Contractor; and any communication issued by

FACT to Contractors representative at site shall be deemed issued to contractor.

3.3 Contractor shall not change his Representative at Site without prior approval of FACT.

4 TAXES, DUTIES AND LEVIES

4.0.0 Any levy of tax or duty in connection with this work under this order is to the CONTRACTOR'S account.

4.1.0 FACT shall have the right to recover sales tax, if any applicable on the WORK ORDER in accordance with the provisions of the relevant sales tax acts and rules from every payment made to CONTRACTOR including advance and remit the same to the respective assessing authorities under the Act. However, any CONTRACTOR who pays tax regularly in accordance with the rules and produces a certificate issued by the assessing authority to that effect, will be paid the amount due without deduction of Sales Tax on the WORK ORDER for the period and to the extent or for the WORK ORDER specified in the certificate.

5 FIRM PRICE

The prices in the WORK ORDER are fixed for the entire scope of work of the CONTRACTOR under the WORK ORDER and shall remain firm without any escalation on any account till the order is completely executed.

6 SECURITY DEPOSIT

CONTRACTOR, within 15 days of LOI/WORK ORDER, is to furnish Bank Guarantee towards security deposit from any Nationalized / Scheduled Bank for a value equal to 5% of the Price of the ORDER in the Proforma given. The Bank Guarantee should be valid till taking over certificate is issued by FACT and the bank guarantee for full warranty period is furnished.

7 SCOPE OF SERVICES

The scope of work shall include receiving, unloading at site, storing, movement within site, erection, testing and painting and commissioning and any other services and materials required for the satisfactory execution of the order except in so far as any of these are expressly excluded. The contractor shall be responsible for positioning all skilled and unskilled workmen, protective works, safety measures, temporary facilities, tools and tackles etc. For the efficient and expeditious completion of the work, and shall not expect fact's assistance in this respect. The contractor shall also provide, at his cost, all necessary safety measures required to protect the public as well as workmen, including those

employed by him, and ensure compliance with all statutory requirements of acts, rules and regulations. The contractor shall be responsible for effective protection against damage of all finished and unfinished work prior to such work being handed over to fact.

8 **COMPLETION OF WORK**

Contractor shall complete the entire work within the time stipulated in work order. The date shown on the take-over certificate shall be deemed to be the date of completion of work. The completion terms are meant to be binding and essential. In case of delay, FACT shall have the right to accept the system subject to liquidated damages, as provided under Article 10 or terminate the order as provided under Article 12. Any requests of contractor concerning delay or justification for delays, though submitted by registered letter will be void, unless they are accepted by FACT through an amendment to work order.

9 **CONTRACTOR'S WARRANTY**

9.1.1 If any trouble or defect originating with the workmanship of any facilities installed arises at any time up to one (1) year from the date when the system is taken over or twenty four (24) months from the date of mechanical completion whichever period expires earlier, and the contractor is notified thereof, the contractor shall at his own expense and as quickly as possible make such alteration / repairs and replacements as may be necessary to comply with the above guarantees and shall reimburse fact any costs and expenses incurred by fact in connection with such trouble or defect. If the contractor fails to take action as above as FACT shall direct, FACT shall be free to take corrective/alternative action at the contractor's cost and risk within a reasonable time.

9.1.2 In the event of any rectification work the above guarantees shall be suitably extended to cover a period of twelve (12) months from the date of its completion.

9.1.3 The foregoing shall be without prejudice to any other rights which FACT / Client may have against the CONTRACTOR in respect of any breach of the terms and conditions of WORK ORDER.

10 **LIQUIDATED DAMAGES**

10.0.0 Time is the essence of this contract and the delivery period mentioned in this Order shall be strictly adhered to.

10.1.0 If CONTRACTOR fails to complete the works covered under WORK ORDER within the time

period stipulated therein, liquidated damages at the rate of half of one per cent (0.5%) of the total Price of WORK ORDER per week or part thereof subject to a maximum of seven and one half per cent (7.5%) of the total price of the WORK ORDER shall be payable by one half per cent (7.5%) of the total price of the WORK ORDER shall be payable by CONTRACTOR. Such liquidated damages shall be deducted from Contractor's invoices and/or any other payments due to the CONTRACTOR. This is without prejudice to Art.11 below.

