

GENERAL CONDITIONS OF CONTRACT
(Incorporating the correction slip Nos.1,2 &3)
FOR
CIVIL ENGINEERING WORKS
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**GENERAL CONDITIONS OF CONTRACT
FOR
CIVIL ENGINEERING WORKS**

1.0 DEFINITIONS

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

- a. **“Employer”** means the Board of the **Delhi Metro Rail Corporation Ltd. (DMRC), New Delhi**, a body corporate established by Companies Act 1956, acting through its Managing Director or any other officer so nominated by the Managing Director and shall include their legal successors and permitted assignees.
- b. **“Engineer”** means such persons, or firm, as may be appointed from time to time by the Employer, and notified in writing to the Contractor to act as Engineer for the purposes of the Contract, or any nominated officer of DMRC.
- c. **“Engineer’s Representative”** means any Assistant of the Engineer, or any clerk of works, appointed from time to time by the Engineer under **Sub-clause 4.2**.
- d
 - i) **“Contractor”** means the individual, firm, company, corporation, Joint Venture, or consortium whether incorporated or not, who enters into the Contract with the Employer, and shall include his heirs, his executors, administrators, successors, legal representatives, as the case may be.
 - ii) **“Contractor’s Agent”** shall mean the person or persons authorised under power of attorney duly executed to take all actions relating to the work, as could be taken by the Contractor himself. In case of firm of contractors, the Agent shall be conferred sufficiently wide powers to take decision on the spot with regard to project implementation.
 - iii) **“Contractor’s Representative”** shall mean a person in supervisory capacity who shall be so declared by the Contractor and who shall be authorised under a duly executed power of attorney to comply the instructions and to (clause 11.0) receive materials issued by the Engineer 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 permission of the Engineer or Employer and shall include his heirs, his executors, administrators, successors, 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 Employer otherwise than through the Contractor.

- g. **Tenderer or Bidder**” means the individual, firm, Company, Corporation, Joint Venture or Consortium submitting a 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 Contract Agreement with all documents mentioned in **Clause 1.0** of “Instruction to Tenderers”.
- j. **“Tender or Bid”** means the offer made by individual, Firm, Company, Corporation, Joint Venture or Consortium 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 Engineer.
- l. **“Drawings”** means maps, drawings, plans, tracings or prints thereof, calculations and technical information of a like nature provided by the Engineer to the Contractor or annexed to the Contract, and any modifications of such drawings and further drawings that may be issued by the Engineer from time to time or approved by the Engineer in writing. It includes such other drawings as are made from time to time and furnished by the Contractor and approved by the Engineer.
- 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 therefrom as may be made under the provisions of the Contract.
- o.
 - i) **“Works”** means the work to be executed in accordance with the Contract and shall include both Permanent Works and Temporary Works.
 - ii) **“Permanent Works”** means the permanent works to be executed, completed and maintained in accordance with the Contract.
 - i) **“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, appliances or things of whatsoever nature, required for the execution, completion or maintenance of the works, but does 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, in or through which the Works are to be carried out, and any other lands or places provided by the Employer for the purpose of the Contract.
- r. **“Materials”** means all equipment, 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 by the Engineer or Engineer’s Representative, whether performed by the Contractor or by the Engineer or his Representative or any agency acting under the direction of the Engineer.
- t. **“Approval or Approved”** means approval in writing including subsequent written confirmation of previous verbal approval.
- u. **“Period of Maintenance”** means the specified period of maintenance from the date of completion of the work as certified by the Engineer and specified in the Contract. This period is also termed as “Defects Liability Period”.
- v. **“Letter of Acceptance”** means the letter from the Employer or the Engineer, or a person nominated by them on their behalf for this purpose, to the Contractor, conveying acceptance of the Tender, subject to any modifications agreed to between the parties and includes advance acceptance of the tender.
- w.
 - 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, 1897” 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 be 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 organisation having legal capacity.

3.0 SINGULAR, PLURAL AND GENDER

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

4.0 ENGINEER AND ENGINEER’S REPRESENTATIVE

4.1 Duties and Authority of Engineer

The Engineer 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 / administration of the Contract and expeditious and timely completion of the Work. Should the Engineer exercise any specific authority for which, as per the terms of his appointment, he has to obtain the approval of the Employer, the Contractor shall deem such approval to have been given by the Employer.

4.2 Duties and Authority of Engineer's Representative

The Engineer's Representative shall be responsible to the Engineer. 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, nor, except as expressly provided hereunder or elsewhere in the Contract, to order any Work involving delay or any extra payment by the Employer, nor to make any variation of or in the Works.

The Engineer may, from time to time, in writing delegate to the Engineer's Representative, any of the powers and authorities vested in the Engineer, and shall furnish to the Contractor and to the Employer, a copy of all such written delegations of powers and authorities. Any written instruction, decision or approval given by the Engineer's Representative to the Contractor within the terms of such delegation, but not otherwise, shall bind the Contractor and the Employer, as though it had been given by the Engineer. Provided always as follows:

- a. Failure of the Engineer's Representative or his assistants, to disapprove any work or materials shall not prejudice the authority of the Engineer or Employer thereafter, to disapprove such work or materials or plant and order the pulling down, removal or breaking up thereof. The Engineer'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 Engineer's Representative, he shall be entitled to refer the matter to the Engineer, who shall thereupon confirm, reverse or vary such decision. The Engineer'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 Engineer and Engineer's Representative

The Engineer or the Engineer'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 Engineer shall be in writing, provided that if for any reason the Engineer 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 Engineer, 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 ASSIGNMENT AND SUBCONTRACTING

5.1 Assignment of Contract

The Contractor shall not, without the prior consent of the Employer (which consent shall be at the discretion of the Employer), assign the Contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by:

- a. a charge in favour of the Contractor's bankers of any money due or to become due under the Contract, or
- b. assignment to the Contractor's insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable.

5.2 Subcontracting

The Contractor shall not subcontract the whole of the Works. Except where otherwise provided by the Contract, the Contractor shall not subcontract any part of the Works without the prior consent of the Engineer. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

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 for which the Subcontractor is named in the Contract.

All Sub-contracts, including those items under a. to c. above shall be limited to not more than 50% of the Contract Price.

5.3 Assignment of Subcontractor's Obligations

In the event of a Subcontractor having undertaken towards the Contract in respect of the work executed, or the goods, materials, plant or services supplied by such Subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period or Maintenance Period under the Contract, the Contractor

shall at any time, after the expiration of such period, assign to the Employer, at the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof.

5.4 Compensation for Breach

Any breach of the conditions under **Sub-clauses 5.1 to 5.3** above shall entitle the Employer to rescind the contract under **Clause 60.0** of these conditions and also render the Contractor liable to the Employer for compensation, in respect of loss or damage arising out of our ensuing from such cancellation.

5.5 Explanation on Subcontracting

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

5.6 No Change In The Responsibility of Contractor

Permission to assign, transfer or subcontract the work by the Contractor, shall not establish any contractual relationship between the assignee, transferee or the sub-contractor and the Employer and shall not relieve the Contractor of any responsibility under the Contract.

5.7 Sub-Contractor/Vendor Warranty

In the event that a sub-contractor/vendor provides to the Contractor or any other sub-contractor a warranty in respect of Plant, Equipment, Materials or services supplied in connection with the Works, or undertakes a continuing obligation of any nature whatsoever in relation to such Plant, Equipment, Materials or services (including without limitation an obligation to maintain stocks of spare parts) extending for a period exceeding that of the Defects Liability Period, and if the Employer's Representative so directs in writing within 21 days of the expiry of the Defects Liability Period the Contractor shall immediately assign or obtain the assignment of the benefit of such warranty or obligation to the Employer.

If a sub-contractor/vendor has undertaken a continuing and assignable obligation to the Contractor for the work designed or executed, or Plant, Equipment, Materials, services supplied, by such sub-contractor/vendor, and if such obligation extends beyond the expiry of the Contract Period, the Contractor shall, upon the expiry of the Contract Period, assign the benefit of such obligation to the Employer for its unexpired duration.

6.0 COMMUNICATIONS AND LANGUAGE OF CONTRACT

6.1 Communications to be in writing

All notices, communications, references and complaints by either party to the Contract shall be in writing and no notice, communication, reference or complaint not in writing, shall be recognised or be binding.

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 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 of them.

7.3 Ambiguities or discrepancies

In case of ambiguities or discrepancies, the same shall be clarified and adjusted by the Engineer who shall thereupon issue to the Contractor instructions thereon and in such event the priority of the documents forming the Contract shall be as follows:-

- a) Contract Agreement (if completed).
- b) Letter of Acceptance.
- c) Tender.
- d) Special Conditions of Contract.
- e) General Conditions of Contract.

8.0 SPECIFICATIONS AND DRAWINGS

8.1 Ownership

The Contractor shall keep at 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 Engineer or his Representative. All specifications and drawings shall remain the property of the Employer and shall not be used on other works and shall be returned by the Contractor to the Employer on completion of the works or on termination of the Contract.

8.2 Adherence to Specifications and Drawings

The works shall be executed in perfect conformity with the specifications and drawings of the Contract issued to the Contractor by the Engineer from time to time. If the Contractor does any work or part of work in a manner contrary to the specifications or drawings without the approval of the Engineer, he shall bear all the costs arising therefrom including dismantling and reconstruction strictly in accordance with the specifications and drawings and shall be responsible for all loss to the Employer. The Engineer shall have full power and authority to supply to the Contractor from time to time such further drawings as may be needed 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 Engineer, as specified in the Special Conditions of Contract.

8.3 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 of any work or material or as to the measurement of the Works, the decision of the Engineer there shall be final and binding.

8.4 Compliance with Contractor's Request for Details

- i. The Contractor shall give written notice to the Engineer whenever progress of the Works is likely to be delayed or disrupted unless any further drawing, where the Special Conditions of Contract provide for such drawings to be prepared by the Engineer, or order, including a direction, instruction or approval is issued by the Engineer within a reasonable time. The notice shall include details of the drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if this issue is delayed.
- ii. The Engineer 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 therefrom. The Engineer 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 Engineer 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 Engineer shall take such delay into account while determining any extension of time to which the Contractor would be entitled under **Sub-clause 57.4** hereof.

