

# **VISAKHAPATNAM STEEL PLANT**

## **GENERAL CONDITIONS OF CONTRACT**

**INCLUDING FORM OF TENDER  
INVITATION TO TENDER AND ARTICLES OF AGREEMENT**

**FOR**

## **WORKS CONTRACTS**

### **VISAKHAPATNAM STEEL PLANT**

**(RASHTRIYA ISPAT NIGAM LIMITED)**

**MINES DEPARTMENT**

**VISAKHAPATNAM-530 031**

**(ANDHRA PRADESH)**

**Telephone : 0891 – 2519545**

**Fax**

**: 0891 – 2518669**

**VISAKHAPATNAM STEEL PLANT**  
**(RASHTRIYA ISPAT NIGAM LIMITED)**  
**MINES DEPARTMENT**  
**VISAKHAPATNAM-530 031**  
**(ANDHRA PRADESH)**

NAME OF WORK:

General Conditions of Contract Including Form of Tender,  
Invitation to Tender and Articles of Agreement  
For  
Works Contracts

This Tender Document is Issued To

**Name of Tenderer :**

**Address of Tenderer :**

ISSUED BY:

.....  
Visakhapatnam Steel Plant

# FORM OF TENDER

To  
**VISAKHAPATNAM STEEL PLANT**  
**(Rashtriya Ispat Nigam Limited),**  
**Mines Department,**  
**Administrative Building,**  
**Visakhapatnam Steel Plant**  
**VISAKHAPATNAM 530 031 (AP)**

**Ref: Visakhapatnam Steel plant - Tender Documents and Tender No.**  
.....for \*.....

Dear Sirs,

With reference to the tender invited by Visakhapatnam Steel Plant, I/We have examined the General Conditions of Contract, Special Conditions of Contract, Articles of Agreement, Invitation to Tender, Scope of Work, Specifications, Preamble to Bill of Quantities, Bill of Quantities and the Drawings for the above work. I/We hereby offer to construct, complete and maintain the whole of the said works in conformity with the said General Conditions of Contract, Special Conditions of Contract, Articles of Agreement, Invitation to Tender, Scope of Work, Specifications, Preamble to Bill of Quantities, Bill of Quantities and the Drawings for the sum of Rs.....at the Total Value mentioned in the Bill of Quantities.

I/We undertake to complete and deliver the whole of the works comprised in the Contract within.....Calendar months from the date of commencement of work.

I/We have deposited as earnest money a sum of Rs..... Which amount is not to bear any Interest and I/We hereby agree that this sum shall be forfeited by me/us if I/We revoke/withdraw/cancel my/our tender or if I/We vary any terms in our tender during the validity period of the tender without your written consent and/or if in the event of Visakhapatnam Steel Plant accepting my/our tender and I/We fail to deposit the security money, execute the agreement and/or start the work within reasonable time (to be determined by the Engineer) after written acceptance of my/our tender.

Yours faithfully,

Name of Partners of the Firm

Signature\_\_\_\_\_

1. \_\_\_\_\_

Address\_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

3. \_\_\_\_\_

Date\_\_\_\_\_

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\*Name of the work as given in the Tender Notice

# VISAKHAPATNAM STEEL PLANT

## Invitation to Tender

1. Sealed tenders in envelope 'Original' should be sent to Dy.General Manager (Works Contracts) Near ERS, Engineering Shops, Visakhapatnam Steel Plant, Visakhapatnam-530 031, Andhra Pradesh and superscribed 'Tender for .....  
..... and send so as to reach them not later than specified time and date.
2. Tenders received after specified time and date.....will be treated late and are liable to be ignored summarily.
3. Tenders will be opened at specified time and date.....in the office of DGM(Works Contracts) at Visakhapatnam Steel Plant, Near ERS, Engineering Shops, Visakhapatnam – 530 031, in the presence of the tenderers or their representatives should they choose to be present.
4. The tenderer is required to deposit a lumpsum amount of Rs.....as Earnest Money in any of the following forms and attach official receipt thereof, failing which the tender shall not be considered. No interest shall be allowed on the Earnest Money Deposit.
  - a) Deposit receipts, Pay Orders, Demand Drafts and Guarantee Bonds from any Scheduled Bank in India, payable at Visakhapatnam.