10.2.0 Even if supplies are made on time, but Installation & Commissioning gets delayed due to reasons attributable to vendor, then Liquidated Damages (as per relevant clauses of Terms and Conditions of Purchase and Erection & Commissioning) will be applicable for the total order value shown in Purchase and Work Order. Also, if supplies get delayed but Erection & Commissioning activity is completed in time and within the total delivery schedule stipulated for both supply and erection & commissioning, then Liquidated Damages shall not be applicable.

11 **DEFAULT**

In the event of any default of CONTRACTOR to comply with any of the provisions or requirements of thereof, FACT shall have the right to terminate and cancel WORK ORDER with or without notice and without prejudice to any other rights, or remedies FACT may have, and FACT shall be relieved from any further obligations to CONTRACTOR hereunder. In the event of such cancellation of WORK ORDER, FACT shall be entitled to arrange for the procurement of services from alternative sources at the risk and cost of the CONTRACTOR. The waiver of one default shall not be considered an automatic waiver of any other default.

12 **TERMINATION**

FACT reserves the right to terminate or cancel this order in whole or in part by written or telegraphic notice to CONTRACTOR. FACT shall pay CONTRACTOR his actual out-of-pocket costs including reasonable termination expenses in connection with cancellation as approved by FACT less previously paid progress payments up to the date of notification. This article shall be not be applicable in case of termination by FACT due to default by Contractor as per Art. 11.0.0 above.

13 **MODIFICATION**

No agreement or understanding in any way modifying the conditions of WORK ORDER shall be binding upon FACT unless made in writing and approved by FACT. Extras will be paid for only on the prior written order of FACT. WORK ORDER



together with its attachments, specifications and drawings constitutes the entire agreement between the parties, and prior negotiations and writings are superceded and supplemented hereby. This ORDER shall not be assigned by CONTRACTOR without the written consent of FACT. And when and if such consent is given, it shall not absolve CONTRACTOR of his obligations.

14 **CHANGES**

14.0.0 FACT reserves the right to issue change orders which provide for changes in the scope of work required under WORK ORDER, and for equitable adjustment in the price hereunder.

14.1.0 Any amendment to WORK ORDER shall be made in writing by FACT and all other terms and conditions of WORK ORDER shall remain unchanged.

15 **SCHEDULING**

15.1 Within thirty (30) days of the date of WORK ORDER, CONTRACTOR shall inform FACT about the Orders placed with third parties and/or the date within which CONTRACTOR intends to issue such orders together with programs for construction and installation. CONTRACTOR shall also send to FACT all revisions to such orders. One copy of such order for material or equipment to be used on WORK ORDER must be sent to FACT

15.2 Within twenty (20) days of the date of WORK ORDER CONTRACTOR shall submit a detailed schedule indicating the key dates related to engineering, procurement and manufacturing leading to promised delivery date. Actual progress shall be monitored by FACT and/or any agent of FACT nominated for the purpose (such nominations being intimated to CONTRACTOR In writing) against this detailed schedule and SELLER may be required to take corrective actions necessary when actual progress is behind schedule.

16 **TECHNICAL CLARIFICATION**

All questions of a technical nature that may arise during the stage of WORK ORDER should be directed, in writing, by either fax or letter to CM (CS)-HO. Attention: Chief Manager (Computer Centre), FACT (HO).

17 **INSURANCE**

CONTRACTOR shall arrange at his cost suitable insurance to cover risks during all stages of storage, erection and commissioning the equipment / parts / components / materials till the complete system is finally taken over by FACT.

CONTRACTOR shall also arrange at his cost necessary insurance as per law and rules in force including third party insurance, etc. covering liabilities for the erection tools/equipment/ consumables, etc. used at the site and for his employees. Insurance policy taken by the Contractor shall show FACT by way of compensation/Cost under any circumstances, of any nature whatsoever, shall be reimbursed by the Contractor to FACT immediately on demand by FACT to this effect. Replacement/rectification of items, which are lost/damaged in transit or otherwise shall be arranged by Contractor on urgent basis, free of cost to FACT.

