

STANDARD TERMS AND CONDITIONS (STACS)FOR CIVIL WORKS

Definitions and Interpretation.

501. i) **"Definitions"** In the contract (as herein after defined) the following words and expressions shall have the meaning hereby assigned to them except where the context otherwise requires:-
- (a) **"Employer/.Purchaser"** means Mazagon Dock Limited (MDL) of Dockyard road, Mazagon, Mumbai-400 010, Nhava Yard, Nhava, Dighi Yard, Dighi, Tal. Shriwardhan and include the employer's representatives or successors, but not without the consent of the Contractor) any assignee of the Employer.
 - (b) **"Bidder"** means the person or person's firm or company whose tender-bid has been received by the employer and includes the bidder's personal representatives, successors and permitted assigns.
 - (c) **"Contractor / Supplier"** means the person or persons firm or company whose tender-bid has been accepted by the employer and includes the contractor's personal representatives, successors and permitted assigns.
 - (d) **"Engineer"** means HOD (Capital Works) or any other person appointed from time to time by the Employer notified in writing to the Contractor to act as engineer for the purpose of the contract.
 - (e) **"Works"** means the works to be executed in accordance with the contract and includes materials, apparatus, equipment, plant, fittings, and things of all kinds (other than construction plant) to be provided and work to be done by the contractor under this contract and all temporary works of every kind required for the execution completion or maintenance of the works. .
 - (f) "Supplier Furnished Materials (SFM) / Items": **"Items"** means the materials, apparatus, equipment, fittings and other things for incorporation in the works.
 - (g) **"Contract / Order"** means the contract effected by the contractor's tender - bid and the Employer's acceptance thereof comprising (in addition to the tender and the acceptance) the priced bill of quantities and schedules, schedules of particulars (if any) Specification and drawings, these general conditions of contract and any special or particular conditions of contained or attached to any of the foregoing documents, all of which shall be deemed to embody any alterations agreed in writing between the parties before the formal acceptance of the Tender.
 - (h) **"Contract Price"** means the sum named in the tender subject to such additions thereto or deductions there from as may be made under the provisions hereinafter contained.
 - (i) **"Constructional Plant"** means all appliances or things of whatsoever nature required for the execution, completion or maintenance of the works or Temporary Works (as hereinafter defined) but does not include materials or other things intended to form or forming part of the permanent work.
 - (i) "Constructional Plant" shall be deemed to exclude vehicles engaged in transporting any plant equipment or materials to or from the site.

- ii) "Essential Hired Plant" shall mean all Constructional Plant Temporary Works and materials for temporary works the withdrawal of which in the event of a forfeiture under clause 87 hereof might (having regard to the methods of construction employed prior to the forfeiture) endanger the safety or stability of or result in serious disturbance to the execution of any part of the works and which are held by the contractor under any agreement for hire thereof.
- (iii) The expression "Hired Plant" shall mean any Constructional Plant temporary works and materials for temporary works (other than essential hired plant) held by the contractor under agreement for hire thereof.
- (iv) "Agreement for Hire" shall be deemed not to include an agreement for hire purchase.
- (vi) "Hire Purchase Plant" shall mean any constructional plant temporary works and materials for temporary works held by the contractor under an agreement for hire purchase thereof.
- (j) **"Specification"** means the specification annexed to or issued with these conditions and includes Indian or British or other Standard Specifications where required by the Specification.
- (k) **"Drawings"** means the drawings referred to in the Specification and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished or approved in writing by the Engineer.
- (l) **"Site"** means the lands and other places on under in or through which the Works to be executed or carried out and any other lands or places provided by the Employer for the purposes of the Contract.
- (m) **"Approved"** means approved in writing and **"Approval"** means approval in writing.
- (n) **"Month"** means month according to the Gregorian calendar.
- ii) Words importing the singular only also include the plural and vice versa where the context requires. **Singular & Plural**
- iii) The marginal headings or notes in these terms & conditions shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract. **Marginal headings or notes**
- iv). This contract shall in all respects be interpreted and operated as an Indian Contract and in conformity with Indian Law. **Construction of Contract**
- 502** The Employer reserves the right to accept and or reject any or all tenders and or to withdraw the tender in toto and or award the contract / order in full or part to more than one party without assigning any reason whatsoever and without thereby incurring any liability to the affected Bidder or Bidders or any obligations to inform the affected Bidder or Bidders of the grounds for MDL action. **Employer's Right to accept any bid, Part of bid and to reject any or all bids.**