9.0 COMPLAINTS WITH REGULATIONS AND BYLAWS

The Contractor shall comply with the provisions of any statute relating to the works, regulations and by-laws of any local authority and undertaking, including those controlling the utilities such as water supply, sewerage, telephones, power supply, etc., in whose area / jurisdiction the work is to be executed. The Contractor shall be bound to give all notices required by statute, regulations or by-laws, as aforesaid and to pay all fees and invoices payable to any authority or undertaking in respect thereof. It will be the responsibility of the Contractor to arrange for necessary clearances and approvals from such authorities and undertakings before the work is taken up.

10.0 OCCUPATION AND USE OF LAND

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

11.0 REPRESENTATION ON WORKS

The Contractor, shall, when he is not in a position to be present at the site of work place, keep responsible agent (s) there, during all working hours, who shall, on receiving reasonable notice, present himself / themselves to the Engineer, Engineer'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 60.0**.

12.0 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, which shall be found in or at site, shall be the property of the Employer, and the Contractor shall duly preserve the same to the satisfaction of the Employer, and shall from time to time deliver the same to such person or persons, as the Employer may appoint to receive the same.

13.0 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, buildings and produce, shall be the property of the Employer; provided that the Contractor may with the permission of the Engineer use the same for the purpose of Works either free of cost or on payment of cost, as provided for under the Special Conditions of the Contract or in the absence of such conditions, as per mutually accepted terms and conditions.

14.0 INDEMNITY BY CONTRACTOR

14.1 Indemnity Against All Actions of Contractor

The Contractor shall hold and save harmless and indemnify the Employer, from and against all actions, suits, proceedings, loss, costs, damages, charges, claims and demands of every nature and description brought or recovered against the Employer, by reason of any act or omissions of the Contractor, his agent or his 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 Employer, without reference to the actual loss or damage sustained, and whether or not any damage shall have been sustained.

14.2 Indemnity Against All Claims Of Patent Rights And Royalties

The Contractor shall hold and save harmless and indemnify the Employer, his officers, agents, servants and employees from and against all claims and proceedings, for or on account of infringement by the Contractor of copyright, any patent rights, design trademark or name, secret process, patented or unpatented invention, articles or appliances manufactured or 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.

14.3 Contractor's Warranty

The Contractor warrants to the Employer (Form G) that:

- a. the Works will, when completed, comply in all respects with the Employer's Requirements, and the intended use of the Works;
- b. the Electrical and Mechanical Works have been manufactured, installed and otherwise constructed to the highest standards available using proven up-to-date good practice;
- c. the Works will, when completed, comply with enactments and regulations relevant to the Works;
- d. materials generally known to be deleterious or not in accordance with good engineering practice have been neither selected nor incorporated in the Works, by

the Contractor.

- e. the transfer to the Employer of any warranty received from a sub-contractor/vendor for the Works shall be passed to the Employer at the time of Issue of the Performance Certificate.

15.0 PERFORMANCE GUARANTEE

15.1 Amount of Performance Guarantee

- i. Within 30 days of receipt of the Letter of Acceptance from the Employer, the successful tenderer shall furnish to the Employer a security in the form of a bank guarantee for an amount of ten per cent of the Contract value. The approved form provided in the "Instructions to Tenderers" documents shall be used for Bank Guarantee. The Bank Guarantee shall be valid for a period of 90 days beyond the "Maintenance Period" as specified in the "Special Conditions of Contract".
- ii. Failure of the successful tenderer to furnish the required Performance Guarantee shall be a ground for the annulment of the award of Contract and forfeiture of the tender security, in which event the Employer may award the works to the next lowest evaluated tenderer.

15.2 Release of Performance Guarantee

- i. The whole of the Performance Guarantee amount, shall be liable to be forfeited to the Employer at the discretion of the Employer, 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 Contract. On due and faithful completion of the entire work, one half of the Performance Guarantee amount shall be refunded to the Contractor, subject to the issue of Completion Certificate by the Engineer, in accordance with **Clause 78.0** of these conditions. This shall not relieve the Contractor from his obligations and liabilities, to make good any failures, defects, imperfections, shrinkages or faults, that may be detected during the period of maintenance specified in the Special Conditions of Contract. The balance of the Performance Guarantee amount, shall become due and shall be paid to the Contractor, after the expiry of the period of maintenance specified in the Contract, reckoned from the date on which the Engineer shall have issued the Certificate of Completion comprising the whole of the Works, and after all failures, defects, imperfections, shrinkages and faults have been rectified by the Contractor, to the satisfaction of the Engineer. Where different maintenance periods are applicable to different parts of the Works, the expression, "expiration of the period of maintenance", shall for the purpose of this clause, be deemed to mean the expiry of last of such periods.
- ii. Provided always that, no Performance Guarantee amount shall become due nor

payable to the Contractor, unless all the stipulations of the Contract have been fulfilled by the Contractor and all claims and demands made by the Employer 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 Employer, have been finally satisfied.

16.0. INSPECTION OF SITE

- i. The Employer shall have made available to the Contractor with the Tender documents such data on hydrological and sub-surface conditions as may have been obtained by or on behalf of the Employer from investigations undertaken relevant to the Works and the Tender shall be deemed to have been based on such data, but the Contractor shall be responsible for his own interpretation thereof.
- ii. The Contractor shall also 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 thereof, 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.

17.0 CONTRACTOR'S UNDERSTANDING

- i. The Contractor shall be deemed 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. If, however, during the execution of the Works, the Contractor shall encounter physical conditions, other than climatic conditions on the site, or artificial obstructions, which conditions or obstructions could, in his opinion, not have been reasonably foreseen by an experienced Contractor, the Contractor shall forthwith give written notice thereof to the Engineer's Representative and if, in the opinion of the Engineer, such conditions or artificial obstructions could not have been reasonably foreseen by an experienced Contractor, then the Engineer shall certify and the Employer shall pay reasonable additional cost to which the Contractor shall have been put by reason of such conditions in the following

cases:

- a. for complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and
 - b. for any proper and reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instructions from the Engineer, as a result of such conditions or obstructions being encountered.
- ii. The decision of the Employer as to the additional cost shall be final and binding.

18.0 GENERAL RESPONSIBILITY OF THE CONTRACTOR

The Contractor shall comply with the provisions of the contract and with due care and diligence execute and maintain the works and provide all labour therefor, and be responsible for supervision of all works, structural

Plans and other things whether of temporary or permanent nature required for such execution and maintenance in so far as necessary for providing these, as is specified or as is reasonably inferred from the Contract. The Contractor shall take full responsibility for the adequacy, stability and safety at site of all works, materials and methods of construction, provided, however, that the Contractor shall not be responsible except as may be expressly provided for in the tender or the General or Special Conditions of Contract for the design or specifications of permanent works or of any temporary works prepared by the Engineer.

19.0 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, skilled in their trade and calling. The Engineer 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 Engineer, misconducts himself or is incompetent or negligent in the proper performance of his duties on whose employment is otherwise considered by the Engineer to be undesirable and such person shall not be employed again in the works without the written permission of the Engineer. Any person so removed from the works shall be replaced as soon as possible by a competent substitute.

20.0 OPPORTUNITY FOR OTHER CONTRACTORS

20.1 Reasonable opportunity

The Contractor shall, in accordance with the requirements of the Engineer, cooperate with and afford all reasonable opportunities for carrying out their work to any other

Contractors employed by the Employer and their workmen and to the workmen of the Employer 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 Employer may enter into in connection with or ancillary to the Works.

The Contractor shall, on the written request of the Engineer or the Engineer's Representative, make available to any such other Contractor, or to the Employer 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 Employer. The Contractor shall also permit the use by any such of the Contractor's scaffolding or other plant on the Site, or provide any other service of whatsoever nature at the request of the Employer. The Employer shall pay to the Contractor in respect of such use or service such sum or sums as shall, in the opinion of the Engineer, be reasonable. The decision of the Engineer as to the sum payable shall be final and binding.

20.2 Inspection of work of other Contractors

If any part of the Contractor's work depends upon the work of another contractor, he shall inspect and promptly report to the Engineer any defects in such work that may render it unsuitable for such proper execution. The Contractor's failure to so inspect and report shall constitute acceptance of the other Contractor's work as fit and proper except as to defects which may develop in the other Contractor's work after execution of his work.

21.0 WORKS DURING NIGHT

Unless specifically provided in the Special Conditions of Contract, the Contractor shall not carry out any work between sunset and sunrise without the prior permission of the Engineer. 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 Engineer, 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. He shall also be responsible for any claim on account of any injury to or loss of life, of any one, arising out of inadequate lighting and safety arrangements.

22.0 DAMAGE TO EMPLOYER'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 or damage to the works themselves or to any other property of the Employer or the lives, persons and property of others from

whatsoever cause in connection with works until they are taken over by the Employer; in case the Employer is called upon to make good any such costs, loss or damages, or to pay compensation (including that payable under the provisions of Workmen's Compensation Act or any statutory amendments thereof) to any person or persons sustaining 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 Employer may incur in reference thereto, shall be charged to the Contractor. The Employer 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, defence or compromise, and the incurring of any such expenses shall not be called in question by the Contractor.

23.0 INSURANCE

23.1 Requirements

Before commencing execution of Works, unless stated otherwise in the Special Conditions of Contract, it shall be obligatory for the Contractor to obtain at his own cost stipulated insurance cover under the following requirements:

- a. Contractor's All Risk and Third Party Cover.
- 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, Engineers, Supervisors and others who are not governed by Workmen's Compensation) Act.
- d. Damage to material, machinery and works due to fire, theft etc.
- e. Any other risk to be covered by Insurance as may be specified by the Employer in the Special Conditions of Contract.

