A. GENERAL CONDITIONS OF CONTRACT FOR WORKS

1. DEFINITIONS AND INTERPRETATION

i) **construct"** 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 Shipbuilders Limited (MDL) of Dockyard road, Mazagon, Mumbai-400 010 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**" 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 (Technical Services) 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. "**Items**" means the materials, apparatus, equipment, fittings and other things as specified in the contract or necessary 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 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.

(v) "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 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.

o. **Singular & Plural**

Words importing the singular only also include the plural and vice versa where the context requires.

p. **Marginal headings or notes**

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

q. **Construction of Contract**

This contract shall in all respects be interpreted and operated as an Indian Contract and in conformity with Indian Law.

2. 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.

3. 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 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/ 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 bidder / Contractor shall be termed as breach and would be liable for forfeiture of EMD, Security deposits etc.

4. SITE 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 to all regulations laid down by the Engineer for personnel employed upon the Site.

5. 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.

6. POLICE VERIFICATION OF EMPLOYEES

Contractor / 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 / 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.

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

8. CONTRACT LABOUR (REGULATION & ABOLITION) ACT 1970

i) Contractor / 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 at least 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.

ii) The contractor / 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' 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 / 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 / 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.

9. MINIMUM WAGES ACT

The contractor / 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 by the Central Government or the State Government whichever is higher 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.

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.

10. BONUS ACT

The contractor / 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.

11. COMPLIANCE OF FACTORIES ACT AND SAFETY REGULATIONS

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

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

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

iv) The contractor / 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.

12. EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

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

a. Under the Employees' Provident Funds and Miscellaneous Act, 1952,

b. Under the Family Pension Scheme, and

c. 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 / 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/ 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 / bidder must also attend to P. F. Inspections by concerned authorities and submit copy of the Inspection Report.

ii) 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.

iii) 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.

13. EMPLOYEES' STATE INSURANCE ACT

i) 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.

ii) 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.

14. SAFETY

i) 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.

ii) 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.

iii) 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.

iv) 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.

v) 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.

15. INDEMNITIES AND INSURANCE (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. Except where otherwise specified, the contractor shall pay all tonnage and other royalties rent and other payments or compensation (if any) for getting stone sand gravel clay or other materials required for the works or temporary works or any of them.

16. 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.

17. FORFEITURE- REMEDIES AVAILABLE TO EMPLOYER

i) 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.

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.

18. FORCEMAJEURE

i) 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.

ii) 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.

iii) 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.

19. RISK PURCHASE

i) 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.

ii) 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.

20. AGENTS / AGENCY COMMISSION

i) 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.

ii) 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.

iii) 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.

iv) 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 or 6% whichever is

higher above LIBOR (London Inter Bank Offer Rate) (for foreign vendors) and base rate of SBI plus 2% (for Indian Vendors).

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

21. USE OF UNDUE INFLUENCE / CORRUPT PRACTICES:

i) The Contractor / 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 undertaking by the Contractor / bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Contractor / bidder) or the commission of any offence by the Contractor / 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 / bidder and recover from the Contractor / 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 / bidder.

ii) The Contractor / 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 s or any one employed by them or acting on their behalf (whether with or without the knowledge of the Contractor s) or the commission of any offence by the Contractor s 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.

iii) 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.

22. IMMUNITY OF GOVERNMENT OF INDIA CLAUSE. (APPLICABLE ONLY FOR ORDERS / CONTRACTS WITH USA / OTHER FOREIGN COMPANIES)

It is expressly understood and agreed by and between M/s. (Bidder / contractor / bidder) 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 of Laws of India and general principles of Contract Law. The (Bidder /Contractor / 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 / 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.
in connection with the entrusted work will not indulge in any activities other than the duties assigned to them.

23. DISPUTE RESOLUTION MECHANISM AND ARBITRATION

24. DISPUTE RESOLUTION MECHANISM (DRM)

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.

25. ARBITRATION

i) 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.

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

iii) In case of unresolved difference/dispute between the Purchaser and Contractor, 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.

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

26. 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.

27. FORFEITURE OF EMD/ BID SECURITY DEPOSIT

In cases of withdrawal of bid during validity period or during any extension granted thereof, no acceptance of agreed conditions of Technical and or Commercial and or Price Negotiations, non-submission of the security deposit / performance bank guarantee the EMD or bid security will be forfeited or encashed as the case may be.

28. FORFEITURE OF SECURITY DEPOSIT / PERFORMANCE GUARANTEE

Non-performance of agreed terms and or default / breach by bidder/ contractor will result in forfeiture of security deposit / performance bank guarantee with application of risk purchase, by the Employer.

29. FORFEITURE OF PERFORMANCE GUARANTEE

In the event of contractor's 's failure to attend the Guarantee defects within a reasonable period of time, the Performance Bank Guarantee will be encashed by the Employer. The Employer's decision shall be final and binding on Bidder / Contractor in this regard.

30. CANCELLATION OF ORDER / CONTRACT

The Employer reserves the right to cancel an order forthwith without any financial implications on either side, if on completion of 50% of the scheduled delivery period the progress of Contractor is not to the satisfaction of Employer and failure on the part of the Contractor to comply with the delivery schedule is inevitable. In such an event the Contractor shall repay all the advances together with interest at prevailing bank rates from the date of receipt of such advances till date of repayment. The title of any property delivered to Employer will be reverted to the Contractor at his cost.

In case of breach /noncompliance of any of the agreed terms & conditions of order /contract and also in case of any persistent failure on part of contractor to comply with any of the provision of contract labour (regulation & Abolition) act & Scheme, ESI Act, Family Pension Scheme, order/Contract is liable to be terminated at the cost of the contractor and employer reserves the right to recover consequential damages from the contractor on account of such premature termination of contract. Without prejudice to any other rights.

31. PRELIMINARIES, CONTRACT DOCUMENTS, ETC.

i) **INSPECTION OF SITE**

The Contractor shall inspect and examine the Site and its surroundings and shall satisfy himself before submitting his tender as to the nature of the ground and sub-soil (so far as is practicable) the form and nature of the Site and the quantities and nature of the work and materials necessary for the completion of the Works and the means of access to the Site and accommodation he may require and in general shall himself obtain all necessary information (subject as above mentioned) as to risks contingencies and other circumstances which may influence or affect his tender.

32.

I) SUFFICIENCY OF TENDER

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 Schedules which rates and price shall except in so far as the Contract otherwise provides cover all his obligations under the Contract and all matters and things necessary for the proper completion and maintenance of the Works. In drawing up a programme

of Construction before tendering and entering times for completion in his tender, the Contractor shall have regard to the procurement of any supplementary information plant delivery and other contractor's commitments so that the Employer is not responsible for additional costs that may arise from the contract period for completion being exceeded.

II) ADVERSE PHYSICAL CONDITIONS & ARTIFICIAL OBSTRUCTIONS.

If however during the execution of the Works unfavourable physical conditions (other than weather conditions or conditions due to weather conditions) or artificial obstructions are encountered the Contractor shall forthwith give written notice thereof to the Engineer and if (in either case) such conditions could not in the opinion of the Engineer have been reasonably foreseen by an experienced contractor then the Engineer shall certify and the Employer shall pay the additional expenses to which the contractor shall have been put by reason of such conditions including the proper and reasonable expense :

a. of complying with any instruction which the Engineer may issue to the Contractor in connection therewith and

b. of any proper reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instruction from the Engineer as a result of such conditions being encountered.

33. EXTENT OF CONTRACT

The contract comprises the construction completion and maintenance of the Works and except insofar as the contract otherwise provides the provision of all labour. Materials, constructional plant, temporary works and everything whether of a temporary or permanent nature required in and for such construction completion and maintenance so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract.

34. DOCUMENTS MUTUALLY EXPLANATORY

The several documents forming the Contract are to be taken as mutually explanatory of one another and in case of ambiguities or discrepancies the explanatory same shall be explained and adjusted by the Engineer who shall thereupon direct the Contractor in what manner the work is to be carried out. Provided always that if in the opinion of the Engineer compliance with any such directions shall involve the Contractor in any expense which by reason of any such ambiguity or discrepancy the Contractor did not and had reason not to anticipate the Engineer shall certify and the Employer shall pay such additional sum as may be reasonable to cover such expense.

35.

I) DRAWINGS

The drawings shall remain in the sole custody of the Engineer but two free copies thereof shall be furnished to the Contractor. The Contractor shall make at his own expense any further copies required by him. At the completion of the contract the contractor shall return to the engineer all drawings provided under the contract, including the copies made by him.

The Contractor shall give adequate notice in writing to the engineer or the engineer's representative of any further drawing or specification that may be required for the execution of the works or otherwise under the contract.

II) ONE COPY OF DRAWINGS TO BE KEPT ON SITE

One copy of the Drawings furnished to the contractor as aforesaid shall be kept by him on the Site and shall at all reasonable times be available for inspection and use by the Engineer and the Engineer's Representative and by any other person authorized by the Engineer in writing.