- 503** With the acceptance of the successful bidder's offer by the Employer, which is as the **Acceptance of order/contract**
- (i) Terms & Conditions of the tender, by means of Order/Contract, the tender is concluded. The Supplier / bidder/ Contractor shall, on receipt of the order / Contract, communicate their unconditional acceptance to the Employer in the prescribed format immediately within 10 days.
- (ii) If nothing to the contrary is heard by Employer within 10 days from the date of placement of order, it will be understood that the order has been accepted by the Contractor/Supplier / bidder.
- (iii) Any delay in acknowledging the receipt & acceptance of the Order/Contract from the specified time limit or any qualification or modification of the order/Contract in its acknowledgement acceptance by the Supplier / bidder / Contractor shall be termed as breach and would be liable for forfeiture of EMD, Security deposits etc.
- 504** For works costing less than 10 Lakhs: **Security Deposit**
- i) Security deposit for the work done shall be recovered as "Retention Money" which shall be deducted @ 10% of the value of work done (excluding secured advance, escalation etc.) from each R.A. Bill subject to a maximum of 5% of contract value. The amount so retained will be refunded without Interest to the contractor stated in clause 2 of GT&C.
- ii) For works costing between 10 to 50 Lakhs
- In addition to 5% retention money, the contractor before commencement of work, shall submit "PERFORMANCE BANK GUARANTEE" in the form of a bank guarantee for 5% of the contract amount, valid till 30 days after end of the defect liability period.
- iii) For works exceeding 50 Lakhs,
- For works exceeding 50 Lakhs, the contractor before commencement of work, shall submit "PERFORMANCE BANK GUARANTEE" in the form of a bank guarantee for 10% of the contract amount, valid till 30 days after end of the defect liability period
- 505.** The Site is a Protected Place under the Defence Of India Regulations and no person shall be employed or allowed on the Site without the prior authority in writing of the Employer. All persons employed or allowed on the Site shall at all times conform to all regulations laid down by the Engineer for personnel employed upon the Site. **Site a Protected Place.**
- 506.** The contractor shall conform in all respects to the provisions of any Central and/or State Government Acts and the Regulations and/or Bye-laws of any local or other statutory authority which may be applicable to the works or to any temporary works or services used and with such rules of public bodies and companies as aforesaid and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Act, Regulation or Bye-law. **Contractor to Conform to Statutes Etc.**

- 507.** Contractor / Supplier / bidder shall have to produce and submit to the Chief Security Executive of Employer, verification through Mumbai Police of Character and Antecedents of their employees / workers for while working in Purchaser's/Employer's Yards. Entry passes will not be issued in the absence of Police Verification Report and employees without Police Verification shall not be employed by them in Employer's /Employer's Yard and any lapse on the part of Contractor / Supplier / bidder shall will be viewed seriously as per applicable laws of the land, Employment of any Foreign National during the contract period would be permitted with prior permission of Purchaser/Employer.
- i)** The Contractor shall comply fully with all Central and State Government Laws and ordinance dealing with the employment of persons including (but not by way of limitation), Inter state migrant workmen act(Regulation of employment and condition of service) act 1979, the employment of children act 1938, the Workmen's Compensation Act 1923,the Factories Act 1948, The Minimum Wages Act 1948, the Contract Labour (Regulation &Abolition) Act, 1970, the Apprentices Act 1970, the Apprentices Act 1961 and any statutory amendment or re-enactment thereof for the time being in force.
- ii)** 1. Contractor / Supplier / bidder shall possess licence under Section 12 and 13 of the Contract Labour (Regulation & Abolition) Act, 1970 and rules made there under and the same should be kept valid atleast until the expiry of contract with Employer, if he is intending to employ 20 and more employees. The registration and Licence under the Contract Labour (Regulation and Abolition) Act 1970 shall be renewed in time every year and if work continues for more than a year, a copy of the Licence is produced as and when demanded by the concerned authorities of Employer.
- 2.The contractor / Supplier / bidder shall carryout his obligations and duties under the Contract Labour (Regulation & Abolition) Act, 1970 and the rules framed there under, but not limited to :-
- a. Pay in time, on or before 7th of every succeeding month not less than the prescribed minimum wages (as stipulated under item V (a) or V (b) of the Form VI prescribed Under Rule (25) 1 of the Act as applicable.
- b. Disburse Wages in respect of workers working on Employer's jobs inside the premises under the supervision of nominated representative of the Employer.
- c Production of Wage / Attendance Register along with E. S. I. & P. F. Statements to Corporate Personnel Department (from 8th to 15th of every succeeding month) for verification of the same as required under the Contract Labour (Regulation and Abolition) Act 1970.
- d .Forwarding to the respective Divisional Personnel Department a list of deductions and contributions duly effected from the salary / wages on Contract Labour engaged on Employer's jobs in respect of Employees'
- Police Verification of Employees**
- Compliance with Laws.**
- Contract Labour (Regulation & Abolition) Act 1970**

