



**GENERAL CONDITIONS OF
CONTRACT**



**CITY & INDUSTRIAL DEVELOPMENT
CORPORATION OF MAHARASHTRA LTD.**

**REVISED
GENERAL CONDITIONS OF CONTRACT
OF CIDCO LTD.**

(W.e.f. _____)

Updated upto _____

ISSUED TO _____

SIGN. OF ISSUING AUTHORITY _____

Price Rs. 100/-

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GENERAL CONDITIONS

Definitions and Interpretation

Definitions

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

- (a) (i) **“Employer”** means the CIDCO Ltd. a Company incorporated under the Companies Act, 1956 (The Corporation).
- (ii) **“Contractor”** means the person whose tender has been accepted by the Employer and the legal successors in title to such person, but not any assignee of such person appointed without consent of Employer.
- (iii) **“Subcontractor”** means the person named in the Contract as a Subcontractor for a part of the Works or any person to whom a part of the Works has been subcontracted with the consent of the Engineer and the legal successors in title to such person, but not any assignee of any such person appointed without consent of Employer.
- (iv) **“Engineer”** means the person nominated by the Employer to act as Engineer for the purposes of the Contract and named as such in Annexure “A” of these Conditions.
- (v) **“Engineer’s Representative”** means a person appointed from time to time by the Engineer under Sub-Clause 2.2
- (vi) The **'Managing Director'** means the Managing Director of the CIDCO Ltd., for the time being holding that office and also his successors and shall include any officer authorised by him.
- (vii) The **'Joint Managing Director'** means the Joint Managing Director of the CIDCO Ltd., for the time being holding that office

and also his successors and shall include any officer authorised by him.

- (viii) The "**Chief Engineer**" means Chief Engineer & General Manager (Technical), the officer so designated in the Corporation or any other officer who is for the time being entrusted with his functions, duties and powers by the Managing Director and notified to the Contractor.
 - (ix) The "**Additional Chief Engineer**" means the officer, so designated in the Corporation or any other officer who is for the time being entrusted with his functions, duties and powers by the Managing Director and notified to the Contractor.
 - (x) The "**Chief Accounts Officer**" means the officer, so designated in the Corporation or any other officer who is for the time being entrusted with his functions, duties and powers by the Managing Director and notified to the Contractor.
 - (xi) The '**Superintending Engineer** ' means the officer, so designated in the Corporation or any other officer who is for the time being entrusted with his functions, duties and powers by the Managing Director and notified to the Contractor.
 - (xii) The '**Executive Engineer** ' means the officer, so designated in the Corporation or any other officer who is for the time being entrusted with his functions, duties and powers by the Managing Director and notified to the Contractor.
 - (xiii) The "**Inspecting Officers**" shall mean the Chief Engineer, Additional Chief Engineer, Superintending Engineer or any other officer or person for the time being exercising their functions, duties and powers.
- (b) (i) "**Contract**" means these Conditions, the Specifications, the Drawings, the Bill of Quantities, the Tender, the Letter of Acceptance, the Work order, the Contract Agreement (if completed) and such further documents as may be expressly incorporated in the Letter of Acceptance or Contract Agreement (if completed).

- (ii) **“Specification”** means the specification of the Works included in the Contract and any modification thereof or addition thereto made under Clause 51 or submitted by the Contractor and approved by the Engineer.
 - (iii) **“Drawings”** means all drawings, calculations and technical information of a like nature provided by the Engineer to the Contractor under the Contract and all drawings, calculations, samples, patterns, models, operation and maintenance manuals and other technical information of a like nature submitted by the Contractor and approved by the Engineer.
 - (iv) **“Bill of Quantities”** means the priced and completed Bill of quantities forming part of the Tender.
 - (v) **“Tender”** means the Contractor's priced offer to the Employer for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract, as accepted by the Letter of Acceptance.
 - (vi) **“Letter of Acceptance”** means the formal acceptance by the Employer of the Tender.
 - (vii) **“Contract Agreement”** means the contract agreement (if any) referred to in Sub-Clause 9.1.
 - (viii) **“Work Order”** means the written communication of the Engineer ordering starting of the Work and specifying Commencement date and date of completion.
- (c)
- (i) **“Commencement Date”** means the date upon which the Contractor receives the notice to commence, issued by the Engineer pursuant to clause 41.
 - (ii) **“Time for Completion”** means the time for completing the execution of and passing the Test on Completion of the Works or any Section or part thereof as stated in the Contract (or as extended under Clause 44) calculated from the Commencement Date.
- (d)
- (i) **“Tests on Completion”** means the tests specified in the contract or otherwise agreed by the Engineer and the Contractor which are

to be made by the Contractor before the Works or any section or part thereof are taken over by the Employer.

- (ii) **“Taking over Certificate”** means a certificate issued pursuant to clause 48.
- (e) (i) **“Contract Price”** means the sum stated in the Letter of Acceptance as payable to the Contractor for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract.
- (ii) **“Performance Security”** means the aggregate of all monies retained by the Employer pursuant to Sub-Clause 10.1.
- (iii) **“Interim Payment Certificate”** means the certificate of payment issued by the Engineer other than the Final Payment Certificate.
- (iv) **“Final Payment Certificate”** means the certificate of payment issued by the Engineer pursuant to Sub-Clause 60.8.
- (f) (i) **“Works ”** means the Permanent Works and the Temporary Works or either of them as appropriate.
- (ii) **“Permanent Works”** means the permanent Works to be executed (including Plant) in accordance with the Contract.
- (iii) **“Temporary Works”** means all temporary Works of every kind (other than Contractor’s Equipment) required in or about the execution and completion of the Works and the remedying of any defects therein.
- (iv) **“Plant”** means machinery, apparatus and the like intended to form or forming part of the Permanent Works.
- (v) **“Contractor’s Equipment”** means all appliances and things of whatsoever nature (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects therein, but does not include Plant, materials or other things intended to form or forming part of the Permanent Works .
- (vi) **“Section”** means a part of the Works specifically identified in the Contract as a Section.

- (vii) **“Site”** means the places provided by the Employer where the Works are to be executed and any other places as may be specifically designated in the Contract as forming part of the Site.
- (g) (i) **“Cost”** means all expenditure properly incurred or to be incurred, whether on or off the Site, including overhead and other charges properly allocable thereto but does not include any allowance for profit.
- (ii) **“Day”** means calendar day.
- (iii) **“Foreign currency”** means a currency of a country other than that in which the Works are to be located.
- (iv) **“Writing”** means any hand-written, type-written, or printed communication, including telex, cable and facsimile transmission.

Headings and Marginal Notes

- 1.2 The headings and marginal notes in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

Interpretation

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

Singular and Plural

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

Notices, Consents, Approvals, Certificates & Determinations

- 1.5 Wherever in the Contract provision is made for the giving or issue of any notice, consent, approval, certificate or determination by any person, unless otherwise specified such notice, consent, approval, certificate or determination shall be in writing and the words “notify”, “certify” or “determine” shall be construed accordingly. Any such consent, approval, certificate or determination shall not unreasonably be withheld or delayed.

Engineer and Engineer's Representative

Engineer's Duties and Authority

- 2.1 (a) The Engineer shall carry out the duties specified in the Contract.
- (b) The Engineer may exercise the authority specified in or necessarily to be implied from the Contract, provided, however, that in respect of the items mentioned in following paragraph (d) of this section, the Engineer shall obtain specific approval of the Employer. Provided further that, any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer.
- (c) Except as expressly stated in the Contract, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.
- (d) Notwithstanding anything contrary in this document, the Engineer shall obtain specific approval of the Employer in respect of the following:
- (a) Approving subletting of the work.
 - (b) Granting claims to the Contractor.
 - (c) Ordering suspension of the work.
 - (d) Determining an extension of time.
 - (e) Reduction of Compensation for Delay as per Sub-Clause 47.2
 - (f) ordering variations.
 - (g) Ordering any work/test beyond the scope of the Contract.
 - (h) Determining rates for the varied works.
 - (i) Any variations in the Contract condition.
 - (j) Approval to designs and working drawings.
 - (k) payment of bonus for early completion

Engineer's Representative

- 2.2 The Engineer's Representative may be appointed by and be responsible to the Engineer and shall carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.3.

Engineer's Authority to Delegate

- 2.3 The Engineer may from time to time delegate to the Engineer's Representative any of the duties and authorities vested in the Engineer and he may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Employer and the Contractor.

Any communication given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. Provided that:

- (a) Any failure of the Engineer's Representative to disapprove any work, materials or Plant shall not prejudice the authority of the Engineer to disapprove such work, materials or Plant and to give instructions for the rectification thereof; and
- (b) If the Contractor questions any communication of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary the contents of such communication.

Appointment of Assistants

- 2.4 The Engineer or Engineer's Representative may engage any number of persons to assist the Engineer's Representative in the carrying out of his duties under Sub-Clause 2.2. He shall notify to the Contractor the names, duties and scope of authority of such persons. Such assistants shall have no authority to issue any instructions to the Contractor save in so far as such instructions may be necessary to enable them to carry out their duties and to secure their acceptance of materials, Plant or workmanship as being in accordance with the Contract, and any instructions given by any of them for those purposes shall be deemed to have been given by the Engineer's Representative.

Instructions in Writing

2.5 Instructions given by the Engineer shall be in writing, provided that if for any reason the Engineer considers it necessary to give any such instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Engineer, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Sub-Clause. Provided further that if the Contractor, within 7 days, confirms in writing to the Engineer any oral instruction of the Engineer and such confirmation is not contradicted in writing within 7 days by the Engineer, it shall be deemed to be an instruction of the Engineer.

The provision of this Sub-Clause shall equally apply to instructions, given by the Engineer's Representative and any assistants of the Engineer or the Engineer's Representative appointed pursuant to Sub-Clause 2.4.

A site order book shall be maintained on the site and it shall be the property of the Employer and the Contractor shall promptly sign orders given therein by the Engineer or his representative or his assistant and comply with them. The compliance shall be reported by Contractor to the Engineer in good time so that it can be checked.

Engineer to Act Impartially

2.6 Wherever, under the Contract, the Engineer is required to exercise his discretion by:

- (a) giving his decision, opinion or consent,
- (b) expressing his satisfaction or approval,
- (c) determining value, or
- (d) Otherwise taking action which may affect the right and obligations of the Employer or the Contractor

he shall exercise such discretion impartially with in the terms of the Contract and having regard to all the circumstances. Any such decision, opinion, consent, expression of satisfaction, or approval, determination of value or action may be opened up, reviewed or revised as provided in Clause 67.

Assignment and Subcontracting

Assignment of Contract

3.1 The Contractor shall not, without the prior consent of the Employer (which consent, notwithstanding the provisions of Sub-Clause 1.5, shall be at the sole discretion of the Employer), assign the Contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by:

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

Subcontracting

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

Provided that the Contractor shall not be required to obtain such consent for:

- (a) the provision of labour,
- (b) the purchase of materials which are in accordance with the standards specified in the Contract, or
- (c) the subcontracting of any part of the Works for which the Subcontractor is named in the Contract.

Assignment of Subcontractor's Obligations

4.2 In the event of a Subcontractor having undertaken towards the Contractor in respect of the Work executed, or the goods, materials, Plant or services supplied by such Subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time, after the expiration of such Period, assign to the Employer, at

the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof.

Contract Documents

Language(s) and Law

- 5.1 (a) The languages are English and Marathi, being a Local Language of State of Maharashtra, India. The Ruling Language is English.
- (b) Law - The Contract shall be governed by and construed in accordance with the law of India and all disputes arising out of or in any way connected to the Contract shall be deemed to have arisen in Mumbai and only the courts in Mumbai shall have jurisdiction to determine the same.

Priority of Contract Documents

5.2 The several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions thereon and such event, unless otherwise provided in the Contract, the priority, in descending order, of the documents forming the Contract shall be as follows:

- (a) Letter of Acceptance
- (b) Description of items of Work given in bill of quantities.
- (c) Particular specifications for contract
- (d) Special conditions of contract.
- (e) General conditions of contract.
- (f) Drawing forming part of contract.
- (g) Any other document forming part of the contract.

In case of Lump-sum contracts/ Turnkey Contracts, the order of preference mentioned above stands altered whereby the drawing forming part of the Contract will have highest priority next to Letter of Acceptance.

Custody and Supply of Drawings and Documents

6.1 The Contract document and Drawings shall remain in the sole custody of the Engineer, but two copies thereof, duly certified by the Engineer, shall be provided

to the Contractor free of charge. The Contractor shall make at his own cost any further copies required by him. Unless it is strictly necessary for the purposes of the Contract, the Drawings, Specification and other documents provided by the Employer or the Engineer shall not, without the consent of the Engineer, be used or communicated to a third party by the Contractor. Upon issue of the Defects Liability Certificate, the Contractor shall return to the Engineer all Drawings, Specification and other documents provided under the Contract.

One Copy of Drawings to be kept on Site

6.2 One copy of the Drawing, provided to or supplied by the Contractor as aforesaid, shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorised by the Engineer in writing.

Disruption of Progress

6.3 The Contractor shall give notice to the Engineer, with a copy to the Employer, whenever planning or execution of the Works is likely to be delayed or disrupted unless any further drawing or instruction is issued by the Engineer within a reasonable time. The notice shall include details of the drawing or instruction required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

Delays and Cost of Delay of Drawings

6.4 If, by reason of any failure or inability of the Engineer to issue, within a time reasonable in all the circumstances, any drawing or instruction for which notice has been given by the Contractor in accordance with Sub-Clause 6.3, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultations with the Employer & the Contractor, determine:

- a) any extension of time to which the Contractor is entitled under Clause 44, and
- b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Failure by Contractor to Submit Drawings

6.5 If the failure or inability of the Engineer to issue any drawings or instructions is caused in whole or in part by the failure of the Contractor to submit Drawings,

Specification or other documents which he is required to submit under the Contract, the Engineer shall take such failure by the Contractor into account when making his determination pursuant to Sub-Clause 6.4.

Supplementary Drawings and Instructions

7.1 The Engineer shall have authority to issue to the Contractor, from time to time, such supplementary Drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and completion of the Works and the remedying of any defects therein. The Engineer may also issue further drawings or instructions pursuant to Clause 51. The Contractor shall carry out and be bound by the same.

Permanent Works Designed by Contractor

7.2 Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall submit to the Engineer, for approval :

- (a) such drawings, specifications, calculations and other information as shall be necessary to satisfy the Engineer as to the suitability and adequacy of that design, and
- (b) operation and maintenance manuals together with drawings of the Permanent Works as completed, in sufficient detail to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating that design. The Works shall not be considered to be completed for the purposes of taking over in accordance with Clause 48 until such operation and maintenance manuals, together with drawings on completion, have been submitted to and approved by the Engineer.

Responsibility Unaffected by Approval

7.3 Approval by the Engineer, in accordance with Sub-Clause 7.2, shall not relieve the Contractor of any of his responsibilities under the Contract.

General Obligations

Contractor's General Responsibilities

8.1 The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract. The Contractor shall

provide all superintendence, labour, materials, Plant, Contractor's Equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.

The Contractor shall give prompt notice to the Engineer, with a copy to the Employer, of any error, omission, fault or other defect in the design of or Specification for the Works, which he discovers when reviewing the Contract of executing the Works.

Site Operations and Methods of Construction

- 8.2 The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction. Provided that the Contractor shall not be responsible (except as stated hereunder or as may be otherwise agreed) for the design or specification of Permanent Works, or for the design or specification of any Temporary Works not prepared by the Contractor. Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall be fully responsible for that part of such Works, notwithstanding any approval by the Engineer.

Contractor's Representative

- 8.3 The Contractor shall himself supervise the execution of Works or shall appoint a competent representative approved by the Engineer to act in his stead. If in the opinion of the Engineer the Contractor has himself not sufficient knowledge and experience to be capable of receiving instructions or cannot give his full attention to the Works, the Contractor shall at his own expense, employ as his accredited representative, a suitably qualified and experienced person approved by the Engineer. The name of the representative, so appointed, along with the qualifications, experience and address, shall be communicated to the Engineer. The representative shall be a responsible person adequately authorised by the Contractor to take decision on site and to spend money, if required for procuring material and labour etc., to carry out emergency Work in the interest of the Contract work, if so required by the Engineer. Orders given to Contractor's representative shall be considered to have the same force as if these had been given to the Contractor himself. If the Contractor fails to appoint a suitable representative as directed by the Engineer, the Chief Engineer shall have full

powers to suspend the execution of the Works until such date as a suitable representative is appointed and the Contractor shall be held responsible for the delay so caused to the Works.

