Part 3

**SECTION - IV**

**PAYMENT TERMS**

1. **Terms and Mode of Payment**

# TERMS OF PAYMENT/PROGRESSIVE PAYMENT

| **Nature of Payment** | **Percentage of Price of Item Sl. no I-a of Schedule-I** | **Conditions to be fulfilled** |
| --- | --- | --- |
| **I-a). Supply** | (Total=100% of I-a) |  |
| i) Mobilisation Advance | 5% | As laid down in clause no. 2.1 below |
| ii) Payment for engineering drawing | 5% | Progressive on approval of Drawings. by the Company (OIL)/PMC. |
| iii) Prorata payment against supply of Goods at site & Production of Material Receipt Certificate by Contractor. | 65% | Certification by the Company (OIL)/PMC. |
| iv) Completion of erection & commissioning against mile-stones indicated in the Contract. | 10% | Certification by the Company (OIL)/PMC Engineer. |
| v) On completion of Reliability run . | 5% | Certification by the Company (OIL)/PMC Engineer. |
| vi) Successful demonstration of site performance & guaranteed parameters in accordance with the Contract requirements and taking over of the plant. | 10% | Presentation of Acceptance Certificate issued by the Company (OIL)/PMC Engineer. |
| **I-b). Services towards Civil Works & Erection/Testing/Commissioning of the Gas Engine Power Plant** | **Percentage of price of Item Sl. No. I-b) of Schedule-I**  **(Total=100% of Item- I-b)** | -------- |
| i) Mobilisation advance | 5% | As laid down in clause no. 2.1 below |
| ii) Prorata payment against progress made | 80% | Progressive milestone payments as per agreed PERT network & certified by the Company (OIL)/PMC Engineer. Detailed break-downs to be furnished in the techno-commercial offer. |
| iii) On completion of Reliability run | 5% | Certified by the Company (OIL)/PMC Engineer. |
| iv) Successful demonstration of site performance & guaranteed parameters in accordance with the Contract requirements and taking over. | 7.5% | Certified by the Company (OIL)/PMC’ Engineer. |
| Taking over of the complete plant and submission of “As built “ drawings | 2.5% | On completion of total work as per Contract |
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|  |  |  |
| **Nature of payment** | **Type of payment**  **Total= 100% of Item- III of Schedule-I** | **Remarks** |
| **III) Payment towards 3 Months initial Operation alongwith 1 Year Maintenance Service of the GEG Plant during warranty period,** including all materials and consumables | 100% | Payment will be made on Quarterly basis as per terms of the Contract. |
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|  |  |  |
| **Nature of payment** | **Type of payment**  **Total= 100% of Item- IV of Schedule-I** | **Remarks** |
| **IV) Payment towards Comprehensive Long Term Maintenance Service (LTMS) of the Gas Engine Generator Plant for three years (3),** including all spares and consumables for GEG plant (except fuel), after completion of 1 (one) Year Warranty | 100% | Payment will be made on Quarterly basis as per terms of the Contract. |
|  |  |  |

**2.1 Conditions for receiving the Mobilisation Advances shall be governed by relevant clause of GCC.**

* + 1. For Supply Price Component

i) Issue of the LOI/LOA in favour of the Contractor.

ii) Submission of the agreed PERT network.

iii) Submission and Approval of the billing schedule up to completion of Works

v) Signing of Contract document.

* + 1. For Civil Works and Erection Price Component

i) On establishment of office at the Site and mobilization of the erection team and machineries.

* 1. **Account payment**

All payments made during execution of the Contract including Initial Advances, shall be on account payments only until the release of the Performance Guarantee on successful completion of the Works.

* 1. **Due Dates for Payment**

The Company (OIL) will make progressive payments as and when the payments are due on monthly basis. Payments will become due and payable by the Owner **within Ninety (90) days** from the date of receipt of the Contractor's bills/invoices/ debit‑notes duly certified by the engineer provided the documents submitted are complete in all respects.

* 1. **Billing Schedule**

The Contractor shall prepare item‑wise billing schedule (breakdown of the Contract Price) interlinking the agreed PERT network setting forth starting and completion dates for the various key phases of Work from the date of issue of LOA/LOI

* 1. **Application for Payment**

The Contractor shall submit an application to the Engineer for the payment in the prescribed **PROFORMA-XXXXX**.

The Contractor shall submit to OIL separate applications for payments in different currencies whenever such payment is to be made in more than one currency.

Every interim payment certificate shall certify the Contract value of the Work executed up to the date mentioned in the application for the payment, provided that no sum shall be included in any interim payment certificate in respect of the Work that, according to the decision of the OIL, does not comply with the Contract Specifications or has been performed prematurely on the date of application.