36. FURTHER DRAWINGS AND INSTRUCTIONS.

The Engineer shall have the right to supply to the Contractor from time to time during the progress of the works such further drawings and instructions as shall be necessary for the proper and adequate execution and maintenance of the works and the contractor shall be bound by and carry out the same.

37. CONTRACT AGREEMENT

i) The Contractor shall if and when called upon to do so enter into and execute a formal agreement (to be prepared at the cost of the contractor embodying the terms of the contract, but unless and until such a formal agreement is executed the contract as defined in clause 19.A.01 shall be binding upon the parties.

ii) An executed counterpart of the Agreement together with copies of all other documents comprising the contract shall be supplied to the contractor by the Employer

38. EXECUTION OF WORKS - GENERAL

i) **SUPPLY OF PLANT, MATERIAL & LABOUR**

Except where otherwise specified the Contractor shall at his own expense supply and provide all the Constructional Plant & Temporary Works materials both for temporary and for permanent works labour (including the supervision thereof), transport to or from the site and in and about the Works and other things of every kind required for the construction completion and maintenance of the Works.

39. BANK GUARANTEE/INSURANCE COVER FOR FREE ISSUE MATERIAL

The Contractor / Bidder shall furnish Bank Guarantee/Insurance Cover equivalent to the value of materials supplied by MDL free of cost valid up to the execution of the contract / delivery of material, inspected / accepted and receipt at MDL together with the material reconciliation statement whichever is later.

40. SUPPLIES / SERVICES

Contractual work / services to be provided / facilities hire including supply of equipment / products / items / Jobs to be supplied / performed shall be strictly in accordance with the Drawings / Specifications / Requirements / Scope indicated in the Tender Enquiry / Order / Contract with deviations, if any, as mutually accepted.

41. PRESERVATION & MAINTENANCE

Should any material require any preservation till its final installation/fitment, the detailed procedure (Long term & short term) for the same as also the time of interval after which the state of preservation needs to be reviewed is to be stated by the Contractor

Further the de-preservation prior to the material/equipment being commissioned and the maintenance procedure together with its periodicity is also to be indicated by the Contractor Supplier.

The Contractor in their offer must confirm that indigenous oil; lubricants and preservatives, etc. can be used in the equipment. The bidder must also give assurance that the equipment performance will not be downgraded by use of indigenous equivalents.

42. FREIGHT & INSURANCE

I) FOR INDIGENOUS BIDDERS.

In cases where the Contractor / bidder's offers are for 'Door Delivery to Employer,' (FOR MDL store/site), transit freight & Insurance charges shall be borne by the Contractor / bidder.

In other agreed cases of Ex-works / Ex-Transporter's warehouse or Railway go down offers, the Contractor / bidder on dispatch, shall give details of materials with despatch particulars and their value in time to Employer's Insurance Company on the contact details as provided in the order. In such agreed cases, the freight & insurance charges will be paid by the Employer directly to the parties concerned.

II) FOR OVERSEAS/FOREIGN BIDDERS.

For overseas supplies on CIF basis. Freight & Insurance up to port of destination (Sea/Air) shall be arranged by the Contractor. The Contractor / bidder shall immediately on despatch of the items, inform all relevant details of despatch such as Order number, Bill of Lading / AWB number marked as Freight Paid basis, Insurance Policy / Document, number of packages, value of

consignment, invoice number in time directly to Employer's Insurance Company & Employer on the contact details as provided in the order. In case of delivery term other than CIF/CIP, the freight & insurance charges will be paid by the Employer directly to the parties concerned.

43. DEMURRAGE

Storage and Demurrage charges will be payable by the Contractor for all shipments that reach Employer without proper despatch documentations, Lorry Receipts not accompanied by packing lists, invoices etc. The Contractor shall be responsible for fines due to errors or omissions in description, weight or measurements and for increased handling charges due to improper packing.

44. The ordered items will be inspected either by Classification Society / Nominated Agency and or by Inspection Executive nominated by Employer at stages defined in the tender / Purchase Order or as agreed to be defined subsequently in terms of the Purchase Order.

45. The decision of the Inspecting Authority or their representatives, as the case may be, on any question of the intent, meaning and the scope of Specifications / Standards shall be final, conclusive and binding on the Contractor. The Contractor shall accord all facilities to Employer's Inspectors / Nominated Agency to carry out Inspection / Testing during course of manufacture / final testing.

46. RECEIPT INSPECTION BY MDL

MDL shall carry out necessary inspection of the items / jobs on receipt, on the basis of an appropriate quality assurance system and inspection system requirements along with representative of the Owner. Any objection raised by MDL Quality Control Team against quality of materials or workmanship shall be satisfactorily corrected by the Contractor at his expense including replacement as may be required within shortest possible time within 30 days. Items damaged during transit shall also be rectified / replaced by the Contractor within shortest possible time, payment for which shall be made at mutually agreed rates.

47. REJECTION OF MATERIALS

Should the items / jobs, or any portion thereof of the equipment / jobs be found defective / rejected, the Contractor shall collect the same from the Employer's Stores, all incidental charges being borne by him (inclusive of Custom duty, if payable), within 30 days from the date of intimation to the Contractor of such rejection. The Employer reserves the right to dispose off the rejected items at the end of a total period of 90 days in any manner to the best advantage to the Employer and recover storage charges and any consequential damages, from sale proceeds of such disposal.

48. WORK TO BE TO SATISFACTION OF ENGINEER

Save in so far as it is considered legally or physically impossible by the Engineer and the Employer the Contractor shall execute complete and maintain the Works in strict in accordance with the Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter (whether mentioned in the Contract or not) touching or concerning the works. The Contractor shall take instructions and directions only from the Engineer or (subject to the limitations referred to in clause 50 hereof) from the Engineer's Representative.

49. ACCESS FOR ENGINEER AND EMPLOYER

The Engineer and the Employer and any person authorized by them shall at all times have access to the Works and to the Site and to all Workshops and places where work is being prepared or whence materials, manufactured articles or machinery are being obtained for the Works and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.

50. QUALITY OF MATERIALS & WORKMANSHIP AND TESTS

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 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) **COST OF SAMPLES**

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 Specification or Bill of Quantities but otherwise at the cost of the Employer.

iii) The cost of making any test shall be borne by the contractor if such test is clearly intended by or provided for in the Specification or Bill Of Quantities and/or (in the cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purpose which it was intended to fulfil) is particularized in the Specification or Bill Of Quantities in sufficient detail to enable the Contractor to price or allow for the same in his Tender.

iv) **COST OF TESTS NOT PROVIDED FOR ETC**

If any test is ordered by the Engineer Which Cost of is either:

a. not so intended by or provided for or

b. in the cases above mentioned) is not so particularized or

c. 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 Contractor if the test shows the workmanship or materials not to be in accordance with the provisions of the Contract or the Engineer's instructions but otherwise by the Employer.

51. POSSESSION OF SITE

i) Save in so far as the Contract may prescribe the extent of portions of the site. 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 give to the Contractor timely possession of such parts of the Site as may be required to enable the Contractor to commence and proceed with the constructions of the Works in accordance with the programme referred to clause 73 hereof (if any) and otherwise in accordance with such reasonable proposals as the Contractor shall make in writing to the Engineer. If the Contractor suffers delay from failure on the part of the Employer to give possession in accordance with the terms of this Clause the Engineer shall grant an extension of time for the completion of the Works.

ii) **Way leaves Etc.**

The Contractor shall bear all expenses and charges for special or temporary way leaves 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 purpose of the work.

52. SUBCONTRACT & RIGHT OF EMPLOYER

The Bidder / Contractor shall under no circumstances undertake or subcontract any work / contract from or to any other Sub-contractor without prior written approval of the Competent Authority of Employer.

53. OPPORTUNITIES FOR OTHER CONTRACTORS

The Contractor shall in accordance with the requirements of the Engineer 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 of any other duly constituted authorities who may be employed in the execution on or near the site of any work not included in the contract.

54. FACILITY PROVIDED BY EMPLOYER / EMPLOYER

The Employer would consider providing facilities like - compressed air, carnage facility

for handling heavy loads for lowering onto the ship and water intended for use by the Bidder / Contractor for execution of contract for working within the Employer's premises at no extra cost to the Bidder / Contractor. Industrial gases, electrical power, office space / RU store facility may be provided only if possible and available, and only on CHARGEABLE BASIS, if so desired by the Bidder / Contractor.

55. NO NIGHT OR SUNDAY WORK.

i) Subject to any provision to the contrary contained in the Contract none of the permanent work shall save as hereinafter provided be carried on during the night or on Sundays (if locally recognized as days of rest) or their locally recognized equivalent without the 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 shifts, or which has to be carried out under tidal conditions.

ii) All work at night 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 in 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.

56. BOREHOLES AND EXPLORATORY EXCAVATION

If at any time during the execution of the works, the Engineer shall require the Contractor to make boreholes or to carry out exploratory excavation such requirement shall be ordered unless a provisional of clause 50 here of unless a provisional sum in respect of such anticipated work shall have been included in the Bill of Quantities.