Temporary office for the Engineers

8.4 The Contractor shall at his own cost and to the satisfaction of the Engineer, Construct an office at the Works site, for Engineer's Supervisory staff which will include adequate furniture and the necessary arrangement for drinking water, toilet, etc. and shall be got approved from the Engineer. The office shall have area not less than the area given below:

Contract Amount	Minimum area of site Office
a) From 25 Lacs and upto 1 Crore	40 sq.m.
b) Above 1 crore and upto 10 crores	60 sq.m.
c) Above 10 crores	75 sq.m.

a) For the Works above 1.0 crore, the Contractor shall also provide a new Computer of latest configuration with latest software with printer, scanner, back-up facility with UPS including maintenance of the Computer till the end of certified completion period of the contract.

The Contractor will bear all the expenses including procurement, installation and maintenance of the Computer. The Contractor shall also provide the Computer Operator and required consumables during the entire Contract period.

b) The Computer, printer, scanner, UPS etc. provided under this clause, shall be the property of the Contractor and shall be taken back after the payment under Final Payment Certificate is made.

Changes in Constitution

8.5 Where the Contractor is a partnership firm, the prior approval in writing of the Managing Director shall be obtained before any change is made in the constitution of the firm. Where the Contractor is an individual or a Hindu Undivided family business concern such approval as aforesaid shall likewise be

obtained before the Contractor enters into any partnership agreement where under the partnership firm would have the right to carry out the Work hereby undertaken by the Contractor. If prior approval as aforesaid is not obtained, the Contractor shall be deemed to have been assigned in contravention of the condition 63 hereof and the same action may be taken and the same consequences shall ensure as provided for in the said condition 63.

Contract Agreement

9.1 The Contractor shall, within 30 days from the date of issue of Letter of Acceptance , prepare Contract agreement on stamp paper of required denominations as per the format provided in Contract document and shall attend the office of the Engineer, with intimation to the Engineer, to sign the Contract Agreement.

Performance Security

10.1 The Contractor shall pay a total Performance Security equal to five percent of the Contract Price as a security in form of Contract deposit and Retention money for due fulfilment of the contract, unless otherwise stated in the tender documents.

The mode of making this deposit is as under:

10.1.1 Contract deposit

A sum amounting to two & half percent (2.5 %) of the Contract Price shall be paid within 15 days after receipt of intimation in writing of acceptance to tender. It is optional for Contractor to make this deposit in one or the other of the following -

- i) Wholly in cash; or
- ii) Wholly in F.D.R. of Scheduled Bank, pledged in favour of Employer; or
- iii) Partly in cash and partly in F.D.R of Scheduled Bank, pledged in favour of Employer; or
- iv) By way of General Undertaking and Guarantee issued on behalf of the Contractors by the Nationalised/Scheduled Bank only by its Mumbai/Navi Mumbai Branch, provided the Banker's Guarantee covers the entire completion period, including extensions from time to time if any, the Bank Guarantee shall be acceptable only in case of Contractors Registered with Government Departments and provided Contract Price is Rs.100.00 lacs and above.

10.1.2 If the Contract deposit is paid in the manner as per paragraphs (ii) or (iii) of Sub-Clause 10.1.1 above, the value of F.D.R. to be lodged a deposit shall be taken as five percent below the market value on the day of acceptance or at their face value whichever is less.

In case the deposit is paid by the transfer of G.P. Notes, the endorsement in favour of the Corporation should be paid to the City and Industrial Development Corporation of Maharashtra Limited on order and should bear the 'EXAMINED' stamp of Public Department, Office, Reserve Bank of India. All the charges for safe custody, withdrawal or for collection of interest etc. on the paper deposit shall be payable by the Contractor. Securities endorsed for payment of interest in Mumbai only shall be accepted as deposits as aforesaid.

10.1.3 Retention Money

The remaining amount of the Performance Security of two & half percent (2.5 %) shall be recovered from amount due to the Contractor under Interim payment Certificates at the rate of five percent and such retention together with the Contract deposit made as aforesaid shall not exceed in the aggregate five percent of the Contract Price after which the deduction will cease.

Period of Validity of Performance Security

10.2 The performance security shall be valid until the Contractor has executed and completed the Works and remedied any defects therein in accordance with the Contract. No claim shall be made against such security after the issue of the Defects Liability Certificate in accordance with Sub-Clause 62.1 and such security shall be refunded to the Contractor within 14 days of the issue of the said Defects Liability Certificate after deduction for claims, if any.

Claims under Performance Security

10.3 Prior to making a claim under the performance security the Employer shall, in every case, notify the Contractor stating the nature of the default in respect of which the claim is to be made.

Inspection of Site

11.1 The Employer shall have made available to the Contractor, before the submission by the Contractor of the Tender, such data on hydrological and sub-surface conditions as have been obtained by or on behalf of the Employer from

investigation undertaken relevant to the Works but the Contractor shall be responsible for his own interpretation thereof.

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself (so far as is practicable, having regard to considerations of cost and time) before submitting his Tender, as to:

- (a) the form and nature thereof, including the sub-surface conditions,
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of Work and materials necessary for the execution and completion of the Works and the remedying of any defects therein, and
- (d) the means of access to the Site and the accommodation he may require and, in general, shall be deemed to have obtained all necessary information, subject as above mentioned, as to risks, contingencies and all other circumstances which may influence or affect his Tender.

If the Contractor shall claim to have been obstructed in the execution of the Contract work by any act of lawlessness on the part of any person other than an agent or servant of the Corporation, the Contractor shall exclusively deal with such act by the due process of law but shall not be entitled to attribute thereby the breach of any obligation under the Contract to the Corporation and to claim from the Corporation compensation for damage or loss, if any thereby suffered, but shall only be entitled to an appropriate extension of period agreed for the completion of the Contract work. Provided that, the Contractor has reported to the local police authorities and the Corporation, every such act of obstruction with particulars, soon after its occurrence and the Corporation has, after enquiry, found the same to be substantially true and has determined the duration of such obstruction.

The Contractor shall be deemed to have based his Tender confirming details on his own inspection and examination, all as aforementioned.

Sufficiency of Tender

- 12.1 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Tender and of the rates and prices stated in the Bill of

Quantities, all of which shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract (including those in respect of the supply of goods, materials, Plant or services or of contingencies for which there is a Provisional Sum) and all matters and things necessary for the proper execution and completion of the Works and the remedying of any defects therein.

Not Foreseeable physical obstructions or Conditions

12.2 If, however, during the execution of the Works the Contractor encounters physical obstructions or physical conditions, other than climatic conditions on the Site, which obstructions or conditions were, in his opinion, not foreseeable by an experienced contractor, the Contractor shall forthwith give notice thereof to the Engineer, with a copy to the Employer. On receipt of such notice, the Engineer shall, if in his opinion such obstructions or conditions could not have been reasonably foreseen by an experienced contractor, after due consultation with the Employer and the Contractor, determine any extension of time to which the Contractor is entitled under Clause 44, and shall notify the Contractor accordingly, with a copy to the Employer. Such determination shall take account of any instruction which the Engineer may issue to the Contractor in connection therewith, and any proper and reasonable measures acceptable to the Engineer which the Contractor may take in the absence of specific instructions from the Engineer.

Work to be in Accordance with Contract

13.1 Unless it is legally or physically impossible, the Contractor shall execute and complete the Works and remedy any defects therein in strict accordance with the Contract to the satisfaction of the Engineer. The Contractor shall comply with and adhere strictly to the Engineer's instructions on any matter, whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions only from the Engineer (or his delegate).

Programme to be Submitted

14.1 The Contractor shall, within 30 days after the date of the Letter of Acceptance, submit to the Engineer for his consent a programme, in such form and detail as the Engineer shall reasonably prescribe, for the execution of the Works. The Contractor shall, whenever required, by the Engineer, also provide in writing for

his information a general description of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works.

Revised Programme

14.2 If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the programme to which consent has been given under Sub-Clause, 14.1, the Contractor shall produce, at the request of the Engineer, a revised programme showing the modifications to such programme necessary to ensure completion of the Works within the Time for Completion.

Cash Flow Estimate to be Submitted

14.3 The Contractor shall, within 30 days after the date of the Letter of Acceptance, provide to the Engineer for his information a detailed cash flow estimate, in quarterly periods, of all payments to which the Contractor will be entitled under the Contract and the Contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if required to do so by the Engineer.

Contractor not relieved of Duties or Responsibilities

14.4 The submission to and consent by the Engineer of such programmes or the provision of such general descriptions or cash flow estimates shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

Early Warning

14.5 The Contractor is expected to warn the Engineer, at the earliest opportunity, of specific likely future events or circumstances that may adversely affect the quality of work, increase the contract price or delay an estimate of the expected effect of the future events or circumstances on the Contract Price and Time for Completion. The estimate shall be provided by the contractor as soon as reasonably possible.

Contractor's Superintendence

15.1 The Contractor shall 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 authorised representative approved by the Engineer, which approval may at any time be withdrawn, shall give his whole time

to the superintendence of the Works. Such authorised representative shall receive, on behalf of the Contractor, instructions from the Engineer.

If approval of the representative is 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 notice of such withdrawal, remove the representative from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another representative approved by the Engineer.

Use of Corporation's land

15.2 The Contractor shall not be permitted to enter (other than for inspection purposes) or take possession of site until instructed to do so by the Engineer in writing. The portion of the site to be occupied by the Contractor shall be defined and/or marked on the site plan, failing which these shall be indicated by the Engineer and the Contractor shall on no account be allowed to extend his operations beyond these areas. The Contractor will be allowed to use such land free of charge for the purpose of sheds, offices thereon for themselves and for the Engineer and his subordinates, and shall remove the same from the ground at the completion of the Works or whenever required to do so by the Engineer after receiving 7 days notice. He shall make good any damage which may have been done and restore to good condition anything which may have been disturbed during the period of his occupation.

- a) The Contractor shall not use or allow to be used any such ground, sheds or offices, or any portion of the site of the Works, for any other purpose than the carrying out of Works under the Contract. In the event of there being no plot or ground or insufficiency of ground belonging to the Corporation, available for the above purposes, the Contractor shall provide other such ground at his own cost. The Contractor shall, in any case, pay all taxes, which have to be paid in respect of all ground sheds or offices used as above, and all the license fees, etc., that may be demanded for the storage or otherwise of the various articles as per rules in force. The Contractor shall provide, if necessary or if required, on the site, all temporary access thereto and shall alter, adopt and maintain the same as required from time to time and shall take up and clear them away as and when no longer required and make good all damage done to the site.

- b) In case, the Contractor requires additional land for specialised Works under the Contract, he shall approach to the Chief Engineer with details of his requirements. The decision of Chief Engineer in this respect shall be final and binding on the Contractor.

Supply of Water and Power

15.3 The Contractor shall make, at his own cost, his own arrangement for:

- a) supply of water required for the Works including water required for testing purpose and also for drinking purpose.
- b) power connection, if required.

Contractor's Employees

16.1 The Contractor shall provide on the Site in connection with the execution and completion of the Works and the remedying of any defects therein :

- (a) only such technical assistants as are skilled and experienced in their respective callings and such foremen and leading hands as are competent to give proper superintendence of the Works , and
- (b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely fulfilling of the Contractor's obligations under the Contract.

Engineer at Liberty to Object

16.2 The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person provided by the Contractor who, in the opinion of the Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence on Site is otherwise considered by the Engineer to be undesirable, and such person shall not be again allowed upon the Works without the consent of the Engineer. Any person so removed from the Works shall be replaced as soon as possible.

Setting Out

17.1 The Contractor shall be responsible for:

- (a) The accurate setting out of the Works in relation to original points, line and levels of reference given by the Engineer in writing.

- (b) The correctness, subject as above mentioned, of the position, levels, dimensions and alignment of all parts of the Works , and
- (c) The provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.

If, at any time during the execution of the Works , any error appears in the position, levels, dimensions or alignment of any part of the Works , the Contractor, on being required so to do by the Engineer, shall at his own cost, rectify such error to the satisfaction of the Engineer, unless such error is based on incorrect data supplied in writing by the Engineer, in which case the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

- d) All levels referred to in connection with these Works are based on G.T.S. levels

The checking of any setting out or of any line or level by the Engineer shall not in any way relieve the Contractor of his responsibility for the accuracy thereof and the Contractor shall carefully protect and preserve all bench-marks, site-rails, pegs and other things used in setting-out the Works .

Boreholes and Exploratory Excavation

- 18.1 If, at any time during the execution of the Works, the Engineer requires the Contractor to make boreholes or to carry out exploratory excavation, such requirement shall be the subject of an instruction in accordance with Clause 51.

Safety, Security and Protection of the Environment

- 19.1 The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein :

- (a) have full regard for the safety of all persons entitled to be upon the Site and keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons.

The Contractor shall, at his own expense, arrange for the safety provisions indicated in Annexure-'B' or as required by the Engineer, in

respect of all labour, directly or indirectly employed for performance of the Works and shall provide all facilities in connection therewith. In case, the Contractor fails to make arrangements and provide necessary facilities as aforesaid, the Engineer may do so and recover the costs thereof from the Contractor.

- (b) Provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Engineer or by any duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others, and
- (c) Take all reasonable steps to protect the environment on and off the Site, in accordance with Environment (Protection) Act, 1986, and amendments thereof, and to avoid damage or nuisance to persons or to property of the public or others, resulting from pollution, noise or other causes arising as a consequence of his methods of operation.
- (d) Trees designated by the Engineer shall be suitably protected from damage during the course of the Work as directed by the Engineer, cost of which shall be borne by the Contractor.

Employer's Responsibilities

19.2 If under Clause 31 the Employer shall carry out work on the Site with his own workmen he shall, in respect of such work:

- (a) have full regard to the safety of all persons entitled to be upon the Site, and
- (b) keep the Site in an orderly state appropriate to the avoidance of danger to such persons.

If under Clause 31 the Employer shall employ other contractors on the Site, he shall require them to have the same regard for safety and avoidance of danger.

Care of Works

20.1 The Contractor shall take full responsibility for the care of the Works and materials and Plant for incorporation therein from the Commencement Date until the date of issue of the Taking-Over Certificate for the whole of the Works, when the responsibility for the said care shall pass to the Employer, provided that :

- (a) if the Engineer issues a Taking-Over Certificate for any Section or part of the Permanent Works, the Contractor shall cease to be liable for the care of that Section or part from the date of issue of the Taking-Over Certificate, when the responsibility for the care of that Section or part shall pass to the Employer, and
- (b) the Contractor shall take full responsibility for the care of any outstanding Works and materials and Plant for incorporation therein which he undertakes to finish during the Defects Liability Period until such outstanding Works have been completed pursuant to Clause 49.

Responsibility to Rectify Loss or Damage

20.2 If any loss or damage happens to the Works, or any part thereof, or materials or Plant for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, other than the risks defined in Sub-Clause 20.4, the Contractor shall, at his own cost, rectify such loss or damage so that the Permanent Works conform in every respect with the provisions of the Contract to the satisfaction of the Engineer. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 49 and 50.

Loss or Damage Due to Employer's Risks

20.3 In the event of any such loss or damage happening from any of the risks defined in Sub-Clause 20.4, or in combination with other risks, the Contractor shall, if and to the extent required by the Engineer, rectify the loss or damage and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

In the case of a combination of risks causing loss or damage any such determination shall take into account the proportional responsibility of the Contractor and the Employer.

Employer's Risks

20.4 The Employer's risks are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war,
- (c) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof,
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works ,
- (f) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works , except as may be provided for in the Contract.
- (g) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible, and
- (h) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.