* 1. **Other Conditions**

a) The contractor shall not insist upon opening of a letter of credit i.e. L.C. facility, if arrangement are made for payment of certified bills in the country of origin.

b) The supplier shall not ask for compensation for loss of time in realisation of payment from the identified financial agency.

c) Owner shall not be called upon to reimburse the cost of working capital financing by the supplier in any from. Financing of the working capital requirement is the contractor's responsibility and therefore no such concession will be allowed in any from including advance/adhoc payment called for by the supplier.

1. **PAYMENT PROCEDURE**
   1. Company (OIL) shall pay to Contractor, during the term of the contract, the amount due calculated according to the rates of payment set and in accordance with other provisions hereof. No other payments shall be due from Company (OIL) unless specifically provided for in this contract. All payments will be made in accordance with the terms hereinafter described.
   2. All payments due by Company (OIL) to Contractor shall be made at Contractor's designated bank. All bank charges will be to Contractor’s account.
   3. Payment of any application shall not prejudice the right of Company (OIL) to question the validity of any charges therein, provided Company (OIL) within one year after the date of payment shall make and deliver to Contractor written notice of objection to any item or items the validity of which Company (OIL) questions.
   4. Contractor will **submit six (6) sets of all payment applications** to Company (OIL) for processing of payment. Separate payment application for the charges payable under the contract shall be submitted by Contractor for foreign currency and Indian Rupee.
   5. The Company (OIL) shall within 30 days of receipt of the payment application notify Contractor of any item under dispute, specifying the reasons thereof, in which event, and payment of the disputed amount may be withheld until settlement of the dispute, but payment shall be made of any undisputed portion **within 90 days.** This will not prejudice the Company (OIL)’s right to question the validity of the payment at a later date as envisaged.
   6. The acceptance by Contractor of part payment on any billing not paid on or before the due date shall not be deemed a waiver of Contractor’s rights in respect of any other billing, the payment of which may then or thereafter be due.
   7. Contractor shall maintain complete and correct records of all information on which Contractor’s payment application are based, till completion of the warranty period of the project. Such records shall be required for making appropriate adjustments or payments by either party in case of subsequent audit query/objection. Any audit conducted by Company (OIL) of Contractor's records, as provided herein, shall be limited to Company (OIL)’s verification (i) of the accuracy of all charges made by Contractor to Company (OIL) and (ii) that Contractor is otherwise in compliance with the terms and conditions of this Agreement.
2. **WITH-HOLDING OF PAYMENT**

4.1Company (OIL) may withhold or nullify the whole or any part of the amount of payment due to Contractor, after informing the Contractor of the reasons in writing, on account of subsequently discovered evidence in order to protect Company (OIL) from loss on account of :-

a) For non-completion of jobs assigned as per the terms of the contract.

b) Contractor's indebtedness arising out of execution of this Contract.

c) Defective work not remedied by Contractor.

d) Claims by sub-Contractor of Contractor or others filed or on the basis of reasonable evidence indicating probable filing of such claims against Contractor.

e) Failure of Contractor to pay or provide for the payment of salaries/wages, contributions, unemployment compensation, taxes or enforced savings with-held from wages etc.

f) Failure of Contractor to pay the cost of removal of unnecessary debris, materials, tools, or machinery.

g) Damage to another Contractor of Company (OIL).

h) All claims against Contractor for damages and injuries, and/or for non-payment of bills etc.

i) Any failure by Contractor to fully reimburse Company (OIL) under any of the indemnification provisions of this Contract. If, during the progress of the work Contractor shall allow any indebtedness to accrue for which Company (OIL), under any circumstances in the opinion of Company (OIL) may be primarily or contingently liable or ultimately responsible and Contractor shall, within five days after demand is made by Company (OIL), fail to pay and discharge such indebtedness, then Company (OIL) may during the period for which such indebtedness shall remain unpaid, with-hold from the amounts due to Contractor, a sum equal to the amount of such unpaid indebtedness.

4.2 **With-holding will also be effective on account of the following**:-

i) Order issued by a Court of Law in India.

1. Income tax deductible at source according to law prevalent from time to time in the country.
2. Any obligation of Contractor which by any law prevalent from time to time to be discharged by Company (OIL) in the event of Contractor's failure to adhere to such laws.
3. Any payment due from Contractor in respect of unauthorised imports.
   1. When all the above grounds for with-holding payments shall be removed, payment shall thereafter be made for amounts so with-hold.
   2. Notwithstanding the foregoing, the right of Company (OIL) to withhold shall be limited to damages, claims and failure on the part of Contractor, which is directly/ indirectly related to some negligent act or omission on the part of Contractor.