57. WATCHING AND LIGHTING

The Contractor shall in connection with the Works provide and maintain at his own cost all lights, guards, fencing 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.

58. GIVING OF NOTICE AND PAYMENT OF FEES

i) The Contractor shall at his own expenses give all notices and pay all fees required to be given or paid by any Central or State Government Act or Ordinance or any Regulation or Bye-laws of any local or other statutory authority in relation to the execution of the Works or of any Temporary Works and by the Rules and Regulations to all public bodies and companies whose property or

rights are affected or may be affected in any way by the works or any temporary works. Provided always that the Contractor shall not be responsible for obtaining any planning permission which may be necessary in relation to the Works or for making application to the appropriate authority in respect of development charges or for payment of any sum which the appropriate authority may determine to be payable by way of development charges.

ii) **CONTRACTOR'S RATES TO INCLUDE FEES, DUTIES ETC.**

The contractor shall pay (and the rates and prices named by him in the priced Bill Of Quantities and Schedules shall provide) all fees, octroi, general or sales tax, import and export duties, harbour dues, port rates, tolls pilotage, lighter age, landing charges, wharf age and all other imposts, charges and taxes including Income Tax, Service Tax Time & Costs for Import & Export Licenses etc. whatsoever in respect of the materials, labour, plant and all other things obtained or used by the Contractor for the execution and maintenance of the works or any temporary works.

59. INTERFERENCE WITH TRAFFIC AND ADJOINING PROPERTIES

All operations necessary for the execution, construction of any temporary works shall so far as compliance with the requirements of the contract permits be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and footpaths or to or of properties whether in the possession of the Employer or of any other person and the Contractor shall save harmless and indemnify the Employer in respect of all claims demands proceedings damages costs charges and expenses whatsoever arising out of or in relation to any such matters.

60. HEAVY TRAFFIC

i) 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 sub-contractors and in particular shall select routes choose and use vehicles and restrict and distribute loads so that the movement of plant and materials to and from the site shall not damage or injure such highways and bridges.

ii) Should any highway or bridge be damaged or injured by such traffic as aforesaid then:

a. If the highway or bridge is vested in or maintainable by the Employer, the Contractor shall at his own cost make good all such damage or injury to the entire satisfaction of the Employer or if the Employer shall prefer to do the making good the Contractor shall pay to the Employer or the Employer may deduct from any monies due to the Contractor or otherwise recover from the Contractor so much of the cost incurred by the Employer in so making good

the highway or bridge as shall be attributable to damage or injury caused by or due to much traffic as aforesaid.

b. In any other case the Contractor shall indemnify and keep indemnified the Employer from and against and shall himself be responsible for and shall meet and discharge all claims demands proceedings damages and expenses in respect of any such damage or injury to highway or bridges.

iii) Where the nature of the works is such as to require the use by the contractor of water-borne transport, the foregoing provisions of this clause shall be construed as though 'highway' included a lock, dock, sea wall or other structure related to a waterway and 'vehicle' included craft, and shall have effect accordingly.

61. CARE OF WORKS

From the commencement to the handing over of the works, the contractor shall take full responsibility for the care thereof and of all temporary works and in case any damage loss or injury shall happen to the works or to any part thereof or to any temporary works from any cause whatsoever (save and except the excepted risks as defined in sub-clause (ii) of this clause) shall at his own cost repair and make good the same so that at completion and handing over the 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 provisions of clause 87 hereof repair and make good the same as aforesaid at the cost of the Employer. The contractor shall also be liable for any operations carried out by him for the purpose of complying with his obligations under clause 80 hereof.

62. EXAMINATION OF WORKS BEFORE COVERING UP

i) No work shall be covered up or put out of view without the approval of the engineer and the contractor shall afford full opportunity or the engineer to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the Engineer whenever any such work or foundations before permanent work is placed thereon. The contractor shall give due notice to the engineer whenever any such work or foundations is or are ready or about to be ready for examination and the engineer shall without unreasonable delay unless he considers it unnecessary and advises the contractor accordingly attend for the purpose of examining such foundations.

ii) **UNCOVERING AND MAKING OPENINGS**

The contractor shall uncover any part or parts of the work 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 requirements of sub-clause (i) of this clause and 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 in any other case all such expenses shall be borne by the contractor and shall be recoverable from him by the employer from any monies due or which may become due to the contractor.

63. RIGHT OF ENGINEER TO INSPECT AT PLACE OF MANUFACTURE ETC.

i) The engineer shall during the progress of the works be entitled to inspect from time to time at the place of manufacture or preparation or getting any materials intended for incorporation in the permanent works and the Contractor shall make arrangements with his Contractors accordingly. The Engineer shall also be entitled upon such inspection to reject any such materials as are in his opinion not in accordance with the contract. Notwithstanding that materials may have been so inspected before delivery on the site, the engineer shall be entitled to reject any material after delivery found not be suitable or not in accordance with the contract.

ii) The Engineer shall during the progress of the works have power to order in writing from time to time.

a. The removal from the site within such time or times as may be specified in the order of any materials which in the opinion of the Engineer are not in accordance with the contract.

b. The substitution of proper and suitable materials; and

c. The removal and proper re-execution (not withstanding any previous test thereof or interim payment therefore) of any work which in respect of materials or workmanship is not in the opinion of the Engineer in accordance with the Contract.

iii) **Default of Contractor in compliance**

In case of defaults on the part of the Contractor in carrying out such order, the Employer shall be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto from him by the Employer or may be recoverable from him by the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor.

64. URGENT REPAIRS

If by reason of any accident or failure or other even occurring to in or in connection with the works or any part thereof either during the execution of the works or during the period of maintenance any remedial or other work or repair shall be in the opinion

of the engineer or the engineer's representatives be urgently necessary for security and the contractor is unable or unwilling at once to do such work or repair the employer may his own or other workmen do such work or repairs as the Engineer or the Engineer's representative may consider necessary. If the work or repair so 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 costs and charges properly incurred by the Employer in so doing shall on demand be paid by the contractor to the employer or may be deducted by the employer from any monies due to which may become due to the contractor. Provided always that the engineer or the engineer's representative (as the case may be) shall soon after the occurrence of any such emergency as may be reasonably practicable notify the contractor thereof in writing.

65. SITE TO BE KEPT CLEAR OF OBSTRUCTIONS

i) The contractor shall at all times keep the site free from obstruction except that which is the unavoidable result of the construction of the works and shall at any time if directed by the engineer clear away and remove from the site any redundant constructional plant surplus materials, rubbish, wreckage and temporary works no longer required.

ii) **Clearance of site on Completion**

On the completion of the works, the contractor shall clear away and remove from the site, all constructional plant surplus materials rubbish and temporary works of every kind and leave the whole of the site and works clean and in a workmanlike condition to the satisfaction of the engineer.

66. EXECUTION OF WORKS - SUPERVISION ETC

i) **Contractor's Superintendence**

The Contractor shall give or provide all necessary superintendence during the execution of the works and as long thereafter as the engineer may consider necessary for the proper fulfilling of the contractor's obligations under the contract. The contractor or a competent and authorized agent or representative approved of in writing by the engineer (which approval at any time be withdrawn) is to be constantly on the works and shall give his whole time to the superintendence of the same and shall make himself available whenever called for by the engineer or his representative. If such approval shall be withdrawn by the Engineer, the contractor shall as soon as is practicable (having regard to the requirement of replacing him as hereinafter mentioned) after receiving written notice of such withdrawal remove the agent from the site and shall not thereafter employ him again on the site in any capacity and shall replace him by another agent approved by the engineer. Such authorized agent or representative shall receive on behalf of the contractor directions and instruction from the Engineer or the engineer's representative.

ii) The names, qualifications, training and experience of the contractor's agent or representative and other supervisory site staff shall be submitted to the engineer for approval before they are appointed and such agent or representative and senior supervisory staff shall speak the English language.

67. CONTRACTOR'S EMPLOYEES

i) The contractor shall provide and employ on the site in connections with the execution and maintenance of the works.

a. Only such technical assistance as are skilled and experienced in their respective callings and such sub-agents foremen and leading hands as are competent to give proper supervision to the work they required to supervise, and

b. Such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution and maintenance of the works.

ii) The Engineer shall be at liberty to object to and require the contractor to remove forth with from the works any person employed by the contractor in or about the execution or maintenance of the works who in the opinion of the engineer misconducts himself or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by the engineer to be undesirable and such person shall not be again employed upon the works without the written permission of the engineer. Any person so removed from the works shall be replaced without delay by a competent substitute approved by the engineer.

iii) **COST OF CONTRACTOR'S EMPLOYEES.**

The rates and prices named by the contractor in the priced bill of quantities and schedules shall include salaries wages transport accommodation insurances allowances of all kinds and all expenses costs and charges whatsoever of and in connection with the contractor's agent and other employees and labour force.

