

GENERAL  
CONDITIONS  
OF CONTRACT

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## General Provisions

### 1.1 Definitions

In the Conditions of Contract ("these Conditions"), which include Particular Conditions and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

#### 1.1.1 The Contract

1.1.1.1 "**Contract**" means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 "**Contract Agreement**" means the contract agreement (if any) referred to in Sub-Clause 1.6 [*Contract Agreement*].

1.1.1.3 "**Letter of Acceptance**" means the letter of formal acceptance, signed by the Employer, of the Tender submitted by the tenderer, including any annexed documents.

1.1.1.4 "**Letter of Tender**" means the document entitled letter of tender, which was completed by the contractor and includes the signed offer to the Employer for the Works.

1.1.1.5 "**Specification**" means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the works.

1.1.1.6 "**Drawings**" means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

1.1.1.7 "**Schedules**" means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 "**Tender**" means the Letter of Tender and all other documents, which the Contractor submitted with the Letter of Tender, as included in the Contract.

1.1.1.9 "**Appendix to Tender**" means the completed pages entitled appendix to tender, which are appended, to form part of the Letter of Tender.

1.1.1.10 "**Bill of Quantities**" means the documents so named (if any) which are comprised in the Schedules.

#### 1.1.2 Parties and Persons

1.1.2.1 "**Party**" means the employer or the Contractor, as the context requires.

1.1.2.2 "**Employer**" means the person name as employer in the Appendix to Tender and the legal successors in title to this person.

1.1.2.3 "**Contractor**" means the person(s) named as contractor in the Letter Tender accepted by the Employer and the legal successors in title to this person(s).

1.1.2.4 "**Engineer**" means the person appointed by the employer to act as the Engineer for the purpose of the contract and named in the Appendix to tender.

1.1.2.5 "**Contractor's Representative**" means the person named by the Contractor in the Contract or appointed from time to time by the contractor under sub-clause 4.3(Contractor's Representative), who acts on behalf of the contractor.

1.1.2.6 "**Employer's Personnel**" means the Engineer, the assistants referred to in sub-clause 3.2(Delegation by the Engineer) and all other staff, labour and other employees of the Engineer and of the Employer and any other personnel notified to the contractor, by the Employer or the Engineer, as Employer's Personnel.

1.1.2.7 **"Contractor's Personnel"** means the contractor's representative and all personnel whom the contractor utilises on site, who may includes the staff labour and other employee of the contractor and of each sub contractor and any other personnel assisting the contractor in the execution of the work.

1.1.2.8 **"Sub-contractor"** means any person named in the contract as a sub-contractor or any person appointed as sub-contractor, for a part of the work; and the legal successor in title to each of these persons.

### 1.1.3 Dates, Tests, Periods and Completion

1.1.3.1 **"Base Date"** means the date 21 days prior to the latest date for submission of the Tender.

1.1.3.2 **"Commencement Date"** means the date notified under Sub-Clause 7.1 [*Commencement of Works*].

1.1.3.3 **"Time for Completion"** means the time for completing the Works or a Section (as the case may be) under Sub-Clause 7.2 [Time for Completion], as stated in the Appendix to Tender (with any extension under Sub-Clause 7.4 [*Extension of Time for Completion*]), calculated from the Commencement Date.

1.1.3.4 **"Tests on Completion"** means the tests which are specified in the contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 8 [*Tests on Completion*] before the Works or a Section (as the case may be) are taken over by the Employer.

1.1.3.5 **"Taking-Over Certificate"** means a certificate issued under Clause 9 [*Employer's Taking Over*].

1.1.3.6 **"Tests after Completion"** means the tests (if any), which are specified in the Contract, and which are carried out in accordance with the provisions of the Particular Conditions after the Works or a Section (as the case may be) are taken over by the employer.

1.1.3.7 **"Defects Notification Period"** means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 10.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in the Appendix to Tender (with any extension under Sub-Clause 10.3 [*Extension of Defects Notification Period*]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 9.1 [*Taking Over of the Works and Sections*].

1.1.3.8 **"Performance Certificate"** means the certificate issued under Sub-Clause 10.9 [*Performance Certificate*].

1.1.3.9 **"Day"** means a calendar day and **"Year"** means 365 days.

### 1.1.4 Money and Payments

1.1.4.1 **"Accepted contract Amount"** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.

1.1.4.2 **"Contract Price"** means the price defined in Sub-Clause 13.1 [*The Contract Price*], and includes adjustments in accordance with the Contract.

1.1.4.3 **"Cost"** means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.

1.1.4.4 **"Final Payment Certificate"** means the payment certificate issued under Sub-Clause 13.12 [*Issue of Final Payment Certificate*].

1.1.4.5 **"Final Statement"** means the statement defined in Sub-Clause 13.10 [*Application for Final Payment Certificate*].

1.1.4.6 **"Currency"** means Rupees in which part (or all) of the Contract Price is payable.

1.1.4.7 **"Interim Payment Certificate"** means a payment certificate issued under Clause 13 [*Contract Price and Payment*], other than the Final Payment Certificate.

1.1.4.8 **"Payment Certificate"** means a payment certificate issued under Clause 13 [*Contract Price and Payment*].

1.1.4.9 **"Provisional Sum"** means a sum (if any), which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 12.5 [*Provisional Sums*].

1.1.4.10 **"Security Deposit"** means the accumulated retention moneys alongwith the initial security deposit of 5%, which the employer retains under Sub-Clause 13.3 [*Application for Interim Payment Certificates*] and pays under Sub-Clause 13.8 [*Payment of Retention Money*].

1.1.4.11 **"Statement"** means a statement submitted by the Contractor as part of an application, under Clause 13 [*Contract Price and Payment*] for a payment certificate.

## 1.1.5 Works and Goods

1.1.5.1 **"Contractor's Equipment"** means all apparatus, machinery, vehicles and other things required for the execution and completion of the works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works, Employer's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

1.1.5.2 **"Goods"** means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

1.1.5.3 **"Materials"** means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

1.1.5.4 **"Permanent Works"** means the permanent works to be executed by the Contractor under the Contract.

1.1.5.5 **"Plant"** means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.

1.1.5.6 **"Section"** means a part of the Works specified in the Appendix to Tender as a Section (if any).

1.1.5.7 **"Temporary Works"** means all temporary works of every kind (other than contractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 **"Works"** mean the Permanent Works and the Temporary Works, or either of them as appropriate.

## 1.1.6 Other Definitions

1.1.6.1 **"Contractor's Documents"** means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

1.1.6.2 **"Country"** means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

1.1.6.3 **"Employer's Equipment"** means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the contractor in the execution of the Works, as stated in the specification; but does not include Plant which has not been taken over by the Employer.

1.1.6.4 **"Force Majeure"** is defined in Clause 18 [*Force Majeure*].

1.1.6.5 **"Laws"** means all national (or state) legislation, statutes, ordinances

and other laws, and regulations and by-laws of any legally constituted public authority.

**1.1.6.6 "Performance Security"** means the security (or securities, if any) under Sub-Clause 4.2 [*Performance Security*].

**1.1.6.7 "Site"** means the places where the Permanent Works are to be executed and to which Plant and materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

**1.1.6.8 "Unforeseeable"** means not reasonably foreseeable by an experienced contractor by the date for submission of the Tender.

**1.1.6.9 "Variation"** means any change to the Works, which is instructed or approved as a variation under Clause 12 [*Variations and Adjustments*].