Insurance of Works and Contractor's Equipment

21.1 The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 20, insure:

- (a) the Works , together with materials and Plant for incorporation therein, to the full replacement cost (the term "cost" in this context shall include profit),
- (b) an additional sum of 15 per cent of such replacement cost, to cover any additional costs of and incidental to the rectification of loss or damage

including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature, and

- (c) the Contractor's Equipment and other things brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

Scope of Cover

21.2 The insurance in paragraphs (a) and (b) of Sub-Clause 21.1 shall be in the joint names of the Contractor and the Employer and shall cover:

- (a) the Employer and the Contractor against all loss and damage from whatsoever cause arising, other than as provided in Sub-Clause 21.4, from the date of start of Work at the Site until the date of issue of the relevant Taking-Over Certificate in respect of the Works or any Section or part thereof as the case may be, and
- (b) the Contractor for his liability:
- (i) during the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liabilities Period, and
- (ii) for loss or damage occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under Clauses 49 and 50.
- (c) It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract.

Responsibility for Amounts not Recovered

21.3 Any amounts not insured or not recovered from the insurers shall be borne by the Employer or the Contractor in accordance with their responsibilities under Clause 20

Exclusions

21.4 There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war,
- (c) ionising radiations or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, or
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

Damage to Persons and Property

22.1 The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of:

- (a) death of or injury to any person, or
- (b) loss of or damage to any property (other than the Works),

which, may arise out of or in consequences of the execution and completion of the Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined in Sub-Clause 22.2.

Exceptions

22.2 The "exceptions" referred to in Sub-Clause 22.1 are :

- (a) the permanent use or occupation of land by the Works , or any part thereof
- (b) the right of the Employer to execute the Works , or any part thereof, on, over, under, in or through any land,
- (c) damage to property which is the unavoidable result of the execution and completion of the Works , or the remedying of any defects therein, in accordance with the Contract, and
- (d) death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, his agents, servants or other

contractors, not being employed by the Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto, or where the injury or damage was contributed to by the Contractor, his servants or agents, such part of the said injury or damage as may be just and equitable having regard to the extent of the responsibility of the Employer, his servants or agents or other contractors for the injury or damage.

Indemnity by Employer

22.3 The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the exceptions defined in Sub-Clause 22.2.

Third Party Insurance (including Employer's Property)

23.1 The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 22, insure, in the joint names of the Contractor and the Employer, against liabilities for death of or injury to any person (other than as provided in Clause 24) or loss of or damage to any property (other than the Works) arising out of the performance of the Contract, other than the exceptions defined in paragraphs (a), (b) and (c) of Sub-Clause 22.2.

Minimum Amount of Insurance

23.2 Such insurance shall be for at least the amount equivalent to 1.2 times the Contract Price.

Cross Liabilities

23.3 The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Employer as separately insured.

Insurance Policy

23.4 All insurance to be effected by the Contractor and/or his sub- contractors (if any) shall be taken out only with the Government Insurance Fund, MAHARASHTRA State.

Accident or Injury to Workmen

24.1 The Employer shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the

Contractor or any Subcontractor, other than death or injury resulting from any act or default of the Employer, his agents or servants. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, other than those for which the Employer is liable as aforesaid, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Insurance Against Accident to Workmen

24.2 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 that, in respect of any persons employed by any Subcontractor, the Contractor's obligations to insure as aforesaid under this Sub-Clause shall be satisfied if the Subcontractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy, but the Contractor shall require such Subcontractor to produce to the Employer, when required, such policy of insurance and the receipt for the payment of the current premium.

It is mandatory for the Contractor that all workmen appointed to complete the Contract work, are insured under Workmen's Compensation Insurance Policy.

Evidence and Terms of Insurances

25.1 The Contractor shall provide evidence to the Employer as soon as practicable after respective insurances has been taken out but in any case prior to the start of Work at the Site that the insurances required under the Contract have been effected and shall, within 84 days of the Commencement Date, provide the insurance policies to the Employer. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the general terms agreed prior to the issue of the Letter of Acceptance. The Contractor shall effect all insurances for which he is responsible with insurers and in terms approved by the Employer. The Contractor shall pay full premium prior to start of the Work and take out insurance policies for the entire period of Contract including defects liability period and also pay necessary premium for extended period of Contract if any. The Contractor shall prove to the Engineer from time to time that he has taken out all the insurance policies and has paid the necessary premiums for keeping the policies alive till expiry of the Defects Liability Period.

Adequacy of Insurances

25.2 The Contractor shall notify the insurers of changes in the nature, extent or programme for the execution of the Works and ensure the adequacy of the insurances at all times in accordance with the terms of the Contract and shall, when required, produce to the Employer the insurance policies in force and the receipt for payment of the current premiums.

Remedy on Contractor's Failure to Insure

25.3 If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide the policies to the Employer within the period required by Sub-Clause 25.1, then and in any such case the Employer may effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.

Compliance with Policy Conditions

25.4 In the event that the Contractor or the Employer fails to comply with conditions imposed by the insurance policies effected pursuant to the Contract, each shall indemnify the other against all losses and claims arising from such failure.

Compliance with Statutes, Regulations

26.1 The Contractor shall conform in all respects, including by the giving of all notices and the paying of all fees, with the provisions of:

- (a) any National or State Statute, Ordinance, or other Law, or any regulation, or bye-law of any local or other duly constituted authority in relating to the execution and completion of the Works and the remedying of any defects therein, and
- (b) the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works,

and the Contractor shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such provisions. Provided always that the Employer shall be responsible for obtaining any planning, zoning or other similar permission required for the Works to

proceed and shall indemnify the Contractor in accordance with Sub-Clause 22.3.

Fossils

27.1 All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be deemed to be the absolute property of the Employer. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the Engineer of such discovery and carry out the Engineer's instructions for dealing with the same. If, by reason of such instructions, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultation with the Employer and the Contractor determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Patent Rights

28.1 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 trademark or name or other protected rights in respect of any Contractor's Equipment, materials or Plant used for or in connection with or for incorporation in the Works and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer.

Royalties

28.2 Except where otherwise stated, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting soil / earth , stone, sand, gravel, murum, clay or other materials required for the Works , imposed by authorities from time to time and submit to the Engineer, proof of such payment, if so required by the Engineer.

Interference with Traffic and Adjoining Properties

29.1 All operations necessary for the execution and completion of the Works and the remedying of any defects therein shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to, use and occupation of public or private roads and footpaths to or of properties whether in the possession of the Employer or of any other person.
- (c) the underground utilities services such as water pipes, gas pipes, drains, sewers, cables etc., which shall be protected and properly maintained at his own cost.

The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters insofar as the Contractor is responsible therefore.

The Contractor shall have to make all necessary arrangements for regulating traffic day and night, during the period of construction and to the entire satisfaction of the Engineer.

Avoidance of damage to Roads

30.1 The Contractor shall use every reasonable means to prevent any of the roads 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 Subcontractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Plant, Contractor's Equipment or Temporary Works from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such roads and bridges.

Transport of Contractor's equipment or temporary Works

30.2 Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or

improving any road communicating with or on the routes to the Site to facilitate the movement of Contractor's Equipment or Temporary Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the Employer, and shall negotiate and pay all claims arising solely out of such damage.

Transport of materials or plants

30.3 If, notwithstanding Sub-Clause 30.1, any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials or Plant, the Contractor shall notify the Engineer with a copy to the Employer, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any law or regulation the haulier of such materials or Plant is required to indemnify the road authority against damage the Employer shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto. Provided that if an so far as any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-Clause 30.1, then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure shall be recoverable from the Contractor by the Employer and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Provided also that the Employer shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor, the Employer shall consult with the Contractor before such settlement is agreed.

Waterborne Traffic

30.4 Where the nature of the Works is such as to require the use by the Contractor of waterborne transport the foregoing provisions of this Clause shall be construed as though "road" included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included craft, and shall have effect accordingly.

Opportunities for Other Contractors

- 31.1 The Contractor shall, in accordance with the requirements of the Engineer, afford all reasonable opportunities for carrying out their work to:
- (a) any other contractors employed by the Employer and their workmen,
 - (b) the workmen of the Employer, and
 - (c) the workmen of any duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works .

Facilities for Other Contractors

- 31.2 If, however, pursuant to Sub-Clause 31.1 the Contractor shall, on the written request of the Engineer :
- (a) make available to any such other contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the Contractor is responsible,
 - (b) permit the use, by any such, of Temporary Works or Contractor's Equipment on the Site, or
 - (c) provide any other service of whatsoever nature for any such,
- the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

Contractor to Keep Site Clear

- 32.1 During the execution of the Works the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.

Clearance of Site on Completion

- 33.1 Upon the issue of any Taking-Over Certificate the Contractor shall clear away and remove from that part of the Site to which such Taking-Over Certificate relates all Contractor's equipment, surplus material, rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean and in a

workmanlike condition to the satisfaction of the Engineer. Provided that the Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials, Contractor's Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

Labour

Engagement of Staff and Labour

34.1 The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport.

The Contractor shall employ the unskilled labour to be employed by him on the Works only from locally available labours and shall give preference to those persons enrolled under Maharashtra Government Employment and Self Employment Departments Scheme. provided, however, that if the required unskilled labours are not available locally, the Contractor shall in the first instant employ such number of persons as is available and thereafter may with previous permission, in writing of the Engineer, obtain the rest of the requirement of unskilled labour from outside the above scheme. In such case, the Contractor shall obtain requisite license / registration certificate under the Interstate Migrant Workmen Act and/or Contract Labour Act.

Rates of Wages and conditions of Labour

34.2 The Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or industry where the work is carried out.

The Contractor shall also comply with the provisions of payment of Wages Act, 1936, Minimum Wages Act, 1948, Employees Liability Act 1938, Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Indian Factories Act, 1948, Maternity Benefit Act, 1961, or any modification thereof or any other law relating thereto and rules made thereunder from time to time, he will observe and give effect to the provisions of any law for the time being in force and regulating the rights and privileges of the labourers employed by him directly or indirectly. The Contractor shall indemnify the Corporation against any payments to be made thereunder.

Housing for Labour

34.3 Save insofar as the Contract otherwise provides, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all his staff and labour, employed / engaged for the purpose of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and fire fighting equipment, and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary camps or housing provided by the Contractor shall be removed and the site reinstated to its original condition, all to the approval of the Engineer.

Health and Safety

34.4 Due precautions shall be taken by the Contractor, and at his own cost, to ensure the safety of his staff and labour and in collaboration with and to the requirements of the local health authorities, to ensure that medical staff, first aid equipment and stores sick bay and suitable ambulance services whenever necessary, including an adequate supply of sterilized dressing materials and sterilized cotton wool, as prescribed in the Factory Rules of the Maharashtra State, are available at the camps, housing, and on the Site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.

Measures against Insect and Pest Nuisance

34.5 The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from insect nuisance, rats, and other pests and reduce the dangers to health and the general nuisance caused by the same. The Contractor shall provide his staff and labour with suitable prophylactics for the prevention of malaria, and shall take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as instructed by the Engineer. The Contractor shall warn his staff and labour of the dangers of bilharzia and wild animals.

Disorderly Conduct

34.6 The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous, or disorderly conduct by or among his staff and labour and take all reasonable precautions for the preservation of peace and protection of persons and property in the neighbourhood of the Works against the same. He shall also pay the necessary charges for Police protection, required if any, as the Chief Engineer may deem necessary.

Returns of Labour and Contractor's Equipment

35.1 The Contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and such intervals as the Engineer may prescribe, showing the staff and the number of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Contractor's Equipment as the Engineer may require.

Records of Safety and Health

35.2. The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Engineer may from time to time prescribe.

Reporting of Accidents

35.3. The Contractor shall report to the Engineer details of any accident as soon as possible after its concurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means.

The Apprentices Act 1961

35.4. The Contractor shall duly comply with the provision of the Apprentices Act 1961 (III of 1961) the rules made there under and the order that may be issued from time to time under the said Act and the said Rules and on his failure or neglect to do so he shall be subject to all the liabilities and penalties provided by the said Act and said Rules.

Materials, Plant and Workmanship

Quality of Materials, Plant and Workmanship

36.1 All materials, Plant and workmanship shall be:

- (a) of the respective kinds described in the Contract and in accordance with the Engineer's instructions, and
- (b) subjected from time to time to such tests as the Engineer may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.

The Contractor shall provide such assistance, transport, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or Plant and shall supply samples of materials, before incorporation in the Works , for testing as may be selected and required by the Engineer.

Cost of Samples

36.2 All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract.

Cost of Tests

36.3 The cost of making any test shall be borne by the Contractor if such test is:

- (a) clearly intended by or provided for in the Contract, or
- (b) particularized in the Contract (in case 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 fulfill) in sufficient detail to enable the Contractor to price or allow for the same in his tender.

Cost of Test not Provided for

36.4 If any test required by the Engineer which is:

- (a) not so intended by or provided for,
- (b) (in the cases above mentioned) not so particularised, or

- (c) (though so intended or provided for) required by the Engineer to be carried out at any place other than the Site or the place of manufacture, fabrication or preparation of the materials of Plant tested,
- shows the materials, Plant or workmanship not to be in accordance with the provisions of the Contract to the satisfaction of the Engineer, then the cost of such test shall be borne by the Contractor, but in any other case Sub-Clause 36.5 shall apply.

Engineer's Determination where Tests not provided for

36.5 Where, pursuant to Sub-Clause 36.4, this Sub-Clause applies, the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly with a copy to the Employer.

Use of B.I.S. specifications

36.6 In cases where no particular specifications are given for any articles to be used under the contract, the relevant specification where one exists of the latest version of Bureau of Indian Standards shall apply.

Inspection of Operations

37.1 The Engineer, and any person authorised by him, shall at all reasonable times have access to the Site and to all Works hops and places where materials or Plant are being manufactured, fabricated or prepared for the Works and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.

Inspection and Testing

37.2 The Engineer shall be entitled, during manufacture, fabrication or preparation to inspect and test the materials and Plant to be supplied under the Contract. If materials or Plant are being manufactured, fabricated or prepared in Works hops or places other than those of the Contractor, the Contractor shall obtain permission for the Engineer to carry out such inspection and testing in those Works hops or places. Such inspection or testing shall not release the Contractor from any obligation under the Contract.

Dates for Inspection and Testing

37.3 The Contractor shall agree with the Engineer on the time and place for the inspection and testing of any materials or Plant as provided in the Contract. The Engineer shall give the Contractor not less than 24 hours notice of his intention to carry out the inspection or to attend the test. If the Engineer, or his duly authorised representative, does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Engineer, proceed with the tests, which shall be deemed to have been made in the presence of the Engineer. The Contractor shall forthwith forward to the Engineer duly certified copies of the test readings.

Rejection

37.4 If, at the time and place agreed in accordance with Sub-Clause 37.3, the materials or Plant are not ready for inspection or testing or if, as a result of the inspection or testing referred to in this Clause, the Engineer determines that the materials or Plant are defective or otherwise not in accordance with the Contract, he may reject the materials or Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Contractor shall then promptly make good the defect or ensure that rejected materials or Plant comply with the Contract. If the Engineer so requests, the tests of rejected materials or Plant shall be made or repeated under the same terms and conditions. All costs incurred for the tests shall be borne by the Contractor.

Independent Inspection

37.5 The Engineer may delegate inspection and testing of materials or Plant to an independent inspector. Any such delegation shall be effected in accordance with Sub-Clause 2.4 and for this purpose such independent inspector shall be considered as an assistant of the Engineer. Notice of such appointment (not being less than 14 days) shall be given by the Engineer to the Contractor.

Examination of Work before Covering up

38.1 No part of the Works shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any such part of the Works which is about to be covered up or put out of view and to examine foundations before any part of the Works is placed thereon. The Contractor shall give notice to the Engineer whenever any

such part of the Works or foundations is or are ready or about to be ready for examination and the Engineer shall, without unreasonable delay, unless he considers it necessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such part of the Works or of examining such foundations.

Uncovering and Making Openings

38.2 The Contractor shall uncover any part of the Works or make openings in or through the same as the Engineer may from time to time instruct and shall reinstate and make good such part. If any such part has been covered up or put out of view after compliance with the requirement of Sub-Clause 38.1 and is found to be executed in accordance with the Contract, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor's costs in respect of such of uncovering, making openings in or through, reinstating and making good the same, which shall be added to the Contractor Price, and shall notify the Contractor accordingly, with a copy to the Employer. In any other case all costs shall be borne by the Contractor.