68. RETURN OF CONTRACTOR'S EMPLOYEES.

i) The contractor shall if required by the engineer deliver to the engineer or the engineer's representative at such intervals as the engineer may prescribe returns showing in detail the supervisory staff and numbers of the several classes of labour from time to time employed by the contractor and his sub-contractors on the site.

ii) **SANITATION AT THE SITE**

The Contractor shall provide to the approval of the engineer and in such numbers as he may require sanitary arrangements at approved locations on the site for the supervisory staffs and labour of the contractor and his

subcontractors. The contractor shall at all times during the continuance of the contract adopt such precautions as may be necessary to prevent soil or water pollution on the site (including any area occupied by temporary accommodation) and shall compel his and his sub-contractors' employees and labour to use the facilities provided which shall be carefully maintained throughout the currency of the contract to the satisfaction of the engineer.

iii) **SANITARY REQUIREMENTS OF LOCAL AUTHORITIES**

The Contractor shall comply with the sanitary requirements of the local Medical Health Authorities and bear the cost of any charges levied by such authorities for the execution of work on the Contractor's behalf.

iv) **ANTI-MALARIA PRECAUTIONS**

The contractor shall carry out all anti-malarial instructions given to him by engineer including (but not by way of limitation) the filling up of borrow pits and the treatment of standing water.

v) **DRINKING WATER**

The contractor shall make drinking water available for his supervisory staffs and labour to the satisfaction of the engineer.

vi) **OBSERVANCE BY SUB-CONTRACTORS**

The contractor shall be responsible for the observance of the provisions of this clause by sub-contractors employed by him in the execution of the works.

69. SETTING OUT

The contractor shall be responsible for the true and proper setting out of the works and for the correctness of the position, levels, dimensions and alignment of all parts of the works and for the provision of all necessary instruments, appliances and labour in connection there with. If at any time during the progress of the works, any error shall appear or arise in the position levels dimensions or alignment of any part of the works, the contractor on being required so to do by the engineer or the engineer's representative, shall at his own expense rectify such error to the satisfaction of the engineer or the engineer's representative unless such error is based on incorrect data supplied in writing by the engineer or the engineer's representative in which case the expense of rectifying the same shall be borne by the employer. The checking of any setting out or of any line or level by the engineer or the engineer's 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 benchmarks, sight-rails, pegs and other things used in the setting out the works.

70. EXECUTION OF WORKS - TIME, DELAYS, etc.

Commencement of Works

The contractor shall commence the works on site within the period named in the tender after the receipt by him of any order in writing to this effect from the engineer and shall proceed with the same with due expedition and without delay except as may be expressly sanctioned or ordered by the engineer or be wholly beyond the contractor's control.

71. TIME FOR COMPLETION

i) Subject to any requirement in the specification as to completion of any portion of the works before completion of the whole, the whole of the works shall be completed with the time stated in the tender calculated from the date of the engineer's written order to commence the works or such extended time as may be allowed under clause 76 hereof.

ii) Subject as aforesaid, the contractor will be free to decide the order and programme of the works and shall be responsible for providing and regulating the supply of all necessary plant labour and materials as required from time to time to complete the works and section of the works within the period named in the tender.

iii) The contractor shall each month or more frequently review the progress of the works after which he shall take all necessary steps that may be required to remedy any delays.

iv) The contractor shall notify the engineer each month or more frequently of any delay in the work, stating the cause and extent of the delay and the action being taken to remedy the delay.

72. PROGRESS REPORTING & MONITORING

i) Where so stipulated in the order, the Contractor shall render such reports from time to time as regards the progress of the contract and in such a form as may be called for by the Employer.

73. PROGRAMME TO BE FURNISHED

i) As soon as practicable after the acceptance of his tender, the contractor shall, if required, submit to the engineer for his approval a programme showing the order or procedure and method in which he proposes to carry out the works and shall whenever required by the engineer or the engineers representative furnish for his information particulars in writing of the contractors arrangements for the carrying out of the works and constructional plant and temporary works which the contractor intends to supply, use or construct as the case may be. The submission to and approval by the engineer or the engineer's representative of such programme or the furnishing of such particulars shall not relieve the contractor of any of his duties or responsibilities under the contract, and the contractor shall be

absolutely and solely responsible for the methods employed in carrying out the works

ii) The schedule of plant submitted by the contractor in accordance with sub-clause (i) of this clause shall if approved by the engineer be deemed to form part of the contract. If necessary, the contractor shall at his own expense and in agreement with the engineer add to or amend the schedule of plant to suit the progress of the works.

74. RATE OF PROGRESS

i) The whole of the materials plant and labour to be provided by the contractor in the mode manner and speed of execution and maintenance of the works are to be of a kind and conducted in a manner to the satisfaction of the engineer. Should the rate of progress of the works or any part thereof be at any time in the opinion of the engineer too slow to ensure the completion of the works by the prescribed time or extended time for completion, the engineer shall so notify the contractor in writing and the contractor shall there upon take such steps as the contractor may think necessary and the engineer may approve to expedite the progress as to complete the works by the prescribed time or extended time for completion. If the work is not being carried on by day and by night and the contractor shall request 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 so doing but if such permission shall be refused and there shall be no equivalent practicable method of expediting the progress of the work, the time for completion shall be extended by such period as is solely attributable to such refusal.

75. SUSPENSION OF WORKS

i) The contractor shall on the written order of the Engineer suspend the progress of the works or any part thereof for such time or times and in such manner as the engineer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the engineer. The contractor will be allowed by the accepting Executive, extension of time (not less than the period of suspension) for completion of the item or the group of items of work for which a separate period of completion is given in the contract and of which the suspended work forms a part but no other claims in this respect of completion or otherwise however shall be admitted.

ii) If the progress of the works or any part thereof is suspended on the written order of the engineer for more than 90 days the contractor may serve a written notice on the engineer requiring permission within 28 days from the receipt thereof to proceed with the works or that part thereof in regard to which progress is suspended and if such permission is not granted within that time the

contractor by a further written notice so serve may (but is not bound to) elect to treat the suspension where it affects part only of the works as an omission of such part under clause 77 hereof or where it affects the whole works as an abandonment of the contract by the employer.

76. EXTENSION OF TIME FOR COMPLETION

i) All additional works and variations ordered by the engineer shall be completed within the contract time for completion of the section of the works to which they relate unless the amount of extra or additional work of any kind or other special circumstances of any kind whatsoever which may occur shall be such as fairly to entitle the contractor to an extension of time for completion in which case the engineer shall determine the amount of such extension. Provided that the engineer is not bound to take into account any extra or additional work or other special circumstances unless the contractor has within 28 days after such work has been commenced or such circumstances have arisen or as soon thereafter as is practicable delivered to the engineer's representative full and detailed particulars of any claim to extension of time to which he may consider himself entitled in order that such claim may be investigated at the time. Provided further that an extension of time for completion shall not entitle the contractor to any extra payment for expenses by way of increased overheads or otherwise.

77. EXECUTION OF WORKS - VARIATIONS

a. **NO VARIATION UNLESS ORDERED**

i) The contractor shall not alter any of the works except in accordance with a Variation Order issue in writing by the engineer under the following provisions.

ii) The engineer shall make any variation of the form quality or quantity of the works or any part thereof that may in his opinion be necessary and for that purpose or if for any other reason it shall in his opinion be desirable shall have power to order the contractor to do and the contractor shall do any of the following:

(a) Increase or decrease the quantity of work included in the contract.

(b) Omit any such work

(c) Change the levels lines positions and dimensions of any part of the works and

(d) Execute additional or substituted work of any kind necessary for the completion of the works.

b. **CONTRACT NOT VITIATED BY VARIATIONS.**

i) No variation order issued by the Engineer under sub-clause

ii) of this clause shall in any way vitiate or invalidate the contract that the value (if any) of all variations ordered by the engineer shall be taken into account in ascertaining the contract price.

c. **VARIATIONS EXCLUDE MEASURE-MENT DIFFERENCE**

i) Any increase or decrease of the quantities set out in the Bill of Quantities ascertained by measurement in accordance with Clause 89 hereof is not a variation within the meaning of this Clause 77.

78. VALUATION OF VARIATIONS

i) The Engineer shall determine what adjustments (if any of the sums named in paragraph 1 of the tender) shall be made in respect of work done or omitted pursuant to a variation order. All such work shall be valued at the rates set out in the priced Bill of Quantities if the Engineer considers such rates to be applicable. If the priced Bill of Quantities does not contain any rates applicable to such work then suitable prices shall be agreed between the engineer and the contractor such prices being based upon the rates and prices in the priced Bill of Quantities so far as it is practicable to do so. In the event of disagreement, the Engineer shall fix such prices as he considers being reasonable and proper.

ii) **Power of Engineer to fix rates**

If by reason of any Variation Order, the rate or price contained in the priced Bill of Quantities for any item of the works is in the opinion of the engineer rendered unreasonable or inapplicable then a suitable rate or price shall be submitted by the contractor and on recommendation by the engineer will be subject to approval of the employer before acceptance.

iii) **NOTICE TO BE GIVEN**

No increase of the Contract Price under sub-clause (i) of Variation of rate or price and under and under sub-clause (ii) of this Clause shall be made unless 28 days after the date of the Variation Order notice is given in writing: -

a. By the Contractor to the Engineer of his intention to claim extra payment or a varied rate or

b. By the Engineer to the Contractor of his intention to vary a rate or price as the case may be.

iv) **COST OF REVISING CONTRACTORS PROGRAMME ETC.**

All rates and prices for variations agreed or determined pursuant to the foregoing provisions shall be deemed to include for any necessary revision of the Contractor's programme and his supervision labour and plant requirements and costs that the variations may entail.