## **1.2 Interpretation**

In the Contract, except where the context requires otherwise:

(a) words indicating one gender include all genders;

(b) words indicating the singular also include the plural and words indicating the plural also include the singular;

(c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and

(d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

## **1.3 Communications**

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Appendix to Tender; and

delivered, sent or transmitted to the address for the recipient's communications as stated in the Appendix to Tender. However:

if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and

if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party' the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.

## **1.4 Law and Language**

The Contract shall be governed by the law of the country (or other Jurisdiction) stated in the Appendix to Tender.

If there are versions of any part of the Contract, which are written in more than one language, the version, which is in the ruling language stated in the

Appendix to Tender, shall prevail.

The language for communications shall be that stated in the Appendix to Tender. If no language is stated there, the language for communications shall be the language in which the Contract (or most of it) is written.

**1.5  
Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

The contract Agreement (if completed),

The Letter of Acceptance / Firm work order

The priced Bill of Quantities,

Bid Clarification,

The Technical Specification, Special conditions of contract and Information in Appendix to Tender.

The General conditions of contract.

The Drawings and Annexure.

All Post bid correspondence and any other document forming part of contract  
If any ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

**1.6  
Contract Agreement**

The Parties shall enter into a Contract Agreement within **14 days**, after the Contractor receives the **Letter of Acceptance**, unless they agree otherwise. The Contract Agreement shall be in the format annexed to the bid. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the contractor.

**1.7  
Assignment**

The contractor shall not assign the contract or any part thereof or any benefit or interest therein or there under ( otherwise than by a change in favour of the contractor's Banker of any money due to or to become due under this contract without the prior written consent of the Employer.

**1.8  
Care and Supply of Documents**

The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document, which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

**1.9 Delayed Drawings or Instructions** The Contractor shall give notice to the Engineer whenever the works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if it is late.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine these matters.

However, if and to the extent that the Engineer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

**1.10 Employer's Use of Contractor's Documents** As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor. The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free Licence to copy, use and Communicate the Contractor's Documents, including making and using modifications of them. This Licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Contractor's Documents, which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor. The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause.

**1.11 Contractor's use of Employer's Documents** As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as

necessary for the purposes of the Contract.

**1.12  
Confidential Details**

The Contractor shall disclose all such confidential and other information as the Engineer may reasonably require in order to verify the Contractor's compliance With the Contract.

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise:

**1.13  
Compliance with Laws**

(a) the Employer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent works, and any other permissions described in the Specification as having been (or being) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and

(b) the Contractor at his cost shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

**1.14  
Joint and Several  
Liability**

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or **other** unincorporated grouping of two or more persons/ companies

(a) these persons/ companies shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;

(b) these persons/ companies shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons/ companies shall provide a parent company guarantee in format at Annexure 3;

(c) the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

(d) JVs/ Consortia shall be allowed in all contracts of estimated cost of more than Rs.5 Crores. However, there shall be no limit on the number of partners.

(e) The technical and financial criteria ( MEC) may be met jointly by the partners. At the same time, it has to be ensured that firms are capable. Thus, firms with at least 26% equity holding each shall be allowed to jointly meet the eligibility criteria.

**2. The Employer**

**2.1  
Right of Access to the  
Site**

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Appendix to Tender. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Specification. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Appendix to Tender, the Employer shall give the Contractor right of access to, and possession of, the Site within such times

as may be required to enable the Contractor to proceed in accordance with the programme submitted under Sub-Clause 7.3 [*Programme*].

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and

(b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time Cost or profit.

**2.2  
Permits, Licences  
Approvals**

The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

(a) by obtaining copies of the Laws of the Country which are relevant to the Contract but are not readily available, and

(b) for the Contractor's applications for any permits, Licences or approvals required by the Laws of the Country:

i) which the Contractor is required to obtain under Sub- Clause 1.13 [*Compliance with Laws*],

ii) for the delivery of Goods, including clearance through customs, and

iii) for the export of Contractors Equipment when it is removed from the Site.

**2.3  
Employer's Personnel**

The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:

(a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [*Co-operation*], and

(b) take actions similar to those, which the Contractor is required to take under sub paragraphs (a), (b) and (c) of Sub-Clause 4.8 [*Safety Procedures*] and under Sub-Clause 4.18 [*Protection of the Environment*].

**2.4  
Employer's Claims**

If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer or the Engineer shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [*Electricity, water and Gas*].

The notice shall be given as soon as practicable after the Employer became

aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub Clause 10.3 [*Extension of Defects Notification Period*].

This amount may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

### **3. Engineer**

#### **3.1 Engineer's Duties and Authority**

The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. The Engineer shall obtain prior approval of the Employer for giving any instructions to the Contractor or taking any action on aspects, which are beyond the scope of the contract. The Employer undertakes not to impose further constraints on the Engineer's authority, except as agreed with the Contract.

However, whenever the Engineer exercises a specified authority for which the Employer's approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

(a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;

(b) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract; and

(c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.

**3.2  
Delegation  
Engineer**

by the

The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or Independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.4 [*Determinations*].

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority; and who are fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

(a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;

(b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

**3.3  
Instructions  
Engineer**

of the

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings, which may be necessary for the execution of the works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 12 [*Variations and Adjustments*] shall apply.

The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Engineer or a delegated assistant:

(a) gives an oral instruction,

(b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation, then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

**3.4  
Determinations**

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.4 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 29 [*Claims, Disputes and Arbitration*]

**3.5  
Management Meetings**

The Engineer or the Contractor's Representative may require the other to attend a management meeting in order to review the arrangements for future work. The Engineer shall record the business of management meetings and supply copies of the record to those attending the meeting.

**4. The Contractor**

**4.1  
Contractor's  
Obligations**

**General** The Contractor shall design (to the extent specified in the contract), execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.

The Contractor shall provide the Plant and Contractor's Documents specified in the contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.

The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods, which the Contractor proposes to adopt for the execution of the works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

If the Contract specifies that the Contractor shall design any part of the Permanent Works, then

- (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;
- (c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the

purposes of taking-over under Sub-Clause 9.1 [*Taking Over of the Works and Sections*] until these documents and manuals have been submitted to the Engineer.

#### **4.2 Performance Security**

The Contractor shall obtain (at his cost) and submit a **Performance Security** for proper performance, in the amount, currencies and mode stated in the Appendix to Tender i.e. **10% of the accepted contract amount**.

The Contractor shall deliver the Performance Security to the Employer within **21 days** after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued by an entity and from within a country (or other, jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:

- (a) failure by the Contractor to extend the validity of the Performance Security as described in the preceding paragraph, in which event the Employer may claim the full amount of the Performance Security,
- (b) failure by the Contractor to pay the Employer any amount due, within 42 days after this agreement or determination,
- (c) failure by the Contractor to remedy a default within 42 days after receiving the Employer's notice requiring the default to be remedied, or
- (d) circumstances, which entitle the Employer to termination under Sub-Clause 14.2 [*Termination by Employer*], irrespective of whether notice of termination has been given.

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor not later than 14 days from completion of Defect Liability period.

#### **4.3 Contractor's**

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the

## Representative

Contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the performance of the Contract. If the Contractor's Representative is to be temporary absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Engineer's prior consent, and the Engineer shall be notified accordingly.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [*Instructions of the Engineer*].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Engineer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The Contractor's Representative and all their persons shall also be fluent in English and Hindi, if Contractor's Representative, or these persons, is not fluent in the above languages, the Contractor shall make a competent interpreter available during all working hours.