Materials brought to site

38.3 All materials brought to the site shall become and remains the property of the Corporation and shall not be removed off the site without the prior written approval of the Engineer. But whenever the Works are finally completed and advance paid, if any, in respect of any such material is fully recovered, the Contractor shall at his own expense forthwith remove from the site all surplus materials originally supplied by him and upon such removal, the same shall revert in and become the property of the Contractor.

Materials obtained from excavation

38.4 Materials of any kind obtained from excavation of the site shall remain the property of the Corporation and shall be disposed off as per the Contract and as directed by the Engineer.

Use of Explosives

38.5 The Contractor shall comply with all laws and security regulations in force from time to time, relating to the procurement, importation, movement, storage and use of explosives including the provision of magazines at locations approved by the appropriate authorities. The magazines shall conform in all respects to all laws in

force regarding the erection, maintenance and guarding of magazines.

The Contractor shall obtain all necessary licenses as may be required for the procurement, importation, movement, storage and use of explosives and do all things necessary to ensure compliance with the laws in force relating to dangerous goods.

Removal of Improper Work, Materials or Plant

- 39.1 The Engineer shall have authority to issue instructions from time to time, for:
- (a) the removal from the Site, within such time or times as may be specified in the instruction, of any materials or Plant which, in the opinion of the Engineer, are not in accordance with the Contract,
 - (b) the substitution of proper and suitable materials or Plant, and
 - (c) the removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefore, of any Work which, in respect of
 - (i) materials, Plant or workmanship, or
 - (ii) design by the Contractor or for which he is responsible, is not, in the opinion of the Engineer, in accordance with the Contract.

Default of Contractor in Compliance

- 39.2 In case of default on the part of the Contractor in carrying out such instruction within the time specified therein or, if none, within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Suspension and foreclosure

Suspension of work

- 40.1 If at any time after acceptance of the Tender the Engineer shall for any reason whatsoever (other than default on the part of the Contractor for which the Corporation is entitled to rescind the contract) desire that the whole or any part of

the Work specified in the tender should be suspended for any period or that the whole or part of the Work should not be carried out at all, he shall give the Contractor a notice in writing of such desire and upon the receipt of such notice the Contractor shall forthwith suspend or stop the Work wholly or in part as required, after having due regard to the appropriate stage at which the Work should be stopped or suspended so as not to cause any damage or injury to the Work already done or endanger the safety thereof provided that the decision of the engineer as to the stage at which the Work or any part of it could be or could have been safely stopped or suspended shall be final and conclusive against the Contractor. The Contractor shall have no claim to any payment or compensation whatsoever by reason of in pursuance of any notice as aforesaid on account of any suspension, stoppage or curtailment except to the extent specified in 40.2 & 40.3.

- 40.2 Where the total suspension of the Work ordered as aforesaid continued for a continuous period exceeding 90 days the Contractor shall be at liberty to withdraw from the contractual obligations under the Contract so far as it pertains to the unexecuted part of the Work by giving 10 days prior notice in writing to the engineer, within 30 days of the expiry of the said period of 90 days, of such intention and requiring the engineer to record the final measurements of the Work already done and to pay final payment. Upon giving such notice the Contractor shall be deemed to have been discharged from his obligation to complete the remaining unexecuted Work under the Contract. On receipt of such notice the engineer shall proceed to complete the measurement and make such payment as may be finally due to the Contractor within a period of 90 days from the receipt of such notice in respect of the Work already done by the Contractor. Such payment shall not in any manner prejudice the right of the Contractor to any further compensation under the remaining provisions of this clause.
- 40.3 Where the Engineer required the Contractor to suspend the Work for a period of excess of 30 days at any time or 60 days in the aggregate, the Contractor shall be entitled to apply to the engineer within 30 days of the suspension of Work after such suspension for payment of compensation to the extent of pecuniary loss suffered by him in respect of working machinery remained idle on the site or on the account of his having had to pay the salary or wages of labour engaged by him during the said period of suspension, provided always that the Contractor shall not be entitled to pay any claim in respect of any such working machinery salary or wages for the first 30 days whether consecutive or in the aggregate of

such suspension or in respect of any suspension whatsoever occasioned by unsatisfactory work or any other default on his part. The decision of the engineer in this regard shall be final and conclusive against the Contractor.

40.3.1 If the suspension is ordered for the reasons other than default of the Contractor then the Contractor shall be entitled to an extension of time equal to period of such suspension plus a reasonable time as decided by the Engineer.

40.3.2 In the event of -

(i) Any stoppage of Work on notice from the Engineer under Sub Clause 40.1

AND / OR

(ii) Withdrawal by the Contractor from the contractual obligation to complete the remaining unexecuted Work under Sub-Clause 40.2 on account of continued suspension of Work for a period exceeding 90 days.

It shall be open to the Contractor, within 90 days from the service of (i) the notice of stoppage of Work or (ii) the notice of withdrawal from the contractual obligations under the Contract on account of the continued suspension of Work or (iii) notice under clause 40(1) resulting in such curtailment, to produce to the Engineer satisfactory documentary evidence that he had purchased or agreed to purchase material for use in the contracted work, before receipt by him of the notice of stoppage, suspension or curtailment and require the Corporation to take over on payment such material at the rates determined by the Engineer, provided, however, that such rates shall in no case exceed the rates at which the same was acquired by the Contractor. The Corporation shall thereafter take over the material so offered, provided the quantities offered, are not in excess of the requirement of the unexecuted work as specified in the accepted tender and are of quality and specifications approved by the Engineer.

Foreclosure of Contract in full or in part

40.4 If at any time after acceptance of the tender the Managing Director shall decide to abandon or reduce the scope of the Works for any reasons whatsoever and hence not require the whole or any part of the Works to be carried out, he shall inform the Contractor in writing to that effect and the Contractor shall have no

claim to any payment or compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the Works in full but which he did not derive in consequence of the foreclosure of the whole or part of the Works .

The Contractor shall be paid at the Contract rates full amount for Works executed at site, and in addition, reasonable amount as certified by the Engineer for the value of such material (which material thereupon become the property of the Corporation) and also such further allowances as the Chief Engineer may think reasonable and fair in respect of (a) any expenditure incurred by the Contractor towards preliminary Works etc., and (b) other reasonable and proper engagement the Contractor may have entered into for carrying out the work.

Commencement and Delays

Commencement of Works

41.1 The Contractor shall commence the Works as soon as is reasonably possible after the receipt by him of a notice to this effect from the Engineer, which notice shall be issued within 30 days after the date of the Letter of Acceptance. Thereafter, the Contractor shall proceed with the Works with due expedition and without delay.

Possession of Site

42.1 Save insofar as the Contract may prescribe:

- (a) the extent of portions of the Site of which the Contractor is to be given possession from time to time.
- (b) the order in which such portions shall be made available to the Contractor, and, subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer will, with the Engineer's notice to commence the Works , give to the Contractor possession of
- (c) so much of the Site, and
- (d) such access as, in accordance with the Contract, is to be provided by the Employer as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 14, if any, and otherwise in accordance

with such reasonable proposals as the Contractor shall, by notice to the Engineer with a copy to the Employer, make. The Employer will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with such programme or proposals, as the case may be.

Failure to Give Possession

42.2 If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of the Sub-Clause 42.1, the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, subject to maximum of 5% of Contract Price, which shall be added to the Contract Price, and shall, notify the Contractor accordingly, with a copy to the Employer

Rights of Way and Facilities

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

Time for Completion

43.1 The whole of the Works and, if applicable, any Section required to be completed within a particular time as stated in the Annexure- A, shall be completed, in accordance with the provisions of Clause 48, within the time stated in the Annexure- A, for the whole of the Works or the Section (as the case may be), calculated from the Commencement Date, or such extended time as may be allowed under Clause 44.

Extension of Time for Completion

44.1 In the event of:

- (a) the amount of nature of extra or additional work,
- (b) any cause of delay referred to in these Conditions,
- (c) exceptionally adverse climatic conditions,
- (d) any delay, impediment or prevention by the Employer, or
- (e) other special circumstances which may occur, other than through a default of or breach of Contract by the Contractor or for which he is responsible,

being such as fairly to entitle the Contractor to an extension of Time for Completion of the Works , or any Section or part thereof, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of such extension and shall notify the Contractor accordingly, with a copy to the Employer

Contractor to Provide Notification and Detailed Particulars

44.2 Provided that the Engineer is not bound to make any determination unless the Contractor has

- (a) within 28 days after such event has first arisen notified the Engineer, with a copy to the Employer and
- (b) within 28 days, or such other reasonable time as may be agreed by the Engineer, after such notification submitted to the Engineer detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

Interim Determination of Extension

44.3 Provided also that where an event has a continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 28 days referred to in Sub-Clause 44.2(b), he shall nevertheless be entitled to an extension of time provided that he has submitted to the Engineer interim particulars at intervals of not more than 28 days and final particulars within 28 days of the end of the effects resulting from the event. On receipt of such interim particulars, the Engineer shall, without undue delay, make an interim

determination of extension of time and, on receipt of the final particulars, the Engineer shall review all the circumstances and shall determine an overall extension of time in regard to the event. In both such cases the Engineer shall make his determination after due consultation with the Employer and the Contractor and shall notify the Contractor of the determination, with a copy to the Employer. No final review shall result in a decrease of any extension of time already determined by the Engineer.

Restriction on Working Hours

45.1 Subject to any provision to the contrary contained in the Contract, none of the Works shall, save as hereinafter provided, be carried on during the night or on locally recognized days of rest without the consent of the Engineer, except when 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. Provided that the provisions of this Clause shall not be applicable in the case of any Work which it is customary to carry out by multiple shifts.

Rate of Progress

46.1 If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any Section is at any time, in the opinion of the Engineer, too slow to comply with the Time for Completion, the Engineer shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to expedite progress so as to comply with the Time for Completion. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any Work at night or on locally recognized days of rest, he shall be entitled to seek the consent of the Engineer so to do. Provided that if any steps, taken by the Contractor in meeting his obligations under this clause, involve the Employer in additional supervision costs, such costs shall, after due consultation with the Employer and Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the employer.

Compensation for Delay

47.1 If the Contractor fails to comply with the Time for Completion in accordance with Clause 48, for the whole of the Works or, if applicable, any Section within the relevant time prescribed by Clause 43, then the Contractor shall pay to the Employer, as agreed compensation, amount calculated at $\frac{1}{4}$ percent per week of Contract price of the whole Work or of the Section for which separate period of Completion are given in the contract and of which completion is delayed, as Compensation for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default) for every week or part of a week which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the relevant Section, subject to the applicable limit stated. The employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

47.1.1 When the delay is not a full week or in multiple of a week but involves a fraction of a week the compensation payable for that fraction shall be proportional to the number of days involved.

47.1.2 Provided always that the total amount of compensation for delay to be paid under this condition shall not exceed $7\frac{1}{2}$ percent of the contract price of the whole work or group of items of Work for which a separate period of completion is given.

47.1.3 The amount of compensation may be adjusted or set off against any sum payable to the Contractor under this or any other Contract with the Corporation.

47.1.4 Notwithstanding to any provision of this clause, during the progress of the work till Taking-Over Certificate is issued, Engineer shall be entitled to recover amount towards Compensation for Delay in terms of following provisions, if Contractor fails to proceed as per Works programme i.e. physical and financial programme approved by Engineer

- a) Contractor shall analyze or break down the Contract Work to be executed by him into several parts or items and specify the time for the completion of each part of item, in the form of a works programme, and

- b) Contractor shall complete each part or item on or before such specified time, being intended to be of the essence of the contract, and
- c) If Contractor fails to so complete each part or item of the Work before such specified time, the Contract becomes voidable at the option of the Corporation, and
- d) Contractor shall be liable to pay to the Corporation the compensation under clause 47.1 at the rates provided therein on the Contract price of whole Work or of section for which, the separate period of completion is specified and which has not been completed accordingly, and
- e) If Contractor fails to so complete one part or item of Work within specified time and pays the compensation to the Corporation but completes the delayed part or item of Work and also the next succeeding part or item of Work on or before the time specified for such next succeeding part or item of work, the compensation so paid by the Contractor, shall be refunded to him by the Corporation free of interest.

47.1.5 The original Works programme submitted by the Contractor and approved by Superintending Engineer and subsequent revisions, if any, approved by the Chief Engineer shall be considered for levy of compensation for delay.

47.1.6 This clause shall become operative after completion of 25 percent of Work in financial terms or after elapse of 25 percent of stipulated time period of contract, whichever is earlier.

Reduction of Compensation for Delay

47.2 If, before the Time for completion of the whole of the Works or, if applicable, any Section, a Taking-Over Certificate has been issued for any part of the Works or of a Section, the Compensation for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion with the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The provisions

of this Sub-Clause shall only apply to the rate of Compensation and shall not affect the limit thereof.

Taking-Over Certificate

48.1 When the whole of the Works have been substantially completed and have satisfactorily passed all Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer, with a copy to the Employer, accompanied by a written undertaking to finish with due expedition any outstanding Work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works. The Engineer shall, within one month of the date of delivery of such notice, either issue to the Contractor, with a copy to the Employer, a Taking-Over Certificate, stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the Work which, in the Engineer's opinion, is required to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the Works specified therein. The Contractor shall be entitled to receive such Taking-Over Certificate within one month of completion, to the satisfaction of the Engineer, of the Works so specified and remedying any defects so notified.

Taking Over of Sections or Parts

48.2 Similarly, in accordance with the procedure set out in Sub-Clause 48.1, the Contractor may request and the Engineer shall issue a Taking-Over Certificate in respect of :

- a) any Section in respect of which a separate Time for Completion is provided in the Appendix to Tender.
- b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and, otherwise than as provided or in the Contract, occupied or used by the Employer, or
- c) any part of the Permanent Works which the Employer has elected to occupy or use prior to completion (where such prior occupation or use is

not provided for in the Contractor or has not been agreed by the Contractor as a temporary measure).

Substantial Completion of Parts

48.3 If any part of the Permanent Works has been substantially completed and has satisfactorily passed any Tests on Completion prescribed by the Contract, the Engineer may issue a Taking-Over Certificate in respect of that part of the Permanent Works before completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with the expedition any outstanding Work in that part of the Permanent Works during the Defects Liability Period.

Surface Requiring Reinstatement

48.4 Provided that a Taking-Over Certificate given in respect of any Section or part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Taking-Over Certificate shall expressly so state.

Defects Liability

Defects Liability Period

49.1 In these Conditions the expression "Defects Liability Period" shall mean the defects liability period named in the Annexure A, calculated from:

- a) the date of Taking-Over of Works certified by the Engineer in accordance with Clause 48, or
- b) in the event of more than one certificate having been issued by the Engineer under Clause 48, the respective dates so certified,

and in relation to the Defects Liability Period the expression "the Works" shall be construed accordingly.

Completion of Outstanding Work and Remedying Defects

49.2 To the intent that the Works, shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer, the Contractor shall:

- a) complete the work, if any, outstanding on the date stated in the Taking-Over Certificate as soon as practicable after such date, and
- b) execute all such work of amendment, reconstruction, and remedying defects, shrinkage or other faults as the Engineer may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration, instruct the Contractor to execute.

Cost of Remedying Defects

49.3 All Work referred to in Sub-Clause 49.2(b) shall be executed by the Contractor at his own cost if the necessity thereof is, in opinion of the Engineer, due to:

- a) the use of materials, Plant or workmanship not in accordance with the Contract,
- b) where the Contractor is responsible for the design of part of the Permanent Works , any fault in such design, or
- c) the neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.

If, in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an addition to the Contract Price in accordance with Clause 52 and shall notify the Contractor accordingly, with copy to the Employer.

Contractor's Failure to Carry Out Instructions

49.4 In case of default on the part of the Contractor in carrying out such instruction within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and if such work is work which, in the opinion of the Engineer, the Contractor was liable to do at his own under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer, be determined by the Engineer and shall be recoverable from the Contractor, including supervision charges thereupon as per Annexure 'A', by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Contractor to Search

50.1 If any defect, shrinkage or other fault in the Works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, with copy to the Employer, to search under the directions of the Engineer for the cause thereof. Unless such defect, shrinkage or other fault is one for which the Contractor is liable under the Contract, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer. If such defect, shrinkage or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, shrinkage or other fault at his own cost in accordance with the provisions of Clause 49.

