

# **GENERAL CONDITIONS OF CONTRACT**

(GCC)

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## GENERAL CONDITIONS OF CONTRACT

### 1.0 DEFINITIONS

In the Contract, as hereinafter defined, the following words and expressions shall have the meanings hereby respectively assigned to them, except where the context requires otherwise.

- a. "Company" for this Contract means who has awarded the work and is named in the Contract Data and shall include its successors or assigns
- b. "Project Manager" means such person or a firm or a company of Architects and Project Managers appointed by the Company, and notified in writing to the Contractor to act as the Project Manager for the purposes of this Contract.
- c. "Project Manager's Representative" means any Assistant, clerk or any person, appointed from time to time by the Project Manager.
- d. Contractor:
  - i. "Contractor" means the individual, firm, company, corporation, joint venture or consortium, whether incorporated or not, who enters into the Contract with the Company, and shall include his, its, their heirs, executors, administrators, successors (approved by the Company) , permitted assigns or legal representatives, as the case may be.
  - ii. "Contractor's Agent" shall mean the person or persons authorized under power of attorney duly executed to take all actions relating to the work, as could be taken by the Contractor himself.
  - iii. "Contractor's Representative" shall mean a person in supervisory capacity who shall be so declared by the Contractor and who shall be authorized under a duly executed power of attorney to comply the instructions and to receive materials issued by the Project Manager to the Contractor for works. He shall be capable of taking responsibility for proper execution of works.
- e. "Sub-Contractor" means the individual, firm, company, corporation, joint venture or consortium, having direct contract with the Contractor and to whom any part of the work has been sublet by the Contractor, with prior written permission of the Project Manager and shall include his, its, their heirs, executors, administrators, successors, permitted assigns or legal representatives, as the case may be.
- f. "Other Contractor" or "Others" means the individual, firm, company, corporation, joint venture or consortium, employed by or having a contract directly or indirectly with the Company otherwise than through the Contractor.
- g. "Tenderer or Bidder" means the individual, firm, corporation, joint venture or consortium submitting the bid/tender.
- h. "Scheduled Bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934, or modifications thereto.
- i. "Contract" means the documents forming the tender and acceptance thereof and the formal agreement executed between the Company and the Contractor together with the documents referred to therein including these conditions, any special conditions, the specifications, designs, drawings and

instructions issued from time to time by the Company, Project Manager or any person duly authorized by the Company and all these documents/instructions taken together, shall be deemed to form one contract and shall be complimentary to each other

- j. "Tender or Bid" means the offer made by individual, firm, company, corporation, joint venture or consortium to the Company for the execution of the works.
- k. "Specification" means the specification referred to in the Contract and any modification thereof or addition thereto, as may from time to time be furnished or approved in writing by the Project Manager
- l. "Drawings" means maps, drawings, plans, tracings or prints thereof, calculations and technical information of a like nature provided by the Project Manager to the Contractor or annexed to the Contract, and any modifications of such drawings and further drawings that may be issued or approved by the Company, / the Project Manager from time to time in writing. It includes such other drawings as are made from time to time and furnished by the Contractor and approved by the Company / the Project Manager.
- m. "Bill of Quantities" means the priced and completed bill of quantities forming part of the Tender.
- n. "Contract Price" or "Contract Value" means the sum stated in the Letter of Acceptance, subject to such additions thereto or deductions there from as may be made pursuant to the Contract.
- o. Works:
  - i. "Works" means the work to be executed in accordance with the Contract, including all variations and shall include both Permanent Works and Temporary Works.
  - ii. "Permanent Works" means the permanent works to be executed, completed and maintained, in performance with the Contract.
  - iii. "Temporary Works" means all temporary and enabling works of every kind required for the execution and completion of the works and the remedying of any defects therein.
- p. "Construction Plant" means all machinery and appliances of whatsoever nature, required for the execution, completion or maintenance of the works, but do not include material or other things, intended to form or forming part of the permanent works.
- q. "Site" means the land and or other places on, under, into or through which the works are to be carried out, and any other land(s) or place(s) provided by the Company for the purpose of the Contract.
- r. "Material(s)" means all equipments, components, fittings and other materials including raw materials required to execute and complete the work.
- s. "Test" means such tests as are prescribed in the specifications or directed by the Project Manager or Project Manager's Representative, whether performed by the Contractor or by the Project Manager or his Representative or any service provider acting under the direction of the Project Manager.
- t. "Approval or Approved" means approval in writing including subsequent written confirmation of previous verbal approval.

- u. "Defect Liability Period" means the specified period of maintenance from the date of completion of the work as certified by the Project Manager. This period is also termed as the "Period of Maintenance".
- v. "Letter of Acceptance" means the letter from the Company to the Contractor, conveying acceptance of the Tender, subject to any modifications agreed to between the parties.
- w. Month & Day:
  - i. "Month" means calendar month.
  - ii. "Day" means calendar day
- x. "Terms and expressions not herein defined" shall have the meanings assigned to them in the "Indian General Clauses Act, 1987" or the Indian Contract Act or the Indian Sale of Goods Act or any other applicable Indian Law, as the case may be

## **2.0 HEADINGS AND MARGINAL NOTES AND INTERPRETATIONS**

### **2.1. Headings and Marginal Notes**

The top headings and marginal notes given in the Tender or Contract documents are solely for the purpose of facilitating reference and shall not be deemed to form part thereof and shall not be taken into consideration in the interpretation or construction thereof or of the Contract.

### **2.2 Interpretation**

Words importing persons or parties shall include firms, corporations and any organization having legal capacity.

## **3.0 SINGULAR, PLURAL AND GENDER**

Words importing the singular only also include the plural and vice versa where the context so requires. Similarly, words importing masculine gender shall also include the feminine gender and vice versa.

## **4.0 PROJECT MANAGER AND PROJECT MANAGER'S REPRESENTATIVE**

### **4.1 Duties and Authority of Project Manager**

The Project Manager shall carry out the duties specified or implied in the Contract including issue of instructions, decisions, certificates and orders, as are specified in the Contract, or necessary for the observance of the Contract and expeditious and timely completion of the work. Should the Project Manager exercise any specific authority for which, as per the terms of his appointment, he has to obtain the approval of the Company, the Contractor shall deem such approval to have been given by the Company to the Project Manager. To assist him, the Project Manager may appoint Project Manager's Representative(s).

### **4.2 Duties and Authority of Project Manager's Representative**

- i. The Project Manager's Representative shall be responsible to the Project Manager. His duties are to watch and supervise the Works and to test and examine any materials to be used or workmanship employed in connection with the Works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract or, except as expressly provided hereunder or elsewhere in

the Contract, to order any work involving delay or any extra payment by the Company, or to make any variations of or in the works.

- ii. The Project Manager may, from time to time, in writing delegate to the Project Manager's Representative, any of the powers and authorities vested in the Project Manager, and shall furnish to the Contractor and to the Company, a copy of all such written delegations of powers and authorities. Upon receipt of such notice, the Contractor shall recognize and accept each person so appointed as lawfully entitled to exercise for the purposes of the Contract the powers, duties, discretions and authorities referred to in the notice. Any written instruction, decision or approval given by the Project Manager's Representative to the Contractor within the terms of such delegation, but not otherwise, shall bind the Contractor and the Company, as though it had been given by the Project Manager, provided always as follows:
  - a. Failure of the Project Manager's Representative or his assistants, to disapprove any work or materials shall not prejudice the authority of the Project Manager or Company thereafter, to disapprove such work or materials or plant and to order the pulling down, removal or breaking up thereof. The Project Manager's Representative shall have similar authority to disapprove any work or material or plant passed by his Assistants, appointed in terms of provision of sub-clause 4.3 herein.
  - b. If the Contractor shall be dissatisfied by reason of any instruction or decision of the Project Manager's Representative, he shall be entitled to refer the matter to the Project Manager, who shall thereupon confirm, reverse or vary such decision. The Project Manager's Representative shall have similar authority to confirm, vary, or, reverse any instructions and decisions issued by his Assistants, appointed in terms of Sub clause 4.3 herein.

#### 4.3 Assistants to Project Manager and Project Manager's Representative

The Project Manager or the Project Manager's Representative may appoint any number of assistants to assist them. Their names, duties and scope of authority shall be notified to the Contractor, and they shall have the authority to issue instructions / give decisions to the extent of duties assigned and powers delegated to them.

#### 4.4 Instructions in Writing

Instructions given by the Project Manager shall be in writing, provided that if for any reason the Project Manager considers it necessary to give any such instruction orally, the Contractor shall comply with such instructions. Confirmation in writing of such oral instruction given by the Project Manager, whether before or after carrying out of the instruction shall be deemed to be an instruction within the meaning of this sub-clause.

### 5.0 REPRESENTATION ON WORKS

The Contractor, shall, when he is not in a position to be present at the site, keep responsible agent(s) / representatives there, during all working hours, who shall, on receiving reasonable notice, present himself / themselves to the Project Manager, Project Manager's Representative or their Assistants. The instructions and orders given by them to the Contractor's Agent(s) shall be deemed to have the same force, as if they had been given to the Contractor. Before absenting himself, the Contractor



should furnish the name and address of his agent(s), for the purpose of this clause. Failure on part of the Contractor to comply with these provisions shall constitute a breach of Contract leading to action under Clause 73.0.

## **6.0 COMMUNICATIONS AND LANGUAGE OF CONTRACT**

### **6.1 Communications to be in writing**

All notices, communications, references, representations, requests and complaints by either party to the Contract shall be in writing. . All notices or requests shall be delivered or addressed to the party to receive the same at the addresses indicated below No notice, communication, reference or complaint not in writing, shall be recognized or be binding on either party.

### **6.2 Language of Contract**

The Contract document shall be drawn up in English. Supporting documents or literature may be in any other language, but an appropriate English translation thereof shall be provided. In case of inconsistency between the two, the English translation shall prevail.

## **7.0 LAWS GOVERNING THE CONTRACT AND CO-RELATION OF DOCUMENTS**

### **7.1 Laws governing the Contract**

The Contract shall be governed by and construed in accordance with the laws for the time being in force in India.

### **7.2 Co-relation of documents**

The Contract documents are complementary and what is called for by any one of them shall be as binding as if called for by all them.

### **7.3 Ambiguities or discrepancies**

In case of ambiguities or discrepancies in the interpretation of the Contract Documents or error, omission or contradiction therein or in any of them, the CONTRACTOR shall, prior to commencing the relative work, apply in writing to the Project Manager who shall thereupon issue to the Contractor instructions and clarifications which shall be in writing and shall be final and binding upon the Contractor. thereon and in such event, such instructions etc shall form part of the Contract Documents, and shall be read as though the said instructions are and were at all times incorporated therein.

In such an event, the provisions in the separate contract documents concerning or governing the same aspect precedence shall be given to the provisions contained in the documents mentioned below in the order in which they are set out below :-

- a. The Agreement
- b. The Letter of Acceptance
- c. The Letter of Negotiations
- d. The Bill of Quantities
- e. The Specifications.
- f. The Tender Drawings.
- g. The Special Conditions of Contract.
- h. The Contract Data Sheet
- i. The General Conditions of Contract.

A variation or amendment issued after the execution of the formal contract shall take precedence over the formal contract and all other Contract Documents.

## **8.0 COMPLIANCE WITH REGULATIONS AND BYLAWS**

The Contractor shall comply with the requirements of all Acts, ordinances, regulations, by-laws, orders and lawful requirements of public and other authorities , including those controlling the utilities such as water supply, sewerage, telephones, power supply, etc, in any way affecting or applicable to the Works or the execution of the work under the Contract.

If, in the opinion of the Contractor, the provisions of any document forming part of the Contract are at variance with any such requirements, the Contractor shall give written notice to the Project Manager or his representative specifying the departure from such provisions which he considers necessary to comply with such requirements and the reasons thereof, The Project Manager or his representative as the case may be shall, and as soon as practicable after receiving the Contractor's written notice in consultation with the Company, give to the Contractor such lawful instructions as deemed fit and necessary and the Contractor shall comply with those instructions. The Contractor shall give all notices necessary to comply with the aforesaid requirements and shall pay and bear all fees payable in connection therewith. It shall be deemed to be the part of the contract and no extra payment shall be made to the contractor for the same.

## **9.0 DISCLOSURE OF RELATIONSHIP**

If the Contractor or any partner or Director of the Contractor's company, is closely related to any of the officers of the Company or the Project Manager, or alternatively, if any close relative of an officer of the Company or the Project Manager has financial interest / stake in the Contractor's firm / company, the same shall be disclosed by the Contractor at the time of filling his tender. Any failure to disclose the interest involved, shall entitle the Company to rescind the Contract, without payment of any compensation to the Contractor.

## **10.0 EMPLOYMENT OF EMPLOYEE OF COMPANY / PROJECT MANAGER**

At any time after the tender relating to the Contract has been signed and submitted by the Contractor:

If the Contractor is a partnership firm and it admits as one of its partners or employees under it, or

if the Contractor is a Company or a Corporation incorporated or otherwise and it elects, nominates or allows to act as one of its directors or employees under it in any capacity whatsoever, any employee of the Company or the Project Manager, except when he has obtained specific permission of the Company for such position / employment;

then, in any of eventualities mentioned above, in addition to any or several of the courses, referred in Sub-clauses 73.1 and 73.2 being adopted:

- a. The Contractor shall have no claim to compensation for any loss sustained by him by reason of his having purchased or procured any materials or entered into any commitment or made any advance on account of the Contract and the Contractor shall not be entitled to recover or be paid any sum for any work thereto or actually performed under the Contract, unless and until the Project Manager shall have certified the performance of such work and the value payable in respect thereof and the Contractor shall only be entitled to be paid the value so certified.
- b. The Project Manager or the Project Manager's representative shall be entitled to take possession of any material, tool, implement, machinery and buildings on the Works and to retain and employ the same in further execution of Works or part thereof until the completion of the Works without

the Contractor being entitled to any compensation for the use and employment thereof or for wear and tear or destruction thereof.

- c. The Company shall not be liable to pay to the Contractor any monies on account of the Contract until the expiration of the period of maintenance and thereafter until the cost of completion and maintenance, damages for delay in completion (if any) and all other expenses incurred by the Company have been ascertained and the amount thereof certified by the Project Manager. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Project Manager may certify, that would have been due to him upon due completion of work by him after deducting the said amount; but if such amount shall exceed the sum which would have been payable to the Contractor, then the Contractor shall upon demand pay to the Company the amount of such excess and it shall be deemed a debt due by the Contractor to the Company and shall be recoverable accordingly.

## **11.0 ILLEGAL GRATIFICATION**

### **11.1 Bribe, commission, gift or advantage**

Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner, agent or servant to any officer, representative, employee, or agent of the Project Manager or Company, or to any person on their behalf, in relation to obtaining or the execution of this or any other contract with the Company, shall, in addition to any criminal liability which he may incur, subject the Contractor to rescission of this and all or any other Contract with the Company,. The contractor shall also be liable for payment of any loss or damage to the Company, resulting from such rescission. The Company shall be entitled to deduct the amounts so payable from any money(s) due to the Contractor alone, or jointly under this contract or any other contract with the Company. The Contractor shall not be entitled to, nor shall be paid any compensation whatsoever for any loss, alleged or actual, suffered by him when the Contract is so rescinded.

### **11.2 Monetary dealing of Contractor with the employee(s) of the Company or Project Manager**

The Contractor shall not lend or borrow money from, or enter into any monetary dealings or transactions directly or indirectly, with any employee of the Project Manager or the Company, and if he does so, the Company shall be entitled forth-with to rescind the Contract and all other Contracts with the Contractor. The Contractor shall be liable to pay compensation for any loss or damage to the Company resulting from such rescission and the Company shall be entitled to deduct the amounts so payable from the money(s) due to the Contractor.

### **11.3 Settlement of dispute as to commission of such offence**

If any question or dispute as to the commission of any such offence arises under Sub-clauses 11.1 and 11.2, the same shall be settled by the Project Manager, in such manner as he shall consider fit and proper, and his decision shall be final, conclusive and binding on the Contractor.

### **11.4 Compensation to the Contractor on rescission of the Contract under this clause**

In the event of rescission of Contract under Sub-clause 11.1 or 11.2 the Contractor shall not be entitled to any compensation whatsoever, except for the work done up to the date of rescission.

## **12.0 GENERAL RESPONSIBILITY OF THE CONTRACTOR**

The contractor shall execute the whole and every part of the work in the most substantial and workmanlike manner both as regards materials and otherwise in every respect in strict accordance with the specifications. The contractor shall also conform exactly, fully and faithfully to the design, drawings and instructions in writing in respect of the work signed by the Project Manager

The Contractor shall comply with the provisions of the Contract, with due care and diligence, and execute and maintain the works and provide all labour and materials, tools thereof, and be responsible for supervision of all works, structural plans and other things of temporary or permanent nature required for such execution and maintenance in so far as necessary for providing these, is specified or is reasonably inferred from the Contract. The Contractor shall take full responsibility for the adequacy, stability and safety of all works, materials and methods of construction / demolition at the site, provided, however, that the Contractor shall not be responsible except as may be expressly provided for in the Contract Agreement for the design or specifications of permanent works or of any temporary works prepared by the Project Manager.

## **13.0 OPPORTUNITY FOR OTHER CONTRACTORS**

### **13.1 Reasonable opportunity**

The Contractor shall, in accordance with the requirements of the Project Manager, cooperate with and afford all reasonable opportunities to any other contractors employed by the Company and their workmen and to the workmen of the Company and the workmen of any other duly constituted authority, who may be employed in the execution on or near the Site, of any work not included in the Contract or of any contract which the Company may enter into in connection with or ancillary to the Works.