23.2 Policy in joint names of Contractor and Employer

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

- Loss of life or injury involving public, employee of the Contractor, or that of Employer and Engineer, labour etc.
- Injury, loss or damages to the Works or property belonging to public, Government bodies, local authorities, utility organisations, contractors, Employer or others.

23.3 Currency of Policy

The policies shall remain in force through out the period of execution of the Works and till the expiry of the maintenance period. The Contractor shall whenever called upon, produce to the Engineer or his representative the various insurance policies obtained by him as also the rates of premia and the premia 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 Employer may effect and keep in force any such insurance or further insurance and the cost and expenses incurred by him in this regard shall be deductible from payments due to the Contractor or from the Contractor's Performance Guarantee.

24.0 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 Engineer 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 delay the carrying out of the Works with due expedition. The Engineer and the Engineer's representatives shall have free access to the said sheds, store-houses 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 Engineer 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 works.

25.0 EMPLOYER'S MATERIAL

25.1 Materials to be supplied by the Employer

Except for any specific items mentioned in the Special Conditions of Contract, the Contractor is expected to supply all materials for the Works. Soon after the acceptance of tender, the Contractor shall give in writing to the Engineer a phased requirement of materials to be supplied by the Employer according to the programme of execution of Works.

25.2 Phased Requirements

For the materials that are required to be supplied by the Employer to the Contractor, the latter shall give reasonable notice in writing of his phased requirements to the Engineer in accordance with the approved programme for the completion of the Works. Such materials shall be supplied for the purpose of Contract only and against a Bank Guarantee for the value of materials so supplied at the rate specified in the

aforsaid Schedule. The value of covering Bank Guarantee shall be set off or deducted, as and when materials are consumed in items of work for which payment, is being made to the Contractor, from any sums then due or which may thereafter become due to the Contractor, under the Contract. At the time of submission of bills, the Contractor shall certify that balance of materials supplied is available at Site.

25.3 Cost to be Borne by Contractor

The materials shall be issued to the Contractor at the Employer's nominated depots / goods sheds. The Contractor shall bear the cost of loading, transporting to site, unloading, storing under cover as required, 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.

25.4 Return of Surplus Materials

All materials issued to the Contractor by the Employer 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. However, material considered unserviceable by the Employer 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 Employer.

25.5 Credit for Returned Materials

Surplus materials returned by the Contractor shall be credited to him by the Engineer at rates not exceeding those 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.

25.6 Remedy for Failure to Return Materials

If, on completion of works, the Contractor fails to return surplus materials out of those supplied by the Employer, then, in addition to any other liability which the Contractor would incur, the Engineer 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 Engineer, plus 14% of the market rates.

26.0 TOOLS, PLANTS AND EQUIPMENT SUPPLIED BY THE EMPLOYER

Except for any specific item mentioned in the Special Conditions of Contract, the Contractor is expected to supply all tools, plants and equipment for the Works. In

respect of such exceptional tools, plants or equipment committed to his charge by the Employer under terms and conditions specified in the Special Conditions of Contract, 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 equipment made over to him by the Employer and on completion of the Works, shall hand over the unused balance of the same to the Employer in good order and repair, fair wear and tear excepted, and shall be responsible for any failure to account for the same or any damage done thereto. The decision of the Engineer as to the amount recoverable from the Contractor on this account shall be final and binding.

27.0 ROADS AND WATER COURSES, ACCESS TO PREMISES AND SAFETY OF PUBLIC

- i. Existing road or water courses shall not be blocked, cut through, altered, diverted or obstructed in anyway by the Contractor, except with the permission of the Engineer. All compensation claimed for any unauthorised 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.
- ii. 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 Engineer for the regulation of traffic, and provide watchman necessary to prevent accidents. The Works shall in such cases be prosecuted day and night if so ordered by the Engineer and with such vigour that the traffic is impeded for as short a time as possible.
- iii. The Contractor shall be responsible for taking all precautions to ensure safety of the public, whether on public or Employer's property and shall post such look-out men as may, in the opinion of the Engineer, be necessary to comply with the regulations appertaining to the work and to ensure safety.

28.0 USE OF EXPLOSIVES

Explosives shall not be used on the Works or on the Site by the Contractor without the permission of the Engineer 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 precautions in using the

explosives and prevent damage to nearby structures and utilities. The Contractor shall also obtain necessary licence for the storage and the use of explosives. All operations in which or for which explosives are employed shall be at the sole risk and responsibility of the Contractor and the Contractor shall indemnify the Employer in respect thereof.

29.0 INDEMNITY BY EMPLOYER

The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of :

- a. the permanent use or occupation of land by the Works or part thereof.
- b. injuries or damages to persons or property resulting from any act of omission or neglect of the Employer, his agents, servants or other Contractors not being employed by the Contractor, or for or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto. Where the injury or damage is contributed partially by the other Contractor or his servants or agents, the proportion in which the liability will be borne by each party shall be decided by the Engineer and his decision shall be final.

30.0 CARE OF WORK

From the commencement of the Works until the date stated in the Certificate of Completion for the whole of the Works pursuant to **Clause 78.0**, the Contractor shall take full responsibility for the care thereof. Provided that if the Engineer shall issue a Certificate of Completion in respect of any part of the Permanent Works for which a separate date of completion is stipulated as provided for in Sub Clause 78.2, 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 Employer. 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 Period of Maintenance. 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 31.0** 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 Engineer'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 Engineer and subject always to the provision of Clause 84.0, repair and make good the same as aforesaid at the cost of the Employer. 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 completing any outstanding work or complying with his obligations under **Clause 44.0 or 80.0** hereof.

31.0 EXCEPTED RISKS

The “Excepted Risks” are war, hostilities (whether war be declared or not), invasion, act or foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, riot, commotion or disorder unless solely restricted to employees of the Contractor or of his sub-contractors and arising from the conduct of the Works, loss or damage due to use or occupation by the Employer of any part of the Permanent Works except as may be provided for in the Special Conditions of Contract, loss or damage, caused solely due to the Engineer’s design of the Works, ionising radiations or contamination by radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio active coxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling 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”.

32.0 EXTRAORDINARY TRAFFIC

32.1 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 so 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 by the Contractor and he shall indemnify the Employer fully against any claim on this account.

32.2 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 Works and the Contractor shall indemnify and keep indemnified the Employer 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 Employer, and shall negotiate and pay all claims arising

solely out of such damage.

32.3 Settlement of Extraordinary Traffic Claims

If, notwithstanding Sub-clause **32.1**, 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 Engineer with a copy to the Employer, 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 haulier of such materials or Plant is required to indemnify the road authority against damage, the Employer shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases the Employer shall negotiate the settlement and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of 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 Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under **Sub-clauses 32.1 and 32.2**, then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure shall be recoverable from the Contractor by the Employer and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor, the Employer shall consult with the Contractor, the before such settlement is agreed.

33.0 CONTRACTOR TO KEEP SITE CLEAR

During the progress of Works, 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 or temporary works no longer required. On completion of the works, the Contractor shall clear away and remove from site all constructional plant, surplus material and temporary works. He should leave the whole of the site and Works in a clean, tidy and workman like condition to the satisfaction of the Engineer.

34.0 EMPLOYER NOT TO PROVIDE QUARTERS FOR CONTRACTOR

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

35.0 LABOUR CAMP

35.1 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 latrines and urinals, for his staff and workmen employed on the Works, 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.

35.2 Compliance with Rules for Employment of Labour

The Contractor shall comply with all laws, bylaws, rules and regulations, for the time being in force, pertaining to the employment of local or imported labour, 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-contractor.

35.3 Preservation of Peace

The Contractor shall take requisite precautions, and use his best endeavours to prevent any riotous or unlawful behaviour 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 neighbourhood of Works. In the event of the Employer requiring the maintenance of a Special Police Force at or in the vicinity of the Site, during the tenure of Works, the expenses thereof shall be borne by the Contractor and if paid by the Employer, shall be recoverable from the Contractor.

35.4 Sanitary Arrangements

The Contractor shall obey all sanitary rules, 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 Engineer, the Engineer's Representative or the Medical staff of the Employer and the staff of the local municipal or other authorities concerned. Should the Contractor fail to make adequate sanitary arrangements, these will be provided by the Employer, and the cost thereof recovered from the Contractor.

35.5 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

Engineer or the Engineer's Representative on the advice of Medical Authority. Should Cholera, Plague or any other epidemic, contagious or infectious disease break out, the Contractor shall on his own burn the huts beddings, clothes and other belongings of or used by the infected persons, and promptly erect new huts on healthy sites as required by the Engineer, within the time specified in the Engineer's requisition, failing which the same may be done by the Employer and cost thereof recovered from the Contractor.

35.6 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 Engineer, on advice of Medical Authority in relation to the strength of the Contractor's staff and workmen employed on the Works, directly or through petty contractors or sub-contractors.

35.7 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.

36.0 SAFETY PROVISIONS

36.1 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 or those directed by the Engineer. 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, Employer's officers, agents or servants or any member of the public.

36.2 Safety of Works and Public

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

36.3 Recovery of cost from the Contractor

Should the Contractor fail to make provision as required in the preceding **Sub-clauses 36.1 and 36.2**, the Employer may provide necessary arrangements, the cost of which shall be recoverable from the Contractor.

37.0 RATES FOR ITEMS OF WORK TO BE ALL INCLUSIVE

- i. 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 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 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 all cost and freight of materials, stores, equipments, profiles, moulds, cuttings, centerings, scaffoldings, shuttering, machinery, derricks, tackles, ropes, pegs, posts, tools and all apparatus and plants, required at / for the work, and contingencies, except such items as may be specified in the Special Conditions of Contract to be supplied to the Contractor by the Employer. 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 centre 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 77.3**.
- ii. 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 and except what is specifically provided in General or Special Conditions of Contract.
- iii. The Employer will make efforts to get some or all of taxes, royalties, duties, cess, octroi and other levies payable to various authorities, waived fully or partially. The Contractor shall maintain complete records on the amounts paid on these accounts and advise the Employer the details every month. In case the waiver becomes effective, the Contractor will be advised for getting the refund from the concerned authority. He will arrange for the same and remit the amount to the Employer. In case of failure by the Contractor to remit such amounts, the same will be recovered from the pending dues of the Contractor.

