

CONDITIONS OF CONTRACT

Conditions of Contract comprises of the following:

Part 1 General Conditions of Contract

Part 2 Particular Conditions of Contract consists of:

- (a) Amendments to the General Conditions of Contract
- (b) Additional Clauses to the General Conditions of Contract

Part 1 and Part 2 above shall be read in conjunction with each other as detailed in Part 1 General Conditions of Contract.

PART-1
GENERAL CONDITIONS OF CONTRACT

The Conditions of Contract comprise the “General Conditions”, which form part of the “Conditions of Contract for Plant and Design-Build” (for Electrical and Mechanical Plant, and for Building and Engineering Works, Designed by the Contractor), published by Federation Internationale Des Ingenieurs-Conseils (FIDIC), and the following “Particular Conditions”, which include amendments and additions to the General Conditions. Whenever there is a conflict between the General and Particular Conditions, the provisions contained in the Particular Conditions shall prevail over those in the General Conditions of Contract.

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PART 2
PARTICULAR CONDITIONS OF CONTRACT
(a) **Amendments to the General Conditions of Contract**

1.1 Definitions

1.1.22 Replace “DAAB” by “DRM (Dispute Resolution Mechanism)”

1.1.23

1.1.30 The Employer is M/s Mazagon Dock Shipbuilders Limited, a Company incorporated under the Companies Act 1956 and having its registered office at Dockyard Road, Mumbai 400010 acting through its Chairman & Managing Director, Director(Corporate Planning & Personnel), HOD(Technical Services) or any other Executive so nominated by MDL.

1.1.35 The Engineer shall be the Engineer-in-charge (EIC) as nominated by the Employer through HOD (Technical Services).

1.4 Law and language

Delete the text “The Contract shall be governed by the law.....excluding any conflict of law rules” and substitute with the following:

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.

2.4 Employer’s Financial Arrangements

This clause is deleted.

4.2 Performance Security

The entire text of existing Sub-Clause shall be substituted by the following:

Within 21 days from the date of issue of Letter of Acceptance (LOA) **or date of issue of Notice for Commencement of work, whichever is later**, the Contractor shall submit “PERFORMANCE BANK GUARANTEE” as per MDL format at Enclosure-16 for 10% of contract value excluding taxes, duties, freight & services component etc. valid till 30 days beyond the stipulated Defect Liability Period of One year from actual completion of entire work.

Increase in the Contract Value during execution of work:-

1. In case of Contract value increases more than 10% during execution of the work, within 21 days after issue of Amendment of Purchase order, the contractor shall submit the additional “PERFORMANCE BANK GUARANTEE” of 10% of additional contract value excluding taxes, duties, freight & services component etc. valid till 30 days beyond the stipulated Defect Liability Period of One year from actual completion of entire work.
2. In case of Contract value increases upto 10% during execution of work, an equivalent amount of 10% of the additional contract value excluding taxes, duties, freight & services component etc. shall be retained from the Running Account bills/ Final bills which will be refunded without interest, to the Contractor on completion of 30 days beyond stipulated Defect Liability Period of One year from actual completion of entire work. However this retained amount can be released to the contractor without interest, on submission of Additional Performance Bank Guarantee of requisite amount valid till 30 days beyond the stipulated Defect Liability Period of One year from actual completion of entire work.
3. The Bank Guarantee shall be only from banks as per list approved by SBI / Canara Bank published on MDL website. Bank Guarantee from banks not mentioned in the aforesaid approved list shall NOT be accepted.
4. In case of non-submission of PBG within 21 days of Placement of Purchase Order, there is likelihood of cancellation of the order.
5. In case of delays in submission of the Performance Bank Guarantee, MDL

reserves the right to charge Interest @ SBAR+2% from the firm for such period of delays.

6. The Performance Bank Guarantee will be returned only after expiry of the 30 Days beyond the stipulated Defect Liability Period of One years from actual completion of entire work, provided there are no pending defects for rectification, already notified to the contractor. However, in cases where rectification of defects notified are not likely to be completed by the Contractor before expiry of the DLP, the Contractor will have to extend the Performance Bank Guarantee suitably or as requested by MDL.
7. In case of non-submission of PBG within 21 days of Placement of Purchase Order, MDL reserves right to retain the equivalent amount of PBG from 1st RA bill upto the period till completion of contractual & Guarantee / Warranty obligations.