79. DAY WORK

i) In any Variation Order, the Engineer may if in his opinion it is necessary or desirable order in writing that any additional or substituted work shall be executed on a day work basis. The contractor shall then be paid for such work under the conditions set out in the Day work Schedule included in the Bill of quantities and at the rates and prices affixed thereto by him in his tender or in the absence thereof upon such terms consider to be proper and reasonable.

ii) The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the amounts paid and before ordering materials shall submit to the Engineer quotations for the same for his approval.

iii) In respect of all work executed on a day work basis the Contractor shall during the continuance of such work deliver each day to the Engineer's representative an exact list in duplicate of the names occupation and time of all workmen employed on such work and statement also in duplicate showing the description and quantity of all materials and plant used thereon or therefore (other than plant which is included in the percentage addition in accordance with the schedule under which payment for day work is made). One copy of each list and statement when agreed will be signed by the Engineer's representative and returned to the contractor. At the end of each month the contractor shall deliver to the Engineer's representative a priced statement of the labour materials and plant (except as aforesaid) used.

80. CLAIMS ADDITIONAL OR SUBSTITUTED WORK

i) The Contractor shall send to the Engineer with each monthly statement to be submitted under sub-clause (i) of clause 92 hereof an account giving full and detailed particulars (including in the case of day work the above mentioned priced statement of labour, materials and plant) additional or substituted work ordered by the engineer (whether on a day work basis or otherwise) which the contractor has executed during the preceding month. No claim for payment for any such work will be considered which has not been included in such particulars unless the omission shall have been approved by the engineer in exceptional circumstances represented by the contractor to the engineer in writing before the end of the month in which the additional or substituted work is executed.

81. INDEMNITY BY CONTRACTOR

i) The contractor shall (except if and so far as the specification provides otherwise) indemnify and keep indemnified the Employer against all losses and claims for injuries or damage to any person or any property whatsoever (including surface or other damage to land being or crops being on the site suffered by tenants or occupiers) which may arise out of or in consequence of the construction and maintenance of the works and against all claims demands proceedings damages costs charges and expenses whatsoever in respect of or in relation thereto. The Contractor shall further indemnify and keep

indemnified the Employer against all claims demands proceedings damages cost charges and expenses whatsoever for which the Employer may become liable or which he may incur in consequence of any failure on the part of the contractor to comply with the provisions of clauses 57, 59 and 60 hereof (GT&C) and. Provided always that nothing herein contained shall be deemed to render the contractor liable for or in respect of or to indemnify the employer against any compensation or damages for or with respect to:

a. The permanent use of occupation of land by the works or any part thereof.
b. The right of the employer to construct the works or any part thereof on over under in or through any land.
c. Interference whether temporary or permanent with any right of light airway or water or other easement or quasi-element which is the unavoidable result of the construction of the works in accordance with the contract.
d. Injuries or damage to persons or property resulting from any act or neglect done or committed during the currency of the contract by the employer his agents servants or other contractors (not being employed by the contractor) or for or in respect of any claims demands proceedings damages costs charges and expenses in respect thereof or in relation there to.

ii) **INDEMNITY BY EMPLOYER**

The Employer will save harmless and indemnify the contractor from and against all claims demands proceedings damages costs charges and expenses in respect of the matters referred to in the proviso to sub-clause (i) of this clause.

82. ACCIDENT OR INJURY TO WORKMEN

i) 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.

ii) **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 sub-contractor, 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.

83. INSURANCE OF WORKS ETC

i) Without limiting his obligations and responsibilities under clause 61 hereof the contractor shall insure at his expense with a company to be approved by the employer in the joint names of the employer and the contractor against all loss or damage from whatever cause arising (other than the excepted risks) for which he is responsible under the terms of the contract

a. The works and the temporary works to the full value of such works executed from time to time.

b. The materials constructional plant and the things brought on to the site by the contractor to the full value of such materials constructional plant and other things. The value of the work to be insured will be specified in the Special conditions of contract.

84. THIRD PARTY INSURANCE

Before commencing the execution of the works, the contractor (but without limiting his obligations and responsibilities under clause 61 hereof) shall insure in the joint names of the employer and the contractor against any damage loss or injury which may occur to any property or to any person (including property and employees of the employer) by or arising out of the execution of the works or temporary works or in the carrying out of the contract otherwise than due to the matters referred to in the proviso to clause 67(i) hereof. Such insurance shall be affected from the insurance company of repute for at least full value of the contract till the completion period. The original policy shall be lodged with the employer and employer's name shall appear first in the insurance policy.

85. GENERAL PROVISIONS AS TO INSURANCE

i) All insurance to be effected by the contractor under clauses 81, 82 and 83 hereof or otherwise under the contract shall be effected with an insurer and in terms approved by the employer (which approval shall not be unreasonably withheld) and the contractor shall whenever required produce to the engineer or the engineer's representative the policy or policies of insurance and the receipts for payment of the current premium and shall also procure to be so produced policies effected by his sub-contractors under clause 52 hereof and the receipts for the current premium there under.

ii) All such insurances shall (save as otherwise expressly provided) be kept in force by the contractor in such manner that the employer and contractor are covered during the period of construction of the works and are also covered

during the period of maintenance for loss or damage occasioned by the contractor in the course of any operations carried out by him for the purpose of complying with his obligations under clause 95 hereof.

iii) If the site where the works or part thereof are to be executed is the sea the insurance to be effected pursuant to these conditions shall include (but not by way of limitation) collision and other risks attaching to works and operations on under in or through the sea at the site.

86. REMEDY ON CONTRACTORS FAILURETO INSURE

If the contractor shall fail to effect and keep in force the insurances referred to in clauses 82, 83 and 84 hereof or any other insurance which he may be required to effect under the terms of the contract then and in any such case the employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the employer as aforesaid from any monies due or which may become due to the contractor or recover the same as a debt due from the contractor.

87. MEASUREMENT AND PAYMENT

i) **Quantities**

The quantities set out in the Bill of Quantities are the estimated quantities of the work but they are not to be taken as the actual and correct quantities of the works to be executed by the contractor in fulfilment of his obligations under the contract.

88. WORKS TO BE MEASURED

The engineer shall except as otherwise stated ascertained and determine by admeasurements the value in accordance with the contract of work done in accordance with the contract. He shall when he requires any part or parts of the works to be measured give notice to the contractor's authorised agent or representative who shall forthwith attend or send a qualified agent to assist the engineer or the engineer's representative in making such measurement and shall furnish all particulars required by either of them. Should the contractor not attend or neglect or omit to send such agent then the measurement made by the engineer or approved by him shall be taken to be the correct measurement of the work. For purpose of measuring such permanent work as is to be measured by record drawings the contractor's representative shall prepare record drawings month by month of such work and the contractor when called upon to do so in writing shall within 14 days attend to examine and agree such record drawings with the engineer's representative and shall sign the same when so agreed and if the contractor does not so attend to examine and agree any such record drawings they shall be taken to be correct. If after examination of such record drawings the contractor does not agree the same or does not sign the same as agreed they shall nevertheless be taken to be correct unless the contractor shall within 14

days of such examination lodged with the engineer's representative for decision by the engineer notice in writing of the respects in which such record drawings are claimed by him to be incorrect.

89. METHOD OF MEASUREMENT. I. S. CODE

The works shall be measured not notwithstanding any general or local custom except where otherwise specifically described or prescribed in the contract/ relevant IS Code.

90. PROVISIONAL SUMS

i) Every provisional sum (other than P.C. prices under sub-clause
ii) of this clause) set out in the bill of quantities (whether for work to be executed by the contractor which has not been specified in detail when the contract is entered into or for work to be executed by a nominated sub-contractor as hereinafter defined) together with the charges and profits (if any) which the contractor shall have added to such sums shall be deducted from the contract price and in lieu thereof there shall be added to the contract price.

a. Where work to which the provisional sum relates has been ordered by the engineer and executed by the contractor the value of the work so executed valued in accordance with clause 78 hereof and

b. Where work to which the provisional sum relates has been ordered by the Engineer and executed by a nominated sub-contractor (as hereinafter defined) the sub or sums actually paid by the contractor to such sub-contractor on the direction of the engineer and (if the contractor shall have added to the provisional sum to which the work relates any sums in respect of charges and profits) an sum in the same proportion to the sum so actually paid as the said charges and profits bear to the said provisional sum

iii) **PRIME COST ITEMS**

Every sum in the bill of quantities which contains (either as the whole or part of the sum) a prime cost (P.C.) price for goods or materials to be supplied for or for incorporation into the works shall be varied by the substitution for the prime cost price of the actual price paid by the contractor for the goods or materials on the direction of the engineer and the contract price shall be increased or decreased (as the case may be) by the amount by which the sum in the bill of quantities is increased or decreased by such substitution. No variation shall be made to or in respect of any sum added for labours to the prime cost price on account of the said actual prices being greater or less than the prime cost but in respect of all other charges and profit there shall be added or deducted as the case may be a sum representing such percentage as provided in the bill of quantities in relation to the particular item of prime cost concerned.

iv) **USE OF PROVISIONAL AND CONTINGENCY ITEMS**

All sums set out in the bill of quantities, which shall be stated to be provisional or for contingencies shall be used only at the direction and discretion of the Engineer and if not used either whole or in part shall as to the amount not used be deducted from the contract price.

v) **PRODUCTION OF VOUCHERS ETC**

The contractor shall when required by the engineer produce all quotations invoices, vouchers and accounts or receipts in connection with expenditure in respect of provisional or prime cost items.