The Contractor shall, on the written request of the Project Manager or the Project Manager's Representative, make available to any such other contractor of the Company or any such authority, any roads or ways for the maintenance of which the Contractor is responsible, for which no additional payment shall be made by the Company. The Contractor shall also permit the use of the Contractor's scaffolding or other plant on the Site, or provide any other service of whatsoever nature at the request of the Company.. The Company or any such other contractor of the Company shall pay to the Contractor in respect of such use or service such sum or sums as shall, in the opinion of the Project Manager, be reasonable. The decision of the Project Manager as to the sum payable shall be final and binding.

### **13.2 Inspection of work of other contractors**

If the Contractor's work or any part thereof depends upon the work of another contractor, he shall before commencing with his work, inspect and promptly report to the Project Manager in writing any defects found to be existing in such other work that may render it unsuitable for such proper execution by him. The Contractor's failure to inspect and report shall constitute acceptance of the other Contractor's work as complete fit and proper and shall be deemed to have waived any and all rights to complain in respect of any defects as may exist therein except as to defects which may develop in the other Contractor's work after execution of his work.

## **14.0 ASSIGNMENT AND SUBCONTRACTING**

### **14.1 Assignment of Contract**

The Contractor shall not assign the Contract or any part thereof, or any benefit or interest therein or there under.

### **14.2 Subcontracting**

- i. The Contractor shall not sub-contract the whole of the work under the Contract. Except where otherwise specifically provided in the Contract, the Contractor shall not subcontract any part of the works without the prior consent of the Project Manager in writing. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be solely responsible for all the acts, omissions, defaults and neglects of any Sub-Contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.
- ii. Provided that the Contractor shall not be required to obtain such consent for :
  - a. the provision of labour, or
  - b. the purchase of materials which are in accordance with the standards specified in the Contract, or
  - c. the subcontracting of any part of the Works is specifically permitted and provided for which the Sub-Contractor is named in the Contract.

### **14.3 Assignment of Sub-Contractor's obligations**

In the event of a Sub-Contractor having undertaken towards the Contract in respect of the work executed, or the goods, materials, plant or services supplied by such Sub-contractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time, after the expiration of such period, assign to the Company, at the Company's request and cost, the benefit of such obligation for the unexpired duration thereof.

### **14.4 Compensation for Breach**

Any breach of the conditions under sub-clauses 14.1 to 14.3 above shall entitle the Company to rescind the Contract and also render the Contractor liable to the Company for compensation, in respect of any loss, damage or third party claims whatsoever including all costs incurred towards litigation, arising out of or ensuing from such cancellation.

### **14.5 Explanation on Sub-contracting**

Provided always that execution of the details of the works by petty contractors, or on piece work basis, under the personal supervision of the Contractor or his agent, shall not be deemed to be sub-contracting under this clause.

14.6 No change in the Responsibility of Contractor.

Permission to sub-contract the work by the Contractor shall not establish any contractual relationship between the sub-contractor and the Company and the Contractor shall remain solely responsible for the due and proper performance of the Contract.

**15.0 CONTRACTOR'S UNDERSTANDING**

15.1 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself, so far as is practicable, before submitting his Tender, as to the form and nature of the site, including the sub-surface conditions, the hydrological and climatic conditions, the extent and nature of work and materials necessary for the completion of the Works, the means of access to the Site and the accommodation he may require and in general, shall be deemed to have obtained all necessary information, subject as above mentioned, as to risks, contingencies and all other circumstances which may influence or affect his Tender.

15.2 The Contractor shall be deemed to have read all contract documents and made himself aware of the scope and specifications of the work and to have satisfied himself, before tendering, as to the correctness and sufficiency of his Tender for the Works and of the rates and prices stated in the priced Bill of Quantities and the Schedule of Rates and Prices, if any, all of which shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution and maintenance of the works.

15.3 Failure by the Contractor to do all or any of the things under clause 15.1 or 15.2 will not relieve the Contractor of his liability to perform and complete the Contract in accordance with the terms and conditions thereof.

**16.0 ADVANCES**

16.1 Types of advances

Subject to the conditions provided herein, the Contractor may avail of the following advances for the execution of the Works:

- a. Mobilization advance
- b. Advance against materials at site.

16.2 Mobilisation Advance

16.2.1 For completing preliminaries such as construction of site office, hiring of accommodation, labour hutments, arranging electricity and water supply and movement of staff, labour plant and machinery, an advance specified in the Contract Data and as required by the Contractor shall be payable against a Bank Guarantee of a Scheduled Bank duly approved by the Company for an equivalent amount of advance in a format acceptable to the Company.

16.2.2 Such advance shall be given only after the Contractor has submitted the Performance Security and executed the formal Contract and the Company is rightly entitled to check that this Mobilization Advance is utilized for the Contract

### 16.2.3 Recovery of Mobilisation Advance:

Recovery of mobilisation advance shall be made by deduction from the contractor's bills commencing after the first 10% (Ten percent) of the gross value of work duly certified is executed and paid, on pro-rata percentage basis calculated @ 15% of the gross value of certified work billed beyond 10% of the completed work in such a way that the entire advance is recovered by the time 80% (eighty percent) of gross value of contract is executed and paid.

The Bank guarantee for the advance shall initially be for the full amount and valid for the contract period, and be kept renewed from time to time to cover the balance amount and likely period of complete recovery.

### 16.3 Advance Against Material at Site

Advance on account of main non-perishable construction materials required for incorporation in the permanent Works, shall be paid on request of the Contractor after these materials are brought to site, against an Indemnity Bond duly executed. The Indemnity Bond will be furnished in a Form acceptable and approved by the Company. **The advance shall be limited to 75% of the actual value of the materials or the value as assessed by the Project Manager and the total advance on account of construction materials at a time shall be limited to 3% (three percent) of original Contract Value or likely average consumption of such materials for three months whichever is less and at any time the total outstanding advance against material at site shall not exceed four percent of the original contract value.** The valuation of the average consumption of such main construction materials shall be approved by the Project Manager. For the purpose of valuation of the aforesaid materials, all incidental charges such as packing, handling, freight, transportation, storage, etc shall be excluded. The Contractor shall be bound to store the materials at the site of work earmarked for this purpose and shall not remove them from the site or use them for any purposes other than execution of the Works. If any material is rendered surplus, the Company shall not take over such materials, and the Contractor shall remove the same from the site of work within 7 days from the date of completion of the Works.

### 16.4 Written Request for advance

Advance as admissible under the Contract, shall be payable only after the Contractor makes a written request for the same to the Company. The amount payable shall be the amount applied for by the Contractor, subject however to the conditions and limitations given herein.

### 16.5 Interest in Case of Delay

Should there be delay in the progress and completion of work, as a result of which it is not possible to recover the advance and interest thereon, if provided in the Contract, before the date stipulated in the Contract and such delay is due to Contractor's failure / fault in execution of the contract or for any other reason, then the interest to be charged from the Contractor on the remaining portion of the advance beyond the completion date specified in the Contract Data, shall be the prevailing annual Bank lending Rate plus 2%. Such higher interest rate shall also be chargeable during any extended period of Contract, where the need for extension has arisen on account of Contractor's default.. In no case shall the interest rate be less than 10%.

16.6 Advance to be Used only for This work

The advance(s) referred in clause 16.1 above and received by the Contractor, shall be used by him strictly for the purpose of the Contract, and for the purpose for which they are paid. If it is found that any of the advances aforesaid have been utilized by the Contractor, in whole or in part for any other purpose or if the contract is for any reason terminated, the Company may at its discretion recall the said advances or the unrecovered portions thereof immediately alongwith interest at prevailing annual Bank lending rate plus 2%, till the advance and interest thereon are recovered from him. This is without prejudice to any other remedy that may be available to the Company.

**17.0 PAYMENT, TAX DEDUCTION AT SOURCE AND SALES TAX ON WORK CONTRACTS**

17.1 Payment by Cheque only.

Unless otherwise specified, all payments to the Contractor shall be made by Cheque, but no Cheque will be issued for an amount less than Rs. 1,000/- (Rupees One thousand Only). This stipulation, however, shall not apply to Final Bills.

17.2 Tax Deduction at Source

Where there is a statutory requirement for Tax deduction at source, such deduction towards Income Tax and other Taxes as applicable will be made from the bills and advances payable to the Contractor at the rates notified from time to time.

17.3 Sales tax on work Contracts

a) Sales Tax on the Works Contract, if legally leviable, shall be included by the Contractor in his quoted rates. The Company retains the right to deduct the same from the RA bills of the contractor and provide him with a copy of the Documentary proof of actual payment made as Sales Tax to the concerned department. The contractor shall provide the company with the following:

- i. Valid Registration Number.
- ii. Valid Sales Tax Clearance Certificate from the Commercial Taxes Department of the Government concerned.
- iii. Documentary proof of actual payment made as Sales Tax on the concerned Works contract in case the same is deposited by the contractor: and
- iv. A declaration to the effect that the amount of Sales Tax paid is against the works covered in the Contract.

b) The above-mentioned Sales Tax on Works Contracts is distinct from the Sales Tax elements that might have gone into the price of various raw materials used by the Contractor in the work.

**18.0 INDEMNITY BY THE COMPANY**

The Company shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the use or occupation of the land by the works or part thereof.



## **19.0 OCCUPATION AND USE OF LAND**

No land belonging to or in the possession of the Company shall be occupied by the Contractor without the permission of the Project Manager or the Company. The Contractor shall not use, or allow the site to be used for any purpose other than that of executing the works.

## **20.0 INDEMNITY BY CONTRACTOR**

### **20.1 Indemnity against all actions of the Contractor**

The Contractor shall hold and save harmless and indemnify the Company its representative (s), officers, agents, sub-contractors, servants and employees from and against all actions, suits, proceedings, loss, costs, damages, charges, claims and demands of every nature and description brought or recovered against the Company, by reason of any act or omissions of the Contractor, his officers, agents, sub-contractors, servants and employees, in the execution of the Works or in the guarding of the same. All sums payable by way of compensation under any of these conditions, shall be considered as reasonable compensation payable to the Company, without reference to the actual loss or damage sustained, and whether or not any damage shall have been sustained.

### **20.2 Indemnity Against All Claims of Patent Rights And Royalties**

The Contractor shall hold and save harmless and indemnify the Company, his officers, agents, servants and employees from and against all claims and proceedings, for or on account of infringement or use by the Contractor of copy right, any patent rights, design trademark or name, secret process, patented or unpatented invention, in respect of articles, machines, appliances, works, material or thing, process or method used for or in connection with the Works and from and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. Except where otherwise stated, the Contractor shall pay all royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the works.

In the event of any claim or demand being made or action, suit or proceeding being brought against the Company on account of the infringement as stated above, the Company shall immediately notify the Contractor in writing thereof, and the Contractor shall, with the assistance of the Company, if he makes a request in writing for such assistance, but at the sole expense of the Contractor, conduct any litigation that may arise therefrom and all negotiations for the settlement of the claim, demand, action, suit or proceeding. The Contractor shall not make any settlement or consent to any judgment order or verdict against the Company without first obtaining the Company's written consent thereto.

## **21.0 SECURITY DEPOSIT**

21.1 The Contractor shall permit Company at the time of making any payment to him for work done under the Contract to deduct a sum at the rate of 5% of the gross amount of each running bill till the sum along with the sum already deposited as Earnest Money, will amount to Security Deposit of 5% of the tendered value of the work. Such deductions will be made and held by the Company by way of Security Deposit unless he has deposited the amount of

Security at the rate mentioned above in cash or in the form of Bank Guarantee / Government Securities or fixed deposit receipts of the scheduled bank. In case a fixed deposit receipt of any Bank is furnished by the Contractor to the Company as part of the Security Deposit and the Bank is unable to make payment against the said fixed deposit, the loss caused thereby shall fall on the Contractor and the Contractor shall forthwith on demand furnish additional security to the Company to make good the deficit.

21.2 All compensations or the other sums of money payable by the Contractor under the terms of this Contract may be deducted from, or paid by the sale of a sufficient part of his Security Deposit or from the interest arising therefrom, or from any sums which may be due to or may become due to the Contractor by Company on any account whatsoever and in the event of his Security Deposit being reduced by reason of any such deductions or sale as aforesaid, the Contractor shall within 10 days make good in the same way as the initial deposit as described in clause 21.1 above. The Security Deposit shall be collected from the running bills of the Contractor at the rates mentioned above and the Earnest Money if deposited in cash at the time of tenders will be treated a part of the Security Deposit.

21.3 Release of Security Deposit

Security Deposit shall be released after expiry of Defects Liability Period of 01 year . During this liability period, the Contractor shall be bound to rectify any defects in their executed Works. In case the Contractor fails to remedy the defects to the full satisfaction of the Project Manager / , the Company shall be at liberty to forfeit the available Security amount and get the defects remedied at the risk and cost of the Contractor.

## **22.0 PERFORMANCE SECURITY**

22.1 Amount of Performance Security

- i. Within 7 days of receipt of the Letter of Acceptance from the Company, the successful tenderer shall furnish to the Company a security in the form of a bank guarantee for an amount of 2% (two percent) of the total Contract value in the form approved by the Project Manager valid for a period of 6 months beyond the "Defects Liability Period".
- ii. Failure of the successful tenderer to furnish the required Performance Security shall constitute a ground for the termination of the award of Contract and forfeiture of the Earnest Money, in which event the Company may award the works to any other organization.

22.2 Release of Performance Security

- i. The whole of the Performance Security amount, shall be liable to be forfeited to the Company at the sole discretion of the Company, in the event of any breach of Contract on the part of the Contractor or if the Contractor fails to perform or observe any of the conditions of the Contract. On due and faithful completion of the entire work, the Bank Guarantee for one half of the Performance Security amount may be released to the Contractor, subject to the issue of Completion Certificate by the Project Manager. This shall not relieve the Contractor from his obligations and liabilities, to make good any neglect / failures, defects, imperfections, shrinkages, works not in accordance with the contract or faults that may be detected during the Defects Liability Period. The balance of the Performance Security Amount shall become due for release and shall be released to the Contractor after six months of the

successful completion of the Defects Liability Period. Where different Defects Liability Periods are applicable to different parts of the works, the expression, "successful completion of Defects Liability Period" shall for the purpose of this clause, be deemed to mean the successful completion of the last of such periods.

- ii. Provided always that, no release of Bank Guarantee for Performance Security shall become due to the Contractor, unless all the stipulations of the Contract have been fulfilled by the Contractor and all claims and demands made by the Company for and in respect of damage or loss by, from or in consequence of the Works, but excluding the claims made by the Contractor on the Company, have been finally satisfied.
- iii. Provided also that the security deposit, performance security and any other withheld amounts from the running account bills, if any, at any time held with the Company, shall be free of any liability for payment of interest to the Contractor.

## **23.0 INSURANCE**

### **23.1 Requirements**

Before commencing execution of works it shall be obligatory for the Contractor to obtain insurance cover against any loss of or damage resulting from any cause and for such amounts as mentioned in the Contract Data to the satisfaction of the Company under the following matters at his own cost:

- a. Contractor's All Risk and Third Party Cover.<sup>1</sup>
- b. Liability under the Workmen's Compensation Act, 1923, Minimum Wages Act, 1948 and Contract Labour (Regulation and Abolition ) Act, 1970
- c. Accidents to staff, Project Managers, sub- contractors, supervisors and others of the company who are not governed by Workmen's Compensation Act.
- d. Damage to material, machinery and works due to earthquake, fire, theft etc.
- e. Any other risk to be covered by insurance as may be specified by the Company in the Contract Data.

### **23.2 Policy in joint name of Contractor and Company**

The policy referred to under Sub-clause 23.1 (a) above shall be obtained in the joint names of the Contractor and the Company, Principal Beneficiary shall be the Company, and shall inter-alia provide coverage against the following, arising out of in connection with execution of Works, their maintenance and performance of the Contract :

- i. Loss of life or injury involving public, employees of the Contractor, or that of the Company and of the Project Manager, other agencies and their employees, labour, agents etc.
- ii. Injury, loss or damage to the Works or property belonging to public, Government bodies, local authorities, utility organizations, contractors, Company or others.

### 23.3 Currency of Policy

The policies shall remain in force throughout the period of execution of the Works till the satisfactory completion of the Defects Liability Period. The Contractor shall, submit to the Company copies of the Policies within 10 days from the date of issue of the Letter of Acceptance and whenever called upon, produce to the Project Manager or his representative the originals of various insurance policies obtained by him as also the receipts of premium paid by him to ensure that the policies indeed continue to be in force. If the Contractor fails to effect or keep in force or provide adequate cover in the Insurance policies mentioned in Sub-clause 23.1 or any other insurance he might be required to effect under the Contract, then in such cases, the Company shall be entitled to take out and keep in force any such insurance or further insurance at the cost and expense of the Contractor without prejudice to any other right of the Company in this regard to deduct the sums incurred therefrom from the payments due to the Contractor or from the Contractor's Performance Security.

The Contractor shall, as soon as practicable, inform the Company in writing of the occurrence of an event that may give rise to a claim under a policy of insurance and shall ensure that the Company is kept fully informed of subsequent action and developments concerning the claim. The Contractor shall take such steps as are necessary or appropriate to ensure that a sub-contractor will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the sub-contractor, take in relation to the Principal the like action to that which the Contractor is required to take under this paragraph. The effecting of insurance as required by clauses 23.1 and 23.2 or any of them shall not in any way limit the liabilities or obligations of the Contractor under other provisions of the Contract. .(To be added)

### 24.0 EXCEPTED RISKS

The "Excepted Risks" are war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, unless solely restricted to employees of the Contractor or of his sub-contractors and arising from the conduct of the Works, riot, commotion or disorder, loss or damage due to use or occupation by the Company of any part of the Permanent Works, loss or damage caused solely due to the Project Manager's design of the Works, radiations or contaminations by radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio active toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds, or any such operations of the forces of nature as an experienced contractor could not foresee, or reasonably make provision for or insure against all of which are herein collectively referred to as "the Excepted Risks."