4.19 Temporary Utilities

Delete paragraphs “The Contractor shallin the relevant statement” of this Sub-Clause and insert TEF Clause no. 36.

6.2 Rates of Wages and Conditions of Labour

Insert the following at the end of Sub-Clause 6.2

Notwithstanding the provisions of above paragraph the Contractor shall at all times comply fully with the provisions of any law or ordinance 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.

6.4 Labour Laws

Insert the following at the end of Sub-Clause 6.4

The Contractor shall at all times during the continuance of the Contract comply fully with all existing Acts, Regulations, ordinances, Laws and Bye-Laws including all statutory Amendments, enactment’s, notifications, Acts and re-enactment’s for the time being in force of Central and State Government and other Local Authorities dealing with the employment of persons including, but not limited to;

- (a) Inter-State Migrant Workman Act (Regulation of Employment and Conditions of Service) Act 1979
- (b) the Employment of Children Act 1938
- (c) the Workman’s Compensation Act 1923
- (d) the Factories Act 1948
- (e) the Minimum Wages Act 1948
- (f) the Contract Labour (Regulation & Abolition) Act 1970
- (g) the Apprentices Act 1970
- (h) the Apprentices Act 1961
- (i) the Equal Remuneration Act 1976

- (j) Employee's Provident Fund Act
- (k) Employee's Family Pension Scheme
- (l) Employee's Deposit Linked Insurance Scheme
- (m) Employee's State Insurance Act

and any statutory amendment or re-enactment thereof for the time being in force.

6.5 Working Hours

Insert the following at the end of Sub-Clause 6.5

Subject to any provision to the contrary contained in the Contract none of the Permanent Works shall, save as hereinafter provided, be carried on between sunset and 8.00a.m. or during the night or on Sundays (or locally recognized days of rest) or Public Holidays or outside the normal working hours stated in the Appendix to Tender without permission in writing of the Engineer save or when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer or the Engineer's Representative. Provided always that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by rotary or double or multiple shifts, or which has to be carried out under tidal conditions.

All work at night, if required, and approved by the Engineer, shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while or carrying out the work and from and against all claims, demands, proceedings, costs, charges and expenses whatsoever in regard or in relation to such liability.

Where permission of the Engineer is requested as aforesaid, such permission will not be unreasonably withheld. However granting of such permission will be entirely at the discretion of the Engineer or his Representative and cannot be claimed by the Contractor as a matter of right and the refusal to grant such permission will not be accepted as a ground or excuse for not completing the Works within the specified Contract Period.

Working on Saturdays/Sundays/Holidays: Request for permission for working on Saturday / Sunday / holidays if required, should be submitted 3 working days prior to the date of holiday, to Personnel department and Security through Technical Services Department.

6.7 Health and Safety

In paragraph 1, line 3 add the following after "the Contractor's Personnel";

"and comply with or cause to be complied with all the rules and regulations of the sanitary and other authorities or as framed by the Employer from time to time for the protection of health and sanitary arrangements for all workers"

Add the following paragraph after paragraph 2:

The Contractor shall in connection with the Works provide and maintain at his own Cost all lights, guards, fencing, warning lights, warning signs and watching when and where necessary or required by the Engineer or the Engineer's Representative or by any duly constituted authority for the protection of the Works or for the safety and convenience of the public or others.

The Contractor shall at his own Cost comply with all precautions as required for the safety of the workmen by the I.L.O Convention (No62) as far as they are applicable to the Contract and shall at his own expense arrange for all the safety provisions as per the safety codes, The Electricity Act and such other Acts as applicable. The Contractor shall observe and abide by all fire and safety regulations of the Employer before starting and during execution of the Works. The Contractor shall make good to the satisfaction of the Employer any loss or damage due to fire to any portion of the work done or to be done under this Contract or to any of the Employer's existing property. The Contractor shall provide all necessary personal safety equipment to the workmen and staff.