91. NOMINATED SUB- CONTRACTORS

i) All specialists merchants tradesmen and others executing any work or supplying any goods for which provisional or prime cost sums are included in the Bill of Quantities who may have been or be nominated or selected or approved by the employer or the engineer and all persons to whom by virtue of the provisions of the bill of quantities or specification the contractor is required to sub-let any work shall in the execution of such work or the supply of such goods be deemed to be sub-contractors employed by the contractor and are hereinafter referred to as "nominated sub-contractors". Provided always that the contractor shall not be required by the employer or the engineer or be deemed to be under any obligation to employ any nominated sub-contractor who shall decline to enter into a sub-contract with the contractor containing provisions

a. That in respect of the work or goods the subject of the sub contract the subcontractor will undertake towards the contractor the like obligations and liabilities as are imposed upon the contractor towards the employer by the terms of the contract and will save harmless and indemnify the contractor from and against the same and from all claims demands proceedings damages costs charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities and

b. That the sub-contractor will save harmless and indemnify the contractor from and against any negligence by the sub-contractor his agents workmen and servants and from and against any issue by him or them of any constructional plant or temporary works provided by the contractor for the purposes of the contract and from all claims as aforesaid.

ii) **PAYMENT TO NOMINATED SUB- CONTRACTORS**

Before issuing under clause 94 hereof any certificate which includes any payment in respect of work done or goods supplied by any nominated sub-contractor the engineer shall be entitled to demand from the contractor

reasonable proof that all payments (less retentions) included in previous certificates in respect of the work or goods of such nominated sub-contractor have been paid or discharged by the contractor in default whereof unless the contractor shall –

a. inform the Engineer in writing that he has reasonable cause for withholding or refusing to make such payment and

b. produce to the engineer reasonable proof that he has so informed such nominated sub-contractor in writing the employer shall be entitled to pay to such nominated sub-contractor direct upon the certificate of the engineer all payments (less retention) which the contractor has failed to make to such nominated sub-contractor and to deduct by way of set-off the amount so paid by the employer from any sums due or which become due from the employer to the contractor.

Provided always that where the engineer has certified and the employer has paid direct as aforesaid the engineer shall issuing any further certificate in favour of the contractor deduct from the amount thereof the amount so paid direct as aforesaid but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the contract.

92.

i) **PAYMENT ON ACCOUNT**

The Contractor shall submit to the Engineer at the end of each month a statement showing the estimated contract value of the permanent work executed up to the end of the month (if such value shall justify the issue of an interim certificate) and the contractor will be paid on the certificate of the Engineer the amount due to him on account of the estimated contract value of the permanent work executed as the Engineer may consider fair and reasonable for any Preliminaries Temporary Works or Constructional Plant for which separate amounts are provided in the Bill Of Quantities subject to a retention of the percentage named in the Tender until the amount retained shall reach "Limit Of Retention Money" named in the Tender (hereinafter called the retention money). Provided always that no interim certificate shall be issued for a less sum than that named in the tender at one time.

ii) **FINAL STATEMENTS**

The Contractor's final statement showing in detail the total quantities and values of the works actually executed under the contract shall be delivered to the engineer within three months after the date of issue of the Certificate of completion under clause 94 hereof or latest such certificate if more than one and the contractor shall be paid on the certificate of the engineer the amount due to the contractor for the works actually executed under the contract less the aggregate amount of all previous payments made to the Contractor under the provisions of this clause. Full effect shall be given to this sub-clause not withstanding that at the date of issue

of the Engineer's certificate relevant to the Contractor's final statement there may be outstanding works which the contractor has undertaken to complete during the period of maintenance but the employer shall be entitled to withhold payment of such sums as shall in the opinion of the engineer represent the cost of such outstanding works until they are completed.

iii) **PAYMENT OF RETENTION MONEY**

One half of the retention money shall become due and shall be paid to the contractor when the engineer shall certify in writing that the works have been substantially completed and the other half shall be paid to the contractor within twenty-eight days after the expiration of the defects liability period not withstanding that at such time there may be outstanding claims by the contractor against the employer.

Provided always that if at such time there shall remain to be executed by the contractor any works ordered during such period pursuant to clauses 95 and 96 hereof the employer shall be entitled to withhold payment until the completion of such works of so much of the second half of the retention money as shall in the opinion of the engineer represent the cost of the works so remaining to be executed.

Provided further that in the event of different maintenance periods having become applicable to different parts of the works pursuant to clause 94 hereof the expression "expression of the Period of Maintenance" shall for the purposes of this sub-clause be deemed to mean the expiration of the latest of such periods.

iv) **CORRECTION AND WITHHOLDING OF CERTIFICATES**

The Engineer may by any certificate make any correction or modification in any previous certificate which have been issued by him and shall have power to withhold any certificate if the works or any part thereof are not being carried out to his satisfaction.

v) **CURRENCY**

Unless specially agreed otherwise by the employer before the acceptance of the tender, the contract price shall be paid wholly in India in rupees.

vi) **RECOVERY OF SUMS DUE FROM CONTRACTOR**

Whenever under this contract any sum of money shall be recoverable from or payable by the contractor the same may be deducted from any sum then due to the contractor under this contract or any other contract.

vii) **POST PAYMENT AUDIT AND TECHNICAL EXAMINATION**

The employer reserves the right until the end of the maintenance period to carry out a post-payment audit and technical examination of the final bill including all supporting vouchers abstracts, etc. If as a result of such audit and technical

examination any overpayment is discovered in respect of 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 by any or all of the methods described above or if any underpayment discovered the amount shall be duly paid to the contractor by the employer.

93. NO RESPONSIBILITY UPON ENGINEER FOR PAYMENT

Nothing in the contract or arising out of the relationship between the employer and the engineer shall place any responsibility upon engineer for any payment to the contractor for or in respect of the works or other obligations of the contractor hereunder.

94. MAINTENANCE AND MAINTENANCE CERTIFICATE

CERTIFICATE FOR VIRTUAL COMPLETION OF WORKS

As soon as in the opinion of the Engineer the works shall have been substantially completed and shall have satisfactorily passed any final test that may be prescribed by the contract the engineer shall on receiving a written undertaking by the contractor to finish any outstanding work during the period of maintenance issue to the employer (with a copy to the contractor) a certificate of virtual completion in respect of the works and the period of maintenance of works shall commence from the date of such certificate. Provided that the engineer may give such a certificate with respect to any part of the works before the completion of the whole of the works and shall upon the written application of the contractor give such certificate with respect to any substantial part of the works which has been both completed to the satisfaction of the engineer and occupied or used by the employer and when any such certificate is given in respect of a part of the works such part shall be considered as completed and the period of maintenance of such part shall commence from the date of such certificate. Provided also that a certificate of virtual completion given in accordance with the foregoing provisions of any of the works occupied and used as aforesaid shall not be deemed to certify completion of any ground or surfaces requiring reinstatement unless such certificate shall expressly so state.

95. DEFINITION OF DEFECT LIABILITY PERIOD

i) In these conditions the expression "Defect Liability Period" shall mean the period of maintenance in the tender calculated from the date of virtual completion of the works certified by the engineer 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.

ii) **Execution of work of repair Etc.**

To the intent that the works shall comply in all respects with the contract (fair wear and tear during the Defects Liability Period only expected) the contractor shall execute all such work or repair

amendment/reconstruction/rectification and making good of defects /imperfections /shrinkages or other faults as may be required of the contractor in writing by the engineer during the defects liability period for within fourteen days after its expiration as a result of an inspection made by or on behalf of the engineer prior to its expiration.

iii) **COST OF EXECUTION OF REPAIR WORK ETC**

All such work shall be carried out by the contractor at his own expenses if the necessity thereof shall in the opinion of the engineer be due to the use of materials or workmanship not in accordance with the contract or to neglect or failure on the part of the contractor to comply with any obligations expressed or implied on the contractor's part under the contract. If in the opinion of the engineer such necessity shall be due to any other cause the value of such work shall be ascertained and paid for as it were additional work

iv) **REMEDY ON CONTRACTOR'S FAILURE TO CARRY OUT WORK REQUIRED**

If the contractor shall fail to do any such work as aforesaid required by the engineer, the employer shall be entitled to carry out such work by his own workmen or by other contractors and if such work which the contractor should have carried out at the contractor's own cost shall be entitled to recover from the contractor and cost thereof or may deduct the same from any monies due or that become due to the contractor.