Alterations, Additions and Omissions

Variations

51.1 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 appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:

- a) increase or decrease the quantity of any Work included in the Contract,
- b) Omit any such Work (but not if the omitted Work is to be carried out by the Employer or by another contractor),
- c) Change the character or quality or kind of any such work,
- d) Change the levels, lines, position and dimensions of any part of the work,
- e) Execute additional Work of any kind necessary for the completion of the Works , or
- f) Change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contractor, but the effect, if any, of all such variations shall be valued in accordance with Clause 52. Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of Contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.

Instructions of Variations

51.2 The Contractor shall not make any such variation without an instruction of the Engineer. Provided that no instruction shall be required for increase or decrease in the quantity of any Work where such increase or decrease is not the result of an instruction given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.

Valuation of Variations

52.1 All variations referred to in Clause 51 and any additions to the Contract Price which are required to be determined in accordance with Clause 52 (for the purposes of this Clause referred to as "varied work"), shall be valued as detailed below :

- i. If rate for varied item of Work is specified in the Bill of Quantities, the Contractor shall carry out the varied item at the same rate.
- ii. If the rate for any varied item of Work is not specified in the schedule of work/items quantities, the rate for the such item shall be derived from the rate for the nearest similar item specified therein. In case of Bills of Quantities forming part of the contract, the rate shall be derived from the nearest similar item in the Bill of Quantities of Works in which the variation is involved, failing that from the lowest of the nearest similar items in other Bills of Quantities of the same Contract.
- iii. If the rates of any varied item of Work is not included in the Bill of Quantities, such item of Work shall be carried out as per the latest Schedule of rates of particular department, based on which the estimate is framed, prevailing at the time of execution of such quantities of the item including mark up quoted by the Contractor.
- iv. If the rate for any varied item of Work cannot be determined in the manner specified in (i) to (iii) above, then the Contractor will be paid at such fair

and reasonable rates as worked out by the Engineer on the basis of material and labour required to execute the item and allowing 12 percent (twelve percent) towards overhead charges and Contractor's profit.

- 52.1.1. On receipt of letter of award of work, the Contractor shall carefully study the tender specifications, the architectural drawings, the detailed description of item as well as the site conditions and bring to the notice of the Engineer the inadequacies in the above, within a period of two months for consideration of varied items. The Contractor shall communicate the approximate quantities of varied item. The decision in this regard shall be communicated to the Contractor within 3 months from the date of submission of his letter.
- 52.1.2 In case of Lump-sum contract, the rates for varied item shall be derived in accordance with paragraphs (iii) or (iv) of Sub-Clause 52.1 as applicable. For this purpose, the quoted amount vis-à-vis estimated cost put to tender would be considered for deciding the quoted mark up of the Contractor.
- 52.1.3 Price variation, as per Clause No. 70, for varied items becomes operative when the rate for varied item is derived only in accordance with paragraphs (i) or (ii) of Sub-Clause 52.1.

Variations Exceeding 15 percent

52.2 If, on the issue of the Final payment Certificate for the whole of the Works , it is found that as a result of:

- a) all varied work valued under Sub-Clauses 52.1 and
- b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding Provisional Sums and adjustments of price made under Clause 70,

but not from any other clause, there have been additions to or deductions from the Contract Price which taken together are in excess of 15 percent of the "Effective Contract Price" (which for the purposes of this Sub-Clause shall mean the Contract Price, excluding Provisional Sums if any) then in such event the rates for variations beyond 15% shall be derived in accordance with paragraphs (iii) or (iv) of Sub-Clause 52.1.

Procedure for Claims

Notice of Claims

53.1 Notwithstanding any other provision of the Contract, if the Contractor intends to claim any additional payment pursuant to any Clause of these Conditions or otherwise, he shall give notice of his intention to the Engineer, with a copy to the Employer, within 28 days after the event giving rise to the claim has first arisen.

Contemporary Records

53.2 Upon the happening of the event referred to in Sub-Clause 53.1, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Employer's liability, the Engineer shall, on receipt of a notice under Sub-Clause 53.1, inspect such contemporary records and may instruct the Contractor to keep any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall permit the Engineer to inspect all records kept pursuant to this Sub-Clause and shall supply him with copies thereof as and when the Engineer so instructs.

Substantiation of Claims

53.3 Within 28 days, or such other reasonable time as may be agreed by the Engineer, of giving notice under Sub-Clause 53.1, the Contractor shall send to the Engineer an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event. The Contractor shall, if required by the Engineer so to do, copy to the Employer all accounts sent to the Engineer pursuant to this Sub-Clause.

Failure to Comply

53.4 If the Contractor fails to comply with any of the provisions of this Clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount, as the Engineer with the approval

of Employer, assessing the claim considers to be verified by contemporary records (whether or not such records were brought to the Engineer's notice as required under Sub-Clauses 53.2 and 53.3).

Payment of Claims

53.5 The Contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to Clause 60 such amount in respect of any claim as the Engineer, after due consultation with the Employer and the Contractor, may consider due to the Contractor provided that the Contractor has supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer.

Contractor's Equipment, Temporary Works and Materials

Contractor's Equipment, Temporary Works and Materials; Exclusive use for the Works

54.1 All Contractors Equipment, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent of the Engineer. Provided that consent shall not be required for vehicles engaged in transporting any staff, labour, Contractor's Equipment, Temporary Works, Plant or materials to or from the Site.

Employer not liable for Damage

54.2 The Employer shall not at any time be liable, save as mentioned in Clauses 20 and 65, for this loss of or damage to any of the said Contractor's Equipment, Temporary Works or materials.

Customs Clearance

54.3 The Employer will use his best endeavours in assisting the Contractor, where required, in obtaining clearance through the Customs of Contractor's Equipment, materials and other things required for the Works.

Condition of Hire of Contractor's Equipment

54.4 With a view to securing, in the event of termination under Clause 63, the continued availability, for the purpose of executing the Works , of any hired Contractor's Equipment, the Contractor shall not bring on to the Site any hired Contractor's Equipment unless there is an agreement for the hire thereof (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner thereof will, on request in writing made by the Employer within 7 days after the date on which any termination has become effective, and on the Employer undertaking to pay all hire charges in respect thereof from such date, hire such Contractor's Equipment 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 executing and completing the Works and remedying any defects therein, under the terms of the said Clause 63.

Cost for the Purpose of Clause 63

54.5 In the event of the Employer entering into any agreement for the hire of Contractor's Equipment pursuant to Sub-Clause 54.4, all sums properly paid by the Employer under the provisions of any such agreement and all costs incurred by him (including stamp duties) in entering into such agreement shall be deemed, for the purpose of clause 63, to be part of the cost of executing and completing the Works and the remedying of any defects therein.

Incorporation of Clause in Subcontracts

54.6 The Contractor shall, where entering into any subcontract for the execution of any part of the Works , incorporate in such subcontract (by reference or otherwise) the provisions of this Clause in relation to Contractor's Equipment, Temporary Works or materials brought on to the Site by the Subcontractor.

Approval of Materials not implied

54.7 The operation of this Clause shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

Measurements**Quantities**

55.1 The quantities set out in the Bill of Quantities are the estimated quantities for the Works, and 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.

Works to be measured

56.1 The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Bill of Quantities and the Contractor shall be paid that value in accordance with Clause 60. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice to the Contractor's authorised representative, who shall:

- (a) forthwith attend or send a qualified representative to assist the Engineer in making such measurement, and
- (b) supply all particulars required by the Engineer.

Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Engineer shall prepare records and drawings as the work proceeds and the Contractor, as and when called upon to do so in writing, shall, within 14 days, attend to examine and agree such records and drawings with the Engineer and shall sign the same when so agreed. If the Contractor does not attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and 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, within 14 days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm or vary them.

Method of Measurement

57.1 The Works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the Contract.

Measurement shall be taken in accordance with the procedure set forth in the schedule of rates/ specifications, notwithstanding any provisions in the relevant standard method of measurement or any general or local custom. In the case of items which are not covered by the schedule of rates/specifications, measurement shall be taken in accordance with relevant Standard Method of Measurement of Bureau of Indian Standards.

Provisional Sums

Definition of “Provisional Sum”

58.1 “Provisional Sum” means a sum included in the Contract and so designated in the Bill of Quantities for the execution of any part of the Works or for the supply of goods, materials, Plant or services, or for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Engineer. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Engineer shall determine as accordance with this Clause. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer.

Use of Provisional Sums

58.2 In respect of every Provisional Sums the Engineer shall have authority to issue instructions for the execution of work or for the supply of goods, materials, Plant or services by:

- a) the Contractor, in which case the Contractor shall be entitled to an amount equal to the value thereof determined in accordance with Clause 52, and

- b) a nominated Sub-contractor, as hereinafter defined, in which case the sum to be paid to the Contractor thereof shall be determined and paid in accordance with Sub-Clause 59.4.

Production of Vouchers

- 58.3 The Contractor shall produce to the Engineer all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums, except where work is valued in accordance with rates or prices set out in the Tender.

Nominated Subcontractors

Definition of “Nominated Subcontractor”

- 59.1 All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials, Plant or services for which Provisional Sums are included in the Contract, 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 Contract the Contractor is required to sub-contract shall, in the execution of such work or the supply of such goods, materials, Plant or services, be deemed to be sub-contractors to the Contractor and are referred to in this Contract as “nominated Sub-contractors”.

Nominated Subcontractors; Objection to Nomination

- 59.2 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 against whom the Contractor may raise reasonable objection or who declines to enter into a sub-contract with the Contractor containing provisions:
- (a) that in respect of the work, goods, materials, Plant or services the subject of the sub-contract, the nominated Sub-contractor will undertake towards the Contractor such obligations and liabilities as will enable the Contractor to discharge his own obligations and liabilities towards the Employer under the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims proceedings, damages, costs, charges and expenses whatsoever arising out of or in

connection therewith, or arising out or in connection with any failure to perform such obligations or to fulfil such liabilities, and

- (b) that the nominated Sub-contractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Sub-contractor, his agents, workmen and servants and from and against any misuse by him or them of any Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid.

Design Requirements to be Expressly Stated

59.3 If in connection with any Provisional Sum the services to be provided include any matter of design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Subcontractor. The nominated Sub-contractor shall specify that the nominated Sub-contractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, 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.

Payments to Nominated Subcontractors

59.4 For all work executed or goods, materials, Plant or services supplied by any nominated Sub-contractor, the Contractor shall be entitled to:

- (a) the actual price paid or due to be paid by the Contractor, or the instructions of the Engineer, and in accordance with the Sub-contractor;
- (b) in respect of labour supplied by the Contractor, the sum, if any, entered in the Bill of Quantities or, if instructed by the Engineer pursuant to paragraph (a) of Sub-Clause 58.2, as may be determined in accordance with Clause 52; and
- (c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the

Contractor and repeated where provision for such is made in special item provided in the Bill of Quantities for such purpose.

Certification of Payments to Nominated Subcontractors

59.5 Before issuing, under Clause 60, any certificate, which includes any payment in respect of work done or goods, materials, Plant or services 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, materials, Plant or services of such nominated Sub-contractor have been paid or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor:

- (a) satisfies the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments, and
- (b) produces 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 retentions, provided for in the nominated Sub-Contract, 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 to become due from the Employer to the Contractor.

Provided that, where the Engineer has certified and the Employer has paid direct as aforesaid, the Engineer shall, in 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.

Certificates and Payments

Monthly Statements

60.1 The Contractor shall submit to the Engineer after the end of each month two copies, each signed by the Contractor's representative, a statement, in such form

as the Engineer may from time to time prescribe, showing the amounts to which the Contractor considers himself entitled up to the end of the respective month in relation to:

- (a) the value of the Works executed along with detailed measurements of various items in Bill Of Quantities,
- (b) adjustments under Clause 70 (to be submitted quarterly), and
- (c) any other sum to which the Contractor consider himself to be entitled under the Contract or otherwise.

Monthly Payment

60.2 The Engineer shall within 28 days of receiving such statement, deliver to the Employer an Interim payment Certificate stating the amount of payment to the Contractor which the Engineer considers due and payable in respect of such statement, subject:

- (a) firstly, to the retention of the amount calculated by applying the Percentage of Retention stated in Clause 10.1 to the amount to which the Contractor is entitled and
- (b) secondly, to the deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the Employer.

Notwithstanding the terms of this Clause or any other Clause of the Contract no amount will be certified by the Engineer for payment until the performance security, if required under the Contract, has been provided by the Contractor and approved by the Employer.

Refund of Performance Security

- 60.3
- (a) Upon the issue of Taking-Over Certificate with respect to the whole of the Works, the Contract Deposit, or upon the issue of Taking-Over certificate with respect of a Section or part of Permanent Works only such proportion thereof as the Engineer determines having regard to the relative value of such Section or part of the Permanent Works, shall be certified by the Engineer for payment to the Contractor.
 - (b) Upon the expiration of the Defects Liability Period for the Works, the Retention Money shall be certified by the Engineer for payment to the

Contractor. Provided that, in the event of different Defects Liability Period having become applicable to different Sections or parts of the Permanent Works pursuant to Clause 48, the expression “expiration of the Defects Liability Period” shall, for the purpose of this Sub-Clause, be deemed to mean the expiration of the latest of such period. Provided also that if at such time there shall remain to be executed by the Contractor any work instructed, pursuant to Clauses 49 and 50, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work of so much of the balance of the Retention money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

Correction of Certificates

60.4 The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate which shall have been issued by him and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

Advance against material

60.5 Advance may, from time to time, if the Engineer thinks fit, be made to the Contractor to the extent of 90 percent of the value of such material, worked out on the basis of Schedule of Rates prevailing at the time of estimation as indicated in tender or procurement value, whichever is lower, against indenture bond, provided such material is brought to the works and Engineer is satisfied that they are the bona fide property of the contractor, suitable in quantity for use in the permanent work and properly housed and protected. The Engineer shall however have the right to reject any such material of which he may thereafter disapprove and order the removal, and in case of such rejection, disapproval or order for removal, all loss resulting therefrom shall be borne by the contractor, it being the intention of this clause that any such materials shall continue to be subject to all the provisions of the contract.

The advance payment so made shall be recovered from the subsequent interim payment towards monthly statement of the contractor. However, a fresh advance will be recommended once in a month through the interim payment depending upon the physical stock of material, lying at site.

Final Statement

60.6 Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the Works , the Contractor shall submit to the Engineer two copies of a Statement at Completion with supporting documents showing in detail, in the form approved by the Engineer:

- a. the final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate,
- b. any further sums which the Contractor considers to be due, and
- c. an estimate of amounts which the Contractor considers will become due to him under the Contract.

If the Engineer disagrees with or cannot verify any part of the Statement at Completion, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the Statement as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed (for the purpose of these Conditions referred to as the "Final Statement").

If, following discussions between the Engineer and the Contractor and any changes to the final statement which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer a Final Payment Certificate for those parts of the draft final statement, if any, which are not in dispute. The dispute may then be settled in accordance with Clause 67.

Discharge

60.7 Upon submission of the Final Statement, the Contractor shall give to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Sub-Clause 60.8 has been made. Provided further that Contractor's liability does not cease till issue of Defect Liability Certificate.

Final Payment Certificate

60.8 Within 60 days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the Contractor, a Final Payment Certificate stating :

- (a) the amount which, in the opinion of the Engineer, is finally due under the Contract or otherwise, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

Cessation of Employer's Liability

60.9 The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub-Clause 60.5.

Time for Payment

60.10 Up to 75% of the amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 7 working days and the balance amount within 21 working days of receipt of Interim Payment Certificate. In the case of the Final Payment Certificate referred to in Sub-Clause 60.8, within 60 days, of receipt of such Final Payment Certificate. In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor interest at the rate stated in the Annexure - A upon all sums unpaid but payable from the date by which the same should have been paid. The provisions of this Sub-Clause are without prejudice to the Contractor's entitlement under Clause 69 or otherwise.

No interest for delayed payments due to disputes etc.

60.11 No claim for interest or damage will be entertained by the Employer with respect to any money, or balances which may be in his hands owing to any dispute or difference.