## 4.4 Subcontractors

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. However, unless otherwise stated,

- (a) the Contractor shall not be required to obtain consent for the purchase of materials which are in accordance with the standards specified in the contract.
- (b) the prior consent of the Engineer shall be obtained to engage other proposed Subcontractors. In case subcontract is approved by Employer then;
  - (i) the Contractor shall give the Engineer not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
  - (ii) each subcontract shall include provisions, which would entitle

the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 4.5 [*Assignment of Benefit of Subcontract*](if or when applicable) or in the event of termination under Sub-Clause 14.2 [*Termination by Employer*].

**4.5  
Assignment of Benefit of  
Subcontract**

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

**4.6  
Co-operation**

The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:

- (a) the Employer's Personnel,
- (b) any other contractors employed by the Employer, and
- (c) the personnel of any legally constituted public authorities,

who may be employed in the execution on or near the Site of any work not included in the Contract.

Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements, which are the responsibility of the Contractor.

If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Engineer in the time and manner stated in the Specification.

**4.7  
Setting Out**

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*]to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and

(b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

**4.8  
Safety Procedures**

The Contractor shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 9 [*Employer's Taking Over*], and
- (e) provide any Temporary Works (including roadways, footways, guards and fences), which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

**4.9  
Quality Assurance**

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

**4.10  
Site Data**

The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data, which come into the Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

- a) the form and nature of the Site, including sub-surface conditions,
- b) the hydrological and climatic conditions,
- c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
- d) the Laws, procedures and labour practices of the Country, and
- e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

**4.11  
Sufficiency  
Accepted  
Amount**

of the  
Contract

The Contractor shall be deemed to:

- a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and
  - b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [*Site Data*].
- Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums; If any) and all things necessary for the proper execution and completion of the works and the remedying of any defects.

**4.12  
Unforeseeable  
Conditions**

Physical

In this Sub-Clauses, "**physical conditions**" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the works, including sub-surface and hydrological conditions but excluding climatic conditions.

If the Contractor encounters adverse physical conditions, which he considers to have been Unforeseeable, the Contractor shall give notice to the Engineer within 24 Hrs.

This notice shall describe the physical conditions, so that they can be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions, which the Engineer may give. If an instruction constitutes a Variation, Clause 12 [*Variations and Adjustments*] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost, which shall be included in the Contract Price.

After receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in subparagraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under subparagraph (b), the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Engineer may proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Engineer may take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which may be made available by the Contractor, but shall not be bound by any such evidence.

**Note:** The contractor may encounter tyre fenders while carrying out the dredging. These will not be considered as unforeseeable and no extra payments will be made for removal of tyres.

**4.13  
Rights of Way and  
Facilities**

The Contractor shall bear all costs and charges for special and/or temporary rights of-way which he may require, including those for access to the Site. The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site, which he may require for the purposes of the Works.

**4.14  
Avoidance of  
Interference**

The Contractor shall not interfere unnecessarily or improperly with:

- a) the convenience of the public, or
- b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

**4.15  
Access Route**

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- c) the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route,
- d) the Employer does not guarantee the suitability or availability of particular access routes, and
- e) Costs due to non-suitability or non-availability, for the use required by

the Contractor, of access routes shall be borne by the Contractor.

**4.16  
Transport of Goods**

Unless otherwise stated in the Particular Conditions:

- a) the contractor shall give the Engineer not less than 07 day's notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- c) the Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of goods, and shall negotiate and pay all claims arising from their transport.

**4.17  
Contractor's equipment**

The Contractor shall be responsible for all Contractor's equipment. When brought on to the Site, Contractor's equipment shall be deemed to be exclusively intended for the execution of the Works and shall be retained at the site till the completion of the work. The Contractor shall not remove from the Site any major items of Contractor's equipment without the consent of the Engineer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

**4.18  
Protection of the  
Environment**

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Specification, and shall not exceed the values prescribed by applicable Laws.

**4.19  
Site Facilities**

**Facilities Supplied by the Contractor**

The Contractor shall supply all services, amenities, temporary structures including security fencing and storage compounds, machinery, buildings and construction equipment necessary for the proper execution of the Works at Site at his cost except for the items specified below, which will be provided by the Employer.

**Facilities Supplied by the Employer**

The Employer will make available to the Contractor the following services which will be charged at the rates given below;

- a) Supply of land for Contractor's site establishment and lay down areas.

The above shall be made available at rates as given in the rate enclosed in the **Appendix 1**.

- b) Construction Water

The Employer will provide a reasonable quantity of construction water, subject to availability at one point adjacent to the Contractor's work area. Any further reticulation to the Contractor's individual facilities shall be the Contractor's responsibility and cost.

The Contractor shall be required to pay for water usage at Rs.37.50 per cu.m, subject to revision from time to time.

(c) **Electric Power**

The Employer will provide electric power at one point adjacent to the Contractor's work area. Any further reticulation to the Contractors' individual facilities shall be the Contractor's responsibility and cost.

The Contractor shall be required to pay for electricity usage as per the prevailing rates as relevant and applicable subject to revision from time to time.

The Employer does not guarantee the continuity of power supply in the event of power failure the contractor shall be required to make its own arrangements for the provision of electric power.

(d) Accommodation - No other accommodation besides mentioned above in(a) will be provided.

e) Harbour facilities will be provided to the contractor as per the rates given in the Port scale of Rates. However No Pilotage and Port dues will be charged to the Contractors' craft associated with the work till the valid completion of Dredging work, unless Pilotage with Tug assistance is provided by the Port.

**4.20  
Progress Reports**

Unless otherwise stated, monthly progress reports shall, be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work, which is known to be outstanding at the completion date, stated in the Taking-Over Certificate for the Works.

Each report shall include:

- a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each Subcontractor,
- b) photographs showing the status of manufacture and of progress on the Site;
- c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
  - i) commencement of manufacture,
  - ii) Contractor's inspections,
  - iii) tests, and
  - iv) shipment and arrival at the Site;
- d) the detail's described in Sub-Clause 5.10 [*Records of Contractor's Personnel and Equipment*];
- e) copies of quality assurance documents, test results and certificates of

Materials;

f) list of notices given under Sub-Clause 2.4 [*Employer's Claims*] and notices given under Sub-Clause 29 [*Contractor's Claims*];

g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and

h) Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

**4.21  
Security of the Site**

Unless otherwise stated:

a) the Contractor shall be responsible for keeping unauthorised persons off the Site, and

b) authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by the Employer or the Engineer, as authorised personnel of the Employer's other contractors on the Site.

**4.22  
Contractor's Operations  
on Site**

The Contractor shall confine his operations to the Site, and to any additional areas, which may be obtained by the Contractor and agreed by the Engineer as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the site and these additional areas, and to keep them off adjacent land.

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

Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

**4.23  
Fossils**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

a) an extension of time for any such delay, if completion is or will be

delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and  
b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

## **5. Staff and Labour**

### **5.1 Engagement of Staff and Labour**

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport. Valid harbour entry permits on payment of necessary charges.

### **5.2 Rates of Wages and Conditions of Labour**

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no Established rates or conditions are applicable, the Contractor shall pay rates of wages and Observe conditions, which are not lower than the general level of wages, and conditions Observed locally by employers whose trade or industry is similar to that of the Contractor.

### **5.3 Persons in the Service of Employer**

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

### **5.4 Labour Laws**

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

### **5.5 Working Hours**

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the Appendix to Tender, unless:

- a) otherwise stated in the Contract,
- b) the Engineer gives consent, or
- c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.