38.0 SUPPLY OF WATER AND ELECTRICAL POWER

Unless otherwise provided for in Special Conditions of Contract, the Contractor shall be responsible for arrangements to obtain supply of water, or electrical power, necessary for the Works. In the event the Employer 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 Employer's distribution system and laying of necessary pipe line, specials, valves, meter for water supply or the laying of underground / overground 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 Engineer. The decision of the Engineer 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.

39.0 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 Engineer or the Engineer'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 Employer or the Engineer on behalf of the Employer may employ and pay other persons to carry out such work or repair, as the Engineer or the Engineer's Representative may consider necessary. If the work or repair so got done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, all expenses properly incurred by the Employer in so doing, shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided always that the Engineer or the Engineer's Representative, as the case may be, shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.

40.0 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 Engineer in writing and for the correctness, subject as above mentioned, of the positions, levels, dimensions and alignment of all parts or the works, and for the provision of all necessary instruments, appliances and labour, in connection therewith. If 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 Engineer shall at once rectify such error, to the satisfaction of the Engineer or his representatives. The checking of any setting out, or of any line or level by the Engineer 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.

41.0 BORE HOLES AND EXPLORATORY EXCAVATION

Where the works are to be executed by the Contractor as per his own Designs, it will be the responsibility of 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 Engineer shall require the Contractor to make out additional bore holes or to carry out additional exploratory excavation, the Contractor shall comply with the same and no extra amount will be payable on this account unless Special Conditions of Contract provide to the contrary.

Where the works are to be executed by the Contractor as per the Designs of the Engineer, the Contractor shall be guided by the site investigation details furnished in the Tender Documents. In such cases, if the Engineer shall require the Contractor to make bore holes or to carry out exploratory excavation, such requirement shall be ordered in writing and shall be paid for extra unless there is a provision in the Special Conditions to the contrary.

42.0 ILLEGAL GRATIFICATION

42.1 Bribe, commission, gift or advantage

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

42.2 Monetary dealing of Contractor with employee of Employer or Engineer

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 Engineer or the Employer, and if he does so, the Employer shall be entitled forthwith to rescind the

Contract and all other Contracts with the Employer. The Contractor shall be liable to pay compensation for any loss or damage to the Employer resulting from such rescission and the Employer shall be entitled to deduct the amounts so payable from the money (s) due to the Contractor.

42.3 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 42.1 and 42.2**, the same shall be settled by the Engineer, in such manner as he shall consider fit and proper, and his decision shall be final and binding.

42.4 Compensation to Contractor on rescission of Contract under this clause

In the event of rescission of Contract under **Sub-clause 42.1 or 42.2**, the Contractor shall not be entitled to any compensation whatsoever, except for the work done up to the date of rescission.

43.0 DISCLOSURE OF RELATIONSHIP

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

44.0 CLEARANCE OF SITE ON COMPLETION

On completion of Works, the Contractor shall clear away and remove from site all constructional 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 conditions to the satisfaction of the Engineer. No final payment in settlement of he 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 effected by him. Such clearance may be made by the Engineer through any other agency 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 Engineer. Should it become necessary for the Engineer to have the site cleared at the expense of the Contractor, the Employer and / or the Engineer shall not be held liable, for any loss or damage to Contractor's property on the site due to such removal therefrom. 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 Engineer. All expenses on such removal / clearance shall be debitable to the Contractor as loans due from the Contractor to the Employer, and the Employer shall be competent to recover the same

from Contractor's on-account or final bills, or from Performance Guarantee amount or from any other amount payable to the Contractor.

45.0 ENGAGEMENT OF LABOUR

45.1 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.

45.2 Non-employment of Female Labour

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 of soldiers' barracks, is avoided, as far as possible.

45.3 Employment of Labour Below the Age of 18

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

46.0 WAGES TO LABOUR

46.1 Wages under relevant laws

In dealing with labour and employees, the Contractor and his sub-contractors (including piece rate and petty Contractors) shall comply fully with all laws and statutory regulations such as the **Payment of Wages Act, 1936, the Minimum Wages Act, 1948, Workman's Compensation Act, 1923, The Contract Labour (Regulations and Abolition's) Act, 1970, Employer's Liability Act, 1938, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961, Employees Provident Funds and Miscellaneous Provisions Act, 1952, Employees State Insurance Act, 1948, Equal Remuneration Act, 1976, Payment of Gratuity Act, 1972, Apprentices Act, 1965, Mines Act, 1952, and** other laws or regulations framed by competent legislative authorities from time to time, as may be applicable. In accordance with the various Acts and regulations with all uptodate amendments, the Contractor shall ensure that he and his subcontractors (including petty and piece rate contractors) observe strictly inter- alia the following:

- a. wages paid are not less than those prescribed;
- b. wages and other dues are paid regularly and in time;
- c. liens / Licenses are obtained as required under any of the Acts or regulations;
- d. maintain prescribed records, submit necessary statements to authorities concerned and display required notices; and

- e. take prompt action on any instructions/directions from the authorities under various labour laws.

46.2 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 Engineer or the Employer, whether in connection with any work being executed by the Contractor or otherwise for the purposes of the Employer, such labour shall, for the purpose of this clause, be deemed to be persons employed by the Contractor,

46.3 Claim on account of violation of Labour laws

If any moneys shall, as a result of any instructions, directions or decisions from the Authorities or claim or application made under any of the labour laws or regulations, be directed to be paid by the Employer, such moneys shall be deemed to be moneys payable to the Employer by the Contractor and on failure of the Contractor to repay the Employer any moneys paid or to be paid by it as aforesaid within seven days after the same shall have been demanded, the Employer shall be entitled to recover the amount from any moneys due or accruing to the Contractor under this or any other Contract with the Employer. The Employer shall not be bound to contest any such claim or demand unless the Contractor makes a written request for it, the Contractor's reasons for contesting are considered reasonable by the Engineer and the Contractor deposits the full cost that the Employer may have to incur in contesting the case.

47.0 REPORT OF ACCIDENTS TO LABOUR

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

48.0 MATERIALS AND WORKMANSHIP

48.1 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 Engineer's instructions and shall be subjected from time to time to such tests as the Engineer 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 and 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 Engineer.
- ii. Sources of materials being supplied shall be intimated to the Engineer 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 Engineer.

48.2 Supply of sample

All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract; if not, then at the cost of the Employer.

48.3 Cost of test provided in Contract

The cost of making any test shall be borne by the Contractor if such test is clearly intended by or provided for in the Contract.

48.4 Cost of test not provided in Contract

If any test is ordered by the Engineer which is either:

- a. not so intended by or provided for in the Contract, or is not so particularised in the Contract, or
- b. though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place other than the Site or the place of manufacture or fabrication of the materials tested.

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

49.0 REMOVAL OF IMPROPER MATERIALS AND WORKS

- i. The Engineer shall have the authority to order in writing from time to time :
 - a. the removal from site within such time, as the Engineer 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 Engineer, in accordance with the Contract.
- ii. In case of default on the part of the Contractor in carrying out such order, the Employer 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 Employer from any money which may be due to the Contractor.

50.0 COVERING UP OF WORK

50.1 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 Engineer or the Engineer's Representative, and the Contractor shall afford full opportunity for the Engineer or the Engineer'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 Engineer's Representative, whenever any such work or foundation is ready for examination, and the Engineer's representative shall without unreasonable delay, attend for the purpose of examining and measuring such work or for the purpose of examining such foundations.

50.2 Cost of uncovering the work already covered up

The Contractor shall uncover any part or parts of the Works, or make openings in or through the same, as the Engineer may from time to time direct, and shall reinstate and make good such part or parts, to the satisfaction of the Engineer. If any such part or parts have been covered up, or put out of view after compliance with the requirement of **Sub-clause 50.1** 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 Employer, but if the Works are found to be defective, all such costs shall be borne by the Contractor.

51.0 SUSPENSION OF WORKS

51.1 Protection during suspension of work

The Contractor shall, on the order of the Engineer, suspend the Works or any part thereof, for such time, and in such manner, as the Engineer 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 Engineer.

51.2 Cost Incidental to suspension of work

If such suspension is

- a. provide 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 safety of adjoining public or other property or safety of 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.

51.3 **Extension of time on account of suspension**

If suspension is ordered by the Engineer for reasons other than those mentioned in **sub-clause 51.2**, 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 Engineer 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 specifically agreed to by the Engineer.

51.4 **Compensation for idle labour / plant due to extension of time**

If the suspension referred to in **Sub-clause 51.3** exceeds 30 days, at any one time, the Contractor shall be entitled to extension of time for completion of the Works, as the Engineer may consider reasonable having regard to the periods of such suspension. He shall also be entitled to compensation on account of any idle labour / employees and idle plant / machinery, which could not be diverted for use elsewhere during the period of suspension. Every effort shall, however, be made by the Contractor, to direct these resources for use elsewhere. The compensation so payable, shall be calculated at the actual daily rate of wages payable to the employees / labour rendered idle, and 70% of the rate for hire charges for plant and machinery as assessed by the Engineer, (excluding cost of fuel and lubricants) plus an additional 15% above all these items, to cover overhead costs. The Contractor shall furnish documentary proof to the satisfaction of the Engineer on the numbers of employees/labour rendered idle, the period for which rendered idle and the daily rates of wages payable to them. Similarly he will also furnish details of the number of different types of Plant/Machinery rendered idle, the period for which rendered idle and the hire charges for the same. The decision of the Engineer shall be final on the amount of compensation payable on account of any idle labour/employees and idle

plant/machinery. Recovery of installments towards all advances shall remain suspended during the period the suspension of work lasts, and no interest on advance shall be charged for the said period of suspension. However, if only a portion of the Works has been suspended, Engineer shall permit postponement of advance recovery and waiver of interest charges, only on the portion of advances as considered reasonable by him.