The Contractor shall be responsible for observance by his Sub-Contractors of the forgoing provisions.

8.3 Programme

Add the following paragraphs at the end of the existing Sub-Clause as follows:

The Programme shall be in the form of a detailed, logic linked, PERT bar chart, showing the various activities involved in the execution of the Works, their interdependency, principal quantities and time required for completion.

The submission of the Contractor's programme shall not relieve the Contractor of any of his duties or responsibilities under the Contract, and the Contractor shall be solely responsible for the methods employed in carrying out the Works.

8.7 Rate of Progress

Insert the following paragraph at the end

If the Contractor, to expedite the progress of the work, requests permission to work by night as well as by day, then if the Engineer shall grant such permission, the Contractor shall not be entitled to any additional payment for doing so.

12 Test after Completion

Delete Clause 12. Refer Technical Specification.

13.4 Provisional Sums

Delete the clause.

13.7 Adjustments for Changes in Cost

Clause 13.7 will be deleted.

14.2 Advance Payment

Clause 14.2 will be deleted, the Employer shall not make any advance payment.

14.3 Application for Interim Payments

Delete first paragraph “The Contractor...[*Progress Reports*]”. and substitute the following:

“Payments will be made in accordance with the Schedule of Payments. When the Contractor considers that one of the milestones given in the Schedule of Payments has been reached then the Contractor shall submit to the Engineer, in a form approved by the Engineer, a Statement (4 copies) detailing the amounts to which the Contractor considers himself to be entitled, along with all the necessary documentation (4 copies) as described in the Schedule of Payments. The supporting documents shall also include the relevant reports on the progress during this month in accordance with Sub-Clause 4.20 [*Progress Reports*]”

14.4 Schedule of Payments

Delete the 2nd paragraph of Clause 14.4 “If the Contract...been issued for the Works” Refer TEF Clause 24.1.6 for schedule of payment.

These payments will be made in the currency specified in the Price Schedule/Contract.

14.5 Plant and Materials Intended for the Works

The sub-clause is deleted.

14.7 Payment

Delete the clause and substitute with the following:

“The Employer shall pay to the Contractor within 45 days from the date of receipt of invoice, duly certified by the Engineer, on completion of the milestones indicated in clause 14.4 above.

Payment in foreign currency shall be made through bank transfer. Payment in Indian Rupees shall be made through Electronic Clearance System (ECS) from the Employers bank to the Contractors bank account. For this purpose the Contractor shall provide the necessary details / complete the necessary formalities.”

14.8 Delayed Payment

The sub-clause is deleted.

14.9 Release of Retention Money

Deleted.

14.11 Final Statement

Add the following para at the end.

Before submission of the Final Bill, the Contractor should sign and submit a "No Claim Certificate" indicating that he has no claim against the company under the contract except as included in the final bill.

14.12 Discharge

Replace 'DAAB' with 'DRM' in the 1st & 3rd paragraphs.

Insert the following new paragraph at the end of Sub-Clause 14.12

“This discharge shall state that the Contractor has no claims against the Employer arising out of the Contract other than claims specifically identified, evaluated and accepted from the operation of release by the Contractor”.

14.15 Currencies of Payment

Delete paragraph 1”The Contract price.....payment shall be made as follows” and substitute it as under:

The Contract Price shall be paid in the currency or currencies named in the tender submitted by the Contractor.

In view of above sub-paragraph (a) of clause 14.15 will not be applicable.

Reword sub-clause (d) as under-

(d) payment of Performance Damages shall be made in the currencies and proportions specified in the Contract.

15.2 Termination for Contractor’s Default

Delete item (h) “is found, based on reasonable to the Contract,” and replace with:-

The Contractor has in the judgment of the Employer, engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purpose of this Clause:

“corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of

business; and

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the client of the benefits of free and open competition.

16.1 Suspension by Contractors

Item (b), delete “Sub Clause 2.4 [*Employers Financial Arrangements*]”

16.2 Termination by the Contractor

Delete Sub Clause 16.2.1 (a).

