

# **GENERAL CONDITIONS OF CONTRACT – CONSULTANCY**



**TALCHER FERTILIZERS  
LIMITED**

**REV. 0**

# **GENERAL CONDITIONS OF CONTRACT – CONSULTANCY**

## **ARTICLE 1: DEFINITIONS AND INTERPRETATIONS**

In this Document, as hereunder defined, the following terms and expressions shall have the meaning hereby assigned to them except where the context otherwise requires:

**AGREEMENT** means the agreement concluded on non-judicial stamp paper between TFL and Consultant for Services as per this Bid document.

**TFL/OWNER** shall mean Talcher Fertilizers Limited

**TFL'S REPRESENTATIVE** means the person appointed or authorized from time to time by TFL for execution of the contract.

**CONSULTANT'S REPRESENTATIVE** means the person appointed from time to time by CONSULTANT for execution of the Contract.

**ENGINEER-IN-CHARGE/EXECUTIVE-IN-CHARGE** shall mean the person designated from time to time by the TFL and shall include those who are expressly authorized by him to act for and on his behalf for operation of this CONTRACT.

**SIGN OFF** means a recorded statement for completion of a milestone/major activity by Consultant as envisaged in this document and accepted by TFL.

**CONTRACT** shall mean Letter of Acceptance and all attached exhibits and document referred to therein and all terms and conditions thereof together with any subsequent modifications thereto.

**SERVICES** mean the duties to be performed and the services to be rendered by Consultant according to the terms and conditions of the Contract.

**HEADINGS** the headings appearing herein are for convenience only and shall not be taken in consideration in the interpretation or construction of the Contract.

**SINGULAR AND PLURAL WORDS** importing the singular only also include the plural and vice-versa where the context requires.

## **ARTICLE 2: PERFORMANCE OF DUTIES AND SERVICES BY CONSULTANT**

2.1 Consultant shall perform its Services in full accordance with the terms and conditions of the Contract and any applicable local laws and regulations and shall exercise all reasonable professional skill, care and diligence in the discharge of said Project work.

Consultant shall in all professional matters act as a faithful advisor to TFL, and will provide all the expert commercial/technical advice and skills which are normally required for the class of Services for which it is engaged.

Consultant, its staff, employees shall carry out all its responsibilities in accordance with the best professional standards.

Consultant shall prepare and submit documents /reports etc. in due time and in accordance with the Tender Conditions.

2.2 Consultant will maintain for the performance of the Contract, personnel as determined to be responsible for carrying out this job and such persons shall not be replaced or substituted without written approval of TFL.

### **ARTICLE 3: TFL'S REPRESENTATIVE**

3.1 TFL shall nominate its Representative(s) who shall be entitled to act on behalf of TFL with respect to any decision it is empowered to make. The bill / invoice of Consultant will be certified for payment by such representatives.

### **ARTICLE 4: CONSULTANT'S REPRESENTATIVE**

4.1 Consultant shall nominate a qualified and experienced person as its Representative who will be the contact person between TFL and Consultant for the performance of the Contract. This nomination shall be done within ten (10) days after the coming into force of the Contract. Consultant shall notify TFL in writing prior to the appointment of a new representative. Consultant's Representative may be replaced only with TFL's consent after getting approved his CV's from TFL.

TFL shall be at liberty to object to any nomination and to require Consultant to remove Consultant's representative for good causes. Consultant shall replace immediately such person by competent substitute at no extra cost to TFL.

4.2 Consultant's Representative shall be entitled to act on behalf of Consultant with respect to any decisions to be made under the Contract.

### **ARTICLE 5: PAYMENT TERMS**

5.1 TFL shall pay for the services rendered as per stipulation in the tender through E-Banking only. All Bank charges of consultant's Bankers shall be to the consultant's account.

5.2 Consultant will invoice TFL according to the terms and conditions provided in the tender.

5.3 Payment terms will be as follows:

5.3.1 **For all consultancy jobs for preparation of reports**, payment terms will be as follows:

- 60 % on submission & acceptance of Draft report.

Where outsourcing will be required, payment will be released on the basis of Milestones achieved within 60% such as submission of report for market survey, etc. The payment for such milestones will be restricted to actual payment made to outsourced agency/ies subject to 40% within 60% limit.

- 40% on submission & acceptance of final report.

Where EMP/EIA/RRR is involved, the 40% payment will be divided as follows:-

- 20% on submission and acceptance of final DFR/Report
- 20% on submission and acceptance of EMP/EIA/RRR

If acceptance is not conveyed within 30 days, it will be presumed to be accepted.