### 25.0 TIME FOR COMPLETION AND PROGRAMME OF WORK

The Contractor shall, on receipt of letter of acceptance of his tender, or as soon thereafter as possible, but not later than 15 days, or as may be indicated by the Project Manager, from the date of receipt of letter of acceptance, submit to the Project Manager for his approval, a detailed programme, showing the order and procedure in which he proposes to carry out the work so as to complete the whole of the Works within the "Time for Completion" stipulated in the Contract Data. Any requirement for completion of any part or parts of the works before completion of the whole of the Works should be reflected in the programme. The contractor shall,

whenever required by the Project Manager or the Project Manager's Representative, also provide in writing for their information, a general description of the arrangements and methods of deployment of labour and machinery which the Contractor proposes to adopt for the execution of the Works. If at any time it should appear to the Project Manager that the approved programme, referred to above, is not likely to be adhered to the Contractor shall produce, at the request of the Project Manager, a revised programme showing modifications to the approved one within the time for completion stipulated in the Contract. The submission to and approval by the Project Manager or Project Manager's representative of such programme or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities or obligations under the Contract. The Project Manager shall have full power and authority during progress of work, to issue such instructions as may be considered necessary. The Contractor shall carry out and be bound by the same. The programme finally approved by the Project Manager shall supersede the one submitted earlier with the Tender. In case any dispute arises between the Project Manager and the Contractor as to the propriety or reasonableness of such direction, the matter shall be referred to the Director of the Company, whose decision shall be final and binding on the Contractor.

## **26.0 POSSESSION OF SITE**

Save insofar as the Contract may prescribe, the extent of portion of the Site of which the Contractor is to be given possession from time to time, and the order in which such portions shall be made available to him and, subject to any requirement in the Contract as to the order in which the Works shall be executed, the Company will, on the Project Manager's written order to commence the Works, give to the Contractor, possession of so much of the Site, as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 25.0 hereof, if any, and otherwise in accordance with such reasonable proposals of the Contractor as he shall, by written notice to the Project Manager, make. The Company will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the Execution of the Works with due dispatch in accordance with the said programme or proposals as the case may be. If the Contractor suffers delay or incurs extra cost as a result of failure on the part of the Company to give possession of site in accordance with the terms of this Clause, the Project Manager may on Contractor's request, grant extension of time for the completion of the Works and / or certify such sum, as in his opinion, shall be fair to cover the extra cost incurred, which sum shall be paid by the Company to the Contractor. Provided further that if the Company is unable to give possession of the site for a small portion of the Works, the Company, or the Project Manager in his behalf, may delete the work at that site from the scope of the Contract and ask the Contractor to complete the rest of the work. The Contractor shall complete the same within the time frame stipulated in the contract without any extra payment. The decision of the Project Manager as to extra cost as referred to above in this clause shall be final.

## **27.0 ACCESS TO SITE OF WORK**

### **27.1 Access for Project Manager**

The Project Manager or the Project Manager's Representative shall, at all times, have access to the Works and to all workshops and places where work is being performed or from where materials, manufactured articles or machinery, are being obtained for the Works; and the Contractor, shall afford every facility and every assistance in obtaining the right to such access.

27.2 Access Road

The Contractor shall provide necessary access roads to the site of work, from the nearest public through fare / right of way, at his cost, unless otherwise provided for in the Contract.

**28.0 BORE HOLES AND EXPLORATORY EXCAVATION**

28.1 Where the works are to be executed by the Contractor as per his own designs, it will be the responsibility of the Contractor to make bore holes or to carry-out exploratory excavation at his cost. If at any time during the execution of the works, the Project Manager shall require the Contractor to make out additional bore holes or to carryout additional exploratory excavation, the Contractor shall comply with the same and no extra amount will be payable on this account.

28.2 Where the works are to be executed by the Contractor as per the Designs of the Project Manager, the Contractor shall be guided by the site investigation details furnished in the Tender Documents. In such cases, if the Project Manager shall require the Contractor to make bore holes or to carry out exploratory excavation, such requirement shall be communicated in writing and shall be paid for extra.

**29.0 COMMENCEMENT OF WORK**

The Contractor shall commence the Works as soon as is reasonably possible after the receipt by him of a notice to this effect from the Project Manager, within the time limit as specified in the Contract Data. Thereafter, the Contractor shall proceed with the works with due expedition and without delay.

**30.0 SPECIFICATIONS AND DRAWINGS**

30.1 Ownership

The Contractor shall maintain at the site in good order one copy of latest approved Specifications and Drawings and also such other Contract documents as may be necessary and make them available to the Project Manager or his Representative. All Specifications and Drawings shall be and remains the exclusive property of the Company and shall not be used on other works and shall be returned by the Contractor to the Company on completion of the works or on termination of the Contract as the case may be.

30.2 Adherence to Specifications and Drawings

The contractor shall execute the whole and every part of the work in the most substantial and workmanlike manner both as regards materials and otherwise in every respect in strict accordance with the specifications and Drawings and instructions issued to the Contractor by the Project Manager from time to time. If the Contractor does any work in a manner contrary to the Specifications, Drawings or instructions without the approval of the Project Manager, he shall bear all the costs and consequences arising there from including dismantling and reconstruction strictly in accordance with the specifications and drawings and shall also be responsible for all loss to the Company. The Project Manager shall have full power and authority to supply to the Contractor from time to time such further drawings as may be required for the proper and adequate execution and maintenance of the work. The term "Drawings" in this Sub-clause includes the drawings prepared by the Contractor and approved by the Project Manager. The contractor shall be

responsible for the adequacy, suitability and safety of all the works under the contract.

### 30.3 Meaning and Intent of Specifications and Drawings

If any ambiguity arises as to the meaning and intent of any portion of the Specifications and Drawings or as to execution or quality or any work or materials or as to the measurement of the works, the decision of the Project Manager thereon shall be final and binding.

### 30.4 Compliance with Contractor's Request for Details.

- i. The Contractor shall give written request to the Project Manager within 15 days whenever progress of the works is likely to be delayed or disrupted due to absence of any further approved drawings, instructions etc. unless any further drawing, or order, including a direction, instruction or approval is issued by the Project Manager within a reasonable time. The request shall include the details of pending drawings, specifications, instructions etc., period and reasons for such pendency the time frame within which the desired information be supplied and delay or disruption likely to be suffered if this issue is delayed.
- ii. The Project Manager shall furnish with reasonable promptness after receipt by him of any request from the Contractor, additional instructions by means of drawings or otherwise necessary for the proper execution of the works or any part thereof. All such drawings and instructions shall be consistent with the Contract documents and reasonably inferable there from. The Project Manager may ask the Contractor for alternative proposals or clarifications or additional data or any other detail in respect of the request of the Contractor, if any.
- iii. If, by any reason of any failure or inability of the Project Manager to issue within a reasonable time any drawing or order requested by the Contractor as stated above, the Contractor suffers delay and / or incurs additional costs, the Project Manager shall take such delay into account while determining extension of time to which the Contractor would be entitled.

## 31.0 RATES FOR ITEMS OF WORK TO BE ALL INCLUSIVE

31.1 The rates entered in the accepted Bill of Quantities of the Contract, shall be all inclusive and provide for Works duly and properly completed in accordance with these conditions of the Contract, Special Conditions of Contract and the Specifications and Drawings, together with such enlargement, extension, diminution, reduction, alteration or addition, as may be ordered in terms of conditions of the Contract, and without prejudice to the generality thereof, shall inter-alia be deemed to include and cover all charges relating to labour and superintendence thereof, supply including cost and freight of materials, stores, equipments, profiles, moulds, cuttings, centering, scaffoldings, shuttering, machinery, derricks, tackles, ropes, pegs, posts, tools, all apparatus, required at / for the work, and contingencies, except such items as may be specified in the Contract Document to be supplied to the Contractor by the Company. The rates quoted shall also include:

- Erection, maintenance and removal of all temporary works and buildings,
- All watching, lighting, pumping and draining unless otherwise provided for,
- All barriers and arrangements for safety of the property, utilities, public or of employees/workers during the execution of works,

- All sanitary and medical arrangements for labour camps as may be prescribed,
- The setting out of all works of construction, repair and up-keep of all center lines, benches, brackets etc.,
- Site clearance,
- All taxes, royalties, duties, Cess, Octroi and other levies payable to various authorities except as provided in Sub-clause 17.3.

31.2 Nothing extra shall be payable over the quoted rates, notwithstanding any provision to the contrary in any law for the time being in force, save except what is specifically provided in the Contract Document.

### **32.0 SETTING OUT**

The Contractor shall be responsible for the true and proper setting out of the Works, in relation to the original points, lines and levels of reference given by the Project Manager in writing and for the correctness, subject as above mentioned, of the positions, levels, dimensions and alignment of all parts of the works, and for the provision of all necessary instruments, appliances and labour, in connection therewith. If at any time during the progress of Works, any error appears or arises in any part of the work, the Contractor, on being required so to do by the Project Manager shall at once rectify such error, to the satisfaction of the Project Manager or his representatives. The checking of any setting out, or of any line or level by the Project Manager or his representative, shall not in any way relieve the Contractor of his responsibility for the correctness thereof, and the Contractor shall carefully protect and preserve all bench marks, sight rails, pegs and other things used in setting out the works.

### **33.0 TEMPORARY WORKS**

All temporary works necessary for the proper execution of the works shall be provided and maintained by the Contractor at his cost and subject to the consent of the Project Manager shall be removed by him at his expense when they are no longer required and in such manner as the Project Manager shall direct. In the event of failure on the part of the Contractor to remove the temporary works, the Project Manager may cause them to be removed and cost as incurred for removal, supervision, and other incidental charges shall be recovered from the Contractor. No land shall be provided to the Contractor for construction of temporary huts or any other form of accommodation for labour engaged by him for the execution of the Works. The Contractor shall arrange for such accommodation by himself and at his cost

### **34.0 RELICS AND TREASURES**

All gold, silver, coins, oil and other minerals of any description, and all precious stones of all kinds, treasures, antiques, fossils and other similar things of geological interest, which shall be found in or at site, shall be the property of the Company, and the Contractor shall duly preserve the same to the satisfaction of the Company, and shall from time to time deliver the same to such person or persons, as the Company may appoint to receive the same.

### **35.0 EXCAVATED MATERIALS**

The Contractor shall not sell or otherwise dispose off, or remove, except for the purpose of this Contract, sand, stone, clay, ballast, earth, rock or any other substance or materials, which may be obtained from any excavation made for the purpose of the works, or any building or produce existing at the site at the time of delivery of possession thereof. All such substances, materials, belong to the Company; provided that the Contractor may, with the permission of the Project



Manager, use the same for the purpose of the Works either free of cost or on payment of cost as determined by the Company.

### **36.0 COMPANY NOT TO PROVIDE QUARTERS FOR CONTRACTOR**

No quarters shall normally be provided by the Company for the accommodation of Contractor or any of his staff employed on Works. In exceptional cases, where accommodation is provided to Contractor at the Company's discretion, recoveries shall be made at such rates, as may be fixed by the Company, for full rent of the building, equipment therein as well as charges for electricity, water supply and conservancy.

### **37.0 LABOUR CAMP**

#### **37.1 Provision of Labour Camp.**

The Contractor, shall, at his own expense, make adequate arrangements for the housing, supply of drinking water, canteen and provision of sanitary and drainage arrangements for his staff and workmen employed on the Work, directly or through petty contractors or sub-contractors and for temporary crèche (Bal-mandir) where 50 or more women are employed at a time. All camp sites shall be maintained in a clean and sanitary condition, by the Contractor, at his own cost.

#### **37.2 Compliance with Rules for Employment of Labour**

The Contractor shall comply with all applicable Central, State, Municipal and local laws, bylaws, rules and regulations, for the time being in force, pertaining to the employment of their respective local or imported labour, concerning social welfare and other benefits to them and shall take all necessary precautions to ensure and preserve the health and safety of all staff, employed on the works directly or through petty contractors or sub contractors at his cost.

The Contractor shall comply with and ensure strict compliance by his sub contractors and agents of the provisions of Payment of Wages Act, 1936, Minimum Wages Act, 1948, Company's Liability Act, 1938, Workmen Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity benefit Act, 1961, Contract Labour (Abolition and Regulation) Act, 1970, Payment of Bonus Act, Gratuity Act, Factories Act, Employees Provident Fund and Miscellaneous Provisions Act, 1952 as amended and any other act / rule as may be applicable from time to time during the entire project duration as per rule of the land.

The Company shall be entitled to carry out inspection of the Contractor's facilities, records and accounts to ensure that the provisions aforesaid are being observed. Any violation shall constitute a ground for termination of the contract. The contractor shall indemnify the Company from and against all actions, claims, levies, damages, penalties and payments as may be imposed by reason of breach of any law, rule or regulation thereof by him, his sub contractors and agents.

### 37.3 Preservation of Peace

The Contractor shall take requisite precautions, and use his best endeavors to prevent any riotous or unlawful behavior by or amongst his workmen, and others, employed on works directly or through petty contractors or assignees or sub-contractors and for preservation of peace and protection of the inhabitants and security of property in the neighborhood of works. In the event of the Company requiring the maintenance of a special Police Force at or in the vicinity of the Site, during the tenure or Works, the expenses thereof shall be borne by the Contractor and if paid by the Company, shall be recoverable from the Contractor.

### 37.4 Sanitary Arrangements

The Contractor shall provide the facilities meeting the requirement of all the sanitary rules and regulations, and carry out at his cost all sanitary measures that may from time to time be prescribed by the Local Medical Authority, and permit inspection of all sanitary arrangements at all times by the Project Manager, the Project Manager's Representative or the Medical staff of the Company and the staff of the local municipal or other authorities concerned from time to time.

### 37.5 Outbreak of Infectious Diseases

- i. The Contractor shall maintain the Labour Camp in a sanitary condition taking all necessary precautions to protect the staff and labour from outbreak of infectious diseases. He shall provide them with suitable prophylactics for the prevention of malaria, gastroenteritis, typhoid and other water-borne diseases.
- ii. The Contractor shall remove from his camp such labour and their families, who refuse protective inoculation and vaccination, when called upon to do so by the Project Manager or the Project Manager's Representative on the advice of local Medical Authority. The Contractor shall make all preventive measures against the outbreak of Cholera, Plague or any other epidemic, contagious or infectious disease and in the event of occurrence of any epidemic, the Contractor shall on his own burn the huts, beddings, clothes and other belongings of or used by the infected person, and promptly erect new huts on healthy sites as required by the Project Manager after disinfecting the land, within the time specified in the Project Manager's requisition. However, no compensation shall be paid by the Company for the same.

### 37.6 Medical Facilities at Site

The contractor shall at his own cost provide First Aid and medical facilities, at the site as may be prescribed by the Project Manager, on advice of Medical Authority <sup>2</sup>in relation to the strength or the Contractor's staff and workmen employed on the Works, directly or through petty contractors or sub-contractors.

### 37.7 Use of Intoxicants

The sale of ardent spirits or other intoxicating drugs or beverages upon the Works, or in any of the buildings, encampments or tenements owned or occupied by or within the control of the Contractor or any of his employees

employed on the Works directly or through petty contractors or sub contractors shall be forbidden, and the Contractor shall exercise his influence and authority to secure strict compliance with this condition. The contractor shall also ensure that no labour or employee is permitted to work at the Site in an intoxicated state or under the influence of drugs.

The Project Manager may require the contractor to dismiss or remove from the site of the work any person, agent or sub contractor in the contractor's employment upon the work who may be found in an intoxicated state and the contractor shall forthwith comply with such requirement.

### **38.0 SHEDS, STORES, YARDS**

The Contractor shall at his own expense provide sheds, store-houses and yards in such situations and in such numbers as in the opinion of the Project Manager are necessary for carrying on the works and the Contractor shall keep at each of such sheds, store-houses and yards sufficient quantity of materials and plant in stock as not to delay the carrying out of the Works with due expedition. The Project Manager and the Project Manager's representatives shall have free access to the said sheds, store-house and yards at any time for the purpose of inspecting the stock of materials and plant so kept in hand. Any materials or plant which the Project Manager may object to shall not be brought upon or used in the Works, but shall forthwith be removed from the sheds, store-houses or yards by the Contractor. The Contractor shall at his own expense provide and maintain any other land, space, plant or equipment necessary for execution of the Works.

### **39.0 ENGAGEMENT OF LABOUR**

#### **39.1 Contractor to Provide Labour**

The Contractor shall make his own arrangements for the engagement of all labour, except as provided otherwise in the Contract, and shall provide for their transport, housing and payment.

#### **39.2 Non-employment of Female Labour near cantonments**

The Contractor shall ensure that the employment of female labour, directly or through petty contractors or sub-Contractors, employed on the work in Cantonment areas, particularly in the neighborhood or soldier's barracks, is avoided, as far as possible.

#### **39.3 Employment of Labour below the Age of 18**

The contractor shall not employ any person below the age of 18 or the age prescribed in any labour legislation, whichever is higher, as labourers, directly or through agents, petty contractors or sub-contractors, for execution of the Works.

### **40.0 WAGES TO LABOUR**

#### **40.1 Wages under relevant laws<sup>3</sup>**

The Contractor shall ensure that he and his subcontractors (including petty and piece rate contractors) observe strictly interalia, the following:

- a. Wages paid are not less than those prescribed under the law;

- b. Wages and other dues are paid regularly and in time;
- c. Requisite valid Liens, Licenses, consent registrations and authorizations are obtained as required under any of the Acts or regulations.
- d. Maintain prescribed books, records and information, submit necessary statements to authorities concerned and display required notices.
- e. Take prompt action on any instructions/directions from the authorities under various labour laws

#### 40.2 Supply of Labour by the Contractor

If the Contractor directly, or through petty contractors or sub-contractors, supplies any labour to be used wholly or partly under the direct orders and control of the Project Manager or the Company, whether in connection with any work being executed by the Contractor or otherwise for the purpose of the Company, such labour shall, for the purpose of this clause, be deemed to be persons employed by the Contractor.