Recovery of dues from the Contractor

60.12 All amounts whatsoever which the Contractor is liable to pay to the Corporation in connection with the Works shall be recovered from any other contract or account

of the Contractor or as arrears of Land Revenue under Paragraph 6 of 1st Schedule of the Maharashtra Regional Town Planning Act, 1966

Crèche Facility for the Children of Construction Labour

60.13 CIDCO has undertaken to provide crèche facilities for children of construction labour through one of the volunteer agency. The facility is open to children of construction labourers employed by the Contractor. In order to meet the expenses of providing crèche facility, the following charges shall be levied on the Contractor.

a.	For Contract Price up to Rs.20,000/- to Rs.50,000/-	NIL
b.	For Contract Price from Rs.50,001/- to Rs.75,000/-	0.5% of Contract Price with a minimum of Rs. 500.00
c.	For Contract Price ranging from Rs.75,001/- to Rs.2,00,000/-	1% of Contract Price with a minimum of Rs.750/-
d.	For Contract Price ranging from Rs.2,00,001/- to Rs.5,00,000/-	1.5% of Contract Price with a minimum of Rs.3,000/-
e.	For Contract Price above Rs.5,00,000/-	1.5% of Contract Price or Rs.1,00,000/- whichever is less.

- i) The aforesaid amount shall be recoverable even if such facility is not made available by the Corporation in the particular node.
- ii) The amount shall be recovered, from first three Interim Payment Certificates, in full.

Approval only by Defects Liability Certificate

61.1 Only the Defects Liability Certificate, referred to in Clause 62, shall be deemed to constitute approval of the Works.

Defects Liability Certificate

62.1 The Contract shall not be considered as completed until a Defects Liability Certificate shall have been signed by the Engineer and delivered to the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer's satisfaction. The Defects Liability Certificate shall only be given by the Engineer after the inspection of work, made prior to expiry of defects liability period & shall be issued within 28 days after the expiration of the Defects Liability Period, or, if different defects liability periods shall become applicable to different Sections or parts of the Permanent Works, the expiration of the latest such period, or as soon thereafter as any Works instructed, pursuant to Clause 49 and 50, have been completed to the satisfaction of the Engineer.

Unfulfilled Obligations

62.2 Notwithstanding the issue of the Defects Liability Certificate the Contractor and Employer shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Defects Liability Certificate which remains unperformed at the time such Defects Liability Certificate is issued and, for the purpose of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties to the Contract.

Remedies

Default of Contractor

63.1 If the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors, or agree to carry out the Contractor under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation relating to reorganisation, arrangement or readjustment of debts, proceeding are commenced against the Contractor or resolutions passed in connection with dissolution or liquidation or if any steps are taken to enforce any security or

interest over a substantial part of the assets of the Contractor, or if any act is done or event occurs with respect to the Contractor or his assets which, under any applicable law has a substantially similar effect to any of the foregoing acts or events, or if the Contractor has contravened Sub-Clause 3.1, or has an execution levied on his goods, or if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion, the Contractor:

- (a) has repudiated the Contract,
- (b) without reasonable excuse has failed,
 - (i) to commence the Works in accordance with Sub-Clause 41.1, or
 - (ii) to proceed with the Works, or any Section thereof, within 28 days after receiving notice pursuant to Sub-Clause 46.1,
- (c) has failed to comply with a notice issued pursuant to Sub-Clause 37.4 or an instruction issued pursuant to Sub-Clause 39.1 within 28 days after having received it,
- (d) despite previous warning from the Engineer, in writing, is otherwise persistently or flagrantly neglecting to comply with any of his obligations under the Contract,
- (e) has contravened Sub-Clause 4.1
- (f) is an individual or a proprietary concern and the individual or the proprietor died or the Contractor is a partnership concern and one of the partners has died and the legal representative of the deceased contractor or surviving partners of the partnership concern, in opinion of the Employer, cannot carry out and complete the Contract.

then the Employer may, after giving 14 days notice to the Contractor, enter upon the Site and the Works and terminate the employment of the Contractor without thereby releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and authorities conferred on the Employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The Employer or such other contractor may use for such completion so much of the Contractor's Equipment, Temporary Works and materials as he or they may think proper.

Valuation at Date of Termination

- 63.2 The Engineer shall, as soon as may be practicable after any such entry and terminations by the Employer, fix and determine ex parte, or by or after reference to the parties or after such investigation or enquiries as may think fit to make or institute, and shall certify:
- (a) what amount (if any) had, at the time of such entry and termination, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and
 - (b) the value of any of the said unused or partially used materials, any Contractor's Equipment and any Temporary Works .

Payment after Termination

- 63.3 If the Employer terminates the Contractor's employment under this Clause, he shall not be liable to pay to the Contractor any further amount (including damages) in respect of the Contract until the expiration of the Defects Liability Period and there after until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum (if any) as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

Assignment of Benefit of Agreement

- 63.4 Unless prohibited by law, the Contractor shall, if so instructed by the Engineer within 14 days of such entry and termination referred to in Sub-Clause 63.1, assign to the Employer the benefit of any agreement for the supply of any goods or materials or services and/or for the execution of any work for the purposes of the Contract, which the Contractor may have entered into.

Urgent Remedial Work

- 64.1 If, by reason of any accident, or failure, or other event occurring to, in, or in connection with the Works or any part thereof, either during the execution of the

Works , or during the Defects Liability period, any remedial or other work is, in the opinion of the Engineer, urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work, the Employer shall be entitled to employ and pay other persons to carry out such work as the Engineer may consider necessary. If the work of repair so done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof.

Special Risks

No Liability for Special Risks

65.1 The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Sub-Clause 65.2, whether by way of indemnity or otherwise, for or in respect of:

- (a) Destruction of or damage to the Works, save to work condemned under the provisions of Clause 39 prior to the occurrence of any of the said special risks.
- (b) Destruction of or damage to property, whether of the Employer or third parties, or
- (c) Injuries or loss of life.

Special Risks

65.2 The special risks are:

- (a) the risks defined under paragraphs (a), (c) (d) and (e) of Sub-Clause 20.4, and
- (b) the risks defined under paragraphs (b) of Sub-Clause 20.4 insofar as these relate to the country in which the Works are to be executed.

Damage to Works by Special Risks

65.3 If the Works or any materials or Plant on or near or in transit to the Site, or any of the Contractor's Equipment, sustain destruction or damage by reason of any of the said special risks, the Contractor shall be entitled to payment in accordance with the Contract for any permanent Works duly executed and for any materials or Plant so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the Works, to payment for:

- (a) rectifying and such destruction or damage to the Works, and
- (b) replacing or rectifying such materials or Contractor's Equipment and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52 (which shall in the case of the cost of replacement of Contractor's Equipment include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the Employer.

Projectile, Missile

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

Increased Costs arising from Special Risks

65.5 Save to the extent that the Contractor is entitled to payment under any other provision of the Contract, the Employer shall repay to the Contractor any costs of the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39 prior to the occurrence of any special risk) which are howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of the Contractor's cost in respect thereof which shall be added to the Contractor Price and shall notify the Contractor accordingly, with a copy to the Employer.

Outbreak of War

65.6 If, during the currency of the Contract, there is 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 terminated under the provision of this Clause, continue to use his best endeavours to complete the execution of the Works. Provided that the Employer shall be entitled, at any time after such outbreak of war, to terminate the Contract by giving notice to the Contractor and, upon such notice being given, the Contract shall, except as to the rights of the parties under this Clause and Clause 67, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

Removal of Contractor's Equipment on Termination

65.7 If the Contract is terminated under the provisions of Sub-Clause 65.6, the Contractor shall, with all reasonable dispatch, remove from the Site, all Contractor's Equipment and shall give similar facilities to his Subcontractors to do so.

Payment if Contract Terminated

65.8 If the Contract is terminated as aforesaid, the Contractor shall be paid by the Employer, insofar as such amounts or items have not already been covered by payments on account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:

- (a) the amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the work or service comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed;
- (b) the cost of materials, Plant or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials, Plant or goods becoming the property of the Employer upon such payments being made by him;
- (c) a sum 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 has not been covered by any other payment referred to in this Sub-Clause;

- (d) any additional sum payable under the provisions of Sub-clause 65.3 and 65.5;
- (e) such proportion of the cost as may be reasonable, taking into account payment made or to be made for work executed, of removal of Contractor's Equipment under Sub-Clause 65.7 and, if required by the Contractor, return thereof to the Contractor's main plant yard in this country of registration or to other destination, at no greater cost; and
- (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 that against any payment due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balance due from the Contractor for advances in respect of Contractor's Equipment, materials and Plant and any other sums which, at the date of termination, were recoverable by the Employer from the Contractor under the terms of the Contract. Any sums payable under this Sub-Clause shall, after due consultation with the Employer and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly, with a copy to the Employer.

Release from Performance

Payment in Event of Release from Performance

- 66.1** If any circumstance outside the control of both parties arises after the issue of the Letter of Acceptance which renders it impossible or unlawful for either or both parties to fulfil his or their contractual obligations, or under the law governing the Contract the parties are released from further performance, then the parties shall be discharged from the Contract, except as to their rights under this Clause and Clause 67 and without prejudice to the rights of either party in respect of any antecedent breach of the Contract, and 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 65 if the Contract had been terminated under the provisions of Clause 65.

Settlement of Disputes

67.1 If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or Foreclosure or termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. Not later than the Ninetieth day after the day on which he received such reference the engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.

Unless the Contract has already been repudiated or foreclosed or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided.

67.2 In case, the Contractor or Employer is dissatisfied with any decision of the Engineer or Appellate authority or as the case may be, he may appeal within 30 days of such decision, in accordance with the provisions in Sub-Clause 67.3, to the appellate authorities, and on payment of a Claim deposit equivalent to 5 percent of total Claim amount. The appeal shall also lie if no decision is given within time specified in clause 67.1 and 67.3

In case of failure of such an appeal, the decision of the Engineer or the appellate authority shall become final and binding upon the Employer and the Contractor without further appeal to any authority.

67.3 The appeal pursuant to sub-clause 67.2 shall be dealt with in accordance with the provisions given hereunder.

Order of Appeal	Appellate authority	Period allowed for the decision
i) for the Contracts up to 10 Crores		
1st appeal	Superintending Engineer	30 days
2nd & Final appeal	Chief Engineer	60 days
ii) for the Contracts above 10 Crores and up to 25 Crores		
1st appeal	Chief Engineer	45 days
2nd & Final appeal	Managing Director	60 days
iii) for the Contracts above 25 Crores		
1st appeal	Managing Director	60 days
2nd & Final appeal	Dispute Review Board	90 days

- a) On receipt of the appeal, the appellate authority shall give a hearing to the Contractor, the Employer and the Engineer, before delivering his decision.
- b) The decision of appellate authority on final appeal shall be final, conclusive and binding on both the parties and without further appeal to any authority.
- c) No professional lawyer shall be allowed to appear at any level of hearing including in the proceedings before the Dispute Review Board.
- d) Out of Claim deposit made under sub-clause 67.2, the amount in proportion to the claims granted shall be refunded to the Contractor.

67.4 Procedure for Settlement of Dispute through Dispute Review Board

67.4.1 If the contractor is dissatisfied with any decision of the Managing director or if the Managing director fails to give decision within a period allowed for decision as per sub-clause 67.3, the Contractor shall communicate his dissatisfaction to the Managing Director, within 30 days from receipt of the notice of such decision or the expiry of such period, as the case may be, with a request to start the process of Settlement of Dispute through Dispute Review Board or to start the process of constitution of Dispute Review Board, if the Dispute Review Board is not constituted.

67.4.2 The Dispute Review Board (“the Board”) shall comprise of three members experienced with the type of construction involved in the works and with the interpretation of contractual documents. One member each shall be selected by Employer and Contractor and approved by the other. If either of these members is not so selected and approved within 180 days of the letter of acceptance or such other reasonable time as may be mutually agreed by the contractor and the Engineer, then upon the request of either or both the parties such members shall be selected as soon as practicable by the President of the Institute of Engineers (I). The 3rd member shall be selected by the other two and approved by the parties. If the two members selected by or on behalf of the parties fail to select the 3rd member within 30 days after the letter of their selections, or if within 30 days, on selection of the 3rd Member, the parties fail to approve that member, then upon the request of either or both parties such 3rd member shall be selected promptly by the President of the Institute of Engineer (I), who shall seek the approval of the proposed 3rd Member by the parties before selection but failing such approval, nevertheless select the 3rd member. The 3rd member shall serve as Chairman of the Board.

In the event of death, disability or resignation of any Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason, a Member shall fail or be unable to serve, the Chairman (or failing the action of Chairman then either of the other Member) shall inform the parties and such non serving member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within 28 days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by the above appointing authority in the same manner as described above. Replacement shall be considered completed when the new Member signs the Board members declaration of acceptance. Throughout the replacement process, the Members not being replaced shall continue to serve and the Board shall continue to function except, however, that the Board shall not conduct a hearing in order to issue a recommendation until the replacement is completed.

67.4.3 Either the Employer or the Contractor may refer the dispute to the Board in accordance with the provisions of Appendix-I to Sub-Clause 67.4.

Payment to the Board members shall be shared equally by the Employer and the Contractor as prescribed in Paragraph 7 of Appendix-I to Sub-Clause 67.4.

The decision of the Board will be final, conclusive and binding on both the parties and is not appealable. If either the Employer or the Contractor is dissatisfied with any recommendation of the Board, then in that case either of the party can proceed in the matter as per the legal remedy available to that party.

If the Board fails to issue its recommendation within 90 days after receipt by the Chairman of the Board of the written request for recommendation then in that case also either of the party can proceed with legal action for getting resolved the matter. If the Board has issued recommendations to the Engineer and the Contractor within the said 90 days and no notice of intention to proceed with the legal action to resolve the dispute has been given by the Employer as well as the Contractor within 14 days after the parties received such recommendation from the Board, the recommendation shall be become final, conclusive and binding on both the parties. All the recommendation which have become final, conclusive and binding shall be implemented by the parties forthwith, such implementation to include any relevant action of the Engineer.

Unless the contract has already been repudiated or terminated, the contractor shall, in every case continue to proceed with the work with all due diligence and the contractor and Employer shall give effect forthwith to every decision of the engineer unless and until the same shall be revised as a result of operation of this sub clause.

67.4.4 If during the contract period, the Employer and Contractor are of the opinion that the Board is not performing its function properly; the Employer and Contractor may together disband the Board. In such an event, the dispute will have to be resolved by taking legal recourse. The Employer and the contractor shall jointly sign a notice specifying that the Board shall stands dissolved with effect from the date specified in the notice. The notice shall be posted by Register letter or delivered personally to each member of the Board.

Notices

Notice to Contractor

68.1 All certificates, notices or instructions to be given to the Contractor by the Employer or the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or at the works Site office or such other address as the Contractor shall nominate for that purpose.

Notice to Employer and Engineer

68.2 Any notice to be given to the Employer or to the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the respective addresses nominated for that purpose in Annexure 'A' of these conditions.

Change of Address

68.3 Either party, may change a nominated address to another address in the country where the Works are being executed by prior notice to the other party, with a copy to the Engineer, and the Engineer may do so by prior notice to both parties.

Default of Employer

Default of Employer

69.1 In the event of the Employer :

- (a) failing to pay to the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in the Sub-Clause 60.10 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract,
- (b) interfering with or obstructing or refusing any required approval to the issue of any such certificate.
- (c) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or
- (d) giving notice to the Contractor that or unforeseen economic reasons it is impossible for him to continue to meet his contractual obligations,

the Contractor shall be entitled to terminate his employment under the Contract by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 28 days after the giving of the notice.

Removal of Contractor's Equipment

69.2 Upon the expiry of the 28 days notice referred to in Sub-Clause 69.1, the Contractor shall, notwithstanding the provisions of Sub-Clause 54.1, with all reasonable dispatch, remove from the Site all Contractor's Equipment brought by him thereon.

Payment on Termination

69.3 In the event of such termination, the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provision of Clause 65, but, in addition to the payments specified in Sub-Clause 65.8, the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

Contractor's Entitlement to Suspend Work

69.4 Without prejudice to the Contractor's entitlement to interest under Sub-Clause 60.10 and to terminate under Sub-Clause 69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub-Clause 60.10 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving 28 days prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.

If the Contractor suspends work or reduce the rate of work in accordance with the provisions of this Sub-Clause and thereby suffers delay or incurs costs the Engineer shall, after due consultation with the Employer and the Contractor, determine any extension of time to which the Contractor is entitled under Clause 44, and shall notify the Contractor accordingly, with a copy to the Employer.