5.3.2 **For Acquisition/ Due diligence consultancy cases;** the payment terms will be as follows:

Stages	Payment (%age of lumpsum price)
a) On submission and acceptance of draft report	40%
b) On submission and acceptance of Final report by TFL	20%
c) On formulation and submission of Bid	15%
d) On negotiations, deal finalization and deal execution	25%

If acceptance is not conveyed within 30 days, it will be presumed to be accepted.

TFL reserves the right to enter into the next Stage or terminate the contract at the completion of the previous Stage as indicated above and submission of all the deliverables pertaining to the Stage completed. In such case the payment to the Consultant shall be restricted to payments payable for the Stage completed as indicated above.

5.3.3 **FOR PMC JOBS/ PROJECT QUALITY CONSULTANTS,** payment terms shall be as follows:

- On completion of Milestones against each activity of Project as identified in the scope of work progressively based on Fortnightly invoices	95%
- After close out of Project on completion of job in all respects	5%

5.3.4 **For Back-up Consultants for Project Monitoring and for Third Party Inspection Services, payment will be based on Manday Rate (per diem)**

5.4 In case of disputes concerning invoice(s), TFL shall return said invoice(s) to Consultant within fifteen (15) days from its/their receipt specifying in writing the reasons for its / their rejection.

- TFL shall pay the undisputed amount of the invoice(s) according to Article - 5.3 hereof.
- The disputed amount, if any, shall be paid after mutual settlement between TFL and Consultant.
- Total or partial rejection of the invoice(s) shall not release Consultant from any of its obligations under the Contract.

## **ARTICLE 6: PERFORMANCE GUARANTEE**

6.1 Consultant shall submit to TFL an unconditional, irrevocable and on first demand guarantee from any Indian scheduled bank or a branch of an International bank situated in India and registered with Reserve Bank of India as scheduled foreign bank. However, other than the Nationalized Indian Banks, the banks whose BGs are furnished, must be commercial banks having net worth in excess of Rs. 100 Crores and a declaration to this effect should be made by such commercial bank either in the bank guarantee itself or separately on a letter head.

The value of Contract Performance Guarantee shall be 5% of contract value for the due performance of the Contract. The Contract Performance Guarantee shall be valid for a period of three months beyond the guarantee/warranty period of the contract. The format

of performance guarantee is annexed hereto (Annexure- C). All expenses incurred in obtaining of such guarantee shall be borne by Consultant.

6.2 In case of extension of completion period, Consultant shall be required to extend the performance guarantee for an appropriate period of time as per contractual requirements.

#### **ARTICLE 7: CONFIDENTIALITY**

7.1 Consultant/TFL shall treat all matters in connection with the Contract as strictly confidential and undertakes not to disclose, in any way, information, documents, technical data, experience and know-how given to him by TFL/Consultant without the prior written consent of the latter.

7.2 Consultant further undertakes to limit the access to confidential information to those of its employees, Implementation Partners who reasonably require the same for the proper performance of the Contract provided however that Consultant shall ensure that each of them has been informed of the confidential nature of the confidentiality and non-disclosure provided for hereof.

#### **ARTICLE 8: TAXES AND DUTIES**

8.1 Consultant shall pay any and all taxes including service tax, duties, levies etc. which are payable in relation to the performance of the Contract. The quoted price shall be inclusive of all such taxes and duties.

8.2 Statutory variation in taxes (CST, LST, WCT, withholding tax, service tax etc.) and duties, if any, within the contractual completion period shall be borne by TFL. No variation in taxes duties or levies other than statutory taxes & duties shall be payable.

8.3 Consultant will not claim from TFL any taxes paid by him.

8.4 TFL shall deduct Income tax at source at applicable rates.

#### **ARTICLE 9: RESOLUTION OF DISPUTES / ARBITRATION**

9.1 TFL and Consultant shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the Contract.

9.2 All disputes, controversies, or claims between the parties (except in matters where the decision of the Executive/Engineer -in-Charge is deemed to be final and binding) which cannot be mutually resolved within a reasonable time shall be referred to Arbitration by sole arbitrator.

TFL shall suggest a panel of three independent and distinguished persons to the other party (Consultant) to select any one among them to act as the sole Arbitrator.

In the event of failure of the other party to select the Sole Arbitrator within 30 days from the receipt of the communication suggesting the panel of arbitrators, the right of selection of sole Arbitrator by the other party shall stand forfeited and TFL shall have discretion to proceed with the appointment of the sole Arbitrator. The decision of the TFL on the appointment of Sole Arbitrator shall be final and binding on the parties.