18 **OFFICIAL INSTITUTION TESTING**

Contractor shall ensure the prompt execution of all approval steps and/or tests by official institutions, like third party inspection agencies and / or statutory bodies, if required, in connection with the equipment and materials installed under WORK ORDER, CONTRACTOR shall be held responsible for any possible delay in the approval or testing phase as well as for any possible delay in obtaining the necessary certificates. Delay on the part of the above mentioned institutions will not be considered a case of "Force Majeure". In case the testing by official institutions is required, CONTRACTOR shall submit to FACT six (6) weeks before the expected date of testing a schedule of testings, to be confirmed eight (8) days before the actual date of tests. All expenses related to such official testing shall be to Contractor's account.

19 **INSPECTION AT SITE**

The Resident Project Manager or his representative shall at all times be entitled to inspect the work at Site. The Contractor shall provide all necessary assistance and facilities for same. Contractor shall uncover any part of work or make openings for inspection as Resident Project Manager may direct and make good such part to the reasonable satisfaction of the Resident Manager. If so required by FACT, the Contractor shall provide specified numbers of test certificates, material analysis certificates and radiographic examination reports at no extra cost to FACT. If in the opinion of Resident Manager any tests to be carried out are not properly conducted, Contractor shall re-do the same at no additional cost to FACT. That an item of work has been approved at the time of setting out or in stage wise inspection/test does not relieve the Contractor of his responsibilities / obligations under Articles - 9. FACT reserves the right to engage for participation their licensor or Collaborator or any third party inspection agency that FACT may appoint for the purpose, in inspection and testing of the work; and such

representative may exercise with Contractor such authorities as FACT may delegate to them.

20 TESTS ON COMPLETION & TAKING OVER

- 20.1 Contractor shall give Resident Project Manager fifteen days' notice in writing of the date on which he will be ready to carry out tests specified in the order. Resident Project Manager may require Contractor at any time before commencement of a test, to postpone or suspend the test if in his opinion the arrangements made by the Contractor for carrying out the tests are unsatisfactory; and in such case Contractor shall reschedule the tests and conduct it in such manner as Resident Manager approves.
- 20.2 Should any part of the work fail to achieve the performance specified or to pass the tests prescribed, Contractor shall at his own cost effect required changes to enable the work to pass further tests and conduct a further test after duly notifying Resident Manager and within the completion period specified in the order.
- 20.3 As soon as the work has been completed in all respects in accordance with the order and has passed the prescribed tests, FACT shall issue a taking over certificate stating the date on which the work has been so completed and passed the tests; and the work shall be deemed taken over by FACT on the said date.
- 20.4 Issue of Taking Over Certificate shall not relieve Contractor of his guarantee responsibilities/obligations under Article - 9

21 TEMPORARY STRUCTURES

Any temporary structures set up at site by contractor shall be of sound construction and contractor shall be solely responsible for any damage or consequences thereof of the same. Any temporary structure made by contractor connection with the work shall be dismantled and removed by contractor and entire area where the work was performed cleared of any surplus or scrap materials, rubbish or debris within thirty days of issue of taking over certificate or such earlier date as Resident Project Manager may require.

22 FACT'S REGULATIONS AND RULES

Contractor shall observe all rules and regulations of FACT as applicable to site from time to time.

23 INDEMNIFICATION

Contractor shall indemnify and hold harmless fact from all claims, losses, demands, causes of action or suits arising out of the services, labour,

equipment, and materials furnished by contractor hereunder.

24 FORCE MAJEURE

- 24.1 Neither party hereto shall be held responsible for any delay or failure to perform any or all of the obligations imposed upon such party caused by Force Majeure. In such case, the time for performance of such obligations and the obligations of the other party to the extent that they are directly or indirectly affected by such occurrence will be extended by a period equal to that duly justified. Notification of a circumstance of Force Majeure shall be given by fax / telex / telegram with confirmation copy addressed to the other party within five (5) working days of its occurrence along with a certificate of the relevant Chamber of Commerce, confirming the existence of the circumstance of the Force Majeure. Only the following shall be considered as Force Majeure if they intervene before contractual completion date and impede performance: Acts of God, wars, revolutions, and official strikes.
- 24.2 However should such a delay, even if due to reasons of Force Majeure, be protracted for more than three (3) months, FACT shall have the right to cancel WORK ORDER at no charge to FACT, and FACT shall be entitled to the reimbursement of any amount already paid to the CONTRACTOR.