### **5.6 Facilities for Staff and Labour**

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

### **5.7 Health and Safety**

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid

facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make Reports concerning health, safety and welfare of persons, and damage to property, as, the Engineer may reasonably require.

**5.8  
Contractor's  
Superintendence**

- (i) Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all Necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [*Law and Language*]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

A reasonable proportion of the Contractor's Superintending staff shall have a working knowledge of English or the Contractor shall have a sufficient number of competent interpreters available during all working hours.

- ii) *Foreign Staff and Labour:*

The Contractor may import any personnel who are necessary for the execution of the works. The Contractor must ensure that these personnel are provided with the required residence visas and work permits. The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of imported Contractor's personnel. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

- iii) *Measures against Insect and Pest Nuisances:*

The Contractor shall at all times take necessary precautions to protect all staff and all labour employed on the site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall provide suitable prophylactics for the Contractor's personnel and shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

- iv) *Alcoholic Liquor or Drugs:*  
The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs or permit or allow importation, sale, gift, barter, or disposal by Contractor's Personnel.
- v) *Arms and Ammunition:*  
The Contractor shall not give, barter or otherwise dispose of to any person any arms or ammunition of any kind, or allows Contractor's Personnel to do so.
- vi) *Festivals and Religious Customs:*  
The Contractor shall respect the Country's recognised festivals, days of rest and religious or other customs.

## **5.9 Contractor's Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- a) persists in any misconduct or lack of care,
- b) carries out duties incompetently or negligently,
- c) fails to conform with any provisions of the Contract, or
- d) persists in any conduct, which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

## **5.10 Records of Contractor's Personnel and Equipment**

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work, which is known to be outstanding at the completion date, stated In the Taking-Over Certificate for the Works.

## **5.11 Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

## **6. Plant, Materials and Workmanship**

### **6.1 Manner of Execution**

The Contractor shall carry out the maintenance of Plant and all other execution of the Works:

- a) in the manner (if any) specified in the Contract,
- b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

## 6.2 Remedial Work

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:

- a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- b) remove and re-execute any other work which is not in accordance with the Contract, and
- c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c). If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall pay to the Employer all costs arising from this failure.

## 6.3 Ownership of Plant and Materials

Each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

- a) when it is delivered to the Site;
- b) when the Contractor is entitled to payment of the value of the Plant and Materials under Sub-Clause 7.10 [*Payment for Plant and Materials in Event of Suspension*].

## 6.4 Testing

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the works.

The Engineer may, under Clause 12 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Engineer's presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

## 6.5 Royalties

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

- a) natural Materials obtained from outside the Site, and
- b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made) except to the extent that disposal area within the Site is specified in the Contract.

## 7. Commencement, Delays and Suspension

### 7.1 Commencement of Work

The contractor shall commence the dredging work as per the schedule given in the Tender call notice.

The Contractor shall commence the execution of the works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

### 7.2 Time of Completion, Compensation for Delay to Contractor's Negligence

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

- a) achieving the passing of the Tests on Completion, and
- b) completing all work, which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking over under Sub-Clause 9.1 [*Taking Over of the Works and Sections*].
- c) time period for completion of Maintenance dredging work shall be **45 weather working days** from the scheduled date of commencement for the year.

In the event of the contractor failing to complete the work in all respects within the time specified or within the extended time that may be allowed by the Engineer as per the terms of the contract, hereof the contractor shall pay or allow the Board to recover a sum equal to **2.0%** per week or part thereof the total value of contract

subject to maximum of 10% of the contract value as liquidated damages.

The payment of liquidated damages shall not relieve the contractor from his obligation and liabilities under the contract. If the contractor fails to complete the work within the stipulated time, the Board shall get the work completed at the risk and cost of the contractor.

- d) In case part / portions of the work can be commissioned and port operates the portion for commercial purposes, the rate of LD will be restricted to the uncompleted/ undelivered value of work, the maximum LD being on the entire contract value.

### 7.3 Programme

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 7.1 [*Commencement of Works*]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations Each programme shall include:

- a) the order in which the (Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- b) the sequence and timing of inspections and tests specified in the Contract, and
- c) a supporting report which includes:
  - i) a general description of the methods which the Contractor intends to adopt; and of the major stages, in the execution of the Works, and
  - ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment required on the Site for each major stage.

Unless the Engineer, within 10 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under- the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances, which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 12.2 [*Variation Procedure*].

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

**7.4  
Extension of Time for  
Completion**

The Contractor shall be entitled subject to Sub-Clause 29 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 9.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

- a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 12.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract,
- b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- c) exceptionally adverse climatic conditions,
- d) unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 29 [Contractor's Claims]. When determining each extension of time under Sub-Clause 29, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time. Further, extension of contract period shall be decided by the engineer as per tender condition including periods where idle charge is paid.

**7.5  
Delays caused by  
Authorities**

If the following conditions apply, namely:

- a) The Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- b) these authorities delay or disrupt the Contractor's work, and,
- c) the delay or disruption was Unforeseeable, then this delay or disruption will be considered as a cause of delay under subparagraph (b) of Sub-Clause 7.4 [Extension of Time for Completion].

**7.6  
Rate of Progress**

If, at any time:

actual progress is too slow to complete within the Time for Completion, other than as a result of a cause listed in Sub-Clause 7.4 [Extension of Time for Completion], then the Engineer may instruct the Contractor to submit, under Sub-Clause 7.2 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the time for completion.

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increase in the working hours and/or in the number of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall pay these costs to the Employer based on the determination of the engineer.

**7.7  
Contractor's  
responsibility**

Notwithstanding the payment of liquidated damages if any under clause-7.2, this shall not relieve the contractor from his obligation to complete the work or from any other obligations / liabilities under this contract.

**7.8  
Suspension of Work**

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub Clauses 7.9, 7.10 and 7.11 shall not apply.

**7.9  
Consequences of  
Suspension**

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 7.8 [*Suspension of Work*]and./or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 [*Contractor's Claims*]to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*]to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 7.8 [*Suspension of Work*].

**7.10  
Payment for Plant and  
Materials in Event of  
Suspension**

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and
- b) The Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

**7.11  
Prolonged Suspension**

If the suspension under Sub-Clause 7.8 [*Suspension of Work*] has continued for more than 30 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 10 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 12 [*Variations and Adjustments*] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 15.2 [*Termination by Contractor*].

**7.12  
Resumption of Work**

After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

**8. Tests on Completion**

**8.1 Contractor's  
Obligations**

The Contractor shall carry out all tests as per MOE & F guidelines during course of execution or on Completion in accordance with this Clause and Sub Clause 6.4 [*Testing*], after providing the documents in accordance with subparagraph (d) of Sub-Clause 4.1 [*Contractor's General Obligations*], on the dredged material, testing/ analysing the quality of water for adopting environmental safeguards, minimising detrimental inputs enhancing the beneficial aspects of the project and for effective management of the environmental resources affected by the project at his cost. No additional charges on any such account shall be payable by the Employer.

The Contractor shall give to the Engineer not less than 10 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on completion. Unless otherwise agreed, Tests on completion shall be carried out within 7 days after this date, on such day or days as the Engineer shall instruct.

In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

**8.2  
Delayed Tests**

If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 6.4 [*Testing*] (fifth paragraph) and/or Sub-Clause 9.3 [*Interference with Tests on Completion*] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 2 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 2 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

**8.3  
Retesting**

If the Works, or a Section, fail to pass the Tests on Completion, it will be rejected and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

**8.4  
Failure to Pass Tests on  
Completion**

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub Clause 8.3 [*Retesting*], the Engineer shall be entitled to:

- a) order further repetition of Tests on Completion under Sub-Clause 8.3;
- b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 10.4 [*Failure to Remedy Defects*]; or
- c) issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (I) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 3.4 [*Determinations*].