16.4 Payment after Termination by Contractor

Delete sub clause (b) “pay the Contractorresult of this termination.”

17.5 Indemnities by Employer

Delete sub clause 17.5

19.1 General Requirements for Insurance

Delete the fourth paragraph “If the Contractor fails.....from the contractor”.

19.2 Insurance to be provided by the Contractor

At the end of clause 19.2.6, add sub clause as under:

- (a) shall also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works,
- (b) shall cover collision and other risks to works / operation on, under, in or through the sea.

21 Disputes and Arbitration

Delete the Clause 21 including its sub clauses and replace by the following:

Dispute Resolution Mechanism:

1. Any dispute/differences between the parties arising out of and in connection with the contract shall be settled amicably by mutual negotiations.
2. In case of non-settlement by (1) 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 scrutinize the claims/disputes that have been referred to the concerned functional Director and make efforts for amicable settlements by mutual discussions/negotiations.

3. In case no amicable settlement is arrived by (2) 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.
4. 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 clause applicable to CPSUs:

1. In the event of any dispute or difference between the parties hereto, such disputes or differences shall be resolved amicably by mutual consultation or through the good offices or empowered agencies of the Government. If such resolution is not possible, then the unresolved dispute or difference shall be referred to arbitration by Permanent Machinery of Arbitrators in the Bureau of Public Enterprises in terms of Office Memorandum No.15/9/86-BPE(FIN) dated 30.03.1989 issued by the Ministry of Industry, Bureau of Public Enterprises and as modified from time to time. The Arbitration and conciliation Act 1996 shall not be applicable to arbitration under this clause. The Arbitrators' fee and cost incurred in arbitration shall be borne equally by both the parties.
2. The venue of arbitration shall be Mumbai. India.
3. The award of Arbitrator (so shall be reasoned award and Arbitrator(s) shall mention his (their) reason of the award.
4. The award of Arbitrator(s) shall be binding upon the parties to the dispute provided, however, any party disagree to buy such award may make further reference for setting aside or revision of the award to the Law Secretary Department of Legal Affairs, Ministry of Justice, Government of India. Upon such reference, the dispute shall be decided by the Law Secretary or the Special Secretary / Additional Secretary when so authorized by the Law Secretary, whose decision shall bind the parties finally and conclusively.

Arbitration clause applicable to non-CPSUs:

If any dispute, difference or question shall, any time hereafter, arise between the parties hereto in respect of the construction of these presents or concerning anything herein contained or arising out of these presents or as to the rights, liabilities or duties of the said parties hereunder which cannot be mutually resolved by the parties, the same shall be referred to the sole Arbitrator appointed by the CMD, MDL. The Sole Arbitrator shall

on matters referred to him / her indicate the reasons for his finding on each and every item of disputes. The venue of the Arbitration shall be Mumbai. Subject to above, The Arbitration will be governed by the provisions of Conciliation and Arbitration Act, 1996, as amended from time to time.

PART 2

PARTICULAR CONDITIONS OF CONTRACT

(b) ADDITIONAL CLAUSES TO THE GENERAL CONDITIONS OF CONTRACT

1 GENERAL PROVISIONS

1.17. Employer's Right to accept any bid, Part of bid and to reject any or all bids

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.

1.18. Acceptance of order/contract

- i) With the acceptance of the successful bidder's offer by the Employer, which is as per the 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.

1.19. Contractor to Conform to Statutes Etc.

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.

1.20. Secrecy and Access to Employer's Premises

- i) The Contractor shall take all steps necessary to ensure that all persons employed on any work in connection with the Contract have noted that the Indian Official Secrets Act 1923 (XIX of 1923) applies to them and shall continue to apply even after completion of the Works under the Contract.

- ii) Passes for Contractor's personnel and labour to work at the Employers premises and at the Site, will be issued by the Employer's Security Department after clearance by the Employer's Personnel Department and local police authorities. All Security and Safety Regulations of the Employer shall be strictly complied with.