#### 40.3 Claim on account of violation of Labour Laws

If any moneys shall, as a result of any instructions, directions or decisions from the Authorities on claim or application made under any of the labour laws or regulations, be directed to be paid by the Company, which otherwise is payable by the Contractor, such moneys shall be deemed to be money's payable to the Company by the Contractor. The company may pay and discharge the same and require the contractor to reimburse. On failure of the Contractor to repay the Company any moneys paid or to be paid by it as aforesaid within 7 (seven) days after the same shall have been demanded, the Company shall be entitled to recover the amount from any moneys due or accruing to the Contractor under this or any other Contract with the Company alongwith interest at the annual bank lending rate applicable plus 2%p.a. . The Company shall not be bound to contest any such claim or demand unless the Contractor makes a written request for it, and the Contractor's reasons for contesting are considered valid and reasonable by the Project Manager and the Contractor deposits the full cost that the Company may have to incur in contesting the case.

### 41.0 CARE OF WORKS

From the commencement of the Works until the date stated in the Certificate of Completion for the whole of the Works, the Contractor shall take full responsibility for the care thereof. Provided that if the Project Manager shall issue a Certificate of Completion in respect of any part of the Permanent Works for which a separate date of completion is stipulated the Contractor shall cease to be liable for the care of that part of the Permanent Works from the date stated in the Certificate of Completion in respect of that part and responsibility for the care of that part shall pass to the Company. Provided further that the Contractor shall take full responsibility for the care of any outstanding work, which he shall have undertaken, to finish during the Defect Liability Period. In case any damage, loss or injury shall happen to the Works, or to any part thereof, from any cause whatsoever, save and except the "Excepted risks" as defined in Clause 24.0 hereof, while the Contractor shall be responsible for the care thereof, the Contractor shall, at his own cost, repair and make good the same, so that on completion, the Permanent Works shall be in good order and condition and in conformity in every respect with the requirements of the Contract and the Project Manager's instructions. In the event of any such damage, loss or injury happening from any of the "Excepted risks" the Contractor shall if and to the extent required by the Project Manager, repair and make good the same as aforesaid at the cost of the Company. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of implementation of this Contract.

## **42.0 EXTRAORDINARY TRAFFIC**

### **42.1 Avoidance of Damage to Roads**

The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his agents or sub contractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of plant and material from and to the Site shall be limited, as far as reasonably possible, and that no unnecessary damage or injury may be occasioned to such highways and bridges. Should any such damage or injury occur, the cost of rectification or reconstruction thereof shall be borne solely by the Contractor and he shall keep the Company fully indemnified against any claim on this account.

### **42.2 Special Loads**

Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the Site to facilitate the movement of Contractor's plant or materials or execution of Temporary / Permanent Works and the Contractor shall indemnify and keep indemnified the Company against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the Company, and shall negotiate and pay all claims arising solely out of such damage.

### **42.3 Settlement of Extraordinary Traffic Claim**

Notwithstanding Sub-clause 42.1, if any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials or Plant, the Contractor shall notify the Company with a copy to the Project Manager, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any law or regulation the transporter of such materials or Plant is required to indemnify the road authority against damage, the Company shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases the Company shall negotiate the settlement and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and all claims, proceedings, damages, costs, charges and expenses in relation thereto. Provided that if and so far as any such claim or part thereof is, in the opinion of the Project Manager, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-clauses 42.1 & 42.2, then the amount, determined by the Project Manager, after due consultation with the Company and the Contractor, to be due to such failure shall be recoverable from the Contractor by the Company and may be deducted by the Company from any moneys due or which may become due to the Contractor and the Project Manager shall notify the Contractor accordingly, with a copy to the Company . Provided also that the Company shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor, the Company shall consult with the Contractor before such settlement is agreed.

#### **43.0 CONTRACTOR TO KEEP SITE CLEAR**

During the progress of Works including any work performed during the Defect Liability Period, the Contractor shall keep the Site reasonably free from obstructions and shall store neatly any construction plant and surplus materials and clear away and remove from site any rubbish, surplus material or temporary works no longer required. On completion of the Works, the Contractor shall clear away and remove from site all construction plant, equipment, temporary buildings, workshops, site office, surplus material and temporary works. He shall leave the whole of the site and Works in a clean, tidy and workman like condition to the entire satisfaction of the Project Manager within a reasonable period of time.

If the Contractor fails to comply with any obligation imposed on him by this clause the Company may, after giving notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons / agencies and the Company shall be entitled to recover the same from any moneys due to the Contractor.

#### **44.0 SAFETY PROVISIONS**

##### **44.1 Safety of Labour**

The Contractor shall, at his own expense, arrange for the safety provisions as required by any law for time being in force, in respect of labour employed directly or indirectly for performance of the Works, and shall provide all facilities in connection therewith.

Safety precautions shall be as warranted by the particular type of work. Also, mere observance of these precautions shall not absolve the Contractor of his liability in case of loss or damage to property, or injury to or death of any person, including Contractor's labour, Company's officers, agents or servants or any member of the public and adjoining land and property owners and occupiers.

##### **44.2 Safety of Works and Public**

The Contractor shall provide and maintain at his own cost, all lights, guards, signage, signalmen, fencing and watching arrangements as and where necessary for the protection of the Works or for safety and convenience of those employed on Works or of the Public.

Please see Annexure-1 for "Expectations on Safety" to be adopted by the contractor. The contractor shall not limit his efforts towards ensuring safety to the enclosed Annexure-1 and is free to take additional / stringent measures, so as to ensure a safe working environment.

The Contractor shall remain fully responsible for all liabilities, obligations and indemnities to the Company under the Contract.

#### **45.0 ROADS AND WATER COURSES, ACCESS TO PREMISES AND SAFETY OF PUBLIC**

45.1 Existing roads or water courses shall not be blocked, cut through, altered, diverted or obstructed in any way by the Contractor, except with the permission of the Project Manager. All compensation claimed for any unauthorized closure, cutting through, alteration, diversion or obstruction to such roads or water courses by the Contractor or his agent or his staff shall be recoverable from the Contractor by deduction from any sums which may become payable to him in terms of the Contract, or otherwise according to law.

- 45.2 During progress of work in any street or thoroughfare, the Contractor shall make adequate provision for the passage of traffic, for securing safe access to all premises – approached from such street or thoroughfare and for any drainage, water supply or means of lighting which may be interrupted by reason of execution of works and shall erect and maintain at his own cost barriers, lights and other safeguards as prescribed by the Project Manager for the regulation of traffic, and provide watchman necessary to prevent accidents. The works shall, in such cases, be executed day and night if so ordered by the Project Manager and with such vigour that the traffic is impeded for as short a time as possible.
- 45.3 The Contractor shall be responsible for taking all precautions to ensure safety of the public, whether on public or Company's property and shall post such look out men as may be required in the opinion of the Project Manager, is necessary to comply with the regulations pertaining to the Work and to ensure safety.

#### **46.0 USE OF EXPLOSIVES**

Explosives shall not be used on the Works or on the Site by the Contractor without the prior permission of the Project Manager in writing and only in the manner and to the extent such permission is given. When explosives are required for works they shall be stored in a special magazine, to be provided by and at the cost of the Contractor, in accordance with the provisions of law on Explosives. The Contractor shall take all necessary precautions in using the explosives and prevent damage to nearby structures and utilities. The Contractor shall also obtain necessary permits, licenses and approvals for the storage and the use of explosives. All operations in which or for which explosives are employed shall be in accordance with the laws applicable and at the sole risk and responsibility of the Contractor and the Contractor shall indemnify the Company in respect thereof.

#### **47.0 WORK DURING NIGHT**

The Contractor shall not carry out any work between sunset and sunrise without the prior written permission of the Project Manager. In case of any grave emergency or in order to avoid risk to property and life or to prevent damage to utilities or to restore them, work may be done at night also without the prior permission of the Project Manager, but intimation to this effect should be sent to him immediately. No increase in rates or extra payments shall be admissible for night work. The Contractor shall make adequate lighting and safety arrangements. The Contractor shall also be responsible for any claim or account of any injury to or loss of life, of any one, arising out of inadequate lighting and safety arrangements. The contractor shall not be entitled for any compensation or remuneration for any work to be carried out or any arrangements to be made at the site and shall also keep the Company indemnified against all or any claims or demands arising therefrom.

#### **48.0 DAMAGE TO COMPANY'S PROPERTY, PRIVATE PROPERTY AND LIFE**

The Contractor shall be responsible for all risks to the works and for trespass and shall make good, at his own expense, all loss of or damage to the works or any property of the Company or that of others from whatever causes and against any claim, demand, action, suit or proceeding that may be brought against the Company, in respect of personal injury to or the death of any person no matter what claims arising out of or in connection with the works until they are taken over by the Company. In case the Company is called upon to make good any such costs, loss or damages, or to pay compensation, (including payable under the provisions of Workmen's Compensation Act or any statutory amendments thereof) to any person or persons sustaining personal injury or damage as aforesaid by reason of any act, omission or negligence on the part of the Contractor the amount of any costs or charges

(including costs and charges in connection with legal proceedings), which the Company may incur in reference thereto, shall be charged to the Contractor. The Company shall have the authority to pay or to defend or compromise any claim or threatened legal proceeding or in anticipation of legal proceedings being instituted consequent on the action or default of the Contractor, to take such steps as may be considered necessary or desirable to ward off or mitigate the effect of such proceedings, as aforesaid. Any sum or sums of money which may be paid and any expenses whether for reinstatement or otherwise which may be incurred and the propriety of any such payment, defense or compromise, and the incurring of any such expenses shall not be called in question by the Contractor.

#### **49.0 REPORTING OF LABOUR ACCIDENTS**

The Contractor shall be responsible for safety of all employees and labour employed by him on works, directly or through petty contractors or sub-contractors, and shall report accidents of any of them, however and wherever occurring on Works, to the Project Manager / Company or the Project Manager's / Company's Representative, and shall make every arrangement to render all possible assistance and to provide prompt and proper medical attention. The compensation to affected Workers or their relatives shall be paid by the Contractor / Insurance Company in such cases expeditiously in accordance with the Workmen's Compensation Act.

#### **50.0 COMPANY'S MATERIAL**

##### **50.1 Materials to be supplied by the Company**

Except for any specific items mentioned in the Contract Data, the Contractor shall remain at all times exclusively responsible to supply all materials, facilities, utilities, consumables and other items and things either for incorporation in or in execution and performance of the Works. Soon after the acceptance of tender, the Contractor shall give in writing to the Project Manager a phased requirement of materials to be supplied by the Company according to the programme of execution of Works.

##### **50.2 Phased Requirements**

For the materials that are required to be supplied by the Company to the Contractor, the latter shall give sufficiently in advance a detailed notice in writing of his phased requirements to the Project Manager in accordance with the approved programme supplied for the purpose of the Contract to enable the Company to make appropriate arrangements for supply thereof. The contractor shall place his indent in writing for issue of such materials at least 30 (Thirty) days in advance of his requirement.

The Company shall not be responsible for any delay in supply of materials nor shall render it liable for any claim for damages or compensation by the contractor. At the time of submission of every bill the Contractor shall certify, in the prescribed format, the receipt, consumption and balance of materials supplied as available at the site in good condition. Such certificate shall be supported by necessary documents. The details shall be subject to inspection by the Project Manager or his representative(s).

##### **50.3 Cost to be Borne by Contractor**

The materials shall be issued to the Contractor at the Company's nominated depots/goods sheds. The Contractor shall bear the cost of loading, transporting to site, unloading, storing under cover as required, security, assembling and joining the several parts together as may be necessary and incorporating and fixing materials in the Works including all preparatory work of whatever description as may be required, and of closing, preparing,



loading and returning empty cases or containers to the place of issue, if so required in the Contract.

The contractor shall inspect the materials issued to him and satisfy himself of the quality, quantity and conditions thereof prior to taking delivery and the Company shall not be liable for any claims or complaints whatsoever in respect of quality, quantity or conditions of the materials after such deliveries.

#### 50.4 Use of Materials

The Contractor shall use the materials supplied by the Company for incorporation in the Permanent works carefully and diligently with no wastage or minimum wastage if the same is unavoidable. In case of wastage takes place due to careless or wrong use and mishandling of materials or in case of any loss, damage to the materials during storage in the opinion of the Project Manager, the Contractor shall be responsible to replace the same with material of equivalent quantity and quality acceptable to and within the time specified by the Project Manager, whose decision in this regard shall be final and binding on the Contractor. Where the replacement is not practicable, the Contractor shall compensate the Company with the costs as assessed and determined by the Project Manager

#### 50.5 Insurance of the materials<sup>4</sup>

The Contractor shall be required to take out at his cost and keep in force at all times during the pendency of the Works insurance against the risk of fire, theft and other damage or loss for the full value of the material supplied by the Company and lying in the Contractor's custody. The policy(s) shall be in joint names of the contractor and the Company with the exclusive right to the Company to receive all monies with respect to such policies.

#### 50.6 Return of Surplus Materials

All materials issued to the Contractor by the Company for use, incorporation or fixing in the Works (including preparatory works) shall, on completion of or before closure of Works, be returned by the Contractor at his expense, at the place of issue, after making due allowances for actual consumption and permissible wastage(s). However, material considered unserviceable by the Company will not be taken back. If the Contractor is required to deliver such materials at a place other than the place of issue, he shall do so and transportation charges from the site to such place less transportation costs which would have been incurred by the Contractor had such materials been delivered at the place of issue shall be borne by the Company.

#### 50.7 Credit for Returned Materials.

Surplus material returned by the Contractor shall be credited to him by the Project Manager at the rates not exceeding the rates at which those were originally issued to him after taking into consideration any deterioration or damage which may have been caused to the said materials whilst in the custody of the Contractor.

#### 50.8 Ownership of materials

Notwithstanding anything herein provided and notwithstanding transfer of all risks in respect of the material to the contractor, the ownership of all such materials shall remain with the Company.

50.9 Remedy for Failure to Return Materials

If, on completion of works, the Contractor fails to return surplus materials out of those supplied by the Company, then, in addition to any other liability which the Contractor would incur, the Project Manager may, by a written notice to the Contractor require him to pay, within a fortnight of receipt of the notice, for such unreturned surplus materials, at market rates as assessed by the Project Manager, plus 5%( five percent) of the market rates.

**51.0 TOOLS, PLANTS AND EQUIPMENT SUPPLIED BY THE COMPANY**

Except for any specific item mentioned in the Contract Data, the Contractor is expected to supply all tools, plants or equipment for the Works. In respect of such exceptional tools, plants and equipment committed to his charge by the Company the Contractor shall take all reasonable care and shall be responsible for all damages or loss caused by him, his agents, permitted sub-contractors or his workmen or others while they are in his charge. The Contractor shall sign accountable receipts for tools, plants and equipments handed over to him by the Company and on completion of the works, shall hand over the unused balance of the same to the Company in good order and repair, fair wear and tear accepted, and shall be responsible for any failure to account for the same or any damage done thereto. The decision of the Project Manager as to the amount recoverable from the Contractor on this account shall be final and binding. The provisions applicable to the materials as shall apply mutatis mutandis to tools, plants and equipment.

**52.0 PLANT, EQUIPMENT AND MATERIALS SUPPLIED BY THE CONTRACTOR**

52.1 Contractor's plant, machinery and equipment and material at site to be exclusive to the work.

All construction plant and materials provided by the contractor shall , when brought on to the site, be deemed to be exclusively intended for the execution of the Works The Contractor shall not thereafter remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent, in writing, of the Project Manager, which consent shall not be unreasonably withheld or delayed.

52.2 Removal of construction plants / materials from site

Upon completion of the Works the Contractor shall remove from the Site all the said constructional plant remaining thereon and any unused materials belonging to the Contractor within such period as notified by the Project Manager.

52.3 Loss or damage to plant / materials

The Company shall not, at any time, be liable for the loss of or damage to any of the said construction plant, temporary works or materials.

52.4 Assistance to Contractor for re-exports of plant.

In respect of any construction plant which the Contractor shall have imported for the purposes of the Works, the Company may assist the Contractor, where required, in procuring any necessary Government consent for re-export of such construction plant by the Contractor after the completion of the Works.

Any assistance which the Company renders to the Contractor in terms hereof shall not for any cause afford a basis or defense to the Contractor for the performance of any of his obligations under the contract.

**52.5 Assistance to Contractor for Customs clearance**

The Company may assist the Contractor, where required, in obtaining clearance through the Customs for constructional plant, materials and other things required for the Works. This shall not in any way dilute the Contractor's obligations and responsibilities under the Contract or be construed as any relief in the Custom Duty which shall have to be paid by the Contractor as per the law.

**52.6 Rejection of any material / workmanship found defective at site.**

The operation of Clauses 55.0 and 52.0 hereof shall not be deemed to imply any approval by the Project Manager of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials or workmanship at any time by the Project Manager if the same is found to be defective and / or not conforming to the Contract and the specifications.

**53.0 SUPPLY OF WATER AND ELECTRICAL POWER**

Unless otherwise provided for in the Contract Data, the Contractor shall be responsible for arrangements to obtain supply of water and electrical power necessary for the Works. In the event the Company is in a position to supply water or electrical power, or both, required for Works, such supply will be given only at one point near the Site. The cost of making necessary connections to the Company's distribution system and laying of necessary pipe line, specials valves, meters for water supply or the laying of underground / over ground conductor, circuit protection, electric power meters and transmission structures in case of electric power, shall be borne by the Contractor. The Contractor shall bear the cost of water and power supplied, the rates for which shall be determined and notified by the Project Manager. The decision of the Project Manager on such cost shall be final. Any increase in Water / Power tariff by supply agency with either prospective or retrospective effect shall be borne by the Contractor.