96. CONTRACTOR TO SEARCH FOR CAUSE OF DEFECT ETC

The Contractor shall if required by the engineer in writing search for the cause of any defect, imperfection or fault under the directions of the engineer. Unless such defect imperfection or fault shall be one for which the contractor is liable under the contract the cost of the work carried out by the contractor in searching as aforesaid shall be borne by the employer. But if such imperfection or fault shall be one for which the contractor is liable as aforesaid the cost of the work carried out in searching as aforesaid shall be borne by the contractor and he shall in such case repair rectify and make good such defect imperfection or fault at his own expenses in accordance with the provisions of clause 95 hereof.

97. APPROVAL ONLY BY MAINTENANCE CERTIFICATE

No certificate other than the maintenance certificate referred to in clause 98 hereof shall be deemed to constitute approval of any work or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the accuracy of any claim or demand made by the contractor or of additional or varied work having

been ordered by the engineer nor shall any other certificate conclude or prejudice any of the powers of the engineer.

98. MAINTENANCE CERTIFICATE

i) The contract shall not be considered as completed until a Maintenance Certificate have been signed by the engineer and delivered to the employer stating that the works have been signed by the engineer and delivered to the employer stating that the works have been completed and maintained to his satisfaction. The maintenance certificate shall be given by the engineer twenty-eight days after the expiration of the Period Of Maintenance (or if different periods of maintenance shall become applicable to different parts of the works the expiration of latest such period) or as soon thereafter as any works ordered during such period pursuant to clauses 95 and 96 hereof shall have been completed to the satisfaction of the engineer and full effect shall be given to the clause notwithstanding any previous entry on the works or the taking possession working or using thereof or any part thereof by the employer. Provided always that the issue of the maintenance certificate shall not be a condition precedent to payment to the contractor of the second half of retention money in accordance with clause 92 hereof.

ii) **CESSATION OF EMPLOYER'S LIABILITY.**

The employer shall not be liable to the contractor for any matter or thing arising out of or in connection with the contract or the execution of the works unless the contractor shall have made a claim in writing in respect thereof before the giving of the maintenance certificate under this clause.

iii) **UNFULFILLED OBLIGATIONS**

Notwithstanding the issue of the maintenance certificate, the contractor and (subject to sub-clause (ii) of this clause), the employer shall remain liable for the fulfilment of any obligation incurred under the provisions of the contract prior to the issue of the maintenance certificate which remains unperformed at the time such certificate is issued and for the purposes of determining the nature and extent of any such obligation the contract shall be deemed to remain in force between the parties as hereto.

99. SPECIAL RISKS AND FRUSTRATION

i) **NO LIABILITY FOR WAR, ETC., RISKS**

Not with standing anything in the contract contained:

The contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of destruction of or damage to the works (Save to work condemned under the provisions of clause 63 hereof to the occurrence of any special risk hereinafter mentioned) or temporary works or to property whether of the injury or loss of life which is the consequence whether

direct or indirect of war hostilities (whether war be declared or not) invasion act of foreign enemies rebellions revolution insurrection or military or usurped power riot civil war or commotion or disorder otherwise than among the contractor's own workmen (hereinafter comprehensively referred to as the said special risks) and the employer shall indemnify and save harmless the contractor against and from all claims demands proceedings damages costs charges and expenses whatsoever arising there from or in connection therewith and shall compensate the contractor for any loss of or damage to property of the contractor used or intended to be used for the purposes of the works (including property in transit to the site) and occasioned either directly or indirectly by the said special risks and for the purposes of this clause the expression "property of the contractor" shall include any plant brought to on the site by the contractor the property in which is vested in the employer under the terms of clause 91 hereof.

ii) **DAMAGE TO WORKS ETC, BY SPECIAL RISKS**

If the works or temporary works or any materials (whether for the former or the latter) on or near the site shall sustain destruction or damage by reason of any of the said special risks the contractor shall nevertheless be entitled to payment for any permanent work and for any materials so destroyed or damaged and the contractor shall be entitled to be paid by the employer the cost of making good any such destruction or damage whether to the works or the temporary works and of replacing or making good such materials so far as may be required by the engineer or as may be necessary for the completion of the works on a prime costs basis plus such profit as the engineer may certify to be reasonable.

iii) **PROJECTILES, MISSILES ETC**

Destruction damage injury or loss of life caused by the explosion or impact whenever and wherever occurring of any bomb shell grenade or other projectile missile munitions or explosive of war shall be deemed to be a consequence of the said special risks.

iv) **INCREASED COSTS ARISING FROM SPECIAL RISKS**

The employer shall repay to the contractor any increased cost of or incidental to the execution of the works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of clause 63 hereof prior to the occurrence of any special risk) which is howsoever attributable to or consequent on or the result of or in any way whatsoever connection with said special risks (subject however the provisions in this clause hereinafter contained in regard to outbreak of war) but the contractor shall as soon as any such increase of cost shall come to his knowledge forthwith notify the engineer thereof in writing.

v) **OUTBREAK OF WAR**

If during the currency of the contract there shall be an outbreak of war (whether war is declared or not) in any part of the world which whether financially or otherwise materially affects the execution of the works, the contractor shall unless and until the contract is determined under the provisions in this clause contained use his best endeavours to complete the execution of the works provided always that the employer shall be entitled at any time after such outbreak of war to determine this contract by giving notice in writing to the contractor and upon such notice being given this contract shall (save as to the rights of the parties under this clause and to the operation terminate but without prejudice to the rights of either party in respect of any antecedent breach thereof.

vi) **REMOVAL OF PLANT ON DETERMINATION**

If the contract shall be determined under the provisions of the last preceding sub- clause the contractor shall with all reasonable dispatch remove from the site all constructional plant and shall give similar facilities to his sub-contractors to do so.

vii) **PAYMENT IF CONTRACT DETERMINED**

If the contract shall be determined as aforesaid, the contractor shall be paid by the employer (insofar as such amounts on items shall not have already been covered by payments on account made to the contractor) for all work executed prior to the date of determination at the rates and prices provided in the contract and in addition:

a. The amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out or performed and a proper proportion as certified by the engineer of any such items the work or service comprised in which has been partially carried out or performed.

b. The cost of materials or goods reasonably ordered for the works or temporary works which shall have been delivered to the contractor or of which the contractor is legally liable to accept delivery (such materials or goods becoming the property of the employer upon such payment being made by him.

c. A sum to be certified by the engineer being the amount of any expenditure reasonably incurred by the contractor in the expectation of completing the whole of the works insofar as such expenditure shall not have been covered by the payments in this sub-clause before mentioned.

d. Any additional sum payable under the provisions of sub-clauses (i), (ii) & (iv) of this clause.

e. The reasonable cost of removal under sub-clause (vi) of this clause and (if required by the contractor) return thereof to the contractor's main plant

yard in his country of registration.

f. The reasonable cost of repatriation of all the contractor's staff and workmen employed on or in connection with the works at the time of such termination.

Provided always that against any payments due from the employer under this sub-clause the employer shall be entitled to be credited with any outstanding balances due from the contractor for advances (if any) in respect of plant and materials and any sum previously paid by the employer to the contractor in respect of the execution of the works.

100. PAYMENT IN EVENT OF FRUSTRATION

In the event of the contract being frustrated whether by war or otherwise howsoever, the sum payable by the employer to the contractor in respect of the work executed shall be the same as that which would have been payable under clause 83 hereof if the contract had been determined under the provisions of clause 99 (vii).

101. MISCELLANEOUS

ASSIGN-MENT

The contractor shall not assign the contract or any part thereof or any benefit or interest there in or there under (other than a charge in favour of the contractor's bankers of any monies due or to become due under this contract) without the prior written consent of the employer.