### Notes:

1. Fixed Deposit receipt will not be accepted for earnest money and the deposit receipts referred to above cover only receipts at call or receipts for the deposits of earnest money to the credit of Rashtriya Ispat Nigam Limited, Visakhapatnam Steel Plant.
2. Earnest Money in the form of cheque will not be accepted.
  - b) Deposit receipts etc., are to be drawn in favour of "Rashtriya Ispat Nigam Limited, Visakhapatnam Steel Plant".
  - c) If the Earnest Money Deposit is submitted in the form of Bank Guarantee, the same should be valid for period up to four months beyond the offer submitted.
5. Security Deposit: Upon acceptance of the tender, the successful tenderer shall within ten (10) days of the written acceptance of his tender, deposit with the Employer a sum sufficient, with the amount of earnest money deposited by him prior to the submission of his tender to make the Security Deposit to the extent of 2% (two) percent of the value of the works at the accepted rates. Such sum shall be deposited by the Contractor in any of the forms stipulated in Clause-4 above. The Security Deposit together with the retention of the percentage name in the Appendix to the General Conditions of Contract shall not exceed the "Limit of Retention Money" named therein (under Clause No.13.1) and shall be returned without any interest as per the relevant clauses of GCC after the completion of the work and after completion of period of maintenance.  
If the Security Deposit is submitted in the form of Bank Guarantee, the same should be valid for the period of Contract including the period of maintenance and claim period of 6 months.
6. (i) Tendered amounts shall be written in ink and in English both in figures and in words in the appropriate columns in the Bill of Quantities. In the event of a discrepancy between the amount quoted in figures and the amount quoted in words by a tenderer, the amount quoted in words will govern.  
(ii) All alterations or erasures shall be initialed by the tenderer with date.
7. If a tenderer seeks to clarify his quotations or rates, this should only be done in a separate covering letter. Other clarifications may not be considered. If the contents of the covering letter are to be considered as part of the quotations, this shall be specifically mentioned by the tenderer in his covering letter. Name of the work as given in the tender notice.

8. The Tenderer shall submit along with his tender the following:
- a) Photostat copy of Registration Certificate, if any, from Central or State Government, P.W.D., M.E.S., Railways, or any Public Sector Undertakings.
  - b) Certificate from any Scheduled Bank to prove his financial ability to undertake the work.
  - c) Proof of technical and organisational competence to execute the work.
  - d) Income Tax Clearance Certificate (Latest)
  - e) Details of registration under P.F. Act for their or his employees.
  - f) Details of job undertaken during the past five years with necessary proof.
9. Full information shall also be given by the tenderer in respect of the following:
- a) If individuals : 1) his full name, address and place of business, 2) his financial status, 3) his previous experience.
  - b) In case of Partnership firms: 1) the name of all partners and their addresses. 2) the financial status of the firm and its partners. 3) previous experience of the firm and its partners.
  - c) In case of Companies: 1) date and place of registration, including date of commencement certificate in case of Public Companies. Certified copies of Memorandum and Articles of Association are also to be furnished, 2) Nature of business carried out by the Company and the provisions of its Memorandum relating thereto. 3) Names and particulars, including addresses of all the Directors 4) previous experience, 5) its authorised subscribed and paid up capital.
10. All rates and prices in the tender shall cover sales tax, cover other taxes, octroi duties and other duties.
11. Tender submitted by Tenderers shall remain valid for acceptance for a minimum period of 120 days from the date of opening of the Tender/Final price bid. In case of Tender revoking/withdrawing/cancelling his tender, varying any term in regard thereof during the validity period of the tender without the written consent of Employer, the tender submitted shall be liable for rejection and the tenderer shall forfeit the Earnest Money paid by him along with the tender and liable for any other action deemed fit as per the discretion of Employer.
12. Rashtriya Ispat Nigam Limited, Visakhapatnam Steel Plant reserves the right to reject any or all the tenders or to accept any tender wholly or in part, or drop the proposal of receiving tenders at any time without assigning any reason thereof and without being liable to refund the cost of the tender documents thereupon.
13. With their quotation the tenderers shall sign, all schedules, specifications, special conditions etc. In token of acceptance thereof. The signature on the tender schedule alone shall also be deemed to be taken as acceptance of all these.
14. Details of works of similar type and magnitude carried out by the tenderer shall be furnished in the proforma in Appendix-1.
15. Details of construction plants and equipments available with the tenderer for using in this work shall be furnished in proforma shown in Appendix-11.
16. The tender documents are not transferable without the permission of the Employer.

# VISAKHAPATNAM STEEL PLANT (RASHTRIYA ISPAT NIGAM LIMITED)

## ARTICLES OF AGREEMENT

ARTICLES OF AGREEMENT made at.....this  
.....day of.....200 between Rashtriya Ispat Nigam  
Limited, Visakhapatnam Steel Plant, Visakhapatnam having its registered office at  
Administrative Building, Visakhapatnam-530 031 (hereinafter referred to as the Employer  
which expression shall include its successors and assignees) of the one part and  
Messrs.....

.....(hereinafter referred to as Contractor which expression shall  
include its successors and assignees) of the other part WHEREAS the employer is desirous  
that certain works should be constructed, carried out  
viz..... as envisaged in the Tender Documents and  
specifications/Tender No..... and has accepted a  
Tender by the contractor for the construction, completion and maintenance of such works.