**9. Employer's Taking Over**

**9.1  
Taking over of the  
Works and Sections**

Except as stated in Sub-Clause 8.4 [*Failure to Pass Tests on Completion*], the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 7.2 [*Time for Completion*] and except as allowed in sub-paragraph (a), below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier- than 7 days before the Works will, in the Contractors opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Engineer shall, within 7 days after receiving the Contractor's application:

- a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or

- b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking Over Certificate shall be deemed to have been issued on the last day of that period.

## **9.2 Taking Over of Parts of the Works**

The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Employer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part. However, if the Employer does use any part of the Works before the Taking-Over Certificate is issued:

- a) the part which is used shall be deemed to have been taken over as from the date on which it is used,
- b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and
- c) if requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry' date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the 'Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to payment of any such Cost plus reasonable profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine this Cost and profit.

In case part / portions of work can be commissioned and port operates the portion for commercial purposes, the rates of LD will be restricted to uncompleted/ undelivered value of work beyond the stipulated date of completion. The defects liability period for the portions taken over in sections shall be as indicated in the appendix to tender.

## **9.3 Interference with Tests on Completion**

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 days notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*]to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*]to agree or determine these matters.

#### **9.4 Surfaces Requiring Reinstatement**

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

### **10. Defects Liability**

#### **10.1 Completion of Outstanding Work and Remedying Defects**

In order that the works in Contract documents and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period given in the appendix to tender or as soon as practicable thereafter, the Contractor shall:

- a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

#### **10.2 Cost of Remedying Defects**

All work referred to in sub-paragraph (b) of Sub-Clause 10.1 [*Completion of Outstanding Work and Remedying Defects*]shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- a) any design for which the Contractor is responsible,
- b) Plant, Materials or workmanship not being in accordance with the Contract, or

- c) Failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Employer, and Sub-Clause 12.3 [*Variation Procedure*] shall apply.

**10.3  
Extension of Defects  
Notification Period**

The Employer shall be entitled to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Notification Period shall not be extended by more than three months.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 7.8 [*Suspension of Work*] or Sub-Clause 15.1 [*Contractor's Entitlement to Suspend Work*], the Contractor's obligations under this Clause shall not apply to any Defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

**10.4  
Failure to Remedy  
Defects**

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this Remedial work was to be executed at the cost of the Contractor under Sub-Clause 10.2 [*Cost of Remedying Defects*], the Employer may (at his option):

- a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.4 [*Determinations*]; or
- c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part, which cannot be put to the intended use. Without prejudice to any other rights; under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

**10.5  
Removal of Defective  
Work**

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

**10.6  
Further Tests**

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 10.2 [*Cost of Remedying Defects*], for the cost of the remedial work.

**10.7  
Right of Access**

Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employer's reasonable security restrictions.

**10.8  
Contractor to Search**

The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 10.2 [*Cost of Remedying Defects*], the Cost of the search plus reasonable profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.4 [*Determinations*] and shall be included in the Contract Price.

**10.9  
Performance Certificate**

Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods after completion of dredging in every section, length of which shall be determined by the Engineer, unless otherwise stated in Special Conditions of Contract (Part-II) or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

**10.10  
Unfulfilled Obligations**

After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation, which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

**10.11  
Clearance of Site**

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after the Employer receives a copy of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

## **11. Measurement and Evaluation** (Also refer to Technical Specifications, Clause-8)

**11.1 Works to be Measured** The Works shall be measured, and valued for payment, in accordance with this Clause.

Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

- a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and
- b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them. If the Contractor does not so give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

**11.2 Method of Measurement** Except as otherwise stated in the Contract and notwithstanding local practice:

- a) measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

**11.3 Evaluation** Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 11.1 and 11.2 and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work. However, a new rate or price shall be appropriate for an item of work only if all the following conditions are fulfilled:

- a) (i) the measured quantity of the item is changed by more than 15%

from the quantity of this item in the Bill of Quantities or other Schedule,

ii) this change in quantity multiplied by such specified rate for this item exceeds 0.015% of the Accepted Contract Amount,

iii) this change in quantity directly changes the Cost per unit quantity of this item by more than 1.5%, and

iv) this item is not specified in the Contract as a "fixed rate item";

or

(c) (i) the work is instructed under Clause 12 [*Variations and Adjustments*], no rate or price is specified in the Contract for this item, and

(ii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable cost of executing the work, together with reasonable profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates.

#### **11.4 Omissions**

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- a) the Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;
- b) the omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
- c) this cost is not deemed to be included in the evaluation of any substituted work; then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall Proceed In accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine this cost, which shall be included in the Contract Price.

## **12. Variations and Adjustments**

**12.1** The Engineer shall make any variation of the form, quality or quantity of the

## Right to Vary

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 ( partially or fully.
- c) Change the character or quality or kind of any such work.
- d) Change the levels, lines, position and dimension of any part of the work.
- e) Execute additional work of any kind necessary for the completion of the work.
- f) Change any specified sequence or timing of dredging of any part of the works.

No such variation shall in any way vitiate or invalidate the contract, but the effect, if any, of all such variations shall be valued in accordance with clause-12.2, 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.

The contractor shall not make any 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.

## 12.2 Valuation procedure

All variations referred to in clause 12.1 shall be valued in the following manner:-

- a) at the rates and prices set out in the contract if, in the opinion of the Engineer, the same shall be applicable.
- b) If the contract does not contain any rates or prices applicable to the varied work, the rates and prices in the contract shall be used as the basis for valuation so far as may be reasonable failing which after due consultation by the Engineer with the contractor, suitable rates or prices shall be agreed upon between the Engineer and the contractor.
- c) In the event of disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the contractor accordingly.

Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with clause-13.

## 12.3 Price adjustment

The contract price will be subjected to adjustment on account of variation of price of fuel according to the formula below:-

$$V = 0.85 \times Q \times R (P-P_0)$$

Po

V = Variation in price on account of fuel during the month under consideration.

Po = Average price of fuel by the IOCL in the concerned area / Port, on the date of opening of bids.

P = Average price of fuel fixed by the IOCL in the concerned area / Port, for the month under consideration.

Q = Fuel element factor to be considered as 0.25

R = Value of the work during the month under consideration as per relevant item of Bill of Quantities excluding mobilization and demobilisation fees.

NB:

No escalation on any other account will be payable by the Employer and the rate should be quoted accordingly. Beyond the contract period and during extended completion period, the price adjustment payment shall be made at the frozen price index prevailing on the original scheduled date of completion of work.

**12.4  
Payment in Applicable  
Currencies**

All the payments under this contract shall be made in Indian Rupees (INR).

**12.5  
Provisional Sums**

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer may instruct:

a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 12.3 [*Variation Procedure*]; and/or

b) Plant, Materials or services to be purchased by the Contractor, and for which there shall be included in the Contract Price:

- (i) the actual amounts paid (or due to be paid) by the Contractor, and
- (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Appendix to Tender shall be applied.

The Contractor shall; when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

**12.6  
Adjustments for  
Changes in Legislation**

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*]to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*]to agree or determine these matters.