1.21. Police Verification of Employees

Contractor / Supplier / bidder shall have to produce and submit to the Chief Security Officer (CSO) 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 Purchaser's /Employer's Yard and any lapse on the part of Contractor / Supplier / bidder shall be viewed seriously as per applicable laws of the land. Employment of any Foreign National during the contract period would be permitted only with prior permission of Employer.

1.22. Compliance with Laws.

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), Interstate 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, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Employees' State Insurance Act and any statutory amendment or re-enactment thereof for the time being in force.

1.23. Safety

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 employer's 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. The Bidder / Contractor or their 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.

1.24. Patent rights and royalties

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.

1.25. Employer's Property

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.

1.26. Banned or delisted Contractors / Firms / Suppliers / Suppliers

The bidder declares that they being Proprietors / Directors / Partners have not been any time individually or collectively blacklisted or banned or de-listed by any Government or quasi Government agencies or PSUs. If a bidder's entities as stated above have been blacklisted or banned or de-listed by any Government or quasi Government agencies or PSUs, this fact must be clearly stated and it may not necessarily be a cause for disqualifying him.

2. The Employer

2.7. Accident or injury to Workmen.

The employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the contractor or any subcontractor save and except an accident or injury resulting from any act or default of the employer his agents or servants and the contractor shall indemnify and keep indemnified the employer against all such damages and compensation (save and except as aforesaid) and against all claims demands proceedings costs charges and expenses whatsoever in respect thereof or in relation thereto.

2.8. Insurance against Accident, etc. to Workmen.

The contractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on the works. Provided always that in respect of any persons employed by any subcontractor, the contractor's obligation to insure as aforesaid under this sub-clause shall be satisfied if the sub-contractor shall have insured against the liability in respect of such persons in such manner that the employer is indemnified under the policy.

4 THE CONTRACTOR

4.24. The Site is a Protected Place

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 with all regulations laid down by the Employer / the Engineer for personnel employed upon the Site.

4.25. Documents Relating to the Works

The Contractor shall not disclose to third parties, any details of the Works in the form of drawings, photographs, documents or correspondence of any kind, on which he is engaged without prior approval of the Employer.

4.26. Publicity

The Contractor shall not permit or allow any information regarding the Works herein embraced to be published in any scientific or engineering journal, newspaper, periodical, trade or other publication or broadcast on television and radio or by any other medium such as the internet without prior approval of the Employer.

13. Variations and Adjustments

13.8. Access to the Contractors Books

Whenever, it is considered necessary by the Engineer / Employer to ascertain the actual cost of execution of any particular item of work, he shall direct the Contractor to produce the relevant documents such as pay roll records of personnel, invoices of materials and any or all data relevant to the item as necessary, to determine its cost, etc. The Contractor shall when so required, furnish all information pertaining to the aforesaid items, in the mode and manner specified by the Engineer.

14. Contract Price and Payment

14.16. Post Payment Audit

The Employer reserves the right until the Final Payment to carry out a post-payment audit and technical examination of the final Contract Price including all supporting data.

If, as a result of such audit and technical examination, any overpayment is discovered in respect to any work done by the Contractor or alleged to have been done by him under the Contract, it shall be recovered by the Employer from the Contractor under the Contract. If any underpayment is discovered the amount shall be duly paid to the Contractor by the Employer.

14.17. No Responsibility Upon the Engineer for Payment

Nothing in this Contract or arising out of the relationship between the Employer and the Engineer shall place any responsibility upon the Engineer for any payment to the Contractor for in respect of the Works.

Insert the following new clauses:

21. Notices

- i) Any notice to be given to the Contractor under the terms of the Contract shall be served by sending the same by registered post to or leaving the same at the Contractor's principal place of business (or at its registered office in the event of the Contractor being a Company)
- ii) Any notice to be given to the Employer under the terms of the Contract shall be served by sending the same by registered post to or leaving the same at the Employer's principal place of business (or at its registered office in the event of the Employer being a Company)

22. Duties and Taxes

22.1. Foreign Taxation

The prices bid by the Contractor shall include for all taxes, duties and other charges imposed outside India on the production, manufacture, sale and transport of the Contractors plant and equipment, materials and other supplies (both permanent, temporary or consumable) to be used on or furnished under the Contract and on the services to be performed under the Contract.