51.5 Contractor's option to ask for closure of Contract

If the suspension of the whole of the Works, or any part or group of the Works exceeds 90 days, the Contractor shall have the option to ask for closure of the Contract, or deletion from the Contract of that part of Works which has been suspended. In that event, the Contractor shall not be entitled to any compensation for damage or loss, alleged or actual and for loss of any profits anticipated, but the Contractor shall be eligible for compensation as provided for under **Sub-clause 58.1(i)**.

52.0 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 Engineer, within the time limit as specified in the "Instructions to Tenderers". Thereafter, the Contractor shall proceed with the Works with due expedition and without delay.

53.0 PROGRAMME OF WORK

The Contractor shall, on receipt of letter of acceptance of his tender, or as soon as thereafter as possible, but not later than 30 days from the date of receipt of letter of acceptance, submit to the Engineer 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 "Instruction to Tenderers". 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 Engineer or the Engineer's Representative, also provide in writing for their information, a general description of the arrangements and method 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 Engineer that the actual progress of work does not conform to the approved programme, referred to above, the Contractor shall produce at the request of the Engineer, a revised programme showing modifications to the approved programme, necessary to ensure completion of the work within the time for completion stipulated in the Contract. The submission to and approval by the Engineer or Engineer'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 Engineer shall

have full power and authority during progress of work, to issue such instructions as may be necessary for the proper and adequate execution and maintenance of the Work. The Contractor shall carry out and be bound by the same. The programme finally approved by the Engineer shall supersede the one submitted earlier with the Tender as per Sub-Clause 9.1.2 of "Instruction to Tenderers".

54.0 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 Employer will, on the Engineer'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 53.0** hereof, if any, and otherwise in accordance with such reasonable proposals of the Contractor as he shall, by written notice to the Engineer, make. The Employer 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 despatch in accordance with the said programme or proposals, as the case may be. If the Contractor suffers delay or incur extra cost as a result of failure on the part of the Employer to give possession of site in accordance with the terms of this Clause, the Engineer 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 Employer to the Contractor. Provided further that if the Employer is unable to give possession of the site for a small portion of the Works, the Employer, or the Engineer on 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 Engineer as to extra cost as referred to above in this clause shall be final.

55.0 WAYLEAVES

The Contractor shall bear all costs and charges, for special or temporary wayleaves required by him, in connection with access to the Site. The Contractor shall also provide at his own cost, any additional accommodation outside the Site required by him for the purposes of the Works.

56.0 ACCESS TO SITE OF WORK

56.1 Access for Engineer

The Engineer or the Engineer's representative, shall, at all times have access to the Works and to all workshops and places, where work is being performed 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.

56.2 Access Road

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

57.0 DELAY AND EXTENSION OF CONTRACT PERIOD

57.1 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 Engineer in terms of **Clause 62.0**) 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 Employer to rescind the Contract in terms of **Clause 60.0**
- 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 period(s) stipulated in the Contract, or the extended periods granted, he shall forthwith inform the Engineer and advise 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 thereof. 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 Engineer, 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 Engineer, 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 lead 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.

57.2 **Extension due to Modifications**

If any modifications ordered by the Engineer or site condition actually encountered are such, that in the opinion of the Engineer 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 Engineer to be reasonable.

57.3 **Delays not due to Employer / 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 referred to in **Clause 84.0**.
- b. Delay on the part of other Contractors or other parties engaged directly by the Employer on whose progress the performance of the Contractor necessarily depends.
- c. Any order of Court.
- d. Any other event or occurrence which, according to the Engineer is not due to the Contractor's failure or fault, and is beyond his control;

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

57.4 **Delay due to Employer or Engineer**

In the event of any failure or delay by the Employer or the Engineer, 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 Employer, 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 Engineer shall grant such extension or extensions of time to complete the work, as in his opinion is / are reasonable.

57.5 **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 Engineer feels that the remaining Works or the portions of Works can be completed by the Contractor in a reasonable and acceptable short time, then, the Engineer 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 Employer 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 of the Works, or the portion of the Works, as the case may be.

57.6 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.

57.7 Engineer's decision on compensation payable being final

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

58.0 FORE-CLOSURE OR TERMINATION OF CONTRACT

58.1 Payment to Contractor on fore-closure or termination of Contract

- i. The Employer shall be entitled to foreclose and terminate the Contract, at any time, should, in the Employer'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 Employer, of such termination and reasons therefor, 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 Employer, 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 Engineer by taking into account market rates or by adopting the procedure set forth in **sub-clause 64.2** . In addition, a sum not exceeding 2% (two percent) of the value of the work remaining incomplete on the date of closure (i.e. total stipulated value of Contract less the value of works actually done in terms of Contract and paid for and less the cost of materials at site taken over by the Employer and paid for as aforesaid), shall be payable to the Contractor, to allow for expenditure incurred on preliminary site work, not fully covered by payments effected and for transportation of Contractor's tools, plants and materials, scaffolding and shuttering, etc. as also labour and other personnel back to his depot, notwithstanding whether the sum actually spent by the Contractor on all these items is more or less than the amount paid under this

- Clause. If any materials supplied by the Employer to the Contractor at the cost of the Contractor are rendered surplus, the same shall be returned by the Contractor to the Employer'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 Employer to the Contractor free of cost or on lease terms shall be returned by the Contractor to Employer's depot at his own cost. The Employer 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 and plant, equipment and tools free of cost or on lease basis to the Contractor as stipulated in the Special Conditions of Contract. In case of such unreturned materials, recovery to be effected from the Contractor will be as indicated in **Sub-cause 25.6**. In case of such unreturned plant, equipment and tools, the amount to be recovered from the Contractor shall be decided by the Engineer and this shall be final and binding as indicated in **Clause 26.0**. The Contractor shall have to pay back unrecovered portion of advances made to him, together with accrued interest thereon. In case the Contractor defaults, the Employer shall be entitled to recover the amounts from any payment due to the Contractor, or from the Performance Guarantee 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 Employer.
- 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 whatsoever as per this clause will be due or payable to the Contractor on that account.

58.2 Default of Employer

- i. In the event of the Employer:
 - a) failing to pay to the Contractor the amount due under any certificate of the Engineer, within ninety days after the same shall have become due under the terms of the Contract, subject to any deduction that the Employer is entitled to make under the Contract, or
 - b) interfering with or obstructing or refusing any required approval to 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 him to continue to meet his contractual obligations;

the Contractor shall then be entitled to issue a notice to the Engineer, with a copy to the Employer, stating that he shall be terminating the Contract after 30 days of receipt of the notice by the Engineer, for reasons stated in the notice. If within

the said period of 30 days, the Engineer notifies the Contractor with a copy to the Employer, that the reasons stated in the notice of the Contractor are not valid or that the alleged reasons of default of the Employer have been remedied and no longer exist, then the Contractor shall not be entitled to terminate the Contract.

- ii. Subject to the Engineer 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 constructional plant and equipment brought by him thereon, with all reasonable despatch.
- iii. In the event of termination of Contract under this Clause, the Employer shall be under the same obligations to the Contractor in regard to payment, as if the Contract had been terminated under the provisions of **Sub-clause 58.1** hereof, but, in addition to the payments specified in **Sub-clause 58.1** hereof, the Employer shall pay to the Contractor, an amount for actual loss or damage to Contractor arising out of or in connection with or as a result of such termination. The Engineer's decision on the amount payable on this account shall be final and binding.

59.0 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 Employer 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 Employer shall be entitled to rescind the Contract as to its incomplete part. In that event, the Employer 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 Engineer'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 the surviving partners, shall also not be liable to pay any damages, alleged or actually suffered by the Employer, 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 contract firm as the case may be

60.0 DETERMINATION OF CONTRACT DUE TO CONTRACTOR'S DEFAULT

60.1 Conditions leading to determination of Contract

- (i) 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 execution levied on his goods or property on the Works, or
 - e) assigns or sublets the Contract 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 Engineer 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 Engineer 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, or
 - k) fails to afford the Engineer 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 servants to any officer or employee of the Engineer or the Employer, or to any person on their behalf, in relation to obtaining or execution of this or any other Contract with the Employer, or
 - m) suppresses or gives wrong information while submitting the tender,

then, and in any such case, the Engineer on behalf of the Employer, 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 Engineer, the Employer shall be entitled, after giving 48 hours notice in writing, under his hand or under the hand of the Engineer, to rescind the Contract, as a whole or in part or parts (as may be specified in such notice) .

- (ii) In such a case of rescission, the Employer may adopt either or both of the following courses:
 - a) Take possession of the site and any materials, constructional 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 Contractor; and the manner and method in which such work is to be completed, shall be entirely in the discretion of the Engineer whose decision shall be final.

60.2 Entitlement of Employer

In both cases described in **sub-clause 60.1(ii)** above, the Employer shall be entitled to:

- a. forfeit the whole or such portion of the Performance Guarantee amount, as he 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 Engineer, if the works had been carried out and completed by the Contractor under the terms of Contract. Such certificate shall be final and binding upon the Contractor. The amount to be recovered may be deducted by the Employer from any monies 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.

60.3 Non-exercise of power not to constitute waiver

Provided always that in case any of the powers conferred upon the Employer by **Sub-clause 60.1** and **Sub-clause 60.2** 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.

61.0 EMPLOYMENT OF RETIRED OFFICER / ENGINEER OF EMPLOYER / ENGINEER

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

- a. If the Contractor is a partnership firm and it admits as one of its partners or employees under it, or
- b. If the Contractor is a Company or a Corporation incorporated or otherwise and it

elects or nominates or allows to act as one of its Directors or employees under it in any capacity whatsoever, any retired Engineer of the Employer or the Engineer or any retired officer working in any capacity in Engineering Department of the Employer or the Engineer before expiry of 2 years from date of his retirement, except when he has obtained specific permission for such position / employment.