### **13. Contract Price and Payment**

#### **13.1 The Contract Price**

- a) the Contract Price shall not be subject to any adjustments.
- b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 12.6 [*Adjustments for Changes in Legislation*];
- c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
  - (i) of the Works which the Contractor is required to execute, or
  - (ii) for the purposes of Clause 11 [*Measurement and Evaluation*];

#### **13.2 Advance Payment**

The Employer shall not make any advance payment for mobilisation of equipment or for any reason whatsoever.

#### **13.3 Application for Interim Payment Certificates**

The Contractor shall submit a Statement in four copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.20 [*Progress Reports*].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- a) the contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including 'variations but excluding items described in sub-paragraphs (b) to (f) below);
- b) any amounts to be added and deducted only in case there is a change in rates of taxes.

- c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Appendix to Tender to the total of the above amounts;
- d) any amounts to be deducted towards repayments of advances in accordance with Sub-Clause 13.2 [*Advance Payment*];
- e) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 29 [*Claims, Disputes and Arbitration*]; and
- f) the deduction of amounts certified in all previous Payment Certificates.

**13.4  
Schedule of Payments**

- a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 13.3 [*Application for Interim Payment Certificates*];
- b) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less than that on which this schedule of payments was based, then the Engineer may proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine revised instalments, which shall take account of the extent to which progress is less than that on which the instalments were previously based.

**13.5  
Issue of Interim  
Payment Certificates**

No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 15 days after receiving a Statement and supporting documents, issue to the Employer an Interim Payment Certificate, which shall state the amount, which the Engineer fairly determines to be due, with supporting particulars.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of interim Payment Certificates (if any) stated in the Appendix to Tender. In this event, the Engineer shall give notice to the Contractor accordingly.

An Interim Payment Certificate shall not be withheld for any other reason, although:

- a) if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Engineer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

**13.6  
Payment**

The Employer shall pay to the Contractor:

- a) the amount certified in each Interim Payment Certificate within 21 days after the Engineer receives the Statement and supporting documents after full verification.
- b) the amount certified in the Final Payment Certificate within 45 days after the Employer receives this Payment Certificate.

**13.7  
Delayed Payment**

If the Contractor does not submit the bill in the proper format or if the bill is not based on joint measurements, the bills submitted by the contractor may be rejected. Under such circumstances, the contractor will not be responsible for delayed payments.

**13.8  
Retention Money**

Retention money shall be deducted from each running bill @ 5% subject to a maximum accumulation of 5% of contract price.

Retention Money shall be refunded within 30 days from the date of payment of final bill.

If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money corresponding to value of the work taken over shall be certified and paid.

However, if any work remains to be executed under Clause 10 [*Defects Liability*], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 12.6 [*Adjustments for Changes in Legislation*].

**13.9  
Statement at Completion**

Within 28 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer four copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 13.3 [*Application for Interim Payment Certificates*], showing:

- a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- b) any further sums which the Contractor considers to be due, and
- c) an estimate of any other amounts, which the Contractor considers, will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with Sub-Clause 13.5 [*Issue of Interim Payment Certificates*].

**13.10  
Application for Final  
Payment Certificate**

Within 56 days after receiving the Performance Certificate, the Contractor shall Submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

- a) the value of all work done in accordance with the Contract, and
- b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

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

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 29.1 [*Amicable Settlement*], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

**13.11  
Discharge**

When submitting the Final Statement, the Contractor shall submit a written discharge, which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

**13.12  
Issue of Final Payment  
Certificate**

Within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 13.10 [*Application for Final Payment Certificate*] and Sub-Clause 13.11 [*Discharge*], the Engineer shall issue, to the Employer, the Final payment Certificate which shall state:

- a) the amount which is finally due, 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.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 13.10 [*Application for Final Payment Certificate*] and Sub-Clause 13.11 [*Discharge*], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

**13.13  
Cessation of employer's  
Liability**

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

- a) in the Final Statement and also
- b) (Except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 13.9 [*Statement at Completion*].

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

**13.14** The Contract Price shall be paid in Indian Rupees.  
**Currencies of Payment**

**14. Termination by Employer**

**14.1** If the Contractor fails to carry out any obligation under the Contract, the  
**Notice to Correct** Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

**14.2** The Employer shall be entitled to terminate the Contract if the Contractor:

**Termination by Employer**

- a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 14.1 [*Notice to Correct*],
- b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- c) without reasonable excuse fails:
  - (i) to proceed with the Works in accordance with Clause 7 [*Commencement, Delays and Suspension*], or
  - (ii) to comply with a notice Issued for *Remedial Work*, within 28 days after receiving it,
- d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order- made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
  - (i) for doing or forbearing to do any action in relation to the Contract, or
  - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors

gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these events or circumstances, the Employer may, upon giving 14 days notice to the Contractor terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver all Contractors' Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use Contractor's Documents and other design documents made on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

**14.3**  
**Valuation at Date of Termination** As soon as practicable after a notice of termination under Sub-Clause 14.2 [*Termination by Employer*] has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

**14.4**  
**Payment after Termination** After a notice of termination under Sub-Clause 14.2 [*Termination by Employer*] has taken effect, the Employer may:

- a) proceed in accordance with Sub-Clause 2.4 [*Employer's Claims*],
- b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or
- c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing

for any sum due to the Contractor under Sub-Clause 14.3 [*Valuation at Date of Termination*]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

**14.5  
Employer's Entitlement  
to Termination**

The Employer shall be entitled to terminate the Contract, at any time for the Employer's Convenience, by giving notice of such termination to the Contractor. The termination shall take effect 14 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

After this termination, the Contractor shall proceed in accordance with Sub Clause 15.3 [*Cessation of Work and Removal of Contractor's Equipment*] and shall be paid in accordance with Sub-Clause 18.6 [*Optional Termination, Payment and Release*].

**15. Suspension and Termination by Contractor**

**15.1  
Contractor's Entitlement  
to Suspend Work**

If the Engineer fails to certify in accordance with Sub-Clause 13.5 [*Issue of Interim Payment Certificates*] or Sub-Clause 13.6 [*Payment*], the Contractor may, after giving not less than 15 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 13.7 [*Delayed Payment*] and to termination under Sub-Clause 15.2 [*Termination by Contractor*].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice.) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspension of work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of time for Completion*], and
- b) Payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

**15.2  
Termination by  
Contractor**

The Contractor shall be entitled to terminate the Contract if:

- a) The Engineer fails, within 45 days after receiving a Statement and supporting documents; to issue the relevant Payment Certificate,

- b) The Contractor does not receive the amount due under an Interim Payment Certificate within 30 days after the expiry of the time stated in Sub-Clause 13.6 [*Payment*] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.4 [*Employer's Claims*]),
- c) The Employer substantially fails to perform his obligations under the Contract,
- d) The Employer fails to comply with Sub-Clause 1.6 [*Contract Agreement*]
- e) A prolonged suspension affects the whole of the Works as described in Sub Clause 7.11 [*Prolonged Suspension*], or  
In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

**15.3  
Cessation of Work and  
Removal of Contractor's  
Equipment**

After a notice of termination under Sub-Clause 14.5 [*Employer's Entitlement to Termination*], Sub-Clause 15.2 [*Termination by Contractor*] or Sub-Clause 18.6 [*Optional Termination, Payment and Release*] has taken effect, the Contractor shall promptly:

- a) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works,
- b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

**15.4  
Payment on  
Termination**

After a notice of termination under Sub-Clause 15.2 [*Termination by Contractor*] has taken effect, the Employer shall promptly:

- a) return the Performance Security to the Contractor,
- b) pay the Contractor in accordance with Sub-Clause 18.6 [*Optional Termination, Payment and Release*], and
- c) pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination.