Provident Fund, Employees' Family Pension Fund and Employees' State Insurance Scheme, with reasons for non-deduction, if any, duly clarified by passing suitable remarks against the name of concerned employee on the list.

e. Comply with all the statutory regulations and requirements concerned with employment of contract labour on Employer's jobs and shall follow all orders / decisions of the Government in this respect. Contractor / Supplier / bidder shall furnish all the statutory half yearly returns / six monthly statements concerning with such contract labour to the Licensing Executive in Form No. XXIV as per Rule 82 (1) of Contract Labour (Regulation & Abolition) Act 1970 and also forward a copy of these with necessary statistical information of manpower employed to the Corporate Personnel Department

In the event any employee/s of Bidder / Contractor is advised by the concerned Department to deploy their employees for job during weekly-off, Sundays and holidays, the Contractor / Supplier / bidder must inform the name/s of the employee/s in the prescribed format to CISF / Maintenance Departments and to the concerned Divisional Personnel by mentioning specifically 'Compensatory- Off', before 3 days from the date actual payment.

- iv) The -contractor / Supplier / bidder shall pay to his employees not less than the minimum wages and allowances applicable to the Engineering Industry as notified from time to time by the State Government under the Minimum Wages Act. Bidder / Contractor shall be responsible for timely payment of wages of all his employees engaged in the Employer's Yard, not less than the prescribed minimum wages in each case and without any deductions of any kind, except as specified by Government or permissible under the Payment of Wages Act.

**Minimum
Wages Act**

The Bidder / Contractor must settle all the pending dues of the employees i.e. arrears of wages, proportionate leave wages, proportionate bonus payment, etc.

Before winding up the site, the Bidder / Contractor shall pay all terminal dues to his employees such as Notice pay, Gratuity, Retrenchment compensation, etc.

- v) The contractor / Supplier / bidder shall pay to his eligible employees a Statutory Bonus as per 'Payment of Bonus Act' at the rate prescribed by the Statutory Authorities from time to time.

Bonus Act

- vi) a) The contractor / Supplier / bidder shall observe all applicable Rules and Regulations stipulated under Factories Act applicable to contract labour.

**Compliance
of Factories
Act and
Safety
Regulations**

b). The contractor / Supplier / bidder shall maintain a separate register prescribed under the Act and pay Privilege Leave wages to all eligible employees.

c). On completion of execution of the contract and before winding up, the -contractor / Supplier / bidder shall pay proportionate Privilege Leave wages to all eligible employees.

d.) The contractor / Supplier / bidder shall ensure observance of all applicable Safety Rules and Regulations i.e. issue of Boiler Suits (other than Blue and White colour), Safety Shoes, Gum Boots / Rainy Shoes, Rain Coat, Hand gloves, Helmets, Visors, Safety Belts, etc. wherever applicable.

vii) a) The contractor / Supplier / bidder, where applicable, shall cover his employees deployed in the Employer's Yard –

**Employees
' Provident
Funds and
Miscellane
ous
Provisions
Act, 1952**

i. under the Employees' Provident Funds and Miscellaneous Act, 1952,

ii. under the Family Pension Scheme, an

iii under the Employees' Deposit Linked Insurance Scheme and pay the contributions both in respect of his employees and his own. He shall submit all the necessary returns and other particulars periodically as prescribed under the said Act. contractor / Supplier / bidder shall cover from the first day working all his contract labour on MDL jobs by filling requisite returns to concerned Statutory authorities and obtaining Code Numbers / Account Numbers. Sub-contractor/ Supplier / bidder shall remit employees' and employers' contributions directly to the concerned authorities along with Inspection and Administrative Charges as per relevant provisions of the concerned Acts and Schemes made there under within 15 days from the close of every month. The Bidder / Contractor must submit copies of P. F. dues payment challans, copy of Form No. 12 (A), copy of form No. 6 (A) (Annually) & copies of Muster Roll of their workmen every month to Corporate Personnel Department before renewal of passes for entry into the yard. The contractor / Supplier / bidder must also attend to P. F. Inspections by concerned authorities and submit copy of the Inspection Report.