OR

If the Contractor has failed to give at the time of submitting the said tender:

- a. correct information as to the date of retirement of such retired engineer or retired officer from the said service, or as to whether any such retired engineer or retired officer was under the employment of the Contractor at the time of submitting the said tender, or
- b. correct information as to such engineers or officers obtaining permission to take employment under the Contractor, or
- c. being a partnership firm, correct information as to whether one of its partners was such a retired engineer or a retired officer, or
- d. being an incorporated company, correct information as to whether such a retired engineer or a retired officer was a Director of the said company.

OR

If such a retired engineer or retired officer was himself a Tenderer and at the time of submitting his tender,

- a. he has suppressed or has not disclosed the said fact or
- b. has made a wrong statement in relation to obtaining the permission to take the contract.

Then in any eventualities mentioned above, in addition to any or several of the courses, referred in **Sub-clauses 60.1 and 60.2** 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 Engineer 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 Engineer shall, as soon as may be practicable after removal of the Contractor fix and determine ex-parte or by or after reference to the parties after such investigation or enquiries as he may consider fit to make or institute and shall certify what amount (if any) had, at the time of rescission of the Contract, been reasonably earned by or would reasonably accrue to the Contractor in respect of the work then actually done by him under the Contract

- and what was the value of any unused materials, any constructional plant and any temporary works upon the site.
- c. The Engineer or the Engineer'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.
 - d. The Employer 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 Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to received only such sum or sums (if any), as the Engineer 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 Employer the amount of such excess and it should be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

62.0 MODIFICATIONS TO WORK

62.1 Authority to order modifications

The Engineer acting on behalf of the Employer, 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 62.2** 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.

62.2 Modification not to affect the Contract

The enlargement, extension, diminution, reduction, alterations or additions, referred to in **Sub-clause 62.1** 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 therefor shall be calculated in accordance with accepted schedule of rates and other extra items of works at the rates, determined under

Clauses 63.0 and 64.0 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 the Engineer, the rate for any item in the accepted Bill of Quantities is by reason of such variation rendered unreasonable or in applicable, the Engineer shall fix such other rate or extra payments (plus or minus), as in the circumstances, he shall consider reasonable and proper.

62.3 Decision of Engineer to be final

The decision of the Engineer under this clause shall be final.

63.0 VARIATION IN QUANTITY OF ITEMS COVERED BY THE BILL OF QUANTITIES

- i. 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.
- ii. 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 Engineer 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 such items.
 - 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", their shall be no increase / decrease of rates, whatever be the quantity finally executed.

- v. the Contractor shall be bound to notify the Engineer atleast 7 days before the necessity arises for the execution of quantities of any items or group of items, as the case may be, in excess of 25%. In case mutually agreed rate between the Engineer 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 Engineer shall be free to get such additional quantities beyond 25% executed through any other agency. However, if the Engineer or the Employer 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 under **Clause 85.0**.

64.0 EXTRA ITEMS NOT IN THE BILL OF QUANTITIES

64.1 Operation of extra items of work

If any items of work not provided for in the accepted Bill of Quantities is to be operated, the Contractor on receipt of instructions from the Engineer, shall be bound to carry out such works at the rates to be decided as per **Sub-clause 64.2**

64.2 Derivation of rates for extra items of work

The rate of such items shall be derived, wherever possible, from rate for similar items available in the 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 utilised 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 material released after completion of work and cost of material released as scrap.
- c. Cost of labour actually used at the site of work at rates under Payment of Minimum Wages Act for the area of work for each category of worker, further enhanced by a percentage of 30% of the aforesaid rates to account for labour not directly utilised at Site and other ancillary and incidental expenses on labour.
- d. 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.
- e. An amount of 20% of items (a), (b), (c) and (d) 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.

64.3 Notice by Contractor

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 Engineer, of at least 7 days before the need for their execution arises.

Such a notice shall not, however, be necessary if the Engineer has already instructed in writing to take up such an item of work. To decide the rate, the Engineer may ask the Contractor to furnish detailed analysis of the new rates on the lines mentioned in **Sub-clause 64.2** 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.

64.4 Provisional payment for extra item

In case the Contractor fails to so notify the Engineer 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 Engineer and the Contractor, the Contractor shall be bound to carry out the works at rates to be decided by the Engineer. In the absence of a finalised rate for a new item, the Engineer shall be free to certify a 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 finalised 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 Engineer to accept price variation clause in such cases where the rates are not based on actuals and the work is likely to continue for more than one year.

64.5 Payment for extra items of work on the basis of actual expenditure

The Engineer 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 Engineer, 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 Engineer, if the same is not already provided in the Day work schedule of agreement. The Contractor shall furnish to the Engineer or his representative, a daily list (with name, occupation and shift time) of all workmen deployed on the work, in duplicate for checking and approval. The Contractor shall submit to the Engineer 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 as the work is completed. The payment for the new item of work will be certified by the Engineer based on this submission, duly providing for Contractor's overheads, taxes and profit as indicated in **Sub-clause 64.2**.

64.6 Decision of Engineer to be final and binding

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

65.0 MODIFICATIONS TO CONTRACT TO BE IN WRITING

In the event of any provisions of the Contract requiring to be modified after the agreement has been signed, the modifications shall be made in writing and signed by the Employer or the Employer's authorised representative and the Contractor or his authorised 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 Employer unless and until the same are incorporated in a formal instrument and signed by the Employer or his authorised representative and the Contractor or his authorised representative.

66.0 PRICE VARIATION

66.1 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 fluctuation 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.

66.2 Price variation formula

- i. The payment as per the Contract shall be subject to adjustment in accordance with the Price Variation Formula, and other terms and conditions as provided in "Special Conditions of Contract".
- ii. To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the Price variation formula, the rates in the accepted Bill of Quantities shall be deemed to include amounts to cover the contingency of such rise or fall of costs.

67.0 PRICE VARIATION DURING EXTENDED PERIOD OF CONTRACT

Price adjustment applicable during the extended period of Contract will be regulated as per provisions in the Special Conditions of Contract depending on whether the extension has been granted due to Contractor's fault or otherwise.

68.0 CLAIMS

The Contractor shall send to the Engineer'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 and of all extra or additional work ordered by the Engineer which he has executed during the preceding three months. No final or interim claim for payment for any such work or expense will be considered which has not been included in such particulars. Provided always that the Engineer shall be entitled to authorise payment to be made for any such work or expense, notwithstanding the Contractor's failure to comply with this condition, if the Contractor has, at the earliest practicable opportunity, notified the Engineer in writing that he intends to make a claim for such work.

69.0 LIEN IN RESPECT OF CLAIMS IN OTHER CONTRACTS

Any money due to the Contractor either alone or jointly with others, including the Performance Guarantee amount returnable to him, may be withheld or retained by exercise of lien by the Employer, against any claim of the Employer or of any other branch, office, department or subsidiary of the Employer in respect of payment of a sum of money arising out of or under any Contract other than the present Contract made by the Contractor, alone or jointly with the Employer or any other branch, office, department or subsidiary of the Employer. It is an agreed term of Contract that the sums of money so withheld or retained under this clause by the Employer, shall be kept withheld or retained till the claims arising out of or under the other Contract, are either mutually settled or determined by the Arbitrator, or by the competent Court, as the case may be, and that the Contractor shall have no claim for interest or damages whatsoever on this account, or any other account, in respect of any sums of money withheld or retained, under this clause and duly notified to the Contractor.

70.0 PLANT AND MATERIALS SUPPLIED BY THE CONTRACTOR

70.1 Contractor's plants / material at site to be exclusive to the work

All Constructional 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 and the Contractor shall not 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 Engineer, which shall not be unreasonably withheld or delayed.

70.2 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.

70.3 Loss or damage to construction plants / materials

The Employer shall not at any time be liable for the loss or damage to any of the said Constructional Plant, Temporary Works or materials save as mentioned in **Clauses 29.0 and 30.0.**

70.4 Assistance to Contractor for re-export of plant

In respect of any Constructional Plant which the Contractor shall have imported for the purpose of the Works, the Employer may assist the Contractor, where required, in procuring any necessary Government consent for re-export of such Constructional Plant by the Contractor after the completion of the Works.

70.5 Assistance to Contractor for Customs clearance

The Employer may assist the Contractor, where required, in obtaining clearance through the Customs of 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.

70.6 Rejection of any material / workmanship found defective at site

The operation of **Clauses 48.0 and 70.0** hereof shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein no shall it prevent the rejection of any such materials or workmanship at any time by the Engineer if the same is found to be defective and / or not conforming to the Contract and Specifications.

71.0 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 Engineer shall be removed by him at his expense when they are no longer required and in such manner as the Engineer shall direct. In the event of failure on the part of the Contractor to remove the temporary works, the Engineer will cause them to be removed and cost as incurred for removal, supervision, and other incidental charges shall be recovered from the Contractor. No temporary huts or any other form of accommodation can be provided by the Contractor on the Employer's land for labour engaged by him for the execution of the works. The Contractor shall arrange for such accommodation by himself.

72.0 MEASUREMENTS OF WORK AND PAYMENTS

72.1 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.

72.2 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

Clauses 63.0 and 64.0 of these conditions, on the measurements taken by the Contractor or his Agent in the presence of the Engineer or Engineer's representative.

72.3 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 Engineer, shall be proper, having regard to the progress of the work. On an agreed date and time, the Contractor or his authorised agent shall take the on-account or final measurements in the presence of Engineer or Engineer's representative, in the Measurement Books to be supplied by the Engineer. The Contractor or his authorised agent shall sign the result of the measurements, which shall also be signed by the Engineer or the Engineer's representative as an acknowledgement and acceptance of the accuracy thereof.

72.4 Measurement of works as per records and drawings

For the purpose of measuring such permanent works, as are to be measured by records and drawings, the Contractor shall prepare records and drawings month by month of such work, and submit the same to the Engineer or Engineer's Representative for his agreement on such records and drawings.