**16. Risk and Responsibility**

**16.1  
Indemnities**

The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or In the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the

remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and

- b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
  - (i) arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, and
  - (ii) is attributable to any negligence, wilful act or breach of the Contract by the Contractor, the Contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims; damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from Insurance cover, as described in sub-paragraphs (c)(i), (ii) and (iii) of Sub-Clause 17.3 [*Insurance Against Injury to Persons and Damage to Property*].

## **16.2 Contractor's Care of the Works**

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 9.1 [*Taking Over of the Works and Sections*]) for the works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work, which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 16.3 [*Employer's Risks*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage, which occurs after a Taking Over Certificate, has been issued and which arose from a previous event for which the Contractor was liable.

## **16.3 Employer's Risks**

The risks referred to in Sub-Clause 16.4 below are:

- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,

- b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
- c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- f) design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible, and
- g) any operation of the forces of nature which is Unforeseeable or against, which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions.

**16.4  
Consequences of  
Employer's Risks**

If and to the extent that any of the risks listed in Sub-Clause 16.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost, which shall be, included in the Contract Price in the case of sub-paragraphs (f) and (g) of Sub-Clause 16.3 [*Employer's Risks*], reasonable profit on the Cost shall also be included.

After receiving this further notice, the Engineer shall proceed in accordance with Sub- Clause 3.4 [*Determinations*] to agree or determine these matters.

**16.5  
Intellectual and  
Industrial Property  
Rights**

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer shall Indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- a) an unavoidable result of the Contractor's compliance with the Contract, or
- b) a result of any Works being used by the Employer:
  - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
  - (ii) in conjunction with any thing not supplied-by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration, which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission, which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, Litigation or arbitration upon being requested to do so by such other Party.

**16.6  
Limitation of Liability**

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under Sub-Clause 15.4 [*Payment on Termination*]and Sub-Clause 16.1 [*Indemnities*].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [*Electricity, Water and Gas*], Sub-Clause 16.1 [*Indemnities*]and Sub-Clause 16.5 [*Intellectual and Industrial Property Rights*], shall not exceed Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

**17. Insurance**

**17.1  
General Requirements  
for Insurances**

The Contractor shall be responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Each insurance shall be effected with insurers and In terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Each policy insuring against loss or damage shall provide for payments to be made inthe currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The Contractor shall, within the respective periods stated In the Appendix to Tender (calculated from the Commencement Date), submit to the Employer:

- a) evidence that the insurances described in this Clause have been effected, and
- b) copies of the policies for the insurances described in Sub-Clause 17.2 [*Insurance for Works and Contractor's Equipment*]and Sub-Clause 17.3 [*Insurance against Injury Persons and Damage to Property*].

When each premium is paid, the Contractor shall submit evidence of payment to the Employer.

The Contractor shall comply with the conditions stipulated in each of the insurance policies. The Contractor shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

The Contractor shall not make any material alteration to the terms of any insurance without the prior approval of the other Employer. If the Contractor makes (or attempts to make) any alteration, the same shall be informed to the Employer in advance.

If the Contractor fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the Employer may (at its option and without prejudice to any other right or remedy) effect insurance for the) relevant coverage and pay the premiums due. The Contractor shall pay the amount of these premiums to the Employer, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurer shall be borne by the Contractor. In accordance with these obligations; liabilities or responsibilities. However, if the Contractor fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the Employer neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the Contractor. Payments shall be subject to Sub-Clause 2.4 [*Employer's Claims*]or Sub-Clause 29 [*Contractor's Claims*], as applicable.

**17.2  
Insurance for works and  
Contractor's equipment**

The Contractor shall insure the Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under subparagraph (a) of Sub-Clause 17.1 [*General Requirements for Insurances*], until the date of issue of the Taking-Over Certificate for the Works.

The Contractor shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the

Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 10 [*DefectsLiability*]).

The Contractor shall insure the Contractor's Equipment for not less than the full replacement value, Including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment. The assurance

- a) shall cover all loss and damage from any cause not listed in Sub-Clause 16.3 [*Employer's Risks*],
- b) shall also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub Clause 16.3 [*Employer's Risks*], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Appendix to Tender (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- c) may however exclude loss of, damage to, and reinstatement of:
  - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
  - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
  - (iii) a part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage, and
  - (iv) goods while they are not in the Country,  
If, more than one year after the Base Date; the cover described in sub-paragraph (b) above ceases to be available at commercially reasonable terms, the Contractor shall give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.4 [*Employer's Claims*] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 17.1 [*General Requirements for Insurances*]

**17.3  
Insurance against Injury  
to Persons and Damage  
to Property**

The Contractor shall insure against each Party liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 17.2 [*Insurance for Works and Contractor's Equipment*]) or to any person (except persons insured under Sub-Clause 17.4

*[Insurance for Contractor's Personnel]*, which may arise out of the Contractor's performance of the Contract and Occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Appendix to Tender, with no limit on the number of occurrences. If an amount is not stated in the Appendix to Tender, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

- a) shall be effected and maintained by the Contractor as insuring Party,
- b) shall be extended to cover liability for all loss and damage to the Employers property (except things Insured under Sub-Clause 17.2) arising out of the contractor's performance of the Contract, and
- c) may however exclude liability to the extent that it arises from:
  - (i) the Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
  - (ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and
  - (iii) a cause listed in Sub-Clause 16.3[*Employer's Risks*], except to the extent that cover is available at commercially reasonable terms.

**17.4  
Insurance for  
Contractor's Personnel**

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The Employer and the Engineer shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor Shall be responsible for compliance with this Clause.

Notwithstanding what is stated in the above clauses, all the floating crafts including dredgers deployed in the operation should be insured under Marine Hull Policy and covered for various Port risks including pollution and wreck removal by a P & I club which is a member of an International Group of P & I Club.

**18. Force Majeure**

**18.1  
Definition of Force  
Majeure**

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- a) which is beyond a Party's control,

- b) which such Party could not reasonably have provided against before entering into the Contract,
- c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Sub-contractors,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, tsunami, hurricane, typhoon or volcanic activity.

## 18.2

### Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, (or should have become aware), of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either- Party to make payments to the other Party under the Contract.

## 18.3

### Duty to Minimise Delay

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

## 18.4

### Consequences of Force Majeure

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 18.2 [*Notice of Force Majeure*], and suffers delay and/or incurs Cost by

reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (v) of Sub-Clause 18.1 [*Definition of Force Majeure*] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

**18.5  
Force Majeure Affecting  
Subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

**18.6  
Optional Termination,  
Payment and Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 45 days by reason of Force Majeure of which notice has been given under Sub-Clause 18.2 [*Notice of Force Majeure*], or for multiple periods which total more than 70 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 15.3 [*Cessation of Work and Removal of Contractor's Equipment*].

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

- a) the amounts payable for any work carried out for which a price is stated in the Contract;
- b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and

**18.7  
Release from  
Performance under the  
Law**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further

performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 18.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 18.6.

#### **19. Explosives**

Except as may be provided in the specification or approved by the Engineer, the Contractor shall not use explosives. The Contractor shall only permit handling and use of explosives by men fully qualified and experienced in the storage, handling and use of the types of explosives to be used. He shall comply with the provisions of Indian Explosives Act. Prior permission of Mormugao Port Trust shall be obtained by the contractor before use of explosives. For such permission, contractor shall apply to Mormugao Port Trust furnishing details of charges, locations, etc.