b). The Contractor / Bidder, shall through his own P. F. code number shall fill in P. F. / Pension settlement forms of all the employees engaged in Purchaser's Yard, well in advance of last working day and forward the said settlement forms to the respective P. F. Commissioner's office for settlement. Contractors who are yet to obtain PF code shall apply for Code no s to PF Commissioners Office & furnish copies of the same to Corporate Personnel Department. Purchaser shall recover PF dues from the contractors running bills till such time the PF Code no is obtained.

c). The Bidder / Contractor may contact Corporate Personnel Department / consultant appointed for the purpose to seek any / all clarification / necessary advice for completion of procedural work such as filling labour challans, E. S. I., P. F. -declaration forms, covering their labour under Group Insurance Policy, etc. An Administrative charge @ Rs. 10/- per employee per month for such consultancy will be recovered from all the contractors from the bills of the respective contracts.

vii) a) The Bidder / Contractor should also cover all the eligible contract labourers working on MDL jobs, under the Employees' State Insurance Act and Scheme by furnishing necessary returns to appropriate authority and pay both employees' and employers' contributions in respect of these employees to the concerned authorities within 20 days from the close of every month. The contractor shall produce copy of R. D. F. duly acknowledged by ESI local office for confirmation that the workmen are covered under ESI Act and Scheme.

**Employees'
State
Insurance
Act**

b) Contractor / Bidder should produce proof of such remittances to Corporate Personnel Department, of MDL along with full details of contributions etc. within 25 days from the close of month. He shall also give an undertaking that he will not engage any one on

our work who is not duly covered under the said Act & Scheme. The contract employees who are out of coverage of ESI Act & Scheme should be covered under Group Insurance Policy linked with workman compensation Act. Those Bidders / contractors do not have their ESI Code No., they should submit documentary evidence of application for obtaining ESI Code no to Corporate Personnel Department.

- viii)** The Bidder / Contractor must observe all safety precautions in connection with the work to be performed by him, his agents or labourers. In the event of any accident happening in our yard resulting in loss of lives or otherwise damaging any part of the property, the contractor shall be required to make good the loss to the Company and shall be responsible for all consequences that follow from the loss and / or injuries to the persons involved in such accidents. The standard of safety to be observed in the Company shall be decided by the Executive-in-Charge Safety, or any Executive appointed for the purpose before the commencement of work in the yard. It will be essential for contractor to ascertain the standard precautions which contractor is required to observe in discharging his work as per the standards prevalent in MDL. The decision of MDL in matters concerning Safety shall be final and binding on the contractor.

Safety

The Bidder / Contractor subcontractor shall be required to provide his workmen with Boiler Suits of any suitable colour other than blue or white, with the Name of the Contractor in prominent letters on the boiler suits along with personal protection gears like safety shoes, hand gloves etc. workmen of the Contractor must wear throughout their working while in the premises of MDL. Contractor's workmen working without safety gears are likely to be disallowed for work.

- ix)** Notwithstanding the provisions of above paragraphs the contractor shall at all times comply fully with the provisions of any law or ordinance currently in force relating to all labour employed by him and the Employer shall be entitled to deduct from any monies due or which may become due to the contractor, all sums (if any) payable by the employer under such ordinance in respect of any default of the contractor.
- x)** The Contractor shall at all times during the continuance of the contract display and maintain in clean and legible condition at conspicuous places on the site notices stating in English and the local Indian language spoken by the majority of the workers the rates of wages which have been fixed as fair wages are payable. The contractor shall send to the engineer copies of all such notices.
- xi)** The contractor shall maintain all notices registers and records of payment of wages overtime and other matters as required by the Conciliation Officer (Central) Ministry Of Labour of the Government of India or any other authorized person appointed by the Central or Provincial or State Government.

508 INDEMNITIES AND INSURANCE.

Patent rights

The contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights design trade mark or name or other protected rights in respect of any constructional plant or machine work or temporary works or any of them and form any against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto. Except where other wise specified, the contractor shall pay all tonnage and other royalties rent and other payments or compensation (if any)

and royalties

for getting stone sand gravel clay or other materials required for the works or temporary works or any of them.