The award of the Sole Arbitrator shall be final and binding on the parties and unless directed/awarded otherwise by the Sole Arbitrator, the cost of arbitration proceedings shall be shared equally by the PARTIES. The arbitration proceeding shall be in English language and the venue shall be at New Delhi, India.

Subject to the above, the provisions of (Indian) Arbitration & Conciliation Act, 1996 and the rules framed there-under shall be applicable. All matters relating to this contract are subject to the exclusive jurisdiction of the Courts situated in the State of Delhi (India).

9.3 Consultant may please note that the Arbitration & Conciliation Act 1996 was enacted by the Indian Parliament and is based on United Nations Commission on International Trade Law (UNCITRAL model law), which were prepared after extensive consultation with Arbitral Institutions and centers of International Commercial Arbitration. The United Nations General Assembly vide resolution 31/98 adopted the UNCITRAL Arbitration rules on 15 December 1976.

#### **ARTICLE 10: LEGAL CONSTRUCTION**

10.1 Subject to the provisions of this Article, the Contract shall be, in all respects, constructed and operated as an Indian Contract and in accordance with Indian Laws as in force for the time being and is subject to and referred to the Court of Law situated at New Delhi.

#### **ARTICLE 11: SUSPENSION OF THE PERFORMANCE OF DUTIES AND SERVICES**

11.1 TFL may suspend in whole or in part – the performance of services of Consultants any time upon giving not less than fifteen (15) days' notice.

11.2 Upon notice of suspension, Consultant shall suspend immediately the services and reduce expenditure to a minimum to be agreed upon by both the parties.

11.3 Upon suspension of the performance of services, Consultant shall be entitled to reimbursement of the costs which shall have been actually incurred prior to the date of such suspension. However, the total reimbursement shall be restricted to contract price.

11.4 By fifteen days prior notice, TFL may request Consultant to resume the performance of the services, without any additional cost to TFL.

11.5 In case of suspension of work by consultant on TFL's request for more than 10 days, demobilization and remobilization charges will be paid to consultant as per Schedule of Rates.

11.6 If the suspension of the duties and services exceeds six months, either party shall be entitled to terminate contract according to Article 16 hereunder.

#### **ARTICLE 12: PRICE REDUCTION SCHEDULE (PRS)**

12.1 In case Consultant fails to complete the services within stipulated period then unless such failure is due to force majeure as defined in Article 19 hereinafter or due to TFL's default, there will be a reduction in contract price @ 1/2% for each week of delay or part thereof subject to maximum of 5 % of contract price.

12.2 TFL may without prejudice to any methods of recovery, deduct the amount of such PRS from any money due or which may at any time become due to Consultant from its obligations and liabilities under the contract or by recovery against the Performance Bank Guarantee. Both Consultant and TFL agree that the above percentage of price

reduction are genuine pre-estimates of the loss/damage which TFL would have suffered on account of delay/ breach on the part of Consultant and the said amount will be payable on demand without there being any proof of the actual loss/or damage caused by such breach/delay. A decision of TFL in the matter of applicability of price reduction shall be final and binding.

### **ARTICLE 13: ASSIGNMENT**

Consultant shall not have the right to assign or transfer the benefit and obligations of the contract or any part thereof to the third party without the prior express approval in writing of TFL which it shall do at its discretion. However, in event of that all legal/contractual obligations shall be binding on Consultant only.

### **ARTICLE 14: INDUSTRIAL AND INTELLECTUAL PROPERTY**

- 14.1 In order to perform the services, Consultant must obtain at its sole account, the necessary assignments, permits and authorizations from the titleholder of the corresponding patents, models, trademarks, names or other protected rights and shall keep TFL harmless and indemnify TFL from and against claims, proceedings, damages, costs and expenses (including but not limited to legal costs) for and/or on account of infringements of said patents, models, trademarks names or other protected rights.
- 14.2 All documents, report, information, data etc. collected and prepared by Consultant in connection with the scope of work submitted to TFL will be property of TFL.
- 14.3 Consultant shall not be entitled either directly or indirectly to make use of the documents, reports given by TFL for carrying out of any services with any third parties.
- 14.4 Consultant shall not without the prior written consent of TFL be entitled to publish studies or descriptive article with or without illustrations or data in respect of or in connection with the performance of services.

### **ARTICLE 15: LIABILITIES**

- 15.1 Without prejudice to any express provision in the contract, Consultant shall be solely responsible for any delay, lack of performance, breach of agreement and/or any default under this contract.
- 15.2 Consultant shall remain liable for any damages due to its gross negligence within the next 12 months after the issuance of the provisional acceptance certificate of the contract.
- 15.3 The amount of liability will be limited to 10% of the contract value.