Resumption of work

69.5 Where the Contractor suspends work or reduces the rate of work, having given notice in accordance with Sub-Clause 69.4, and the Employer subsequently pays the amount due, including interest pursuant to Sub-Clause 60.10, the Contractor's entitlement under Sub-Clause 69.1 shall, if notice of termination has

not been given, lapse and the Contractor shall resume normal working as soon as is reasonably possible.

Changes in cost and Legislation

Price variation clause

70.1 The amounts payable to the contractor and valued at base prices in accordance with Schedule shall be adjusted for rises or falls in the cost of labour, materials, fuel, cement, steel, bitumen, CI/DI pipes etc. by addition or deduction of the amounts determined by the formulae prescribed in this sub clause. To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other clauses in the contract, the Contractor's quoted Price shall be deemed to include amounts to cover the contingency of such other rise or fall in costs.

The amount to be added to or deducted from the Payment Certificates (PC) for changes in Cost shall be determined from the following formula.

$$V_N = V_L + V_m + V_f + V_c + V_s + V_{st} + V_d + V_b$$

Where,

V_N = Amount to be added to or deducted from payment certificate (PC)

V_L = Amount to be added to or deducted from PC for changes in cost due to labour

V_m = Amount to be added to or deducted from PC for changes in cost due to all materials excluding base materials mentioned in Annexure-A

V_f = Amount to be added to or deducted from PC for changes in cost due to POL

V_c = Amount to be added to or deducted from PC for changes in cost due to Cement

V_s = Amount to be added to or deducted from PC for changes in cost due to HYSD / TMT Steel

V_{st} = Amount to be added to or deducted from PC for changes in cost

due to Structural Steel

V_d = Amount to be added to or deducted from PC for changes in cost
due to CI / DI pipes

V_b = Amount to be added to or deducted from PC for changes in cost
due to Bitumen

The percentages in respect of Labour, Materials and POL mentioned in Annexure 'A' will govern the price adjustment for the entire contract.

(A) Formula for Labour Component:

$$V_L = 0.85 \times \frac{P_L}{100} \times (R - B) \times \frac{(L_1 - L_0)}{L_0}$$

Where,

V_L = Increase or decrease in the cost of work during the month under consideration due to changes in rates for local labour.

L_0 = The average Consumer price index for industrial workers for centre specified in Annexure-A for the month preceding the date of opening of Bids, as published by Labour Bureau, Ministry of Labour, Government of India.

L_1 = The average Consumer price index for industrial workers for the centre specified in Annexure-A for the month under consideration as published by Labour Bureau, Ministry of Labour, Government of India.

P_L = Percentage of labour component of the work.

R = Cost of work done during the period under consideration.

B = Cost of all base materials at base rates consumed in the work during the period under consideration

(B) Formula for Materials Component:

$$V_m = 0.85 \times \frac{P_m}{100} \times (R - B) \times \frac{(M_1 - M_0)}{M_0}$$

Where,

- V_m = Increase or decrease in the cost of work during the month under consideration due to changes in rates for local materials other than base materials
- M_o = The all India average wholesale price index (all commodities) for the month preceding the date of opening of Bids, as published by the Ministry of Industrial Development Government of India, New Delhi.
- M_1 = The all India average wholesale price index (all commodities) for the month under consideration as published by Ministry of Industrial Development Government of India, New Delhi.
- P_m = Percentage of local materials component (other than base materials) of the work.
- R = Cost of work done during the period under consideration.
- B = Cost of all base materials at base rates consumed in the work during the period under consideration

(C) Formula for Petrol, Oil and Lubricant (POL) Component:

$$V_f = 0.85 \times \frac{P_f}{100} \times (R - B) \times \frac{(F_1 - F_0)}{F_0}$$

Where,

- V_f = Increase or decrease in the cost of work during the month under consideration due to changes in rates for fuel and lubricants.
- F_0 = Average price of HSD at Center specified in Annexure-A including all taxes and levies for the month preceding the date of opening of bids.
- F_1 = The average official retail price of HSD at Center specified in Annexure-A during the period under consideration, including all taxes and levies
- P_f = Percentage of fuel and lubricants component of the work.
- R = Cost of work done during the period under consideration.
- B = Cost of all base materials at base rates consumed in the work during the period under consideration

70.1.2 The price adjustment for variation in cost of base mentioned in Annexure-A shall be made in accordance with the following formulae subject to condition mentioned below:

Price adjustment for Cement Component

- (i) Price adjustment for increase or decrease in the cost of cement procured by the contractor shall be paid in accordance with the following formula:

$$V_c = Q_c \times (C_1 - C_0)$$

Where

V_c = Increase or decrease in the cost of work during the month under consideration due to Changes in the rates for cement

Q_c = Quantity of Cement procured during the period under consideration

C_0 = Base rate of cement as stated in Annexure 'A'

C_1 = Average rate of cement during the period under consideration This shall be the average rate during the period under consideration for ACC/ Ambuja / Birla Super, of 43 grade cement published in Economic Times, Mumbai, from time to time, including all taxes, levies or actual procurement price, based on purchase order & invoice vouchure as produced by contractor whichever is less.

In order to make the Price Variation Clause applicable to the cement component used in the ready mix concrete, following procedure will be adopted :

- a) In case of ready mix concrete produced in the batching plant installed at site, the cement procurement and consumption records are maintained in the register as per the normal practice and price adjustment is calculated based on the formula.
- b) In case the ready mix concrete is procured from outside agency, the calculation of the procurement of cement will be based on the cement constant approved in the mix design adopted and the quantum worked out on the basis of actual quantity of concrete consumed during the period under consideration and Price Variation thereafter shall be calculated based on the above formula.

Price adjustment for HYSD / TMT steel component

- (ii) Price adjustment for increase or decrease in the cost of steel procured by the contractor shall be paid in accordance with the following formula:

$$V_s = Q_s \times (S_1 - S_0)$$

Where

V_s = Increase or decrease in the cost of work during the month under consideration due to changes in the rates for steel

Q_s = Quantity of HYSD / TMT Steel procured during the period under consideration

S_0 = Base rate of HYSD / TMT Steel as stated in Annexure 'A'.

S_1 = Average rate of HYSD / TMT Steel during the period under consideration This shall be the average rate during the period under consideration of RINL/ SAIL / TATA Steel at Mumbai including all taxes, levies etc. or actual procurement price, based on purchase order & invoice vouchure produced by contractor whichever is less.

Price adjustment of structural steel component

- (iii) Price adjustment for increase or decrease in the cost of steel procured by the contractor shall be paid in accordance with the following formula:

$$V_{st} = Q_{st} \times (St_1 - St_0)$$

Where

V_{st} = Increase or decrease in the cost of work during the month under consideration due to changes in the rates for structural steel

Q_{st} = Quantity of Structural Steel procured during the period under consideration

St_0 = Base rate of Structural Steel as stated in Annexure 'A'.

St_1 = Average rate of Structural Steel during the period under consideration This shall be the average rate during the period under consideration of RINL/ SAIL / TATA Steel at Mumbai including all taxes, levies etc. or actual procurement price, based

on purchase order & invoice voucher produced by contractor whichever is less.

Price Adjustment for C.I. / D.I. pipes

$$V_d = Q_d \times (P_1 - P_0)$$

Where

V_d = Amount of price variation in rupees to be allowed for C.I./D.I. pipes component

Q_d = Tonnage of C.I./D.I. pipes and specials, excluding appurtenances procured in the Works during the quarter under consideration

P_0 = Pig Iron basic price in rupees per tonne stipulated as base rate for CI/DI pipes in Annexure 'A'.

P_1 = Average pig iron price in rupees per tonne during the quarter under consideration (Published by Kudremukh Iron Ore Co. Ltd. Bangalore) or actual procurement price, based on purchase order & invoice voucher produced by contractor whichever is less.

Price Adjustment for Bitumen

$$V_b = Q_b \times (B_1 - B_0)$$

Where,

Q_b = Quantity of Bitumen procured during the period under consideration in MT.

B_1 = official price (the price declared by the I.O.C. / H.P. / B.P. Depot) of bitumen at Mumbai for the day on which price rise is announced during the period under consideration or actual procurement price, based on purchase order & invoice vouchure produced by contractor whichever is less.

B_0 = Official price (the price declared by the I.O.C. / H.P. / B.P. Depot) of bitumen at Mumbai for the day 30 days preceding the last date prescribed for receipt of tender/ Final offer).

V_b = Price adjustment on account of variation in price of bitumen.

NOTE: For calculation of price adjustment for Bitumen:

- (a) For arriving basic & current rates, the actual taxes as levied by Govt., as applicable at that time shall be considered.
- (b) For calculation of price adjustment for Bitumen, price list of Mumbai only shall be considered, irrespective of places where Contractor purchases Bitumen.
- (c) The rate of one specific Company (for e.g. IOC, HP or BP Depot) shall be considered for calculation of Bitumen price adjustment payment to the Contractor and rates of same Company shall be considered for entire period of Contract.

70.1.3 Conditions applicable to Sub-Clause 70.1.1 & 70.1.2

- (i) The Operative Period of the Contract shall mean the period from Commencement Date and ending on the date when the time allowed for the work specified in the work order expires, taking into consideration the extension of time, if any, for completion of the Work granted by Engineer under the relevant clause or the conditions of Contract in cases other than those where such extension is necessitated on account of default of the Contractor. The decision of the Engineer as regards the Operative Period of the Contract shall be final, conclusive and binding on the Contractor. Where any Compensation for delay is levied on the Contractor on account of delay in completion or inadequate progress under the relevant Contract provisions, the price variation amount for the balance Work from the date of levy of such compensation shall be worked out as follows :
 - a) The Indices and average rates of the base materials will be pegged to the levels corresponding to the date from which such compensation for delay is levied.
 - b) Pegged indices/ rates as well as actual indices/rates prevailing at the time of calculation of price variation for the period under consideration will be compared and lower of the two will be taken for the calculating actual price variation amount.
- (ii) This price variation clause shall be applicable to all contracts of Contract price more than Rs. 10 Lacs.

- (iii) Price variation for varied items becomes operative when varied item is derived in accordance with paragraphs (i) or (ii) of Sub-Clause 52.1 only. The price variation under this clause shall not be applicable for the varied items executed in the Work and rate of which are calculated in accordance with paragraphs (iii) or (iv) of Sub-Clause 52.1 and also on the excess quantities payable under the provisions of Sub-Clause 52.2, if any.
- (iv) This clause is operative both ways, i.e. if the price variation in the said Wholesale Price Index for all commodities, Consumer Price Index (New Series) or price of HSD for Mumbai or cost of cement or steel or bitumen or CI/DI pipes is on the plus side, payment on account of the price variation shall be allowed to the Contractor and if it is on the negative side the Corporation shall be entitled to recover the same from the Contractor and the amount shall be deductible from the Interim Payment Certificates for the respective period in which there are fluctuations.
- (v) In order to facilitate computation of price variation to be made under this clause, the contractor shall submit copy of original purchase order and procurement invoices of all base materials. The Contractor shall also keep such books of accounts and other documents as are necessary. The Contractor shall allow inspection of the same by a duly authorised representative of the corporation and shall at the request of the Engineer furnish in such a manner as the Engineer may require, true copies of any document so kept and such other information as the Engineer may require for verification.
- (vi) Total quantity of procurement of base materials for calculation of price variation shall be restricted to the quantity of base materials actually consumed in the Work.
- (vii) Calculation of price variation at the time of preparation of Final statement will be based on confirmed indices.

70.1.4 Save and except for what is provided in the foregoing clause, nothing herein shall be construed to entitle the Contractor to reimbursement of any increase in the price of materials or in the wages of labour occurring at any time and for any reason whatsoever or increase in any current tax, duty or fee by the operation of any law or enactment, or increase in the price of any petroleum product, coal,

electricity or water effected by or under the order of the Central Government or a State Government or local authority or its instrumentality, except those admissible in accordance with provisions of Sub-Clause 70.2

Reimbursement of taxes and duties

- 70.2 (i) a. All tendered rates shall be inclusive of all taxes and levies payable under respective statutes. However, if any new tax or levy is imposed by Central/State Government/Local body, after the date of submission of tenders for the Contract including extensions if any, the Contractor shall be reimbursed, subject to compliance of provisions of paragraphs (ii) and (iii) of this Sub-clause.
- b. Any increase or decrease in Royalty charges, Octroi, Cess Tax in lieu of Octroi, Service tax and Custom duties on imports shall be reimbursed to or recovered from the Contractor, subject to compliance of provisions of paragraphs (ii) and (iii) of this Sub-clause.
- (ii) The Contractor shall be reimbursed against proof of payment, the amount so paid, provided such payments, if any, is not, in the opinion of the Employer attributable to delay in execution of work within the control of the Contractor. The Contractor shall keep necessary books of accounts and other documents for the purpose of this condition as may be necessary and shall allow inspection of the same by a duly authorized representative of the Employer and shall furnish such other information/document as the Employer may require from time to time.
- (iii) The Contractor shall, with in a period of 30 days of the imposition of any new tax or levy or of changes in existing structure of taxes or levies mentioned in paragraph (i), give a written notice thereof to the Engineer that the same is given pursuant to this condition, together with all necessary information relating thereto.
- (iv) This clause is not applicable for variations in base materials mentioned in Annexure- A

Tax Registrations

- 71.1 For the various taxes levied in respect of the Contract under provisions of local authorities or law of the state, if the Contractor is required to register with the tax authorities, the Contractor shall obtain such registration and furnish the

registration number, in writing with required proof, to the Engineer. The Contractor shall also produce a valid tax clearance certificate before the Final payment under Final Payment Certificate, failing which, the payment may be withheld.

If the Contractor is not liable to any of such tax registration or assessment, a certificate to this effect from competent tax authority shall be produced by the Contractor, failing which, the payment due to the Contractor may be withheld.

ANNEXURE 'A'

Clause No.

1.1(a)(iv) The Engineer for the Contract Name

Designation

43.1 Time for completion (inclusive / exclusive of monsoon)

A. Contract as whole months

B. Sections (Part or Groups of items)

i) :

ii) :

49.1 Defects Liability Period

i) Months / Years

ii) Months / Years

49.4 Percentage to be charged as supervision charges for the work got executed through other means

.....%

60.10 The rate of interest applicable for payment delayed

.....% p.a.

70.1 i) Centre for price variation Indices :

ii) Price variation clause factors :

P_L : _____ %

P_m : _____ %

P_f : _____ %

Total 100.00 %

iii) Base Materials and Base Rates applicable: *

Base Rate of Cement	:	Rs. _____/M.Tonne
Base Rate of TMT/ HYSD Steel	:	Rs. _____/M.Tonne
Base Rate of Bitumen	:	Rs. _____/M.Tonne
Base Rate of Structural Steel	:	Rs. _____/M.Tonne
Base Rate of CI/DI pipes	:	Rs. _____/ M.Tonne

Signature of Issuing Officer

Signature of Contractor

Date :

Date :

* Strike out if not necessary.

ANNEXURE 'B'

(See Sub-Clause 19.1)

SAFETY PROVISIONS

1. Suitable scaffolds shall be provided for workmen for all works that cannot safely be done from the ground or from solid construction except such short period work as can be done safely from ladders. When a ladder is used an extra mazdoor shall be engaged for holding the ladder and if the ladder is used for carrying materials as well, suitable footholds and holds shall be provided on the ladder and the ladder shall be given an inclination not steeper than 1/4 to 1 (1/4 horizontal and 1 vertical).
2. Scaffolding or staging more than 3.25 metres above the ground or floor swung or suspended from an overhead support or erected with stationary support, shall have a guard rail properly attached, bolted, braced and otherwise secured at least 1 metre high above the floor or platform of such scaffolding or staging and extending along the entire length of the outside and ends thereof with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.
3. Working platform, gangways, and stairways shall be so constructed that they do not sag unduly or unequally, and if height of a platform of gangway or stairway is more than 3.25 metres above ground level or floor level, it shall be closely boarded, have adequate width and be suitably fenced, as described in 2 above.
4. Every opening in floor of a building or in a working platform shall be provided with suitable means to prevent fall of persons or materials by providing suitable fencing or railing with a minimum height of 1 metre.
5. Safe means of access shall be provided to all working platforms and other working places. Every ladder shall be securely fixed. No portable single ladder shall be over 9 metres in length. Width between side rails in a rung ladder shall in no case be less than 30 cm for ladders up to and including three metres in length for longer ladders this width shall be increased by at least 6 mm. for each additional 30 cm. of length. Uniform step spacing shall not exceed 30 cm.