**54.0 PROVISION OF EFFICIENT AND COMPETENT STAFF**

The Contractor shall employ and keep on the works at all times efficient and competent staff to give necessary directives to his workers to see that they execute works in a safe and proper manner. The Contractor shall employ only such supervisors and workmen as are capable, careful, and skilled in their trade and calling. The Project Manager shall be at liberty to object to and require the Contractor to remove forthwith from the works, any person employed by the Contractor in or about the execution of works or maintenance of works, who, in the opinion of the Project Manager, misconducts himself or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by the Project Manager to be undesirable and such person shall not be employed again in the works without the written permission of the Project Manager. Any person so removed from the works shall be replaced as soon as possible by a competent substitute.

**55.0 MATERIALS AND WORKMANSHIP**

**55.1 Material and workmanship as per specification**

- i. All materials and workmanship shall be of the respective kinds described in the Contract and in accordance with the Project Manager's instructions

and shall be subjected from time to time to such tests as the Project Manager may direct at the place of manufacture or fabrication, or on the site or at such other place or places as may be specified in the Contract, or at all or any of such places. The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing any work on the quality, weight or quantity of any material used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Project Manager.

- ii. Source of materials being supplied shall be intimated to the Project Manager and are subject to his approval. Materials that are not specified in the Contract document shall conform to the relevant Indian Standards. If Indian Standards are not available, they shall conform to any International standard approved by the Project Manager.

55.2 Supply of sample

All samples shall be supplied by the Contractor at his own cost.

55.3 Cost of test provided in Contract

The cost of making any test to establish conformity of any material or work to the applicable standards shall be borne by the Contractor.

55.4 Cost of other tests

If any test is ordered by the Project Manager in addition to those required under Clause 55.3 hereof, which is either

- a. not so intended by or provided for in the Contract, or is not so particularized in the contract, or
- b. though so intended or provided for is ordered by the Project Manager to be carried out by an independent person at any place other than the Site or the place of manufacturer or fabrication of the material tested,

then the cost of such test shall be borne by the Company. If however the test shows the workmanship or materials not to be in accordance with the provisions in the Contract or the Project Manager's instructions, then the cost of such test will be borne by the Contractor.

If the normal test indicate that the work is below the specifications and the Project Manager decides to conduct special tests, all the cost and expenses incurred in connection with such tests shall be borne by the Contractor.

The Contractor shall not be eligible for any claim or compensation either arising out of any delay in the work or due to any corrective measures required to be taken on account of and as a result of testing of materials.

## **56.0 REMOVAL OF IMPROPER MATERIALS AND WORKS**

56.1 The Project Manager shall have the authority to order in writing from time to time:

- a. the removal from site within such time, as the Project Manager may specify, any material, which in his opinion, is not in accordance with the specifications and conditions of the Contract,
- b. The substitution of defective material by proper and suitable material, and

- c. The removal and proper re-execution, notwithstanding any previous decision or interim payment thereof, of any work which in respect of materials or workmanship is not, in the opinion of the Project Manager, in accordance with the Contract.
  
- 56.2 In case of default on the part of the Contractor in carrying out such order, the Company shall be entitled to employ and pay other parties, to carry out the same, and all expenses consequent thereof or incidental thereto, shall be recoverable from the Contractor or may be deducted by the Company from any money which may be due to the Contractor.

## **57.0 COVERING UP OF WORK**

### **57.1 Examination of work before covering up**

No work or part of work shall be covered up or put out of view, without the prior approval of the Project Manager or the Project Manager's Representative, and the Contractor shall afford full opportunity for the Project Manager or the Project Manager's Representative, to examine and measure any work, which is to be covered up, and to examine foundations before the permanent work is placed thereon. The Contractor shall give due notice to the Project Manager's Representative, whenever any such work or foundation is ready for examination and measurements, and the Project Manager's representative shall without unreasonable delay, attend for the purpose of examining and measuring such work or for the purpose of examining such foundations.

### **57.2 Cost of uncovering the work already covered**

The Contractor shall uncover any part or parts of the works, or make openings in or through the same, as the Project Manager may from time to time direct, and shall reinstate and make good such part or parts, to the satisfaction of the Project Manager. If any such part or parts have been covered up, or put out of view after compliance with the requirement of Sub-clause 57.1 and the works are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating and making good the same, shall be borne by the Company, but if the works are found to be defective, all such costs shall be borne by the Contractor.

## **58.0 MODIFICATIONS TO WORK**

### **58.1 Authority to order modifications**

The Project Manager acting on behalf of the Company, shall be competent by an order in writing to enlarge or extend, diminish or reduce the works or make any alterations in their design, character, position, site, quantities, dimensions or in the method of execution or in the combination or use of materials for the execution thereof and to order any additional works to be done or any work not to be done and save as provided under Sub-clause 58.2 the Contractor will not be entitled to any compensation for any reduction, but will be paid only for the actual amount of work done and for approved materials supplied at site up to the date of intimation of such reduction, diminution or alteration.

### **58.2 Modification not to affect the Contract**

The enlargement, extension, diminution, reduction, alterations or additions, referred to in Sub-clause 58.1 of this clause shall in no degree affect the validity of the Contract, but shall be performed by the Contractor as provided

therein and be subject to the same conditions, stipulations, obligations and rates as if they had been originally and expressly included and provided for in the schedules, specifications and drawings, and the amount to be paid therefore shall be calculated in accordance with accepted schedule of rates and other extra items of works at the rates, determined under Clauses 59.0 and 60.0 of these conditions. Provided that if the nature or amount of any variation relative to the nature or amount of the whole of the works shall be such, that in the opinion of the Project Manager, the rate for any item in the accepted bill of Quantities is by reason of such variation rendered unreasonable or inapplicable, the Project Manager shall fix such other rate or extra payments (plus or minus), as in the circumstances, he shall consider reasonable and proper.

58.3 Decision of Project Manager to be final.

The decision of the Project Manager under this clause shall be final.

## **59.0 VARIATION IN QUANTITY OF ITEMS COVERED BY THE BILL OF QUANTITIES**

59.1 The quantities of items shown in the Bill of Quantities are approximate, and liable to vary during the actual execution of the Work. The Contractor shall be bound to carry out and complete the stipulated work/group of works, irrespective of the variations in individual items or group of items, specified in the Bill of Quantities.

59.2 Such variations in quantities shall be paid for in the manner laid down below;

- a. At the accepted rates of the Contract for variation in quantities to the extent of 25% on either side i.e. increase/decrease, except in the case of foundation works. Unless otherwise specifically provided for in the bill of quantities or elsewhere in the Contract, the variation of  $\pm 25\%$  shall be applicable to a group of items mentioned therein and not to individual items.
- b. In case the variation in individual items or the group of items as stipulated above, is more than 25% on either side, the rate for the excess quantity beyond 25% shall be negotiated between the Project Manager and the Contractor and mutually agreed rates arrived at. Provided further that:
  - i. The limit of 25% variation shall not apply to items individually costing up to or less than 1% of the value of the original Contract Price. All variations under such items, shall be payable at the accepted rates of the Contract, notwithstanding magnitude of the variation up-to an overall value of 2% of the Contract, for each item.
  - ii. In the case of foundation work, no variation limit applies and the Works shall be carried out by the Contractor on agreed rates irrespective of any variation.
  - iii. In the case of earthwork, the variation limit of 25% shall apply to the gross quantity of earthwork and variation in the quantities of individual classifications of soil shall not be subject to this limit.
  - iv. For items against which the quantity given in the Bill of Quantities is "if or as required", there shall be no increase/decrease of rates, whatever be the quantity finally executed.
  - v. The contractor shall be bound to notify the Project Manager at least 7 days before the necessity arises for the execution of quantities any items or group of items, as the case may be, in excess of 25%. In

case mutually agreed rate between the Project Manager and the Contractor is not arrived at, before the execution of such works, the Contractor shall have no claim to be entrusted with the execution of extra quantities, and the Project Manager shall be free to get such additional quantities beyond 25% executed through any other organization. However, if the Project Manager or the Company so directs, the Contractor shall be bound to carry out any such additional quantities beyond 25% of the original quantities, and the disagreement or the difference regarding rates to be paid for the same, shall be settled in the manner laid down under the conditions for the Settlement of Disputes.

## **60.0 EXTRA ITEMS NOT IN THE BILL OF QUANTITIES**

### **60.1 Operation of extra items of work**

If any item of work not provided for in the accepted Bill of Quantities is to be operated, the Contractor on receipt of instructions from the Project Manager, shall be bound to carry out such works at the rates to be decided as per Sub-clause 60.2

### **60.2 Derivation of rates for extra items of work.**

The rate of such items shall be derived, wherever possible, from the rate for similar items available in the accepted Bill of Quantities of the accepted tender. In case this is not possible, the rate may be decided on the following basis.

- a. Cost of materials at current market rates, as actually utilized in the final finished permanent work, including a reasonable percentage for wastage and transportation,
- b. Cost of enabling works if any (unless provided for separately) worked out on the above basis but with less stringent quality specifications minus salvage value of serviceable materials released after completion of work and cost of material released as scrap.
- c. Hire charges for Plant & Machinery, scaffolding, shuttering, forms, etc., required to be used at the site of the work. The tools used by various trades shall not be counted as Plant & Machinery for this purpose.
- d. An amount of 15% of items (a), (b), and (c) above to allow for Contractor's overheads, taxes, and profits. This percentage shall also apply to estimated cost of materials supplied free to the Contractor.

### **60.3 Notices by Contractor**

- i. In all cases where extra items of work are involved, for which there are no rates in the accepted Bill of Quantities, the Contractor shall give a notice to the Project Manager at the earliest opportunity but at least 7 days before the need for their execution arises.
- ii. Such a notice shall not however be necessary if the Project Manager has already instructed in writing to take up such an item of work. To decide the rate, the Project Manager may ask the Contractor to furnish detailed analysis of the new rates on the lines mentioned in Sub-clause 60.2 above and/or attend a meeting with him to settle the rate. The Contractor shall be bound to furnish the requisite details and / or attend the meeting.

60.4 Provisional payment for extra item

In case the Contractor fails to so notify the Project Manager in advance, wherever required, or having notified fails to attend the meeting after due notice for settlement of rates, or if mutually agreeable settlement of rates is not arrived at between the Project Manager and the Contractor, the Contractor shall be bound to carry out the works at rates to be decided by the Project Manager. In the absence of a finalized rate for a new item, the Project Manager shall be free to certify payment to the Contractor based on a provisional rate for the work done under the new item. This shall be subject to upward or downward adjustment after the rate is finalized by him for that item. Normally, no price variation clause shall be applicable to new rates not originally included in the Bill of Quantities. It shall, however, be open to the Project Manager to accept price variation clause in such cases where the rates are not based on actual and the work is likely to continue for more than one year.

60.5 Payment for extra items of work on the basis of actual expenditure.

The Project Manager may however alternatively decide to allow payment on the basis of actual expenditure incurred on day-work basis. In such a case, the Contractor shall furnish to the Project Manager, vouchers to prove the expenditure incurred. Before ordering material or hiring any plant etc., the Contractor shall get the quotations and rates accepted by the Project Manager, if the same is not already provided in the Day -Work Schedule of Agreement. The Contractor shall furnish to the Project Manager or his representative, a daily list (with name, occupation and shift item) of all workmen deployed on the work, in duplicate for checking and approval. The Contractor shall submit to the Project Manager a priced statement of labour, material, plant, etc. actually used on the work, together with the output of work at the end of each calendar month and/or as soon the work is completed. The payment for the new items of work will be certified by the Project Manager based on this submission, duly providing for contractor's overheads, taxes and profit as indicated in Sub-clauses 60.2.

60.6 Decision of Project Manager to be final and binding.

The decision of the Project Manager under this clause shall be final and binding.

**61.0 PRICE VARIATION**

61.1 Accepted rate applicable till the completion of work

The rates as per the accepted Bill of Quantities, shall hold good till the completion of the Works, and no additional claim or amount shall be admissible on account of fluctuations in market rates, increase in any taxes, levies, fees royalties, etc., barring adjustment ( which may be plus or minus) to be made as provided for herein.

**62.0 MEASUREMENTS OF WORK AND PAYMENTS**

62.1 Quantity in Bill of Quantity only estimated quantity

The quantities set out in the accepted Bill of Quantities, are the estimated quantities of the Works, and they shall not be taken as the actual and correct quantities of the work to be executed by the Contractor, in fulfillment of his obligations under the Contract.



62.2 Payment on actual measurements

The Contractor shall be paid for the Works, at rates in the accepted Bill of Quantities of the Contract, and for additional and extra items of work at rates determined under relevant Clauses of the contract & these conditions, on the measurements taken by the Contractor or his Agent in the presence of or certified by the Project Manager or Project Manager's representative.

62.3 Measurement of work at regular intervals.

Such measurements shall be taken of the work in progress from time to time, and at such intervals, as in the opinion of the Project Manager, shall be proper, having regard to the progress of the work. On an agreed date and time, the Contractor or his authorized agent shall take the on account or final measurements in the presence of Project Manager or Project Manager's representative, in the Measurement Books to be supplied by the Project Manager. The Contractor or his authorized agent shall sign the result of the measurements, which shall also be signed by the Project Manager or the Project Manager's representative as an acknowledgement and acceptance of the accuracy thereof.

**63.0 ON ACCOUNT PAYMENT**

63.1 Procedure for On-Account payment.

The Contractor shall be entitled to be paid from time to time, by way of "On account" bills only for such works as, in the opinion of the Project Manager, the Contractor has executed in terms of the Contract. Such payments shall normally be made once in a calendar month. The Contractor shall submit the on account bill, by the date stipulated by the Project Manager, in the prescribed proforma, supported with measurements, jointly acknowledged and accepted in the measurement books. After preliminary scrutiny and certification by the Project Manager, payment of 75% of the certified amount shall be made by the Company within 15 days of submission of bills alongwith the documentary evidence. The amount certified shall account for all deductions, including statutory deductions as for sales tax, income tax, etc. recoveries for advances and any amounts due from the Contractor. The balance 25% shall be paid within **28** days, from the date of the preliminary certification of the bill by the Project Manager. Such payments made by the Company, are in essence, advance payments and shall not constitute any acceptance of the measurements or bill of quantities by the Company and the Company shall have right to alter, modify, reduce or diminish the quantities or classification entered in the Measurement Books or Bills. The Company shall have right to recover any amount paid in an earlier bill from any subsequent bill and should the amount to be recovered be more than the amount of the subsequent bill, the Contractor shall on demand from the Project Manager or Company immediately refund the extra amount to the Company within 7 days, failing which he shall have to pay interest @ 10% per annum till the said extra amount is paid back by him.

63.2 Non recording of measurements

The Project Manager reserves the right not to record the measurements, and / or not to entertain an on account bill, when the works done during the period is insignificant or is less than 25% of the work to be executed for the period as per agreed programme for the period.

63.3 On Account payment without prejudice

On account payments made in respect of work done or materials delivered by the Contractor, shall be without prejudice to the final accounts, (except where measurements are specifically noted in the measurement book as "final measurements" and have as such been signed by the Contractor), and shall not be considered by itself to be evidence of any facts, stated in or to be inferred from such payments or of any work done or materials supplied, or of the manner of its execution.

Nothing provided in the foregoing clauses hereof shall in anyway deemed to confer any right on the contractor to receive an on account or advance payments of any nature whatsoever, nor shall failure or delay by the Company to make such payments as envisaged or otherwise afford the contractor any ground for extension of time for completion of works nor relieve him from his liabilities and obligations under the contract. The account payments are only by way of assistance to the contractor.

#### **64.0 ROUNDING OFF**

In calculating the amount of each item due to the Contractor, in every certificate prepared for payment, sums of less than fifty paise shall be omitted and sums of fifty paise and more up to one rupee shall be reckoned as one rupee.

#### **65.0 PRODUCTION OF VOUCHERS**

65.1 The Contractor shall, whenever required by the Project Manager, produce or cause to be produced for examination by the Project Manager, any quotation, invoice, cost or other account books, vouchers, receipts, letters, memoranda or any copy of or extract from any such documents and also furnish information and returns, as may be required, relating to the execution of this Contract or relevant for verifying or ascertaining the cost of execution of this Contract or ascertaining that materials supplied by the Contractor are in accordance with the specifications laid down in the Contract. The Project Manager's decision on the question of relevancy of any documents, information or returns shall be final and binding on the parties.

65.2 If any part or item of the work is allowed to be carried out by a sub-contractor, assignee or any subsidiary of contractor, the Project Manager shall have power to secure the books of such sub-contractor, assignee or any subsidiary or allied firm through the Contractor, and shall have power to examine and inspect the same. The above obligations are without prejudice to the obligations of the Contractor under any statute, rules or orders.

#### **66.0 SIGNATURE ON RECEIPTS FOR PAYMENTS**

Every receipt of payment which may become payable, or for any Performance Security amount which may become returnable to the Contractor, under this Contract, shall, if signed in the partnership name by anyone of the partners of a Contractor firm, or by a person holding a power of attorney, if the Contractor is a limited (private / public) company, be a good and sufficient discharge to the Company in respect of moneys or security amount purported to be acknowledged thereby. In the event of death of any of the Contractor's partners during the currency of the Contract, it is hereby expressly agreed that every receipt by any one of the surviving Contractor's partners, shall , if so signed as aforesaid, be a good and sufficient discharge as aforesaid, provided that nothing in this Clause shall be deemed to prejudice or affect any claim, which the Company may hereafter have against the legal representatives of any Contractor's partner so dying, for or in respect of breach of any of the conditions of the Contract. Provided also that nothing contained in this clause shall be deemed to prejudice or affect the respective rights

and obligations of the Contractor's partners, or of the legal heirs / representatives of any deceased Contractor / partner inters.

## **67.0 FORCE MAJEURE**

If, at any time during the currency of the Contract, the performance in whole or in part by either party of any obligation under this Contract shall be prevented or delayed by reason of any war, hostilities, invasion, acts of public or foreign enemies, rebellion, revolution, insurrection, civil commotion, sabotage, large scale arson, floods, earthquake, large scale epidemics, nuclear accidents, any other catastrophic unforeseeable circumstances, quarantine restrictions, any statutory rules, regulations, orders or requisitions issued by a Government Department or competent authority or acts of God ( hereinafter referred to as "event") then, provided notice of the happening of such an event is given by either party to the other within 21 days of the occurrence thereof.