The Engineer or the Engineer's Representative shall have the right to delete or correct any measurement if it is found at a later stage that the work is incomplete, defective and / or not conforming to the specifications.

73.0 ON ACCOUNT PAYMENT

73.1 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 Engineer, 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 bills, by the date stipulated by the Engineer, in the prescribed Performa, supported with measurements, jointly acknowledged and accepted in the measurement books. After preliminary scrutiny and certification by the Engineer, payment of 80% of the certified amount shall be made by the Employer within 7 days. 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 20% shall be paid within 28 days, from the date of the preliminary certification of the bill by the Engineer. Such payments made by the Employer, shall not constitute any acceptance of the measurements or Bill of Quantities by the Employer and the Employer shall have the right to alter, modify, reduce or diminish the quantities or classification entered in the Measurement Books or bills. The Employer shall have right to recover any amount paid in the 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 Engineer or Employer immediately refund the extra amount to the Employer within 7 days, failing which he shall have to pay interest @ 10% per annum till the said extra amount is paid back by him.

73.2 **Non-recording of measurements**

The Engineer reserves the right not to record the measurements, and / or not to entertain an on-account bill, when the work 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.

73.3 **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.

74.0 **FINAL MEASUREMENTS AND PAYMENTS**

- i. Soon after the issue of the Completion Certificate, as per **Clause 78.0** the Engineer shall have the final measurements taken, recorded and signed, as in the case of interim measurements referred to in **Clause 72.0**. A joint accountal of any plant, equipment and materials issued by the Employer to the Contractor, shall also be prepared and signed jointly. Based on the final measurements and joint material and plant, equipment accountal statements, the Contractor shall submit a draft Final bill with supporting documentation, in the Performa prescribed by the Engineer. Within four months of receipt of the draft Final bill and of all information reasonably required for its verification, the Engineer 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 Employer and the Contractor. The Contractor shall sign the Engineer'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 Engineer, together with a "No Claim" certificate or a list of any unsettled claims in accordance with **Clause 68.0**. On receipt of the Final Bills, the Engineer shall promptly prepare and issue to the Employer the Certificate of Final Payment, confirming the amount due to the Contractor under the Contract. The Employer, shall, on receipt of the Certificate, arrange to make payment, subject always to any deductions under these presents, due to the Contractor, within a period of 60 days failing and after which the Employer 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 Engineer or the Employer, 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 dispute as per Conditions of Contract.

- ii. In respect of both on-account Bills and final Bill, purely as a matter of convenience and to help expedite the work, the Engineer 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.

75.0 ADVANCES

75.1 Types of Advance

Subject to any conditions given herein, the Contractor may avail of the following advances for the execution of the works:

- a. Mobilisation advances.
- b. Advance against plant and machinery.
- c. Advance against materials at site.

75.2 Mobilisation Advance

For completing preliminaries such as construction of site offices, depots, hiring of accommodation, labour hutments, arranging electricity and water supply and movement of staff, labour, plant and machinery, an advance up to 4% of the original Contract Value as required by the Contractor shall be payable against a Bank Guarantee of a Scheduled Bank approved by the Employer for an equivalent amount of advance in the proforma acceptable to the Employer. Such advance shall be given only after the Contractor has submitted the Performance Guarantee and signed the Agreement.

75.3 Advance against Plant and Machinery

- i. If required by the Contractor, advance is also payable against plant, equipment and machinery, provided the same have reached the site, or in the case of new items meant specifically for the Works, firm purchase order has been placed and the invoices received. For the advance desired by the Contractor, the plant and machinery shall be valued by the Engineer as follows:
 - a. New items : 80% of purchase price
 - b. Used items in : 80% of the depreciated value as Working Order assessed by the Engineer

- c. Items valued at less than
Rs.25,000 per unit. ; Not to be considered.
- ii. The total amount of advance payable against plant, equipment and machinery on the above basis, shall not exceed 4% of original Contract Value. All such plant, equipment and machinery, shall be hypothecated to the Employer and shall be used only for executing the Works under this Contract. Hypothecation Deed will be executed in a Form acceptable to the Employer. The Contractor shall take all due care for the proper upkeep, maintenance and storage of all such plants, equipment and machinery and guard against damage or loss from any cause whatsoever. These shall not be removed from the site, unless all the advances taken against them have been fully repaid and prior permission of the Engineer has been obtained. The Engineer shall decide whether a particular plant, equipment or machinery is actually required to execute the work. No advance is payable against items identified as unnecessary.
- ii. The Plant & Machinery advance shall also be payable against Bank Guarantee (instead of hypothecation of Plant & Machinery) of a Scheduled Bank. The Bank Guarantee should be for an equivalent amount as the advance and in a proforma acceptable to the Employer. All other conditions mentioned in clause 75.3 (ii) above shall remain unchanged.

75.4 Advance Against Material at Site

Advance on account of main construction materials required for 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 to the Employer. The advance shall be limited to 80% of the actual value or assessed value of these materials by the Engineer and the total advance on account of construction materials at a time shall be limited to 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 Engineer. The value of materials to be considered, shall exclude all incidental charges such as packing, handling, freight, transportation, storage, etc. 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 Employer 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 work.

75.5 Written Request for Advances

Advances as admissible under the Contract, shall be payable only after the Contractor makes a written request for the same to the Employer. The amount payable shall be

the amount applied for by the Contractor, subject, however, to the conditions and limitations given herein.

75.6 Interest on Advances and Recovery of Advances

- i. All Advances shall carry a simple interest at the rate as specified in the Special Conditions of Contract. The recovery of Advances shall commence when 20% of the original contract value of the work has been paid and it will be completed by the time 80% of the original contract value has been paid. Recoveries of the Principal amount of Mobilisation Advance and Plant and Machinery Advances shall be made in equal proportions from all the on-account Invoices in this payment range. Out of the amount of recovery, interest due would be adjusted first and the balance set off against the principal amount of Advance. Any left over advances and interest thereon shall be recovered from the subsequent on account bills and Final bill and, if that is not sufficient, from the Performance Guarantee. The contractor shall always have the option to have the recoveries commenced and/or completed earlier, and/or to have recoveries affected in instalments of higher amount and also to repay part or whole of the advance by direct payment rather than through On-account bills.
- ii. As far as possible, the recoveries will be limited to 30% of an On-account bill. In cases where material Advance is taken even after approximately 40% of the contract amount has been paid, recoveries may be made beyond 30% of an On-account bill also.
- iii. The interest will be calculated from the first day of the month in which an Advance is paid to the contractor and it will be calculated upto the last day of the month in which the recovery is made. Interest for the month would be calculated on the principal outstanding on the first day of month.

75.7 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, before the date of completion stipulated in the Contract, and such delay is due to Contractor's failure / fault, then the interest to be charged from the Contractor on the remaining portion of the advance beyond the completion date specified in the Contract, shall be the Standard 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 failure. In no case shall the interest rate be less than 10%.

75.8 Advances to be Used only for This Work.

The advances 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. Under no circumstances, shall the advances be diverted for use for purposes other than the Contract. Any such diversion shall be construed as a breach of the Contract and the Contractor shall be

liable to return the advance at once and to pay interest at Standard Bank lending Rate plus 2%, till the advance and interest thereon are recovered from him.

75.9 Limit of Material Advance

No advance, except material advance, shall be given after 40% of the original contract amount has been paid.

76.0 ROUND OFF

In calculating the amount 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.

77.0 PAYMENT, TAX DEDUCTION AT SOURCE AND SALES TAX ON WORKS CONTRACTS

77.1 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.1000/-. This stipulation, however, shall not apply to Final Invoices.

77.2 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 invoices payable to the Contractor at rates as notified from time to time.

77.3 Sales Tax on Works Contracts

Sales Tax on works contract shall be borne by the Contractor and will be deemed to have been built by him in the Contract Price. It will not be reimbursed by the Employer.

78.0 COMPLETION CERTIFICATE

78.1 Time of Completion

Subject to any provision in the Contract as to completion of any section of the Works before completion of the whole, the whole of the Works shall be completed in accordance with **Clause 53.0** hereof, within the time limit stated in the "Instructions to Tenderers" or such extended time as may be allowed under **Clause 57.0** hereof.

78.2 Notice by Contractor regarding completion of work

As soon as the work is completed, the Contractor shall give notice of such completion, whether of the whole of the Works, or of any part of the work, for which a separate

date of completion is stipulated in the Contract, to the Engineer, and the Engineer, within 30 days of receipt of such notice, shall inspect the work and also arrange for carrying out of such tests as may be prescribed under the Contract. If the Engineer notices any incomplete item of work or any defect which is to be rectified by the Contractor, or if any part of or whole of the work fails to pass the specified tests, the Engineer shall furnish to the Contractor, the list of all such incomplete items of work, deficiencies, defects failure to pass tests, etc., and may refuse to issue a Certificate of Completion to the Contractor. Provided, however, that such certificate shall not be refused only on grounds of any minor defect in the work, required to be rectified by the Contractor in respect of Contracts wherein a specific defect liability period (maintenance period) is provided for. If in the opinion of the Engineer, the work shall have been satisfactorily completed and shall have satisfactorily passed final test or tests that may be prescribed, the Engineer shall issue a Certificate of Completion, showing the date of completion in respect of Work and the defect liability period if any (i.e. the maintenance period), shall commence from the date of such certificate. Provided that the Engineer may issue such a certificate with respect to any part of the Works, before the completion of the whole of the Works or with respect to any specific substantial part of the work which has been so completed and / or used by the Employer. When any such certificate is given in respect of a part of the work, such part shall be considered as completed and the defect liability period (Maintenance period) of such part, shall commence from the date of such certificate.