102. SUB-LETTING

The contractor shall not sub-let the whole of the works except where otherwise provided by the contract, the contractor shall not sub-let any part of the works without the prior written consent of the engineer (which shall not be unreasonably withheld) and such consent if given shall not relieve the contractor from any liability or obligations under the contract and he shall be responsible for the acts defaults and neglects of any sub-contractor his agents servants or workmen as fully as if they were the acts defaults or neglects of the contractor his agents servants or workmen. The sub-contractor shall be selected in consultation with the engineer. Provided always that the provision of labour on a piece- work basis shall not be deemed to be sub-letting under this clause, but the contractor shall not employ a sub-contractor for the supply of labour without the prior approval of the engineer. In the event of subletting without the permission of Employer, the contract is liable to be terminated without notice and the Bidder/Contractor is debarred all from future tender enquiries / work order.

i) Employers Property

a. The Employer would provide on demand the requisite material to be supplied as per the Contract. On completion / execution of the contract a reconciliation statement detailing quantity of material issued, quantity

used for the contract, scrap generated, quantity returned to Stores and certificate regarding protection of Intellectual Property Rights will have to be submitted along with certified Invoice/s before payment/s are effected. Any excess consumption of material on account of wastage / damage, re-work not attributable to Employer will be suitably recovered from the Bidder / Contractor.

b. On completion of work in any location, the contractor must ensure that the place is left in a reasonably clean state and all scrap/rubble/debris/refuse is transferred to nearby scrap/ Garbage /refuse bins.

ii) VESTING OF CERTAIN PLANT

All constructional plant temporary works and materials owned by the contractor or by any company in which the contractor has a controlling interest shall when brought on to the site (or in the case of hire purchase plant on the site on its becoming the property of the contractor) immediately be deemed to become the property of the employer.

iii) CONDITIONS OF HIRE OF CERTAIN PLANT

With a view to securing the event of a forfeiture the continued availability for the purposes of executing the works of any essential hired plant the contractor shall not bring onto the site any essential hired plant unless the agreement for hire thereof contains a provision that the owner thereof will on request in writing made by the employer within seven days after the date on which any such forfeiture has become effective and on the employer undertaking to pay all hire charges in respect thereof from such date hire such essential hired plant to the employer on the same terms in all respects as the same was hired to the contractor save that the employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of completing the works

iv) COST OF PURCHASE FOR CLAUSE 10 OF STACS

In the event of the employer entering into any agreement for hire of essential hired plant pursuant to the provisions of sub-clause iii) of this clause all sums properly paid by the employer under the provisions of any such agreement and all expenses incurred by him (including stamp duties) in entering into such agreement shall be deemed to be part of the cost of completing the works.

v) CONTRACTOR'S CERTIFICATE AS TO HIRING PROVISIONS

The contractor shall upon request made by the engineer at any time in relation to any item of essential hired plant forthwith notify to the engineer in writing the name and address of the owner thereof and shall certify that the agreement for the hire thereof contains a provision in accordance with the requirements of sub-

clause (iii) of this clause. The contractor shall also upon request as aforesaid give a like notification (but without certificate) in regard to any Hire Purchase Plant.

vi) HIRE PURCHASE PAYMENTS BY EMPLOYER

The employer shall in order to avoid seizure by the owner of any hire purchase plant be entitled to pay to such owner the amount of any overdue instalment or other sum payable under any agreement for hire purchase in the event of his doing so any amount so paid by him shall be a debt due from the contractor to the employer and may be deducted by the employer from any moneys due or that may become due to the contractor under the contract or may be recovered by the employer from the contractor at law.

vii) IRREMOVABILITY OF CERTAIN PLANT ETC.

No Constructional Plant, Temporary Works of materials or any part thereof (except hired plant) shall be removed from the site without the written consent of the engineer which consent shall not be unreasonably withheld where the same is not immediately required for the purpose of completion of works but the employer will permit the contractor the exclusive use of all such Constructional Plant Temporary Works and materials in and for the completion of the works until the occurrence of any event which gives the employer the right to exclude the contractor from the site and proceed with the completion of works.

viii) RE-VESTING AND REMOVAL OF PLANT

Upon removal of any such Constructional Plant Temporary Works or materials as have been deemed to have become the property of the employer under sub-clause (ii) of this clause with consent as aforesaid the property therein shall be deemed to revest in the contractor and upon completion of the works the property in the remainder of such Constructional Plant Temporary Works and materials as aforesaid shall subject to the provisions be deemed to revest in the contractor who shall remove the same together with any essential hired plant and hire purchase plant. If the contractor shall fail to remove any constructional plant temporary works or materials as aforesaid or any essential hire plant or hired purchase plant within such reasonable time after completion of the works as may be allowed by the engineer then the employer may:

a. Sell any such constructional plant temporary works and materials as aforesaid, and

b. Return at the contractor's expense to the person firm or company from whom any essential hire plant or hire purchase plant was held by the contractor such essential hired plant or hire purchase plant and after deducting from any proceeds of sale the costs charges and expenses of and in connection with such sale and of and in connection with return as aforesaid shall pay the balance (if any) to

the contractor but to the extent that the proceeds of any sale are insufficient to meet all such costs charges and expenses the excess shall be a debt due from the contractor to the employer and shall be deductible or recoverable by the employer accordingly as aforesaid.

ix) LIABILITY FOR LOSS OF OR INJURY TO PLANT

The employer shall not at any time be liable for the loss of or injury to any of the constructional plant temporary works or materials which have been deemed to become the property of the employer under sub-clause(ii) of this clause save as mentioned in clauses 61 and 99 hereof.

x) INCORPORAT ION OF CLAUSES IN SUB-CONTRACTS

The contractor shall when entering into any sub-contract for the execution of any part of the works incorporate in such sub-contract (by reference or otherwise) the provision of this clause in relation to constructional plant temporary works and materials essential hired plant and hire purchase plant brought on to the site by the sub-contractor.

103. NO APPROVAL BY VESTING

The operation of the preceding clause 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 at any time by the engineer.

104. FOSSILS ETC

All fossils coins articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the site of the works shall as between the employer and the contractor be deemed to the absolute property of the employer and the contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such articles or thing and shall immediately upon discovery thereof and before removal acquaint the engineer's representative of such discovery and carry out at the expense of the employer the engineer's representative's orders as to the disposal of the same.

105. RECOVERY-ADJUSTMENT PROVISIONS

Payment made under one order shall not be assigned or adjusted to any other order except to the extent agreed upon in writing by the Employer. During the currency of the contract, if any sum of money is payable by the Bidder / Contractor the same shall be deducted from any sum then due or thereafter may become due to the Bidder / Contractor under the contract or any other contract with the Employer.

106. TAXES & DUTIES / STATUTORY LEVIES

i) Taxes and duties applicable, if any, would be allowed at actual provided the bidder indicates in his bid the taxes and duties applicable and the amount on which they are reckoned. Taxes shall be deducted at source wherever applicable (e.g. Income tax) from the bills of the Contractor / bidder as per statutes.

ii) Stamp Duty (Applicable only for the Work Contracts): It shall be incumbent on the successful tenderer to pay Stamp duty on the contract. As per the provision made in article 63, Schedule-I, read with section 30, of the Maharashtra Stamp Act (Bombay Act LX of 1958), Stamp duty is payable by the successful tenderer for "works contract" that is to say, a contract for works and labour or services involving transfer of property in goods (whether as goods or in some other form) in its executions and includes a sub-contract, as under:

Contract Value	Stamp Duty
a. Where the amount or value said forth in work contract does not exceed Rs 10 Lakhs.	Rs. 500.00
b. Where it exceeds Rs 10 Lakhs	Rs. 500.00 +0.1% of the amount above ten lakhs subject to maximum of Rs. 25 lakhs.

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107. TECHNOLOGICAL DEVELOPMENTS / MODIFICATIONS

The Bidder / Contractor shall unconditionally and free of cost to the Employer transfer information on technological developments/ innovations /modifications which the Bidder / Contractor would evolve in future (within 3 years) in relation to the supplied equipment. To enable this, the Employer's address shall be added to the contractor's / bidder's mailing list or database or any other document maintained for dissemination of product information and the Employer shall be informed of the action taken in this regard. If such improvements /modifications are brought in by the contractor's/ bidder's Design Department in the course of manufacture of equipment ordered by the Employer, the Bidder / Contractor shall incorporate such improved versions in the equipment without any extra cost to the Employer.

If the Employer be desirous of getting incorporated all post supply modifications / improvements arising out of technological developments to the original equipment supplied by the Bidder / Contractor, the Bidder /Contractor, shall quote for and carry out all such modifications to the equipment.

Where the whole or a portion of the equipment has been specifically developed by the Bidder / Contractor for the Owner and the latter would through the Employer be bearing the entire or part of the development cost incurred by the Bidder / Contractor, the

design rights for the whole or portion thereof, of the equipment as appropriate, shall vest in the Owners.

Prior approval of the Owner should be obtained before similar articles are sold / supplied to any other party other than the Owner. If such approval is given and sale is effected, the Bidder / Contractor shall pay to the Owner royalty at the rate mutually agreed to.

108. EXPORT LICENCE

The export licenses that may be required for delivery of the various items/equipment to MDL shall be arranged by the bidder from the concerned authorities in their country.

109. BANNED OR DE-LISTED CONTRACTORS / FIRMS

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.

i) COMMUNICATION & LANGUAGE FOR DOCUMENTATION

Any letter, facsimile message, e-mail intimation or notice sent to the Bidder / Contractor at the last known address mentioned in the offer / order shall be deemed to be valid communication for the purpose of the order/contract. Unless stated otherwise by the Employer, Language for communication & all documentation shall be same which the Employer has used in the tender enquiry.

ii) SERVICES OF NOTICES ON EMPLOYER

Any notice to be given to the employer under the terms of the contract shall be served by sending the same by post to or leaving the same at the employer's last known address (or in the event of the employer being a company to or at its registered office).

110. PREFERENCETIAL PURCHASE FROM & START-UPS:

i) 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.