- a. Neither party shall by reason of such event be entitled to terminate the Contract or have claim for damages against the other in respect of such non performance or delay in performance.
- b. The obligations under the Contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.
- c. If the performance in whole or part of any obligation under the Contract is prevented or delayed by reason of the event beyond a period mutually agreed to if any, or 90 days, whichever is more, either party may at its option terminate the Contract.
- d. In case of doubt or dispute, whether a particular occurrence should be considered an "event" as defined under this clause, the decision of the Project Manager shall be final and binding.
- f. If the Contract is terminated under this Clause, the Contractor shall be paid fully for the work done under the Contract, but not for any defective work or work done which has been destroyed or damaged before its measurement. The Company shall have the option to take over any plant and material lying at site, at rates provided for in the Contract, failing that, as per rates which are determined to be fair and reasonable by the Project Manager.
- g. If neither party issues notice regarding the event within 21 days of its occurrence, the said event shall be deemed not to have occurred and the Contract will continue to have effect as such.

## **68.0 DELAY AND EXTENSION OF CONTRACT PERIOD**

### **68.1 Time to be Essence and Extension of Time**

- i. The time allowed for execution and completion of the Works or part of the Works as specified in the Contract, in accordance with these conditions, shall be the essence of the Contract on the part of the Contractor. Subject to any requirement in the Contract as to completion of any portion or portions of the works before completion of the whole, the contractor shall fully and finally complete the whole of the Works comprised in the Contract (with such modifications as may be decided by the Project Manager in terms of Clause 58.0) by the date stipulated in the Contract or extended date in accordance with the Contract. In case of delay on the part of the Contractor, the Contractor shall pay as compensation an amount as provided herein. This is without prejudice to the right of the Company to rescind the Contract in terms of Clause 73.0

- ii. As soon as it becomes apparent to the Contractor, that the Works and/or portions thereof (required to be completed earlier), cannot be completed within the periods(s) stipulated in the Contract, or the extended periods granted, he shall forthwith inform the Project Manager and apprise him of the reason(s) for the delay, as also the extra time required to complete the works and/or portions of work, together with justification there for. In all such cases, whether the delay is attributable to the Contractor or not, the Contractor shall be bound to apply for extension in the period of completion of the whole works and /or portions thereof. This application shall reach the Project Manager, at least 30 days before the stipulated or extended date of completion of the whole works or the stage completion date of any portion of the work. In case the Contractor fails to apply for the extension of Contract or fails to apply in time, the Project Manager, shall, in the case of any subsequent delay in the completion of the whole and /or portion of works, be justified to hold that such delay is due only to Contractor's failure or fault and shall take further action accordingly in terms of the Contract. Any reasons or circumstances leading to delay in the completion of the work(s) even if they are not the result of the Contractor's failure or fault shall not invalidate or vitiate the Contract.

#### 68.2 Extension due to Modifications

If any modifications ordered by the Project Manager or site condition actually encountered are such, that in the opinion of the Project Manager the magnitude of the work has increased materially, then such extension of the stipulated date of completion may be granted, as shall appear to the Project Manager to be reasonable.

#### 68.3 Delays not due to Company / Contractor

If the completion of the whole works (or part thereof which as per the Contract is required to be completed earlier), is likely to be delayed on account of.

- a. Any force majeure event.
- b. Delay on the part of other contractors or other parties engaged directly by the Company, on whose progress or performance the Contractor necessarily depends, or
- c. Any order of Court, or
- d. Any other event or occurrence which, according to the Project Manager is not due to the Contractor's failure or fault, and is beyond his control,

the Project Manager may grant such extension in period of completion of the work(s), as in his opinion is reasonable.

#### 68.4 Delays due to Company/ Project Manager

In the event of any failure or delay by the Company or the Project Manager, to hand over to the Contractor the possession of site necessary for execution of works, or any part of the works, if different dates for handing over the site for different works have been indicated in the Contract, or to give necessary notice to commence the Works, or to provide necessary Drawings or instructions or clarifications or to supply any material, plant or machinery, which under the Contract, is the responsibility of the Company, then such failure or delay, shall in no way affect or vitiate the Contract or alter the character thereof or entitle the Contractor to damages or compensation

thereof but in any such case, the Project Manager shall grant such extension or extensions of time to complete the work, as in his opinion is / are reasonable.

68.5 Delays due to Contractor

If the delay in the completion of the whole works or a portion of the works, for which an earlier completion period is stipulated, is due to the Contractor's failure or fault, and the Project Manager feels that the remaining Works or the portion of Works can be completed by the Contractor in a reasonable and acceptable short time, then, the Project Manager may allow the Contractor extension or further extension of time, for completion, as he may decide, subject to the following:

- a. Without prejudice to any other right or remedy available to the Company on that behalf, by way of ascertained and liquidated damages, recover a sum equivalent to one half of one percent of the Contract Value of the Works, for each week or part of a week the Contractor is in default.
- b. If the delay relates only to a portion of the works with a separate and earlier completion period, the Contract value shall be restricted to the cost of that portion of the Works only.
- c. The total recovery on account of compensation shall be limited to 10% of the Contract Value or the Works, or the portion of the Works, as the case may be.

The fact that the company shall not have terminated the contractor or permitted the contractor to continue the work for its completion shall not prejudice the right and remedies available to the Company under the contract arising out of delayed completion of works.

No assurance, representation, promise or any other statement by any agent, employee or representative of the Project Manager or the Company for extension of time for commencement or completion of the works or operation thereof shall be binding on the Company unless the same has been communicated in writing stating specifically that it embodies extension of time. Mere prescription or signing of progress schedule by the Project Manager or his representative containing an extended time of commencement or completion of works shall not constitute extension of time so as to bind the Company or to relieve the Contractor of his liabilities or obligations under the contract, nor shall the same constitute a waiver by the company of its rights to the performance of the contract within specified time, but shall be deemed as a guidance to the contractor for better organizing his works.

68.6 Time to continue to be the essence of Contract in spite of extension of time

It is an agreed term of the Contract that notwithstanding grant of extension of time under any of the sub-clauses mentioned herein, time shall continue to be the essence of contract on the part of the Contractor.

68.7 Project Manager's decision on compensation payable being final

The decision of the Project Manager as to the compensation payable by the Contractor under this Clause shall be final and binding.

## **69.0 SUSPENSION OF WORKS**

### **69.1 Protection during suspension of work.**

The Contractor shall, on the order of the Project Manager, suspend the Works or any part thereof, for such time, and in such manner, as the Project Manager may consider necessary, and shall during such suspension, properly protect and secure the Works so far as it is necessary in the opinion of the Project Manager.

### **69.2 Cost incidental to suspension of work.**

If such suspension is

- a. provided for in the Contract, or
- b. necessary for proper execution of Works or by reasons of weather condition or by some default on the part of the Contractor, or
- c. necessary for the safety of Works or any part thereof ,or
- d. necessary for the protection and safety of adjoining public or other property or safety or the public or workmen or those who have to be at the site, or
- e. to ensure safety and to avoid disruption of traffic and utilities, as also to permit fast repairs and restoration of any damaged utilities,

the Contractor shall not be entitled to extra cost (if any), incurred by him, during the period of suspension of Work.

### **69.3 Extension of time on account of suspension**

If suspension is ordered by the Project Manager for reasons other than those mentioned in sub-clause 69.2, and when each such period of suspension exceeds 14 days but does not exceed 30 days, at any one time, the Contractor shall not be entitled to extra costs, if any, incurred by him during the period of suspension of work, but the Contractor shall be entitled to such extension of time for completion of the work, as the Project Manager may consider proper, having regard to the period of such suspensions. For any such suspension of work not exceeding 14 days at any one time, the Contractor will not be entitled to any extension of time for completion of the work except where specially agreed to in writing by the Project Manager.

## **70.0 FORE-CLOSURE OR TERMINATION OF CONTRACT**

### **70.1 Payment to Contractor on fore-closure or termination of Contract**

- i. The Company shall be entitled to foreclose and terminate the Contract, at any time, should, in the Company's opinion, the cessation of works becomes necessary, owing to paucity of funds or due to court orders or from any other cause whatsoever. Notice in writing from the Company, for such termination and reasons there for, shall be conclusive evidence thereof and be binding on the Contractor. In such a case, the value of approved materials actually brought to the site and reasonably required to execute the works during next three months, as per approved programme, and of work done up-to-date by the Contractor, shall be paid for in full by the Company, at rates specified in the Contract. If rates for any materials or items of work are not available in the Contract, these shall be fixed by the Project Manager, the same shall be fixed under

relevant clause of the contract. If any materials supplied by the Company to the Contractor at the cost of the Contractor are rendered surplus, the same shall be returned by the Contractor to the Company's depot at Contractor's cost and full credit at rates initially charged to the Contractor, shall be allowed for such materials. Similarly, any plant, equipment or tool issued by the Company to the Contractor free of cost or on lease terms shall be returned by the Contractor to Company's depot at his own cost. The Company shall be entitled to recover the cost of unreturned material, plant, equipment and tools from the Contractor where such materials have been supplied free of cost or on lease basis to the Contractor as stipulated in the Contract Data. In case of such unreturned materials, recovery shall be affected from the Contractor as indicated in Sub-clause 50.6. In case of such unreturned plant, equipment and tools, the amount to be recovered from the Contractor shall be decided by the Project Manager and this shall be final and binding as indicated in Clause 51.0. The Contractor shall have to pay back un-recovered portion of advances made to him, together with interest accrued thereon in terms of the conditions governing the payment of the advance. In case the Contractor defaults, the Company shall be entitled to recover the amounts from any payment due to the Contractor, or from the Performance Security amount or by encashing the Bank Guarantees given by the Contractor for securing the advances. This is without prejudice to other remedies available to the Company.

- ii. Provided further, that any diminution of quantities against individual items of the Contract, merely as a variation when the work is completed, shall not constitute foreclosure of Contract in terms of this clause, and no compensation or payment whatsoever as per this clause will be due or payable to the contractor on that account.

#### 70.2 Default of Company

- i. In the event of the Company:
  - a) failing to pay to the Contractor the amount due under any certificate of the Project Manager, within ninety days after the same shall have become due under the terms of the Contract, subject to any deduction that the Company is entitled to make under the Contract, or
  - b) interfering with or obstructing or refusing any required approval for the issue of any such certificate or release of any such payments, or
  - c) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or
  - d) giving formal notice to the Contractor that for unforeseen reasons or due to economic dislocation, it is impossible for it to continue to meet its contractual obligations,

the Contractor shall then be entitled to issue a notice to the Project Manager, with a copy to the Company, stating that he shall be terminating the contract after 30 days of receipt of the notice by the Project Manager, for reasons stated in the notice. If within the said period of 30 days, the Project Manager notifies the Contractor with a copy to the Company, that the reason stated in the notice of the Contractor are not valid or that the alleged reasons of default of the Company have been remedied and no longer exist, then the Contractor shall not be entitled to terminate the Contract.

- ii. Subject to the Project Manager not raising any objection to the notice of termination of the contract by the Contractor, upon expiry of 30 days notice as per Para (i) of this Sub-clause, the Contract shall stand terminated and the Contractor shall remove from site all balance material and construction plant and equipment brought by him thereon, with all reasonable dispatch.

#### **71.0 WITHHOLDING AND LIEN FOR SUMS CLAIMED**

- 71.1 The Company shall have lien over all or any moneys that may become due and payable to the Contractor under these presents, and / or over the deposit of Performance Security or other amount or amounts made under the Contract and which may become payable to the Contractor, under the condition in that behalf herein contained, in respect of any debt or sum that may become due and payable to the Company by the Contractor, either alone or jointly with others, either under this or under any other Contract or transaction of any nature whatsoever between the Company and the Contractor.
- 71.2 And further, unless the Contractor pays and clears immediately on demand any claim of the Company, the Company shall at all times be entitled to deduct the amount of the said claim from the moneys, securities and / or deposits which may have become or will become payable to the Contractor under these presents, or under any other Contract or transaction whatsoever between the Company and the Contractor even if the matter stands referred to Arbitration. Provided further that if the Contractor does not accept any such claim, the amount deducted shall be treated as having been withheld only till the claim is mutually settled or determined by the Arbitrator or by the competent court of law. The Contractor shall have no claim for any interest or damages whatsoever in respect of any amounts withheld or treated as withheld under the lien referred to above and duly notified as such to the Contractor.

#### **72.0 RESCISSION OF CONTRACT DUE TO DEATH OF CONTRACTOR / PARTNER**

If the Contractor is an individual or a sole proprietary concern, and the individual or the sole proprietor dies, or if the Contractor is a partnership concern and one of the partners dies, in that case, unless the Company is satisfied that the legal representative of the individual Contractor or of the sole proprietor, as the case may be, or in the case of a partnership firm, all surviving partners, are capable of carrying out and completing the Contract, the Company shall be entitled to rescind the Contract as to its incomplete part. In that event, the Company shall not be liable to pay any compensation to the legal heirs of the deceased Contractor and / or to the surviving partners of the Contractor's firm, on account of such cancellation of contract. The Project Manager's decision, as to whether the legal representatives of the deceased Contractor or surviving partners of the Contractor firm can or cannot carry out and complete the Contract, shall be final and binding on the parties. Provided further that the legal representatives of the deceased Contractor or the surviving partners shall also not be liable to pay any damages, alleged or actually suffered by the Company, in respect of incomplete part of the Contract. Any liability incurred by the deceased contractor, or by the deceased partner of the contracting firm, before his death, shall be recovered from the legal representatives of the deceased Contractor or from the surviving partners of the said contracting firm as the case may be.



### **73.0 DETERMINATION OF CONTRACT DUE TO CONTRACTOR'S DEFAULT**

#### **73.1 Conditions leading to determination of contract**

If the Contractor,

- a) Becomes bankrupt or insolvent, or
- b) Makes arrangements with or assignment in favour of his creditor, or agrees to carry out the Contract under a committee of inspection of his creditors, or
- c) Being a Company or Corporation goes into liquidation by a resolution passed by the Board of Directors/ General body of the share-holders or as a result of Court order ( other than voluntary liquidation for the purpose of amalgamation or reconstruction), or
- d) Has distress, execution or other legal process being levied on his goods or property on the works, or
- e) Assigns or sublets or subcontracts the works or any part thereof otherwise than as provided for under conditions of this Contract, or
- f) Abandons the Contract, or
- g) Persistently disregards instructions of the Project Manager or contravenes any provisions of the Contract, or
- h) Fails to adhere to the agreed programme of work by margin of 10% of the stipulated period or 21 days, whichever is earlier, or fails to complete the Works or parts of the Works within the stipulated or extended period of completion, or is unlikely to complete the whole work or part thereof within time because of poor record of progress, or
- i) Fails to remove materials from the Site, or pull down and replace work, after receiving notice from the Project Manager to the effect that the said materials or works have been condemned or rejected, or
- j) Fails to take steps to employ competent and/or additional staff and labour, material, equipment or
- k) Fails to afford the Project Manager or his representative proper facilities for inspecting the Works or any part thereof, or
- l) Promises, offers or gives any bribe, commission, gift or advantage, either himself or through his partners, agents or servant to any officer or employee of the Project Manager or the Company, or to any person on their behalf, in relation to obtaining or execution of this or any other Contract with the Company, or
- m) Suppresses or gives wrong information while submitting the tender,
- n) There is a change in the constitution of the Contractor, which is detrimental to the interest of the Company
- o) mis-conducts himself in any manner

then, and in any such case, the Project Manager on behalf of the Company, may serve the Contractor with a notice in writing to that effect, and if the Contractor does not, within 7 days after delivery to him of such notice, proceed to make good his default in so far as the same is capable of being made good, and carry on the work or comply with such instructions as aforesaid to the entire satisfaction of the Project Manager, the Company shall be entitled, after giving 48 hours notice in writing, under its hand or under the hand of the Project Manager, to rescind the Contract, as a whole or in part or parts (as may be specified in such notice). The reasons for the termination shall be final and binding upon the Contractor.

In such a case of rescission, the Company may adopt either or both of the following courses;

- a) Take possession of the site and any materials, construction plants, implements, stores, etc. thereof, and carry out the whole or part of the work from which the Contractor has been removed, by the

employment of the required labour and materials, the cost of which shall include lead, lift, freight, supervision and/or incidental charges.

b) Measure up whole or part of the Work from which the Contractor has been removed, and get it completed by another service provider at the risk and expense of the contractor; and the manner and method in which such work is to be completed, shall be entirely at the discretion of the Project Manager whose decision shall be final and conclusive.

#### 73.2 Entitlement of Company

In both cases described in sub-clause 73.1 (ii) above, the Company shall be entitled to:

- a) forfeit the whole or such portion of the Performance Security amount, as it may consider fit, and
- b) recover from the Contractor the cost of carrying out the balance work in excess of the sum which he would have been paid, according to the certificate of the Project Manager, if the works had been carried out and completed by the Contractor under the terms of the Contract. Such certificate shall be final and binding upon the Contractor. The amount to be recovered may be deducted by the Company from any money then due or which, at any time thereafter, may become due to the Contractor alone or jointly under this or any other Contract or otherwise.

#### 73.3 Non-exercise of power not to constitute waiver

Provided always that in case any of the powers conferred upon the Company by Sub-clause 73.1 and Sub-clause 73.2 above, shall have become exercisable, and the same may not have been exercised, the non-exercise thereof shall not constitute waiver of any of the conditions, thereof. Any such powers shall, notwithstanding, be exercisable in the event of any future case of default by the Contractor for which his liability in the past or future shall remain unaffected.