- 509.** All property (such as materials, drawings, documents etc) issued by the Employer or any other individual or firm on behalf of the Employer in connection with the contract shall remain confidential, being the property of the Employer and the Bidder / Contractor shall undertake to return all such property so issued and will be responsible for any or all loss thereof and damage thereto resulting from whatever causes and shall reimburse the Employer the full amount of loss and damage. **Employer's Property**
- 510.** If the contractor shall become bankrupt or have a receiving order made against him or shall present him petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the contract under a Committee Of Inspection of his creditors or (being a Corporation) shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or if the contractor shall assign the contract without the consent in writing of the employer first obtained or shall have an execution levied on his goods or if the engineer shall certify in writing to the employer that in his opinion the contractor. **Forfeiture- Remedies available to employer**
- a) Has abandoned the contract, or
 - b) without reasonable excuse has failed to commence the works within 7 days from the written order to commence work or handing over of site or has suspended the progress of the works for 28 days after receiving from the engineer written notice to proceed, or
 - c) has failed to remove materials from the site or to pull down and replace work for 28 days after receiving from the engineer written notice that the said materials or work had been condemned and rejected by the engineer under these conditions, or
 - d) is not executing the works in accordance with the contract or is persistently or flagrantly neglecting to carry out his obligations under the contract, or
 - e) has to the detriment of good workmanship or in defiance of the engineer's instructions to the contrary sub-let any part then the employer may after giving 14 days notice in writing to the contractor enter upon the site and the works and expel the contractor there from without thereby avoiding the contract or releasing the contractor from any of his obligations or liabilities under the contract or affecting the rights and powers conferred on the employer or the engineer by the contract and may himself complete the works or employ any other contractor to complete the works and the employer or such other contractor may use for such completion as much of the constructional plant temporary works and materials on the site which have been deemed to become the property of the employer under the provisions of the contract as he or they may think proper and the employer may at any time sell any of the said constructional plant temporary works and unused materials and apply the proceeds of sale in or towards the satisfaction of

any sums due or which may become due to him from the contractor under the contract.

- ii) The Engineer shall as soon as may be practicable after any such entry and expulsion by the employer fix and determine ex-parte or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute and shall certify what amount (if any) had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the contractor in respect of work then actually done by him under the contract and what was the value of any unused or partially used materials and constructional plant and any temporary works which have been deemed to become the property of the employer under the provisions of the contract upon the site.

511. Force majeure

a) If at any time during the execution of the supply order, the performance in whole or in part by either Employer or and by the Bidder / Contractor is / are prevented or delayed by any reason of force majeure situations such as acts of civil war, civil commotion, sabotage, hostilities, war, fires, explosions, epidemics, natural calamities like floods, earthquakes, volcanoes, storms, acts of God & laws of respective Governments or any other causes beyond the control of either parties, hereinafter referred to as "events", provided notice of the occurrence of such event/s is / are communicated by either party, to the other party within 21 days from the date of occurrence thereof, neither party shall by reason such events be entitled to terminate the contract nor shall either party have any claim for damages against the other in respect of such non performance and or delay in performance of the contract / order. Executions on either side shall be resumed as soon as practicable after such event has come to an end or ceased to exist and the decision of Employer as to whether activities can resume or not, shall be conclusive and final. Occurrence of the events to be certified by Chamber of Commerce / Indian High Commission or Embassies / Government in that Country.

b) The performance in whole or in part under the captioned tender / contract is prevented or delayed by reason of any such event for a period exceeding sixty days either party may at its option terminate the contract / further processing of the tender. The relative obligations of both the parties remain suspended during the actual period of force majeure.

c) The Employer may extend the delivery schedule as mutually agreed, on receipt of written communication from the Contractor / Bidder regarding occurrence of 'Force Majeure' conditions, but not exceeding six months from the scheduled delivery date. If the 'Force Majeure' conditions extend beyond this period, the Employer shall have the right to cancel the order without any financial implication to the Employer or on terms mutually agreed to.