- 5.1 Adequate precautions shall be taken to prevent danger from electrical equipment. No materials on any of the sites shall be so stacked or placed as to cause danger or inconvenience to any person or the public. The Contractor shall provide all necessary fencing and lights to protect public from accidents and shall be bound to bear expenses of defence of every suit, action, other proceedings at law that may be brought by any person for injury sustained owing to neglect of the above precautions and to pay any damages and costs which may be awarded in any such suit, action or proceedings to any such person or which may with the consent of the Contractor be paid to compromise any claim by any such person.
6. Excavation and Trenching : All trenches, 1.5 metres or more in depth, shall at all times be supplied with at least one ladder for each 30 metres in length or fraction thereof. Ladder shall be extended from bottom of trench to at least 1 metre above surface of the ground. Sides of a trench which is 1.5 metres or more in depth shall be stepped back to give suitable slope, or securely held by timber bracing, so as to avoid the danger of sides collapsing. Excavated material shall not be placed within 1.5 metres of edge of trench or half of depth of trench, whichever is more. Cutting shall be done from top to bottom. Under no circumstances shall undermining or undercutting be done.
7. Demolition : Before any demolition work is commenced and also during the process of the Work :
- a) All roads and open areas adjacent to the Work site shall either be closed or suitably protected.
 - b) No electric cable or apparatus which is liable to be a source of danger over a cable. or apparatus used by operator shall remain electrically charged.
 - c) All practical steps shall be taken to prevent danger to persons employed, from risk of fire or explosion, or flooding. No floor, roof, or other part of a building shall be so overloaded with debris or materials as to render it unsafe.
8. All necessary personal safety equipment as considered adequate by the Engineer shall be available for use of persons employed on the site and maintained in a condition suitable for immediate use, and the Contractor shall take adequate steps to ensure proper use of equipment by those concerned.

- (a) Protective head wear shall be provided to workers on the site or in quarries etc. to protect them against accidental fall of materials from above.
- (b) The workmen shall be supported with proper belts, ropes etc. where working on any mast, cranes crib, hoist etc.
- (c) Necessary steps towards training the workers concerned on the use of machinery shall be taken before they are allowed to handle it independently and taking all necessary precautions in and around the area where machines, hoists and similar units are working.
- (d) Life belts, protective railings and /or Jali shall be provided for safety of all workers, working at such situations from where they may accidentally fall.
- (e) Sufficient first aid trained staff and equipments shall be quickly available at the work site to render immediate first aid treatment in case of accidents due to scaffolding, drowning and other injuries.
- (f) Workers employed in mixing asphaltic material, cement and lime mortars/concrete shall be provided with protective footwear, hand-gloves and goggles.
- (g) Those engaged in handling materials, which is injurious to eyes shall be provided with protective goggles.
- (h) Those engaged in welding Works shall be provided with welder's protective eye shields.
- (i) Stonebreakers shall be provided with protective goggles and protective clothing and seated at sufficiently safe intervals.
- (j) When workers are employed in sewers and manholes, which are in use, the Contractor shall ensure that manhole covers are opened and manholes are ventilated at least for an hour before workers are allowed to get into them. Manholes so opened shall be cordoned off with suitable railing and provided with warning signals or boards to prevent accident to public.
- (k) The Contractor shall not employ men below the age of eighteen and women on the work of painting with products containing lead in any form.

Whenever men above the age of eighteen are employed on the work of lead painting the following precautions shall be taken;

- i) No paint containing lead products shall be used except in the form of paste or ready made paint.
 - ii) Suitable face masks shall be supplied for use by workers when paint is applied in the form of spray or a surface having lead paint dry rubbed and scrapped.
 - iii) Overalls shall be supplied by the Contractor to workmen and adequate facilities shall be provided to enable working painters to wash during and on cessation of work.
9. When Work is done near any place where there is risk of drowning, all necessary equipment shall be provided and kept ready for use and all necessary steps taken for prompt rescue of any person in danger and adequate provision made for prompt first aid, treatment of all injuries likely to be sustained during the course of the work.
10. Use of hoisting machines and tackle including their attachments, anchorage and supports shall conform to the following:
- a)
 - (i) These shall be good mechanical construction, sound material and adequate strength and free from patent defects and shall be kept in good repair and in good working order.
 - (ii) Every rope used in hoisting or lowering materials or as a means of suspension shall be of durable quality and adequate strength, and free from patent defects.
 - b) Every crane driver or hoisting appliance operator shall be properly qualified and no person under the age of 21 years shall be in-charge of any hoisting machine including any scaffold winch or give signals to operator.
 - c) In case of every hoisting machine and of every chain ring hook, shackle, swivel and pulley block used in hoisting or lowering or as means of suspension, safe working load shall be ascertained by adequate means. Every hoisting machine and all gear referred to above shall be plainly

marked with safe working load. In case of a hoisting machine having a variable safe working load, each safe working load and the conditions under which it is applicable shall be clearly indicated. No part of any machine or of any gear referred to above in this paragraph shall be loaded beyond safe working load except for the purpose of testing.

- d) In case of a departmental machine, safe working load shall be notified by the Engineer. As regards Contractor's machine the Contractor shall notify safe working load of each machine to the Engineer whenever he brings it to site of Work and get it verified by the Engineer.
11. Motors, gearing, transmission, electric wiring and other dangerous parts of hoisting appliances shall be provided with efficient safe guards, hoisting appliances shall be provided with such means as will reduce to the minimum risk of accidental descent of load, adequate precautions shall be taken to reduce to the minimum risk of any part of suspended load becoming accidentally displaced. When workers are employed on electrical installations which are already energised, insulating mats, wearing apparel such as gloves, sleeves and boots, as may be necessary, shall be provided. Workers shall not wear any rings, watches and carry keys or other materials which are good conductors of electricity.
12. All scaffolds, ladders and other safety devices mentioned or described herein shall be maintained in a safe condition and no scaffold, ladder or equipment shall be altered or removed, while it is in use. Adequate washing facilities shall be provided at or near places of work.
13. These safety provisions shall be brought to the notice of all concerned by display on a notice board at a prominent place at the Work spot. Persons responsible for ensuring compliance with the safety provisions shall be named therein by the Contractor.
14. To ensure effective enforcement of the rules and regulations relating to safety precautions, arrangements made by the Contractor shall be open to inspection by the Engineer or his representative and the Inspecting Officers.
15. Notwithstanding the above provision 1 to 14, the Contractor is not exempted from the operation of any other Act or Rule in force.

ANNEXURE 'C'
(As per Clause 48)

FORMAT FOR TAKING OVER CERTIFICATE

CIDCO/EE (____)/_____

Date : _____

To,

M/s. _____

Subject : _____

C.A.NO. _____

TAKING OVER CERTIFICATE

Dear Sir,

In pursuance of Clause 48 of General Conditions of Contract, I here by certify that, the Work under C.A. No. _____ for “_____” completed by M/s. _____ on _____ and taken over by CIDCO subject to completion of outstanding Works, rectification of defects as per statement attached at Appendix-“A” and rectification of defects noticed during defects liability period and communicated to the agency by Engineer.

The Contract shall be considered as completed only after issue of Defects liability Certificate by the Corporation.

Encl: As above.

Yours faithfully

Executive Engineer (_____)

APPENDIX-“A” to Annexure ‘C’

1. Name of work : _____
2. C.A.NO. : _____
3. Agency : M/s. _____
4. Contract Price of Work : Rs. _____
5. Value of Work as per execution : Rs. _____
6. Date of start : _____
7. Date of completion : _____
8. Outstanding Works
(if any) : 1. _____
2. _____
9. Defects (If any) : 1. _____
2. _____
10. Defects Liability Period : _____
11. Certified that, Work is completed satisfactorily except the defects listed above and subject to satisfactory completion of Defects Liability Period and attending the defects noticed during Defect Liability Period.

AE (_____)

AEE (_____)

EE (_____)

Appendix I to Sub Clause 67.4**DISPUTES REVIEW BOARDS RULES & PROCEDURE**

1. Except for providing the services required hereunder, the Board members shall not give any advice to either party or to the Engineer concerning conduct of the works. The board members,
 - (a) Shall have no financial interest in any party to the contract or the engineer, or a financial interest in the contract except for payment for services on the Board.
 - (b) Shall have no financial ties to any party to the contract or the Engineer except for fee based consultancy services on other projects, all of which must be disclosed in writing to both the parties prior to appointment to the Board.
 - (c) Shall have no prior involvement in the project to which the contract relates.
 - (d) Shall not, while a Board member, be employed whether as a Consultant otherwise for either party to the Contract, or the Engineer except as a Board Member without the prior consent of the parties and the other Board members.
 - (e) shall be and remain impartial and independent of the parties and shall disclose in wiring to the employer, the Contractor, the engineer and one another any fact or circumstance which might be such as to cause either the employer or the contractor to question the continued existence of the impartially and independence required of Board members and
 - (f) shall be fluent in English i.e. the language of the contract.
2. Except for its participation in the boards activities as provided in the contract and in the agreement none of the employer the contractor and or the engineer shall solicit advice or consultation from the board or Board member on matters dealing with the conduct of the works

3. The Contractor Shall:
 - a) Furnish to each Board member one copy of all documents which the Board may request, including one copy of contract documents, progress reports, variation orders and other documents pertinent to the performance of the contract.
 - b) In co-operation with the employer coordinate the site visits of the board, including conference facilities and secretarial and copying services.
4. The Board shall begin its activities following the signing of board members declaration of acceptance by all three board members, and it shall terminate these activities as set forth below:
 - a) The board shall terminate its regular activities after finalization of their recommendations for the various disputes, if any, referred to the Board in accordance with the clause No. 67 or after the expiry of the Defects Liability Period or the employer have expelled the contractor from the site pursuant and to sub clause 63.1 and when in either case the board has communicated to the parties ,to the Engineer its recommendations on all disputes previously referred to it.
 - b) Once the board has terminated its regular activities as provided by the previous paragraph, the Board shall remain available to process any dispute referred to it either party incase of such a referral, board members shall receive payments as provided in paragraph 7.
5. Board members shall not assign or subcontract any of their work under these rules and procedures.
6. The board members are independent contractors and not employees or agents of either the employer or the contractor.
7. Payments to the Board members for the services shall be governed by the following provisions

- a) Each Board member shall receive the fess for their site visits and meetings required from time to time from the date of establishment of Board on day basis at L.S. fees (Rs.6,000 to 10,000) or as finalized by the employer or and agreed by the contractor in writing. The fees shall include the charges of transportation required for attending meetings and site visits.
- b) The Board members shall be available on 7 days notice for all hearings site visits and other meetings of the board.
- c) The Board members shall be conversant with all the project development and maintaining relevant files.
- d) The board members shall be provided the secretarial services during site visits, meeting & during hearings.
- e) The board member shall be preferably selected from Mumbai / Navi Mumbai or nearby areas. Incase any member of the board is selected out of these areas then the necessary arrangement for their transportation and stay shall be made by the concern party selecting the member.
- f) The remuneration payable shall include the reimbursements of any taxes that maybe levied from time to time as an act of State Govt. / Central Govt. legislature.
- g) Payment to the board member shall be shared equally by the employer and the contractor and the payments shall be released to the board members by the employer and shall be subsequently recovered from the contractor through any interim payment certificate or from the performance security paid by the contractor of the contract.

8. Board site visits

- a) The board shall visit the site and meet with representatives of the employer and the contractor and the engineer at regular intervals or at the times of critical construction event, at the written request of either party, but in any case not less than 3 times in any period of 12 months. The

timing of site visit shall be agreed among the employer, the contractor and the board; failing agreement, shall be fixed by the board.

- b) Site visits shall include an informal discussion of the status of the construction of the works an inspection of the works and the review of any requests of recommendation made in accordance with paragraph 10 below Site visits as shall be attended by personnel from the employer the contractor and the engineer.
- c) At the conclusion of each site visit, the Board shall prepare a report covering its activities during the visit and shall send copies to the parties and to the engineer.

9. Procedure for Dispute Referral to the Board

- a) If either party objects to any action or inaction of the other party or the Engineer the objecting party may file a written Notice of Dispute to the other party with a copy to the Engineer stating that it is given pursuant to Clause 67 and stating clearly and in detail the basis of the dispute.
- b) The party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt.
- c) The response shall be final and conclusive on the subject unless a written appeal to the response is filed with responding party within 7 days after receiving the response. Both parties are encouraged to pursue the matter further to attempt to settle the dispute. When it appears that the dispute can not be resolved without assistance of the Board, or if the party receiving the Notice of Dispute fails to provide a written response within 14 days after receipt of such Notice, either party may refer the dispute to the Board by written request for recommendation to the board. The request shall be addressed to the Chairman of the Board, with copies to the other Board Members, the other party ,& the Engineer and it shall state that it is made pursuant to Clause 67.

- d) The request for Recommendation shall state clearly and in full detail the specific issues of the dispute to be considered by the Board.
- e) When a dispute is referred to the Board, and the Board is satisfied that the dispute requires the Board's assistance, the Board shall decide when to conduct a hearing on the dispute. The Board may request that written documentation and arguments from both the parties be submitted to each Board Member before the hearing begins. The parties shall submit insofar as possible agreed statements of the relevant facts.
- f) During the hearing, the Contractor, the Employer, and the Engineer shall each have ample opportunity to be heard and to offer evidence. The Board's Recommendations for resolution of the dispute will be given in writing to the Employer, the Contractor and Engineer as soon as possible and in any event not later than 90 days after receipt by the Chairman of the Board of the written Request for Recommendation.

10. Conduct of hearings

- a) Normally hearings will be conducted at the Site, employer's office but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the Board. Private Sessions of the Board may be held at any cost effective location convenient to the Board.
- b) The Employer, the Engineer and the Contractor shall be given the opportunity to have representatives at all hearings.
- c) During the hearings, no Board Member shall express any opinion concerning the merit of the respective arguments of the parties.
- d) After the hearings are concluded, the Board shall meet privately to formulate its Recommendations. All Board deliberation shall be conducted in private, with all Members individual views kept strictly confidential. The Board's Recommendations together with an explanation of its reasoning shall be submitted in writing to both parties and to the

Engineer. The recommendations shall be based on the pertinent Contract provisions, applicable laws and regulations, and the facts and circumstances involved in the dispute.

- e) The Board shall make every effort to reach a unanimous Recommendation, if this proves impossible, the majority shall decide and the dissenting Member may prepare a written minority report for submission to both parties and to the Engineer.

11. In all procedural matters, including the furnishing of written documents and arguments relating to disputes, Site visits and conduct of hearings, the Board shall have full and final authority.

12. After having been selected and where necessary, approved, each Board Member shall sign three copies of the enclosed declaration and make one copy available each to the Employer, to the Contractor and to the Engineer.

Appendix II to Sub Clause 67.4**BOARD MEMBER'S DECLARATION OF ACCEPTANCE**

WHEREAS:

- a) A Construction Contract (the Contract) for the _____ (fill in name of project) has been signed on _____ (fill in date) between _____ (name of Employer) and _____ (name of Contractor) (the Contractor).
- b) Sub-clause 67.4 of the Conditions of the Contract and Appendix- I to Sub-clause 67.4 provide for the establishment and operation of a Dispute Review Board (the Board).
- c) The undersigned has been selected (and where required, approved) to serve as a Board Member on said Board;

NOW THEREFORE, the undersigned Board Member hereby declares as follows:

1. I accept the selection as Board Member and agree to serve on the Board and be bound by the provisions of Sub-clause 67.4 of Conditions of the Contract and Appendix- I to Sub-clause 67.4.
2. With respect to paragraph 1 of said Appendix- I, I declare;
 - a) that I have no financial interest of the kind referred to in sub-paragraph (a);
 - b) that I have no employment nor financial ties of the kind referred to in sub-paragraph (b); and
 - c) I am not serving as an employee of either party.

- d) that I have made to both parties any disclosures that may be required by sub-paragraphs (b) and (c).

BOARD MEMBER

_____ (insert name of Board Member)

Date: _____