### **74.0 COMPLETION CERTIFICATE & COMPLETION PLANS**

#### 74.1 Completion Certificate

With in 10 ( ten )days of the completion of the work, the Contractor shall give notice of such completion to the Project Manager and within 30 ( thirty) days of the receipt of such notice the Project Manager shall inspect the work and if there is no defect in the work, shall furnish the Contractor with a final certificate of completion, otherwise a provisional certificate of physical completion indicating defects (a) to be rectified by the Contractor and/or (b) for which payment will be made at reduced rates, shall be issued But no final certificate of completion shall be issued, nor shall the work be considered to be complete until the Contractor shall have removed from the premises on which the work shall be executed all scaffolding, surplus materials, rubbish and all huts and sanitary arrangements required for his/their work, people on the site in connection with the execution of the works as shall have been erected or constructed by the Contractor(s) and cleaned off the dirt from all wood work, doors, windows, wall, floor or other parts of the building, in, upon, or about which the work is to be executed or of which he may have had possession, for the purpose of the execution thereof to the entire satisfaction of the Project Manager, and not until the work shall have been measured by the Project Manager. If the Contractor shall fail to comply with the requirements of this clause, as to removal of scaffolding, surplus materials

and rubbish and all huts and sanitary arrangements as aforesaid and cleaning off dirt on or before the date fixed for the completion of work, the Project Manager may at the expense of the Contractor remove such scaffolding, surplus materials and rubbish etc., and dispose of the same as he thinks fit and clean off such dirt as aforesaid, and the Contractor shall have no claim whatsoever in this regard except for any sum actually realised by the sale thereof.

#### 74.2 Contractor to keep site clean

The splashes and dropping from white washing, colour washing, painting etc, on walls, floor, windows, etc. shall be removed and the surface cleaned simultaneously with the completion of these items of work in the individual rooms, quarters or premises etc where the work is done without waiting for the actual completion of all the other items of work in the Contract. In case the Contractor fails to comply with the requirement of this clause, the Project Manager shall have the right to get this work done at the cost of the Contractor through any other service provider. Before taking such action, the Project Manager shall give 10 days notice in writing to the Contractor.

#### 74.3 Completion plans

The Contractor shall within one month of the date of completion of the work submit:

- (i) Completion Plans of all the internal and external works including, but not limited to the Civil, Electrical, Sanitary, Water Supply and Drainage installations by marking on a set of drawings all the details including the route, position and details of the pipes, fixtures, fittings in the manner specified by the Project Manager.
- (ii) The Contractor shall also arrange statutory inspection and certification of the installations by local authorities in conformity with the Bye laws, if any.

If the Contractor fails to submit the Completion Plans and obtain necessary statutory certificates from the Local Authority as aforesaid the Project Manager shall get the Completion Plans prepared and arrange necessary statutory certificates as aforesaid. The expenses that may be incurred by the Project Manager shall be payable by the Contractor and the Project Manager shall have the authority to recover the said expenses from the dues of the Contractor.

### **75.0 CLEARANCE OF SITE ON COMPLETION**

On completion of Works, the Contractor shall within 30 days clear away and remove from site all construction plant, surplus materials, rubbish and temporary works of every kind, and leave the whole of the site of work clean, tidy and in a workmanlike condition to the satisfaction of the Project Manager. No final payment in settlement of the accounts for works shall be made or held to be due to the Contractor, till, in addition to any other condition necessary for such final payment, site clearance shall have been affected by him. Such clearance may be made by the Project Manager through any other service provider at the expense of the Contractor in the event of the Contractor's failure to comply with this provision within 7 days after receiving notice to that effect from the Project Manager. Should it become necessary for the Project Manager to have the site cleared at the expense of the Contractor, the Company and / or the Project Manager shall not be held liable, for any loss or damage to Contractor's property on the site due to such removal there from. Removal may be effected by means of public sale of such plant, materials and property or in such a manner as may be deemed fit and proper by the Project

Manager. All expenses on such removal/ clearance shall be debited to the Contractor as loans due from the Contractor to the Company, and the Company shall be competent to recover the same from Contractor's on account or final bills, or from Performance Security amount or from any other amount payable to the Contractor.

## **76.0 URGENT REPAIRS**

If, by reason of any accident, or failure, or other event occurring to or in connection with the Works, or any part thereof or proximity thereof, either during the execution of the Works, or during the Period of Maintenance, any remedial or other work or repair shall, in the opinion of the Project Manager or the Project Manager's Representative, be urgently necessary for the safety of the Works, adjoining property, traffic, utility or public, and the Contractor is unable or unwilling to do such work or repair at once, the Company may employ and pay other persons to carry out such work or repair, as the Project Manager or the Project Manager's Representative, may consider necessary. If the work or repair so got done by the Company is work which, in the opinion of the Project Manager, the Contractor was liable to do at his own expense under the Contract all expenses properly incurred by the Company in so doing, shall be recoverable from the Contractor by the Company, or may be deducted by the Company from any monies due or which the Project Manager or the Project Manager's Representative, as the case may be, shall, as soon after the occurrence or any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.

## **77.0 FINAL MEASUREMENTS AND PAYMENTS**

77.1 Soon after the issue of the Completion Certificate the Project Manager shall have the final measurements taken, recorded and signed jointly, as in the case of interim measurements. A joint account of any plant, equipment and materials issued by the Company to the Contractor, shall also be prepared and signed jointly. Based on the final measurements and joint materials and plant, equipment account statements, the Contractor shall submit a draft Final Bill with supporting documentation, in the proforma prescribed by the Project Manager. Within one month of receipt of the draft Final Bill and of all information reasonably required for its verification, the Project Manager shall determine the value of all matters to which the Contractor is entitled under the Contract, and issue his draft Final Bill account to the Company and the Contractor. The Contractor shall sign the Project Manager's copy of the draft Final bill Account in token of acknowledgement of the full and final value of the Works performed under the Contract, and based on that, submit promptly the Final Bill duly signed by him in the format desired by the Project Manager, together with a "No Claim" certificate or a list of any unsettled claims in accordance with clause 81.0. On receipt of the Final Bill, the Project Manager shall promptly prepare and issue to the Company the Certificate of Final Payment, confirming the amount due to the Contractor under the Contract. The Company, shall on receipt of the Certificate, arrange to make payment, subject always to any deductions under these presents, due to the Contractor and under the law, within a period of 60 days failing and after which, the Company shall be liable to pay interest at 10% per annum which shall be compounded every 3 months. Provided always, that, no interest shall be payable on any amount disallowed or disputed by the Project Manager or the Company, even if such amount is later on determined to be payable to the Contractor, as a result of any process resorted to for the settlement of the disputes as per Conditions of Contract.

77.2 In respect of both on account bills and final bill, purely as a matter of convenience and to help expedite the work, the Project Manager may ask the Contractor to furnish the details in a computer disc also, prepared using a mutually agreed software package, and the Contractor shall supply the same.

The computer disc shall not replace the written and signed bills and other documents to be submitted by the Contractor under the Contract.

## **78.0 DEFECTS LIABILITY PERIOD AND MAINTENANCE CERTIFICATE**

### **78.1 Defects Liability Period:**

If the Contractor or his labour, agents or servants shall break, deface, injure or destroy any part of building in which they may be working, or any building, road, road kerb, fence, enclosure, water pipe, cables, drains, electric or telephonic telephone post or wire, trees, grass or grassland, or cultivated ground contiguous to the premises on which the work or any part is being executed, or if any damage shall happen to the work while in progress, from any cause whatever or if any defect, shrinkage or other faults appear in the work within 12 months (twelve months) after a certificate of its completion shall have been given by the Project Manager as aforesaid arising out of defect or use of improper materials or workmanship, the Contractor shall within 10 days or reasonable period, as specified by the Project Manager, receipt of a notice in writing on that behalf make the same good at his own expense or in default the Project Manager may cause the same to be made good by other workmen and deduct the expenses from any sums that may be due or at any time thereafter may become due to the Contractor, or from his Security Deposit.

78.1.1 If it is necessary for the Contractor to rectify/reconstruct any defective portions of the work under the contract, the provision of this condition shall apply to the portions of work so replaced or renewed until the expiry of three months from the date of such replacement or renewal or until the end of the Defects Liability period, whichever may be later. If any defect/s is/are not remedied within a reasonable time, the Company may proceed to do the work at the Contractor's risk and expenses, but, without prejudice to any other rights, which the Company may have against the Contractor in respect of such defects. The Contractor shall bear the cost of such repairs/rectifications carried out on his behalf at site.

### **78.2 Maintenance Certificate :**

The Contract shall not be considered as completed, until a Maintenance certificate shall have been signed by the Project Manager stating that the works have been completed and maintained to his satisfaction. Maintenance Certificate shall be issued by the Project Manager, upon expiration of the Defects Liability Period or as soon thereafter as any repair works ordered during such period shall have been completed to the satisfaction of the Project Manager and full effect shall be given to this Clause, notwithstanding the taking possession of or using the works or any part thereof by the Company.

#### **78.2.1 Final Approval by Maintenance certificate**

No certificate other than Maintenance Certificate shall be deemed to constitute final approval of any work or be deemed to constitute final approval of any other matter, in respect of which it is issued, or shall be taken as an admission of due performance of the Contract or any part thereto, or of the accuracy of any claim or demand made by the Contractor, or of additional or waived work having been ordered by the Project Manager, nor shall any other certificate conclude or prejudice any of the powers of the Project Manager or the Company.

### 78.2.2 Unfulfilled Obligations

Notwithstanding the issue of Maintenance Certificate, the Contractor and the Company, shall remain liable for the fulfillment of any obligation incurred under the provision of the Contract, prior to the issue of the Maintenance Certificate, which remain unperformed at the time such certificate is issued, and for the purpose of determination of the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties hereto.

## 79.0 CLAIMS

The Contractor shall send to the Project Manager's Representative once in every three months an account giving particulars, along with full details and justification, of all claims for any additional payment to which the Contractor may consider himself entitled, or dispute the validity of any deductions made or threatened from running account bills and of all extra or additional work ordered by the Project Manager which he has executed during the preceding three months. No final or interim claim for payment for any such work or expenses will be considered which has not been included in such particulars. Provided always that the Project Manager shall be entitled to authorize payment to be made for any such work or expenses, notwithstanding the Contractor's failure to comply with this condition, if the Contractor has, at the earliest practicable opportunity, notified the Project Manager in writing that he intends to make a claim for such work.

The acceptance by the Contractor of any amount paid in respect of final dues under the Final Bill upon the condition that the said payment is being made in full and final settlement of all the said dues shall without prejudice to the notified claims of the contractor be deemed to be in full and final satisfaction of all such dues to the Contractor notwithstanding any qualifying remarks, protest or condition imposed by the Contractor upon acceptance of such payment.

The acceptance by the Contractor of any amount paid by the Company in respect of notified claims of the Contractor included in the final Bill upon the condition that the said payment is being made in full and final settlement of all the claims shall be deemed to be in full and final satisfaction of all such claims of the Contractor notwithstanding any qualifying remarks, protest or condition imposed by the Contractor upon acceptance of such payment.

Notwithstanding the above, the Contractor shall be and remain liable for the defects and for the indemnity and unadjusted balance of security deposit in the hands of the Company.

## 80.0 SETTLEMENT OF DISPUTES AND ARBITRATION

80.1 Dispute to be referred to and settled by Project Manager at the first place.

Should any dispute or difference of any kind whatsoever arise between the Company and the Contractor, touching upon, in connection with, or arising out of the Contract, or subject matter thereof, or the execution of Works, whether, during the progress of Works or after their completion and whether arising before or after termination, abandonment or breach of Contract, it shall, in the first place, be referred to and settled by the Project Manager, who shall, within a period of sixty days after being requested in writing by either party to do so, give written notice of his decision to the Company and the Contractor. The Project Manager while considering the matters of dispute referred to him, shall be competent to call for any records, vouchers, information and enforce the attendance of the parties either in person or

through authorized representatives, to sort out or clarify any issue, resolve the differences and to assist him to decide the matters referred to him. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Company and the Contractor and shall forthwith be given effect to by the Company and by the Contractor. The Contractor however, shall continue to proceed with the execution of works and perform his obligations under the contract with all due diligence irrespective of whether any of the parties refer the disputes for arbitration. If the Project Manager has given written notice of his decision to the parties and no intimation of reference of any claim to arbitration has been sent to him by either the Company or the Contractor within a period of sixty days from receipt of such notice, the said decision of the Project Manager shall remain final and binding upon the Company and the Contractor and the same shall be deemed to have been accepted by them. The Company or the Contractor shall not seek any arbitration thereafter.

#### 80.2 Referring of dispute for arbitration

If the Project Manager shall fail to give notice of his decision, as aforesaid, within a period of sixty days after being requested as aforesaid, or if either the Company or the Contractor be dissatisfied with any such decision of the Project Manager, only then shall the matter in dispute be referred to arbitration as provided hereinafter .

#### 80.3 Dispute due for arbitration

Subject to the provisions of sub clauses 80.1 and 80.2, all disputes or differences shall be referred for arbitration.

#### 80.4 Settlement of disputes

Except where otherwise provided in the Contract, all disputes or differences, whatsoever arising between the parties, arising out of or touching or relating to construction, measuring, operation or effect of the Contract or the breach thereof, shall be settled by arbitration, subject to provisions of Sub- Clause 80.3, as detailed in Sub Clause 80.5.

#### 80.5 Setting up of Arbitral Tribunal

If the Contractor is dissatisfied with the decision of the Project Manager, he may give a notice in writing to the Company requiring the matter in issue to be referred to arbitration. The Company upon receiving such notice from the Contractor, shall then refer the dispute to a Tribunal comprising three arbitrators. For this purpose the Project Manager will nominate an independent panel of five specialists having requisite qualifications, and professional experience relevant to the field to which the Contract relates. This panel will be from serving or retired Engineers of Government Departments or from Public/Private Sector. The Contractor and the Company will select one arbitrator each and the two so chosen will choose the third arbitrator from the panel.

The arbitral tribunal shall be deemed to have entered on the reference on the date when the notice is issued to both the parties calling them to submit their statement of claims and counter statement of claims.

Neither party shall be limited in the proceedings before such arbitrators to the evidence nor shall the arguments be put before the Project Manager for the purpose of obtaining his decision

No decision given by the Project Manager in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrators on any matter, whatsoever, relevant to dispute or difference referred to the arbitral tribunal. The arbitration proceedings shall be held in Delhi only. The language of proceedings, documents and communications shall be English and the award shall be made and published in writing. The arbitrators shall give item wise and reasoned award. The award by the majority will prevail.

The Arbitrator's fee, expenses and all other costs and other expenses relating to the holding of arbitration shall be borne by both the parties equally. However the fees and expenses of Advocates and expenses relating to presentation of witnesses shall be borne by the respective parties. Should the arbitrators give a specific award in respect of costs then it would prevail.

80.6 No suspension of work.

Work under the contract shall be continued by the Contractor during the arbitration proceedings unless otherwise directed in writing by the Purchaser or unless the matter is such that the work cannot possibly be continued until the decision of the Arbitrator is obtained and save as those which are otherwise expressly provided in the contract, no payment due or payable by the Purchaser shall be withheld on account of such arbitration proceedings, unless it is the subject matter or one of the subject matter thereof.

80.7 Award to be binding on all parties.

The award of the Arbitral Tribunal shall be final, conclusive and binding on all the parties.

80.8 Rules governing the arbitration proceedings.

The arbitration proceedings shall be governed by Arbitration and Conciliation Act 1996, as amended or any statutory modification or reenactment thereof and the rules made there-under for the time being in force.

80.9 Limitation of time.

No dispute or difference shall be referred to Arbitration after expiry of 60 days from the date of communication of decision by the Project Manager, or from the date when the Project Manager ought to have given his decision in terms of provisions under Sub clause 80.1 in case of failure on the part of the Project Manager to give notice of decision.

**81.0 MODIFICATIONS TO CONTRACT TO BE IN WRITING**

In the event of any provisions of the Contract requiring modification after the Agreement has been executed, the modifications shall be made in writing and signed by the Company or the Company's authorized representative and the Contractor or his authorized representative. Such modifications shall not be effective until the same have been signed by both the Parties. Any verbal or written arrangements for abandoning, modifying, extending, reducing or supplementing the Contract, or any of the terms thereof, shall be deemed to be provisional and shall not be binding on the Company unless and until the same are incorporated in a formal instrument and signed by the Company or its authorized representative and the Contractor or his authorized representative.



**82.0 OBSERVANCE OF ENVIRONMENTAL REGULATIONS AND ENVIRONMENTAL PROTECTION**

The Contractor shall ensure that his servants and agents and sub-contractors and their servants and agents shall duly comply with all environmental laws, rules and regulations and the conditions of any permit, permission, consent and/or no-objection granted in this behalf by any authority with respect to or concerning the work, and shall independently so organize and conduct his operations and cause his sub-contractors so organise and conduct their operations as not to cause any hazard or pollution to health, life, property or environment including (but not limited to) discharge of any noxious substance or effluent into the atmosphere or into the earth or into any drain, canal, stream, river, pond, lake or other water body.

The Contractor shall indemnify and keep indemnified the Company from and against the breach, non-observance, infraction or dereliction of any of the provisions of the clause hereof, and against any and all claims, actions or proceedings, prosecutions and liabilities and losses and damages and costs (including legal costs), charges and expenses whatsoever suffered or incurred or instituted against the Company as the case may be.

**83. CONFIDENTIAL HANDLING OF INFORMATION <sup>5</sup>**

The Contractor and his employees, agents and Sub-Contractors and the employees and agents of the Sub-Contractor(s) shall treat as strictly confidential and shall take all steps necessary to ensure confidential handling of all maps, plans, charts, designs, drawings, photographs, data, reports, tests, specifications, methods, and other information developed or acquired by the Contractor from or by means of the Tender Documents or any facility extended to the Contractor pursuant thereto or the award or performance of the works or any of them or otherwise disclosed or made available to the Contractor or any of the aforesaid persons, and shall not disclose or reproduce the same in any book, article, speech or other publication. Failure to observe these provisions shall entitle the Company to rescind the contract forthwith.