#### **20. Property in Excavated Materials**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found during excavation / dredging shall be placed under the care and authority of the Employer.

## 21. Drawings & Designs

a) General details of the works are shown on the drawings accompanying this tender document. The Engineer will supply to the contractor from time to time during the progress of the works such further working drawings as will be necessary in his opinion for the proper and adequate execution and maintenance of the works in accordance with the Engineer's designs and/or any modification thereof as decided by the Engineer and the Contractor shall carry out the work in accordance with the said working drawings. Two sets of such working drawings will be issued. If more sets are required by the Contractor he will have to make his own arrangement at his cost.

b) In the event of the Contractor proposing any alteration/modification to the Engineer's design, detail, method of construction, he shall at his own expenses prepare and submit for approval of the Engineer copies in duplicate (in the first instance) of detailed working drawings which may be required for such alteration/modification and at the same time call the attention of the Engineer to any alternative detail or modification of the Contract drawings which the Contractor may wish to make at least 30 days prior to the commencement of the work or part of the work to which such drawings relate. The contractor shall at the same time, if so required by the Engineer, furnish calculation sheets in duplicate relating to the strength and anticipated deflections in respect of such altered/ modified works. The Engineer will, after any such alteration which he may approve, record on the copies as amended his approval and will return one copy of the drawings and calculation sheets to the contractor, who shall carry out the work in accordance therewith. The Contractor shall forward to the Engineer three additional copies of the working drawings and calculation sheets as approved, in addition to these working drawings and calculation sheets as approved. In addition to these working drawings are also to be submitted (the same procedure as in the case of the Contractor) in respect of any work proposed to be executed by sub-contractors. The approval of the Engineer of all or any of the calculation sheets, drawings shall not relieve the Contractor of responsibility in connection with the execution of the altered/modified or sub-contractors works.

c) The complete sets of tracing on linen or tracing film of all drawings showing every and all works 'As Made' under the contract shall be made by the Contractor at his own expense and delivered to the Engineer within one month of the completion of the various sections of the work or at such times as directed by the Engineer. All departure alteration,/ modifications from the Contract Drawings and supplementary working drawings issued by the Engineer also shall be incorporated in the "As Made" drawings. The drawings shall be fully dimensioned, of an approved size and with the standard litho black or as approved by the Engineer.

## 22. Filling in Holes and Trenches

**Filling in Holes and Trenches** The Contractor immediately upon completion of any work under the contract shall at his own expenses fill up all holes or trenches which have been made or dug, level or remove mounds of earth that may have been made and clear away all rubbish occasioned in the execution of the works or temporary works. The contractor shall bear and pay all costs, charges, damages and expenses which may be incurred or sustained on account or in consequence of any accident which may happen by reason of holes and

trenches connected with the work being left unfenced or materials being left or placed in improper situations.

**23. Contract Supersedes  
Previous Documents**

The Contractor shall have no right to any increase in the rates in the Bill of Quantities nor any other right whatsoever by reason of any representative explanation or statement or alleged representative explanation or statement made or by reason of any information promise or guarantee given or alleged to have been given to him by any person (whether in the employment of the Employer or not) before the date of the contract embodies the whole arrangements between the parties with reference to the contract hereby constituted and all previous, correspondence/ negotiation/ representations/ explanations/ statements/ promises or guarantee whether oral or written shall be excluded.

**24. Bribes and Commission  
Bribes and Commission**

Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his or their behalf to any officer, servant, representative or agent of the Engineer or to any person on his behalf in relation to the obtaining or to be execution of this or any other contract with the Employer shall in addition to any criminal liability which he may incur subject the contractor to the cancellation of this and all other contracts with the Employer and also to the payment of any loss or damage resulting from any such cancellation, and the Employer shall be entitled to deduct the amounts so payable from any money otherwise due to the contractor under this or any other contract. Any question or disputes as to the commission of any offence under the present clause shall be settled by the Engineer in such a manner and on such evidence or information as he shall think fit and consider sufficient and his decision shall be final and conclusive.

**25. Mobilisation and  
Demobilisation fees**

Mobilization and Demobilization fees shall not be considered.

**26. Idle time**

Idle time charges are payable to cover idling on port account only. If the contractor suffers delay and/or incurs cost from complying with the Engineers instruction, he shall give notice and shall submit his application for (a) extension of time for any such delay and (b) payment of any such cost with supporting documents, which shall be examined by the Engineer and his decision is final and binding. The contractor shall furnish a schedule of idle time charges for the dredgers proposed to be deployed along with the price bid. This idle time charges shall not be taken in to account for evaluation of the tender. The idle time rates quoted by the L1 tenderer shall be negotiated and finalized taking into consideration the rates quoted by other tenderers and matching the lowest. **The lowest evaluated tenderer shall match the lowest idle time charges quoted by the bidders whose bids are considered responsive.** No idle time charges are payable if dredger /equipments are to be shifted on account of shipping movement. The berths cannot be kept free of ships for dredging. The contractor shall take the advantage/ opportunity of the berths falling vacant.

**27. Service Tax**

Service tax shall be paid extra along with running account bill at the rate prescribed by the Govt. from time to time on production of the tax invoice.

**28. Rejection of Bid**

The Port Trust reserves the right to reject any of Bid which have not substantially complied with the Tender Condition.

**29. Contractor's Claim**

If the contractor considers himself to be entitled to any extension of the time for the completion and/or any additional payment, under the clause of these conditions or otherwise in connection with the contract, the contractor shall give notice to the Engineer, describing the event or circumstance, giving rise to the claim. The notice shall be given as soon as practicable and not later than 28 days after the contractor became aware; or should have become aware of the event or circumstance. If the contractor fails to give the notice of a claim within such period of 28 days, the time of completion shall not be extended, the contractor shall not be entitled to additional payment and the employer shall be discharged from all liabilities in connection with the claim. Otherwise, the following provisions of the sub-clause shall apply. The contractor shall also submit any other notices which are required by the contract, and supporting particulars for the claim, all as relevant to such event or circumstance. The contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the site or at other location acceptable to the engineer. Without admitting the employer's liability, the engineer may after receiving any notice under this sub-clause, monitor to record-keeping and/or instruct the contractor to keep further contemporary records. The contractor shall permit the engineer to inspect all these records, and shall (if instructed) submit copies to the engineer. Within 42 days after the contractor became aware (or should have become aware) of the event or circumstance giving rise to claim, or within such other period as may be proposed by the contractor and approved by the engineer, the contractor shall send to the engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed, if the event or circumstance giving rise to the claim has continuing effect:

- (a) This fully detailed claim shall be considered as interim ;
- (b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and / or amount claimed, and such further particulars as the engineer may reasonably require; and
- (c) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer. Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall

only be entitled to payment for such part of the claim, as he has been able to substantiate. The Engineer shall proceed in accordance with Sub-Clause 3.4 [Determinations] to agree or determine (i) the extension (if any) of the Time for completion (before or after its expiry) in accordance with Sub-Clause 7.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract. The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

**29.1 Amicable Settlement**

In case of any disputes, both parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both parties agree otherwise, arbitration may be commenced on or after the fifty sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

**29.2 Arbitration**

Unless settled amicably, disputes shall be settled by arbitration under the provisions of Indian Arbitration and Conciliation Act 1996. As per this, Dispute Resolution Board shall be set up with representatives of both parties on award of work to continuously facilitate resolution of issues. The place of arbitration shall be Mormugao Port, Goa.