78.3 Completion Certificate not to Absolve

The Certificate of Completion of works referred to in **Sub-clause 78.2** above, shall not absolve the Contractor from his liability to make good defects, imperfections and shrinkages or faults, which may appear during the defect liability period (period of maintenance) specified in the Contract, arising in the opinion of the Engineer from materials or workmanship being not in accordance with Drawings or Specifications or instructions of the Engineer. These shall be amended and made good by the Contractor at his own cost. In case of default on the part of the Contractor, to so make good the defects or deficiencies, the Engineer may employ labour, plant and machinery and materials or appoint another agency or Contractor, to amend and make good such defects, imperfections, shrinkages and faults, and all expenses consequent thereto and incidental thereto, shall be borne by the Contractor and shall be recoverable from any moneys due to the Contractor under the Contract including the Performance Guarantee amount or from any moneys payable to the Contractor by the Employer, under any other Contract, or as a debt due.

79.0 POST PAYMENT AUDIT

It is an agreed term of the Contract, that the Employer reserves to himself the right to carry out a post payment audit and / or technical examination of the Works, and the Final bill including all supporting vouchers, abstracts, etc., and to make a claim on the

Contractor for the refund of any excess amount paid to him, if as a result of such examination, any over-payment to him is discovered to have been made in respect of any work done or alleged to have been done by the Contractor, under the contract. If any under-payment is discovered, the same shall be paid by the Employer to the Contractor. Such payments or recoveries, however, shall not carry any interest.

80.0 MAINTENANCE CERTIFICATE

80.1 Definition of 'Period of Maintenance'

In the Contract, the expression "Maintenance Period" or "Period of Maintenance", shall mean the period of maintenance named in the Special Conditions of Contract, calculated from the date of completion of the Works, as certified by the Engineer in accordance with Clause 78.0 hereof, or, in the event of more than one certificate having been issued by the Engineer under the said Clause, from the respective dates so certified and in relation to the Period of Maintenance the expression "the Works" shall be construed accordingly.

80.2 Maintenance Certificate

The Contract shall not be considered as completed, until a Maintenance Certificate shall have been signed by the Engineer stating that the Works have been completed and maintained to his satisfaction. Maintenance Certificate shall be issued by the Engineer, upon expiration of Maintenance Period (Period of Maintenance), or as soon thereafter as any works ordered during such period pursuant to Clause 78.0 of these conditions, shall have been completed to the satisfaction of the Engineer and full effect shall be given to this clause, notwithstanding the taking possession of or using the Works or any part thereof by the Employer.

80.3 Final Approval by Maintenance Certificate

No certificate other than 'Maintenance Certificate' referred to in **Sub-clause 80.2** of these conditions, shall be deemed to constitute final approval of any work or 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 Engineer, nor shall any other certificate concluded or prejudice any of the powers of the Engineer or the Employer.

80.4 Cessation of Employer's Liability

The Employer shall not be liable to the Contractor for any matter, arising out of or in connection with the Contractor, or the execution of the Works, unless the Contractor shall have made a claim in writing in respect thereof within 60 days from the date of completion of the Works.

80.5 Unfulfilled obligations

Notwithstanding the issue of Maintenance Certificate, the Contractor and the Employer, 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 Contractor shall be deemed to remain in force between the parties hereto.

81.0 PRODUCTION OF VOUCHERS

- i. The Contractor shall, whenever required by the Engineer, produce or cause to be produced for examination by the Engineer, 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 the materials supplied by the Contractor are in accordance with the specifications laid down in the Contract. The Engineer's decision on the question of relevancy of any documents, information or returns shall be final and binding on the parties.
- ii. If any part or item of the work is allowed to be carried out by a sub-contractor, assignee or any subsidiary or allied firm, the Engineer 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.

82.0 WITHHOLDING AND LIEN FOR SUMS CLAIMED

- i. The Employer 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 Guarantee 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 Employer by the Contractor, either alone or joint with others, either under this or under any other Contract or transaction of any nature whatsoever between the Employer and the Contractor.
- ii. And further, unless the Contractor pays and clears immediately on demand any claim of the Employer, the Employer 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

Employer 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.

83.0 SIGNATURE ON RECEIPTS FOR PAYMENTS

Every receipt of payment which may become payable, or for any Performance Guarantee 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 Employer 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 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 Employer 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 interests.

84.0 FORCE MAJURE

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 reasons 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 as given by either party to the other within 21 days of the occurrence thereof.

- a. Neither party shall be reason of such event be entitled to terminate the Contact or have claim for damages against the other in respect of such non-performance or delay in performance.

- b. The obligation 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 Engineer shall be final and binding.
- e. Works that have already been measured shall be paid for by the Employer even if the same is subsequently destroyed or damaged as a result of the event. The cost of rebuilding or replacing any work that has been measured, shall be borne by the Employer.
- 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 Employer 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 Engineer.
- g. If neither party issues notice regarding the event within 21 days of its occurrence, the said event shall be deemed not have occurred and the Contract will continue to have effect as such.

85.0 SETTLEMENT OF DISPUTES AND ARBITRATION

85.1 Dispute to be referred to and settled by Engineer at the first place

Should any dispute or difference of any kind whatsoever arise between the Employer and the Contractor, touching, 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 before or after termination, abandonment or breach of Contract, it should, in the first place, subject to the provision under **Sub-clause 80.4** be referred to and settled by the Engineer, 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 Employer and the Contractor. The Engineer 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 authorised 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 Employer and the Contractor and shall forthwith be given effect to by the Employer and by the Contractor, who shall proceed

with the execution of Works with all due diligence irrespective of whether any of the parties goes in or desires to go in for arbitration. If the Engineer has given written notice of his decision to the Employer and the Contractor and no intimation of reference of any claim to arbitration has been sent to him by either the Employer or the Contractor within a period of sixty days from receipt of such notice, the said decision of the Engineer shall remain final and binding upon the Employer and the Contractor and the same shall be deemed to have been accepted by them. The Employer or the Contractor shall not seek any arbitration thereafter.

85.2 Referring of dispute for arbitration

If the Engineer 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 Employer or the Contractor be dissatisfied with any such decision of the Engineer, only then shall the matter in dispute be referred to arbitration as herein provided.

85.3 Dispute due for arbitration

Disputes or differences shall be due for arbitration only if all the conditions in **Sub-clauses 85.1 and 85.2** are fulfilled.

85.4 Settlement of disputes

Except where otherwise provided in the Contract, all disputes or differences, whatsoever arising between the parties, arising out of touching or relating to construction, measuring, operation or effect of the Contract or the breach thereof, shall be settled by arbitration as detailed in Sub Clause 85.5.

85.5 Nomination of Arbitrators/Sole Arbitrator

Matters to be arbitrated upon shall be referred to a sole Arbitrator where the total value of claims does not exceed Rs.1.50 millions. Beyond the claim limit of Rs.1.50 million, there shall be three arbitrators. For this purpose the Employer will make out a panel of Engineers with the 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 of Public sector. In case of a single arbitrator, the Panel will be of three Engineers, out of which the Contractor will choose one. In case three arbitrators are to be appointed, the Employer will make out a panel of five. The Contractor and the Employer will choose one arbitrator each and the two so chosen will choose the third arbitrator. Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator/s on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The arbitration proceedings shall be held in Delhi only. The language of proceedings, that of documents and communication shall be English and the awards shall be made in writing. The arbitrators shall always give item-wise and reasoned awards in all cases where the

value of total claims exceeds Rs.1.00 million. Where three arbitrators have been appointed, the award by the majority will prevail.

85.6 No suspension of work

The reference to arbitration shall proceed notwithstanding that Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reasons of arbitration being conducted during the progress of Works. Neither party shall be entitled to suspend the work to which the dispute relates on account of arbitration and payments to the Contractor shall continue to be made in terms of the Contract.

85.7 Award to be binding on all parties

The award of the sole arbitrator or a bench of three arbitrators shall be binding on all parties.

85.8 Rules governing the arbitration proceedings

The arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act, 1996, as amended from time to time including provisions in force at the time the reference is made.

85.9 Limitation of time

No dispute or difference shall be referred to Arbitration after expiry of 60 days from the date of decision by the Engineer, if notified, or from the date when the Engineer ought to have given his decision in terms of provisions under **Sub-clause 85.1** in case of failure on the part of the Engineer to give notice of decision.

a. Payment of Interest

Where the arbitral award is for payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

b. Cost of Arbitration

The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include the fees of the arbitrator(s) as per the rates fixed by the Delhi Metro Rail Corporation Limited from time to time.

86.0 NOTICES

86.1 Notice to Contractor

All certificates, notices, written orders or letters, to be given by the Employer or the Engineer to the Contractor, shall be deemed to have been served, if the same are delivered to the Contractor or his authorised agent, or delivered or left at or posted to the given address of the Contractor or Contractor's agent or Contractor's Registered

Office or principal place of business. Such documents shall be deemed to have been received on the day they are left or delivered, or in the case of postal transmission, on the day they would ordinarily have reached but not exceeding 7 days from the date of posting inclusive of day of posting, in any case.

The Contractor shall, on award of the Contract, furnish to the Engineer, the name, designation, address and telephone, telex and telefax numbers of his agent referred to in **Clause 11.0**.

86.2 Notice to Employer and Engineer

All notices to be given to the Employer or to the Engineer, under the terms of the Contract, shall be served by sending by post or telex or telefax, or by delivering the same, to the respective addressees nominated for this purpose.

86.3 Change of Address

Either party may change the nominated address by prior written notice to the other party, and the Engineer may do so by prior written notice to both the parties, viz. The Employer and the Contractor.

86.4 Change in Constitution of Firm

In case the Contractor is a partnership firm, any change in the constitution of the firm shall forthwith be notified by the Contractor to the Engineer as also to the Employer.

87.0 PAYMENT IN FOREIGN CURRENCIES

Unless specifically provided for in the Contract, all payments shall be in Indian rupees only. Unless specified otherwise elsewhere, payment, if any, in foreign currencies, shall be made only to the extent and in the manner laid down in the Agreement. In case of items of Works requiring payments in foreign exchange, the Contractor shall furnish the details in the Bill of Quantities. For such items, payments will be arranged in Foreign Currency.