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## **Annexure I**

### **GUIDELINES ON SAFETY**

#### **1.0 INTRODUCTION**

- 1.1 This document entails some of the actions to be undertaken by Contractor on “site” and “off site” in connection with the “Works” to avoid hazards to those engaged in the work and others who may be working, standing or passing in the vicinity. Notwithstanding the contents of this document, the contractors shall take all additional actions required for safe operation while carrying out works under the Contract and be responsible for it.
- 1.2 It is expected from the Contractor to practice high standards of safety. Therefore, Contractor must know and strictly follow all relevant Laws, Statutory requirements and Rules both for establishments, and workers and to conduct their business and methods of work to conform to the best safety practices. Particular attention is drawn in this regard to “The Building and other Construction workers” (Regulation of employment and condition of service) Act 1998.
- 1.3 The present document is to highlight, some of the common hazards, and suggested preventative measures in connection with the erection, construction, of plant, machinery and buildings etc. These are for guidance and in no way limit the scope of the Contractor’s safety obligation under the Contract.
- 1.4 Immediately on commencement of works under the Contract, the Contractor shall identify one responsible person designated as Safety Officer, who shall be responsible for implementation of safe work practices.
- 1.5 The Contractor shall submit a weekly report on safety aspects to the Company in an agreed format.

This report shall provide complete details of the safety hazards noticed at site, and remedial actions taken. It shall also provide details of any accidents, injuries and action taken and remedial actions taken or contemplated in that regard.

#### **2.0 SAFETY ORGANISATION**

##### **2.1 SAFETY COMMITTEES**

Every Project site wherein five hundred or more building workers are ordinarily employed, there shall be a Safety Committee constituted by the contractor of his own Project Managers and workers.

- a) The main functions of the Safety Committee shall be: –
- To identify probable causes of accident and unsafe practices in building or other construction work and to suggest remedial measures;
  - To stimulate interest of Contractor and building workers in safety by organizing safety weeks, safety competition, talks and film shows on safety, preparing posters or taking similar other measures as and when required or as necessary;

- To go round the construction site with a view to check unsafe practices and detect unsafe conditions and to recommend remedial measures for their rectification including First Aid Medical and Welfare Facilities;
  - To look into the health hazards associated with handling different types of explosives, chemicals and other construction material and to suggest remedial measures including use of proper personal protective equipment;
  - To suggest measures for improving welfare amenities in the construction site and other miscellaneous aspects of safety, health and welfare in building or other construction work;
  - To bring to the notice of the contractor the hazards associated with use, handling and maintenance of the equipment used during the course of building and other construction work.
- b) The Safety Committee shall meet at regular intervals.
- c) The agenda and minutes of the meeting shall be circulated to all concerned and it shall be in the language understood by majority of the building workers.
- d) The decisions and recommendations of the Safety Committee shall be complied with by the Contractor within reasonable time.

## 2.2 SAFETY OFFICER

In every establishment the Contractor shall appoint a Safety Officer. Such Safety Officers shall be assisted by suitable and adequate staff.

## 3.0 GUIDELINES FOR GENERAL OPERATIONS

### 3.1 EQUIPMENT AND TOOLS

- a) Safe working practices must be observed at all times.
- b) It is the Contractor's obligation to supply necessary protective equipment and clothing and ensure their use by the staff.
- c) Certain areas are designated hazardous (e.g. noisy and dusty areas) or otherwise risky, warning signs must be displayed in these areas and their obedience ensured.
- d) Where the Contractor's work presents a potential hazard, appropriate notices must be supplied and displayed, and the area made secure by proper fencing etc to ensure safety of staff and others.
- e) All welding, burning and grinding operations, which can potentially cause fire, must be reported to the fire Safety Officer.
- f) Vehicle parking will be in designated areas only.
- g) Warning signs and speed restrictions must be observed.
- h) Place of work to be left in a tidy and safe condition at the end of each work period.
- i) All injuries must be attended to immediately by trained and experienced persons and reported to the First Aid Room and Security.

- j) Wooden ladders / ghodhies shall not be used for working at height. Properly designed platforms of steel with nylon wheels shall be used for working at heights as per safety rules.
- k) Safety belts and retro-guards shall be used to prevent workmen from tripping / falling from a height.
- l) Workmen using drilling / grinding / cutting tools shall use eye protection devices (spectacles).
- m) Only authorised and approved equipment / tools shall be used in execution of work.
- n) Danger boards to caution by-passers shall be provided wherever hazardous work is being done.

### **3.2 ACCESS**

Nothing shall be done or omitted to be done by Contractor or his workers to render unsafe or obstruct:

- a) Any means of access to the places at which people are required to work.
- b) The passage of people and/or vehicles whether on a defined gangway or not, unless permission is obtained from the designated Safety Officer.
- c) Access for emergency apparatus, such as fire fighting equipment.
- d) Contractor shall nevertheless provide adequate fencing, lighting and warning signs to ensure safety at all times.

### **3.3 EMERGENCY ACTION PLANS**

The contractor shall ensure at a construction site of a building or other construction work that in case more than five hundred building workers are employed at such construction site preparation of emergency action plan to handle the emergencies like –

- a) Fire and explosion;
- b) Collapse of lifting appliances and transport equipment;
- c) Collapse of building, sheds or structures etc;
- d) Gas leakage or spillage of dangerous goods or chemicals;
- e) Drowning of building workers, sinking of vessels; and
- f) Landsides getting building worker buried, floods, storms and other natural calamities.

### **3.4 EXCESSIVE WEIGHT**

No building and other construction workers shall lift or carry excessive weight.

### **3.5 DANGEROUS AND HARMFUL ENVIRONMENT**

No building and other construction workers shall be exposed to dangerous and harmful environment.

### **3.6 OVERHEAD PROTECTION**

Suitable overhead protection should be erected where building or other construction work is being carried out.

### **3.7 EYE PROTECTION**

Suitable personal protective equipment for the protection of eyes shall be provided by the Contractor for use by the building worker engages in operations like welding, cutting, chipping, grinding or similar operations which may cause hazard to his eyes at a building or other construction work.

### **3.8 HEAD PROTECTION AND OTHER PROTECTIVE APPAREL**

- a) Every building worker required to pass through or work within the areas at building or other construction work where there is hazard of his being struck by falling objects or materials shall be provided by the Contractor with safety helmets of type and tested in accordance with the national standards.
- b) Every building worker required to work in water or in wet concrete or in other similar work at a building or other construction work, shall be provided with suitable waterproof boots by the Contractor.
- c) Every building worker required to work in rain or in similar wet condition at building or other construction work, shall be provided with water-proof coat with hat by the Contractor.
- d) Every building worker required using or handling alkalies, acid or other similar corrosive substances at a building or other construction work shall be provided with appropriate protective equipment by the Contractor, in accordance with the national standards.
- e) Every building worker engaged in handling sharp objects or materials at a building or other construction work, which may cause hand injury, shall be provided with suitable hand-gloves by the Contractor, in accordance with the national standards.

### **3.9 ELECTRICAL HAZARDS**

- a) Before commencement of any building or other construction work, the contractor shall take adequate measures to prevent any worker from coming into physical contact with any electrical equipment or apparatus, machines or live electrical circuit which may cause electrical hazard during the course of his employment at a building or other construction work.
- b) The Contractor shall display and maintain suitable warning signs at conspicuous places at a building or other construction work in Hindi and in a local language understood by the majority of the building workers.
- c) In work places at a building or other construction work where the exact location of underground electric power line is not known, the building workers using jack, hammers, crow bars or other hand-tools which may come in contact with a live electrical line, shall be provided by the Contractor with insulated protective gloves and footwear of the type in accordance with the national standards.
- d) The Contractor shall ensure that, as far as practicable, no wiring, which may come in contact with water or which may be mechanically damaged, is left on ground or floor at a building or other construction work.

- e) The Contractor shall ensure that all electrical appliances and current carrying equipment used at a building or other construction work are made of sound material and are properly and adequately earthed.
- f) The contractor shall ensure that all temporary electrical installations at a building or other construction work are provided with earth-leakage circuit breakers (ELCB).
- g) The Contractor shall ensure that all electrical installations at a building or other construction work comply with the requirements of any law for the time being in force.
- h) Only licensed wiremen shall be allowed to carry out electrical work.
- i) Rubber gloves and rubber shoes/boots of correct voltage grade shall be used while working on live panels.
- j) Temporary supply shall be tapped from a source panel, which is properly fabricated and rigidly fixed and effectively earthed.
- k) Each tapping shall have an ELCB of 30mA rating and shall be taken through an armoured sheathed multi-core cable for a distance up to 10 Mts. For extensions less than 10 metres, un-armoured multi-core sheathed, double insulated cable with inbuilt earth wires shall be used. All 3-Phase connections shall have double earth wires.
- l) All workers shall wear helmets and approved boots.
- m) Welding sets shall be properly earthed through an insulated cable to the nearest earth pit. Welders shall use welding shield.
- n) Live line testers and test lamps shall not be used. Usages of multi-meter with long probes are to be followed. All lamps for temporary use shall have protective guards.
- o) Wire cutting tools and knives etc. shall be provided with safety handles.
- p) Cable laying shall be carried out using rollers etc.
- q) Permission is to be obtained from the nominated person before any Contractor electrical hand tools can be connected to the electricity supply.
- r) Connection must be by 3-core cable and 3 pin plugs and sockets, except when tools are double insulated on a 2-wire supply. Where the supply is 3 Phase, 4-core cable and 4 pin plugs and sockets with earth connections must be used.
- s) Makeshift connections are prohibited. No extension cords using insulated tapes are to be used.
- t) The use of extension cables is discouraged, but sometimes necessary.
- u) Portable electric lamps must be the 'gripper' type with caged wire protection for the bulk and precautions as laid down under Section 36-37 of the Factories Act, 1948 must be observed.
- v) In damp conditions, voltage must not exceed 25V, supplied from a double wound transformer.
- w) In all cases, with the exception of double insulated tools, the metalwork of the tools part be effectively earthed, also any flexible metallic cable coverings must be earthed.

### **3.10 VEHICULAR TRAFFIC**

- a) Whenever any building or other construction work is being carried on, or is located in close proximity to a road or any other place where any vehicular traffic may cause danger to building workers, the Contractor shall ensure that such building or other construction work is barricaded and suitable warning signs and lights displayed or erected to prevent such danger and if necessary, he may make a request in writing to the concerned authorities to control such traffic.
- b) The Contractor shall ensure that all vehicles used at construction site of a building or other construction work comply with the requirements of the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.
- c) The Contractor shall ensure that a driver of vehicle of any class or description operating at a construction site of a building or other construction work holds a valid driving license under the Motor Vehicles Act, 1988 (59 of 1988).

### **3.11 STABILITY OF STRUCTURES**

The contractor shall ensure that no wall, chimney or other structure or part of a structure is left unguarded in such condition that it may fall, collapse or weaken due to wind pressure, vibration or due to any other reason at a site of a building or other construction work.

### **3.12 ILLUMINATIONS OF PASSAGEWAYS ETC.**

The contractor shall ensure that illumination sufficient for maintaining safe-working conditions at a site of a building or other construction work is provided where building workers are required to work or pass and for passageways, stairways and landing, such illuminations is not less than that provided in the relevant national standards.

### **3.13 SAFETY CLOTHES AND EQUIPMENT**

- a) This will be supplied by Contractors who are working on Client sites and must be adequate for the well being of their staff engaged in the type of work contracted for.
- b) The equipment and its use must comply with the regulations, rules and codes of safety as laid down that apply to the conditions of work being undertaken.
- c) Contractors will be responsible for the use of any tools and equipment that is supplied by him or his staff to the exclusion of all responsibility of the Client. Tools will be maintained to the highest standard of safety.
- d) It is the contractor's responsibility to ensure that the tools he works with are suitable for the job and in a safe condition prior to work commencement.

### **3.14 DISPOSAL OF DEBRIS**

The contractor shall ensure at a construction site of a building or other construction work that –

- a) Debris are handled and disposed of by a method which does not cause danger to the safety of a person;
- b) Debris are not allowed to accumulate so as to constitute a hazard;
- c) Debris are kept sufficiently moist to bring down the dust within the permissible limit;

- d) Debris are not thrown inside or outside from any height of such building or other construction work;
- e) On completion of work, left over building material, article or other substance or debris are disposed of as soon as possible to avoid any hazard to any traffic or person.

### **3.15 NUMBERING AND MARKING OF FLOORS**

The contractor shall ensure that each floor or level of a building or other construction work is appropriately numbered or marked at the landing of such floor or level.

### **3.16 USE OF SAFETY HELMETS AND SHOES**

The contractor shall ensure that all persons who are performing any work or services at a building or other construction work wear safety shoes and helmets conforming to the national standards.

### **3.17 HAZARDOUS MATERIALS**

The Safety Officer must be informed prior to commencement of work, of processes or materials connected with the contract work of a hazardous nature. The Contractor will ensure secure storage for any such material. These can include inflammable gases, high-pressure cylinders or explosives Etc.

### **3.18 CORROSIVE SUBSTANCES**

The contractor shall ensure that corrosive substances, including alkalis and acids, shall be stored and used by a person dealing with such substances at a building or other construction work in such a manner that it does not endanger the building worker and suitable protective equipment shall be provided by the contractor to a building worker during handling or use of such substances on the building worker, in case of contact, immediate remedial measures shall be taken by the contractor.

### **3.19 FIRE HAZARDS AND PRECAUTIONS**

The Client's fire regulations, as well as regulations under Section 38 of the Factories Act, 1948 must be observed at all times, by all Contractors.

The Contractor shall ensure at a construction site of a building or other construction work that –

- a) such construction site is provided with –
  - (i) fire extinguishing equipment sufficient to extinguish any probable fire at such construction site;
  - (ii) an adequate water supply at ample pressure as per national standards;
  - (iii) number of trained persons required to operate the fire extinguishing equipment provided under sub-cause (i);
- b) fire extinguishing equipment provided under sub-clause (i) of clause (a) is properly maintained and inspected at regular intervals of not less than once in a year by a responsible person and a record of such inspections is maintained;

### **3.20 MACHINERY SAFETY**

Contractors and working on Client sites must not remove or displace any guard, fencing or other safety equipment which is designed to protect personnel or



machinery or any place where safety equipment has been provided without the written permission of the Safety Officer or his designated representative.

On completion of any work, any guards that had to be removed must be replaced immediately and whilst work is being carried out, machinery must not be operated. The requirement of the Factories Act Sections 20 - 21 must be followed.

### **3.21 FENCING OF MOTORS ETC.**

The Contractor shall ensure at a construction site of a building or other construction work that –

- a) all motors, cogwheels, chains and friction gearing, flywheels, shafting, dangerous and moving parts of machinery (whether or not driven by mechanical power) and steam pipes are securely fenced or lagged;
- b) the fencing of dangerous parts of machinery is not removed while such machinery is in motion or in use;
- c) no part of any machinery which is in motion and which is not securely fenced is examined, lubricated, adjusted or repaired except by a person skilled for such examination, lubrication, adjustment or repairs;
- d) machine parts are cleaned when such machine is stopped;
- e) when a machine is stopped for servicing or repairs, adequate measures are taken to ensure that such machine does not re-start inadvertently.

### **3.22 HOUSE KEEPING**

The housekeeping standards employed by Contractors must be of the highest standard. Care must be taken to ensure that the standard of house-keeping for all establishments is known and understood by all. Debris shall be cleared from site and collected at a designated dumping area regularly, preferably daily.

### **3.23 STACKING AND UNSTACKING OF MATERIALS AND ARTICLES**

The contractor shall ensure at a construction site of a building or other construction work that –

- a) Where stacking, un-stacking, stowing or un-stowing of construction material or article, or handling in connection therewith cannot be safely carried out unaided, reasonable measures to guard against accident or dangerous occurrences are taken by shoring or otherwise to prevent any danger likely to be caused by such handling;
- b) Stacking of material or article is made on firm foundation not liable to settle and deviate such material or article and does not overload the floor on which such stacking is made;
- c) The material or articles, are not stacked against partition or walls of a warehouse or store place unless it is known that such partition or the wall is of sufficient strength to withstand the pressure of such materials or articles;
- d) The materials or articles are not stacked to such a height and in such a manner as would render the pile of such stack unstable and cause hazards to the building workers or the public in general;

- e) Where the building workers are working on stack exceeding one point five meters in height, safe means of access to the stack is provided;
- f) All stacking or un-stacking operations are performed under the supervision of a responsible person for such stacking or un-stacking;
- g) The stacking of construction materials or articles is not made near the site of excavation, shaft, pit or any other such opening;
- h) Stacks, which may lean heavily or become unstable or collapse are barricaded.

**3.24 STACKING OF CEMENT AND OTHER MATERIAL BAGS**

The contractor shall ensure at a construction site of a building or other construction work that -

- a) A stack pile is not more than ten bags in height unless such stack pile is stacked in a suitable enclosure or otherwise adequately supported;
- b) While removing bags from the stack pile, the stability of such stack pile is ensured;
- c) Bags containing cement or lime are stored in dry places;
- d) The materials like bricks, tiles or blocks are stored on a firm ground;
- e) Reinforcing steel is stored according to its shape, size and length;
- f) Stack of reinforcing steel is kept as low as possible;
- g) No pipe is stored on rack or in stack where such pipe is likely to fall by rolling;
- h) The angle of repose is maintained where loose materials are stacked; When dust-laden material is to be stored or handled, measures are taken to suppress the dust produced by such storing or handling and suitable personnel protective equipment are supplied to and used by the building workers working for such storing or handling

**3.25 SLIPPING, TRIPPING, CUTTING, DROWNING AND FALLING HAZARDS**

The Contractor shall ensure that all slipping, tripping, cutting, drowning and falling hazards are removed at site.

**3.26 NOISE**

The contractor shall ensure at a construction site of a building or other construction work that adequate measures are taken to protect building workers against the harmful effects of excessive noise or vibration at such construction site and the noise level in no case exceeds the limits laid down.

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