512. If the equipment / article / service or any portion thereof be not delivered / performed by the scheduled delivery date / period, any stoppage or discontinuation of ordered supply / awarded contract without written consent by Purchaser or not meeting the required quality standards the Purchaser shall be at liberty, without prejudice to the right of the Purchaser to recover Liquidated Damages / penalty as provided for in these conditions or to any other remedy for breach of contract, to terminate the contract either wholly or to the extent of such default. Amounts advanced or part thereof corresponding to the undelivered supply shall be recoverable from the Contractor / Bidder at the prevailing bank rate of interest.

**Risk
Purchase**

The Employer shall also be at liberty to Complete/ purchase, manufacture or supply from stock as it deems fit, other articles of the same or similar description to make good such default and or in the event of the contract being terminated, the balance of the articles of the remaining to be delivered there under. Any excess over the purchase price, cost of manufacture or value of any articles supplied from the stock, as the case may be, over the contract price shall be recoverable from the Contractor / Supplier.

513. The seller confirms and declares to the buyer that the seller is the original manufacturer or authorized distributor/stockiest of original manufacturer of the stores referred to in this contract and has not engaged any individual or firm, whether Indian or foreign whatsoever, to intercede, facilitate or in any way to recommended to the Buyer or any of its functionaries, whether officially or unofficially , to the award of the Contract / Purchase order to the Seller; nor has any amount been paid, promised or intended to be paid to any such individual or firm in respect of any such intercession, facilitation or recommendation.

**Agents /
Agency
Commission**

The Seller agrees that if it is established at any time to the satisfaction of the Buyer that the present declaration is in any way incorrect or if at a later stage it is discovered by the Buyer that the Seller has engaged any such individual/firm, and paid or intended to pay any amount, gift, reward , fees, commission or consideration to such person, party, firm or institution , whether before or after the signing of this Contract / Purchase order, the Seller will be liable to refund that amount to the Buyer.

The seller will also be debarred from participation in any RFQ/Tender for new projects/program with Buyer for a minimum period of five years.

The buyer will also have a right to consider cancellation of the Contract either wholly or in part, without any entitlement or compensation to the Seller who shall in such event be liable to refund all payments made by the buyer in terms of the Contract along with interest at the rate of 2% per annum above LIBOR(London Inter Bank Offer Rate) (for foreign vendors) and base rate of SBI plus 2% (for Indian Vendors).

The Buyer will also have the right to recover any such amount from any contracts concluded earlier with Buyer.

514. The Contractor / Supplier / bidder undertakes that he has not given, offered or promised to give, directly or indirectly any gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Employer or otherwise in procuring the contract or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract with the Employer for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Employer. Any breach of the aforesaid

**Use of
Undue
Influence /
Corrupt
Practices:**

undertaking by the Contractor / Supplier / bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Contractor /Supplier / bidder) or the commission of any offence by the Contractor / Supplier / bidder or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1980 or the Prevention of Corruption Act, 1947 or any other Act enacted for the prevention of corruption shall entitle the Employer to cancel the contract and all or any other contracts with the Contractor / Supplier / bidder and recover from the Contractor / Supplier / bidder the amount of any loss arising from such cancellation. A decision of the Employer or his nominee to the effect that a breach of the undertaking has been committed shall be final and binding on the Contractor /Supplier / bidder.

The Contractor / Supplier / bidder shall not offer or agree to give any person in the employment of Employer any gift or consideration of any kind as "Inducement" or "reward" for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the contract/s. Any breach of the aforesaid condition by the Contractor / Suppliers or any one employed by them or acting on their behalf (whether with or without the knowledge of the Contractor / Suppliers) or the commission of any offence by the Contractor / Suppliers or by any one employed by them or acting on their behalf which shall be punishable under the Indian Penal Code 1980 or the Prevention of Corruption by Public Servants, shall entitle Employer to cancel the contract/s and all or any other contracts and then to recover from the Contractor / Bidder the amounts of any loss arising from such contracts' cancellation, including but not limited to imposition of penal damages, forfeiture of Security Deposit, encashment of the Bank Guarantee and refund of the amounts paid by the Employer.

In case, it is found to the satisfaction of the Employer that the Contractor / Bidder has engaged an Agent or paid commission or influenced any person to obtain the contract as described in clauses relating to Agents / Agency Commission and use of undue Influence, the Contractor /Bidder, on a specific request of the Employer shall provide necessary information / inspection of relevant financial documents / information.