# SHIPPING PARTICULARS

* 1. The contractor shall be responsible for the correct appraisal of freight rates, weights and volumes of structural or machinery as the case may be. The Company (OIL) shall not be liable to pay any warehouse or wharf age charges due to the necessity of storing Goods awaiting shipment and also at arrival at Indian Port.
  2. All consignments shall be addressed to and the bill of lading and other shipping documents shall be made in the name of the Consignee.
  3. After shipment is effected, the following documents shall be forwarded to the Consignee by Registered Air Mail/Courier Services.

i) The original bill of lading in duplicate and four (4) non‑negotiable copies of the same.

ii) F.O.B./CIF invoice Six (6) copies including one (1) original

iii) Freight invoice & freight details Six (6) copies including one (1) original

iv) Insurance premium receipts or certificates - Ditto -

v) Packing list - Ditto -

vi) Certificate of origin - Ditto -

# DELIVERY TERMS

* 1. When the Goods are ready for shipment, the Company (OIL) should be notified by the Contractor through fax. Notification of dispatch and delivery in regard to each and every consignment shall be made to the Company (OIL) immediately after dispatch and delivery in case of delivery at either the Site or at the port of entry as applicable at least forty‑eight (48) hours ahead of actual delivery. The Contractor shall further supply to the Consignee an invoice and packing list of all Goods dispatched or delivered by him and other shipping particulars. All packages, containers, bundles and loose materials forming part of each and every consignment shall be described fully in the packing list, and full details of the contents of packages and quantity of goods shall be submitted to the Company (OIL).
  2. For the Goods imported by the Contractor, the Contractor shall deliver the Goods at CIF price. The Contractor shall also make all arrangements to deliver the Goods to the location specified in Technical Specifications.

# CERTIFICATE OF PAYMENT TO BE ISSUED BY THE COMPANY (OIL)

* 1. Every application to the Company (OIL) for a certificate for release of payment must be accompanied by a detailed invoice (in quadruplicate) setting forth in order of the schedule of quantities and prices as per Approved billing breakdowns of the Works executed and/or Goods ready for dispatch up to the date of claim. The certificate relating to such Goods and Work as in the reasonable opinion of the OIL in accordance with the Specifications shall be issued within forty-five (45) days of receipt of the application
  2. The OIL may, with any certificate, make any corrections or modifications to any previous certificates issued by him. The payments to be made against invoices under certification will be regulated and adjusted accordingly.

# COMPANY (OIL)'S DECISION ON PAYMENT

* 1. In respect of all matters which are left to the decision of the Company (OIL), including the granting or withholding of certificates; the Company (OIL) shall, if required to do so by the Contractor, give in writing a decision thereon and his reasons for taking such decision. If in the opinion of the Contractor, a decision made by the Company (OIL) is not in acceptance with the meaning and intent of the Contract, the Contractor may file with the Company (OIL) within fifteen (15) days after receipt of the decision, a written objection to the decision. Failure to file such an objection within the allotted time will be considered to be acceptance of the Company (OIL)'s decision and the decision shall become final and binding.
  2. The Company (OIL)'s decision and the filing of the written objection of the Contractor thereto shall be a condition precedent to the right to request for arbitration. It is the intent of the Contract Agreement that there shall be no delay in the execution of the Work in such cases and the decision of the Company (OIL) as given shall be promptly observed.

# EFFECT OF CERTIFICATE ON THE RIGHT OF THE COMPANY (OIL) /THE CONTRACTOR

No certificate of the Engineer on account, nor any sum paid on account by the Company (OIL), nor any extension of time for the execution of the Work by the Contractor under the powers granted by item "Certificate of the Company (OIL)" shall affect or prejudice the rights of the Company (OIL) against the Contractor, or relieve the Contractor of his obligations for the due performance of the Contract or be interpreted as Approval of the Work done or of the Goods supplied. No certificate shall create the liability for the Company (OIL) to pay for alterations, amendments, variations or additional work not ordered in writing by the Company (OIL), or discharge the liability of the Contractor for payment of damages, whether due, ascertained or certified or not or of any sum against the payment of which he is bound to indemnify the Company (OIL), nor shall any such certificate nor the acceptance by him or any sum paid on account or otherwise, affect or prejudice the rights of the Company (OIL) against the Contractor.

# ISSUE OF TAKING OVER CERTIFICATE BY COMPANY (OIL)

On successful **Plant Commissioning** and completion of all other balance works as per scope of work covered under these specifications, including fulfillment of requirements of Documentations, Drawings and Data, the Plant shall be ready for Handover to OIL. PMC/Company (OIL) shall issue to the Contractor a Taking Over Certificate, as stipulated in the General Conditions of Contract. The takeover by PMC/OIL as aforesaid shall be for the Plant complete in all respects. **The date of Taking over shall be the date of Contract Completion**

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