25 APPLICABLE LAW AND SETTLEMENT OF DISPUTES

This Order shall be subject to and shall in all respects be governed by Indian Law.

Except in the cases referred to in the para below, if any dispute arises out of or relating to or in connection with this contract, between the Contractor and the Owner / FACT, the same shall be amicably settled through mutual discussions, failing which, the unresolved dispute(s) shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time and number of Arbitrator shall be one. The venue of the Arbitration shall be at Ernakulam and proceedings shall be in English.

In the event of any dispute or difference relating to the interpretation and application of the provisions of this contract(s) between Central Public Sector Enterprises (CPSEs) / Port Trusts inter-se and also between CPSEs and Government Departments / Organizations (excluding disputes concerning taxation), such dispute / difference shall be taken up by either party for resolution through AMRCD (Administrative Mechanism for Resolution of CPSEs Disputes) as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018.

Any legal proceedings relating to or in connection with this Contract shall be limited to the exclusive jurisdiction of the High Court of Kerala.

26 **INDEPENDENT CONTRACTORS**

CONTRACTOR shall act as an independent contractor and not as an agent or employee of FACT and shall not subcontract any portion of the work without the written consent of FACT. CONTRACTOR shall make known all requirements of WORK ORDER to his subcontractors and manufacturers, including any amendments and changes thereto. Consent by FACT to contractor for sub-contracting shall not relieve or otherwise alter his responsibilities or obligations under WORK ORDER. CONTRACTOR shall obtain from his subcontractors for the benefit of Client/FACT their standard guarantees and warranties, provided however, that in no circumstances shall such guarantees and warranties, if less than those required from CONTRACTOR, relieve CONTRACTOR of the responsibilities and obligations provided herein.

27 **MECHANICS LIEN**

CONTRACTOR shall indemnify and hold harmless FACT against all labourer's, material man's and/or mechanic's liens arising from its work, and shall keep FACT free from all such claims, liens and encumbrances.

28 **PERMITS AND CERTIFICATES**

SELLER shall procure, at his expense, all necessary permits, certificates, and licenses required by virtue of all applicable laws, regulations, ordinances and other rules in force at the place where any of the work is to be performed, and CONTRACTOR further shall hold FACT harmless from liability or penalty which might be imposed by reason of any asserted or established violation of such laws, regulations, ordinance or other rules.

29 **STATUTORY OBLIGATIONS**

Contractor shall in all matters arising out of performance of the order conform at his own expense with all Acts, Orders, Regulation, Rules & By-laws of Government of India, State Governments, local bodies and other authorities there under, for the time being in force and applicable to Work. Contractor shall also ensure that any temporary installation, facilities or apparatus set up by him to carry out work conform to such regulation, prior to putting the same into use. Any work or part thereof rejected for non-compliance with statutory regulations shall be modified or replaced by Contractor at no cost to FACT with the agreed time schedule so as

to make it conform with applicable regulations. Contractor shall also hold FACT harmless from liability or penalty, which might be imposed by reason of any asserted or established violation of such acts, regulations, rules etc.

30 **SPECIFICATIONS**

CONTRACTOR shall ensure that all equipment and material furnished will be in strict accordance with the Technical Specifications, provided, however, that any apparent omission or error in the Specifications will be met by the CONTRACTOR if such omitted portion is necessary for the functioning of the work to be performed and that the CONTRACTOR, prior to proceeding with the work under WORK ORDER, shall call to the attention of FACT, any such omission or error or ambiguity in the Specifications requiring clarification.

31 **LAWS RELATING TO LABOUR**

Contractor shall comply with all Acts, Rules, Orders, Regulation, By-laws of Government of India, State Government, local bodies of any office, authority or unit there under pertaining to employment of labour at site and procure any license that is required for such employment and maintain such registers and records and display such information and notices as are required. Any information required from Contractor by FACT for discharge of FACT's obligations under such laws shall be provided by Contractor promptly. Contractor shall be liable for any and all compensations receivable by workmen engaged by Contractor under present laws. Contractor shall indemnify FACT against any claims from any person or persons engaged by Contractor and such amounts will be recovered from any amount receivable by Contractor if FACT becomes directly liable for any such payment. Contractor shall amicably resolve any disputes arising between Contractor and persons engaged by Contractor at site. Contractor shall provide a first-aid post for attending to minor injuries.