515. It is expressly understood and agreed by and between M/s. (Bidder / contractor /Supplier / bidder) and Mazagon Dock Limited, Dockyard Road, Mumbai - 400 010 (MDL) is entering into this Agreement solely on its own behalf and not on the behalf of any person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this Agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that MDL is an independent legal entity with power and authority to enter into contracts solely in its own behalf under the applicable of Laws of India and general principles of Contract Law. The (Bidder / Contractor /Supplier / bidder) expressly agrees, acknowledges and understands that MDL is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions and commissions, breaches or other wrongs arising out of the contract. Accordingly, (Bidder / contractor /Supplier / bidder) hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government of India arising out of this contract and covenants not to sue Government of India in any manner, claim, cause of action or thing whatsoever arising of or under this Agreement.

**Immunity Of
Government
Of India
Clause.**

**(APPLICABLE ONLY FOR
ORDERS /
CONTRACTS
WITH USA /
OTHER
FOREIGN
COMPANIES
)**

516. MDL being a Defence Organisation , **Bidder** / Supplier / Contractor undertakes that their personnel deployed in connection with the entrusted work will not indulge in any activities other than the duties assigned to them.

Duty Of Personnel of contractor/ Supplier/ bidder.

517. **DISPUTE RESOLUTION MECHANISM AND ARBITRATION**
DISPUTE RESOLUTION MECHANISM (DRM)

Arbitration clause

i) Any dispute/differences between the parties arising out of and in connection with the contract shall be settled amicably by mutual negotiations.

ii) In case of non-settlement by (i) above, if at any time, before, during or after the contract period any unsettled claim, dispute or difference arose between the parties, upon or in relation to or in connection with or in any way touching or concerning this tender/agreement order/contract, the same shall be referred to the concerned Functional Director.

The Functional Director shall then nominate an Executive of the rank of General Manager whom he thinks fit and competent or a Committee of Executives who/which shall then scrutinise the claims/disputes that have been referred to the concerned functional Director and make efforts for amicable settlements by mutual discussions/negotiations.

iii) In case no amicable settlement is arrived by (ii) above within a period of three months, then the contractor shall approach Public Grievance Cell and address the disputes as per the provisions made under the relevant clause of the contract.

iv) In case the issues/disputes do not get settled within a period of six months from the date of submission of the dispute to the Grievance Cell, then the contractor may invoke Arbitration Clause of the contract.

ARBITRATION.

Unresolved disputes/differences, if any, shall then be settled by arbitration. The Arbitration proceedings shall be conducted at Mumbai, India, in English Language, under the Arbitration & Conciliation Act, 1996.

MDL prefers to have arbitration through Institutes such as Indian Council of Arbitration (ICA)/ICA-DR, with the mutual consent of the parties.

In case of unresolved difference/dispute between the Purchaser and Supplier, being Central Public Sector Enterprises/Central Govt. departments, the disputes shall be resolved firstly through mutual discussion or through the empowered agencies of the Govt. or through arbitration by reference by either party to the department of Public Enterprises, as per extant guidelines. If disputes/differences remain unresolved/unexecuted, the same shall be referred first to the Cabinet Secretariat and then, if necessary to the PMO.

Any changes to arbitration clause must be vetted by HOD (Legal) before incorporation in contract/PO.

518. All contracts shall be deemed to have been wholly made in Mumbai and all claims there under are payable in Mumbai City and it is the distinct condition of the order that no suit or action for the purpose of enforcing any claim in respect of the order shall be instituted in any Court other than that situated in Mumbai City, Maharashtra State, India i.e. courts in Mumbai shall alone have jurisdiction to decide upon any dispute arising out of or in respect of the contract.

**Jurisdiction
Of Courts**

519. UNLESS OTHERWISE INDICATED SPECIFICALLY BY THE CONTACTOR / BIDDER IN HIS BID, IT SHALL BE CONSTRUED AS HIS ACCEPTANCE OF ALL THE CONDITIONS MENTIONED IN THIS STACS.

520. ADDITIONAL BANK GUARANTEE

In case after opening of price bid of technically cleared firms, it is noted that L-1 firm has quoted very low rates and indicates to withdraw from the tender then EMD shall be forfeited and firm may be given tender holiday including intimation to other PSUs. If the rates quoted are less than MDL estimates by 40% or so and if the difference in rate between L1 and L2 is 30% or more then the firm will have to give additional BG of 20% of the PO value as additional security. Bank charges for this additional BG shall be borne by MDL and reimbursed against proof of payment.