22.2. Local Taxation

The prices tendered by the Contractor shall include for all customs duties, import duties, and other taxes that may be levied according to the laws and regulations in force in India and/or Maharashtra State on all Contractors Equipment, materials and other supplies (both permanent, temporary or consumable) acquired for the purpose of the Contract and on the services performed under the Contract. Taxes shall be deducted wherever applicable from the bills of the Contractor/Bidder as per statutes. The variance in statutory levies etc. are not allowed unless the Break-up in respect of taxes, duties, levies etc. is clearly and separately furnished in the bid.

Nothing in the Contract shall relieve the Contractor from any responsibility to pay business taxes, income taxes or any other tax whatsoever that may be levied in India and/ or Maharashtra State on profits made by the Contractor in respect of the Contract.

Tax at Source (TDS) shall be deducted from the payments made to the Contractor towards Income tax and Goods & Services Tax (GST), as applicable. Certificate in respect of Income-tax on payments (Indian Rupees and foreign currencies) from Indian IT authority and provide the same to the Employer before payment. Delay in producing 'Tax Determination Certificate' by the Contractor will not be considered as delay in payment by the Employer.

22.3. Income Taxes on Staff and Labour

The Contractor's staff, personnel and labour will be liable to pay personal income taxes in India in respect of such part of their salaries and wages as are chargeable

under the laws and regulations for the time being in force and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.

22.4. Liability of Government Of India

It is expressly understood and agreed by and between the Contractor and the Employer that the Employer is entering into this Agreement solely on its own behalf and not on behalf of any other 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 the Employer is an independent legal entity with power and authority to enter into Contract solely in its own behalf under the applicable laws of India and general principles of Contract Law. The Contractor expressly agrees, acknowledges and understands that the Employer is not an agent, representative or delegate of Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any note, omissions, commissions, breaches or other wrongs arising out of the Contract. Accordingly, Contractor hereby expressly waives, releases and foregoes any and all action 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 the Government of India as to any manner, claims, cause of actions or things whatsoever arising of or under this Agreement.

22.5. Immunity of Govt. of India (Applicable only for Contracts with USA / other foreign companies):

It is expressly understood and agreed by and between M/s. (Bidder / Tenderer) and Mazagon Dock Shipbuilders 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 Laws of India and general principles of Contract Law. The (Bidder / Tenderer) 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 / Tenderer) 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 or India in any manner, claim, cause of action or thing whatsoever arising of or under this Agreement.

22.6. Jurisdiction of Courts:

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.

22.6-22.7. PREFERENCETIAL PURCHASE FROM MSE- MANUFACTURERS &

START-UPS:

- i) MDL has right to place order on MSE-Manufacturers meeting following criteria:

In tenders, if participating MSEs quoted prices are within price band of L1+15%, such MSEs shall also be allowed to supply a portion up to 20% of requirement by bringing down their prices to L1 price where L1 is non MSEs. If more than 1 MSEs fall under such criteria then this 20% shall be distributed proportionally. This preference shall not be applicable where MSE firm is L1 firm. % out of 20 percent target of annual procurement from Micro and Small Enterprises, a sub-target of 20 percent (i.e 4 percent out of 20 percent) shall be earmarked for procurement from Micro and Small Enterprises owned by the Scheduled Caste or the Scheduled Tribe Entrepreneurs. In respect of items reserved for MSE-Manufacturers, extant guidelines shall be followed. Presently Circular No. S.O. 581(E) dated 23.03.2012 is applicable. MSEs involved in trading activity are not eligible to avail benefits of PPP for MSEs.

- ii) **MDL has right to place order on Start-ups meeting following criteria:**

20% of the of the tendered quantity can be ordered on techno-commercially qualified Start-ups in case emerged L1 bidder is other than Start-up and Start-up firm agrees to match L1 prices. In case if Start-up firm emerges as L1, an initial order for 20% shall be released to monitor performance & subsequently upon successful execution order for balance 80% quantity shall be placed. Presently Circular No. 113 dated 18/02/2016/G.S.R180 (E) is applicable.