32 **RECOVERY OF DUES FROM CONTRACTOR**

FACT shall have recourse to Contractor for any costs, claims, demands, proceedings, damages and expenses whatsoever arising out of or in connection with any failure of Contractor to perform any of his responsibilities / obligations under the terms of the order. Any amount due from Contractor as per the order shall be deducted from money due or becoming due to Contractor or may be recovered as provided for in the contract.

33 **FACILITES / CONDITIONS OF WORK AT SITE**



- 33.1 Open space shall be allotted to CONTRACTOR for erection of his site office and Storage yard. CONTRACTOR shall not be allowed to make use of any other space at site without the written permission of the Resident Project Manager.
- 33.2 Power and water shall be made available for erection purpose at the site, which will be chargeable at rates prevalent from time to time. Power and water supply will be at one point each from where contractor shall arrange further distribution to his consuming Points with metering facilities. All distribution lines put up by contractor shall meet the safety and statutory requirements. Power and water supply shall be subject to usual interruptions at the site / Region which shall be taken care of by contractor in planning his activities at site. Contractor shall indicate his requirement of power and water well in advance (in his bid).
- 33.3 FACT shall provide Contractor at all reasonable time access to Site and place within Site where the Work is to be performed.
- 33.4 All days observed as holidays by FACT shall be holidays and all other days shall be working days at Site. Contractor shall carry out work normally on working days. Working hours shall be 8 hours per day on all working days and timing shall be as Resident Project Manager may notify from time to time. If Contractor has to work outside normal working hours, he shall seek well in advance permission for the same from the Resident Project Manager. Any overtime wages and / or other costs receivable by Contractor's personnel shall be fully paid and borne by Contractor.
- 33.5 Contractor shall arrange for all the required construction and Material Handling equipment for the speedy and satisfactory execution of the Work. Some Construction / Material Handling equipment may be available at the Site which can be made available to Contractor without any obligation on the part of FACT subject to payment of charges prevalent from time to time. Contractor shall be deemed to have obtained himself the nature and details of these equipments available at the Site and ensured their adequacy for the Work.
- 33.6 First aid Facilities to the extent available at Site for FACT's own personnel shall be made available to Contractor's personnel in case of accident / illness during their work on payment of applicable charges.
- 33.7 Contractor shall be responsible for provision of all amenities to his personnel employed at Site such as but not limited to accommodation, conveyance, medical care, safety equipment, etc.
- 33.8 Contractor shall not object to the execution of work by other agencies at site and shall offer very facility for the execution of several other works simultaneously with his own and shall carry out Contractor's Work at Site in close consultation with FACT and the other agencies so that other works at the Site are not impeded.
- 34 **CONTRACTOR TO INFORM HIMSELF FULLY**
- Contractor shall be deemed to have got acquainted well with the Site where the work is to be performed and the conditions therein and the surroundings. Contractor shall also be deemed to have studied the drawings and specifications fully and have fully understood the nature and magnitude of the work. Any failure or neglect on the part of Contractor in the foregoing shall not absolve Contractor of his obligations under the Work Order nor shall the Contractor be entitled to claim any extra payment on such accounts.
- 35 **CORRESPONDENCE**
- 35.1 All correspondence shall be in English and in duplicate.
- 35.2 All correspondence, unless otherwise specified, shall be addressed to Manager (Purchase), Corporate Materials, FACT Ltd., Petrochemical Division Administrative Buildings, Udyogamandal - 683 501, Kerala State.
- 35.3 All correspondence on technical matters shall be addressed to Resident Project Manager, with a copy to Manager (Purchase).
- 36 **ACCEPTANCE**
- With the acceptance of WORK ORDER with all its terms and conditions, CONTRACTOR waives and considers as void any and all of Contractor's bid and conditions.
- 37 **ORDER OF PRECEDENCE**
- In case of any conflict between these STANDARD TERM AND CONDITIONS and the Special conditions agreed to for a particular Order, the latter shall prevail to the extent applicable.