### **ARTICLE 16: TERMINATION OF CONTRACT**

#### **16.1 Termination for Default**

TFL reserves its right to terminate / short close the contract, without prejudice to any other remedy for breach of CONTRACT, by giving one month notice if Consultant fails to perform any obligation(s) under the CONTRACT and if Consultant, does not cure his failure within a period of 30 days (or such longer period as TFL may authorise in writing) after receipt of the default notice from TFL.

#### **16.2 Termination for Insolvency**

TFL may at any time terminate the CONTRACT by giving written notice without compensation to Consultant, if Consultant becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to TFL.

### 16.3 Termination for convenience

TFL may by written notice sent to consultant, terminate the contract, in whole or part, at any time for its convenience. However, the payment shall be released to the extent to which performance of work executed as determined by TFL till the date upon which such termination becomes effective.

## **ARTICLE 17: MODIFICATION**

Any modification of or addition to the contract shall not be binding unless made in writing and agreed by both the parties.

## **ARTICLE 18: CONTRACT / AGREEMENT**

The notification of award along with agreement on non judicial stamp paper of appropriate value as per proforma annexed within 10 days from the date of receipt of FOA (Fax of Acceptance) / DLOA (Detailed Letter of Acceptance), the cost of stamp paper is to be borne by Consultant, and its enclosures shall constitute the contract between the parties and supersedes all other prior agreements, arrangements and communications, whether oral or written, between the parties relating to the subject matter hereof.

## **ARTICLE 19: FORCE MAJEURE**

Shall mean and be limited to the following:

- a) War/hostilities
- b) Riot or Civil commotion
- c) Earthquake, flood, tempest, lightening or other natural physical disaster.
- d) Restrictions imposed by the Government or other statutory bodies which prevents or delays the execution of the Contract by Consultant.

CONSULTANT shall advise TFL by a registered letter duly certified by the local Chamber of Commerce or statutory authorities, the beginning and end of the above causes of delay within seven (7) days of the occurrence and cessation of such Force Majeure Conditions. In the event of delay lasting over one month, if arising out of causes of Force Majeure, TFL reserves the right to cancel the Contract and the provisions governing termination stated under Article 16 shall apply.

For delays arising out of Force Majeure, Consultant shall not claim extension in completion date for a period exceeding the period of delay attributable to the causes of Force Majeure and neither TFL nor Consultant shall be liable to pay extra costs provided it is mutually established that Force Majeure Conditions did actually exist.

Consultant shall categorically specify the extent of Force Majeure Conditions prevalent in their works at the time of submitting their bid and whether the same have been taken into consideration or not in their quotations. In the event of any force majeure cause, Consultant or the TFL shall not be liable for delays in performing their obligations under this order and the completion dates will be extended to Consultant without being subject to price reduction for delayed completion, as stated elsewhere.

## **ARTICLE 20: RECTIFICATION PERIOD**

All services shall be rendered strictly in accordance with the terms and conditions stated in the Contract.

No deviation from such conditions shall be made without TFL'S agreement in writing which must be obtained before any work against the order is commenced. All services rendered by Consultant pursuant to the Contract (irrespective of whether engineering, design data or other information has been furnished, reviewed or approved by TFL) are guaranteed to be of the best quality of their respective kinds.

Consultant shall rectify at his own cost any mistake in assumption of any data in the study or use of wrong data or faulty study observed within twelve months of the acceptance of his report and will submit the rectified report incorporating the changes wherever applicable within 30 days of observance of mistake.

## **ARTICLE 21: SUB CONTRACT**

Any sub contract to be made by the CONSULTANT relating to the services shall be made only to such extent and with such duly qualified specialists and entities as shall be approved in writing in advance by TFL. Upon the request of TFL, the consultant shall submit for TFL's prior approval, the terms of reference or any amendment thereof for such sub contractor's SERVICES. Notwithstanding such approval, the consultant shall remain fully responsible for the performance of services under the CONTRACT.

## **ARTICLE 22: NOTICES**

21.1 Any notice given by one party to the other pursuant to the CONTRACT shall be sent in writing or by telegram or fax, telex/cable confirmed in writing.

21.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

## **ARTICLE 23: ACQUISITION OF DATA**

If required, CONSULTANT shall be responsible for carrying out any surveys and acquisition of all data from necessary sources. TFL, if requested in writing by CONSULTANT, may assist the consultant in the said acquisition by way of issue of recommendatory letters only. All requisite clearances, co-ordination, fees, charges, etc. and compliance to the local laws required for completion of the job shall be the responsibility of the CONSULTANT.