Now this agreement witnesseth as follows:

1. In this agreement words and expressions shall have the same meanings as are,  
respectively assigned to them in General Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of  
this Agreement. Viz.
  - a) Letter of Intent or Written Acceptance of tender.
  - b) Special Conditions of Contract.
  - c) General Conditions of Contract
  - d) Technical documents.
3. In consideration of the payments to be made by the Employer to the Contractor as  
hereinafter mentioned, the contractor hereby covenants with the Employers to construct,  
complete and maintain the works in conformity in all respects with the provisions of the  
contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the  
construction, completion and maintenance of the Works, the Contract Price at the times  
and in the manner described by the contract.
5. No amendment to this agreement shall be valid or be of any effect unless the same is  
agreed to in writing by both the parties hereto and specifically stated to be an amendment  
to this agreement.
6. All disputes arising out of or in any way connected with this Agreement shall be deemed  
to have arisen in Andhra Pradesh and only the Courts in Andhra Pradesh shall have  
jurisdiction to determine the same.

7. The several parts of this Contract have been read to us and fully understood by us.

As WITNESS our hands this.....day of .....200

Signed by the said in the presence of

-----

-----

Employer

Signed by the said in the presence of

-----

-----

Contractor

## CONSTRUCTION/MAINTENANCE/EXPANSION OF VISA KHAPATNAM STEEL PLANT

Tenderers must fill in the under noted columns:

Sl.No.	Full Particulars of similar work carried out by the tenderer	Amount of work	Completion time as stated in tender	Actual completion time&year of execution	Name and address for whom work was carried out
1	2	3	4	5	6

A. Work executed in the Name of Tenderer :-

B. Work executed by tenderer not in the name of the Tenderer but in a different name or in a different partnership:-

N.B.:- A Separate sheet may, if required, be used for giving the details in the proforma mentioned above. The sheet shall be duly signed and stitched to the Tender.

**CONSTRUCTION/MAINTENANCE/EXPANSION  
OF  
VISA KHAPATNAM STEEL PLANT**

Schedule of Plant and Constructional/Maintenance Equipment with details of each to be employed by the Tenderer for the contract.

Sl. No.	Description	Details	Approximate date when it was deployed at site	Period of retention at site
1	2	3	4	5

N.B.:- A Separate sheet may, if required, be used for giving the details in the proforma mentioned above. The sheet shall be duly signed and stitched to the Tender.

# VISAKHAPATNAM STEEL PLANT

## (RASHTRIYA ISPAT NIGAM LIMITED)

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# **GENERAL CONDITIONS OF CONTRACT**

**VISAKHAPATNAM STEEL PLANT  
(RASHTRIYA ISPAT NIGAM LIMITED)  
GENERAL CONDITIONS OF CONTRACT**

**1. DEFINITIONS & INTERPRETATIONS**

- 1.1 Definitions: In the contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires.
- 1.1.1 'Employer' means Visakhapatnam Steel Plant, Rashtriya Ispat Nigam Limited, Administrative building, Visakhapatnam-530 031(AP) and includes Employer's Personal representative or successors or assignees.
- 1.1.2 Contractor means person or persons, firms or Company whose tender has been accepted by the employer and who has entered into contract with the employer and includes the contractor's heirs: executors, administrators, legal representatives, personal representatives, successors and permitted assignees.
- 1.1.3 'Engineer' means an engineer appointed from time to time by the employer and shall include the Chief Engineer of the employer.
- 1.1.4 "Engineer's Representative" means any assistant of the engineer or any clerk of works or any other employee or agent appointed from time to time by the employer or the engineer to perform the duties set forth in clause-2 hereof.
- 1.1.5 'Works' shall mean and include all works specified or set forth and required in and by the specifications, scope of work, BOQ, drawings and schedule hereto annexed or to be implied there from or incidental thereto or to be hereafter specified or required in such explanatory instructions and drawings (being in conformity with the original specifications, scope of work, BOQ, drawings and schedule) and also such additional instructions and drawings not in Conformity as aforesaid as shall from time to time be supplied by the employer during the progress of the work hereby contracted for.
- 1.1.6 'Contract' means invitation to tender, instructions to tenderers, tender with all the enclosures thereto, articles of agreement, general conditions of contract, special conditions of contract: scope of work specifications, preamble to bill of quantities, priced bill of quantities, schedule of rates and prices (if any), drawings together with the letter of intent and other documents specifically indicated herein.
- 1.1.7 'Contract Price' means the sum named in the tender subject to such additions thereto or deductions therefrom as may be made under the provisions hereinafter contained.
- 1.1.8 'Constructional Plant' means all appliances or things of whatsoever nature required in or about the execution, completion or maintenance of the works or temporary works (as hereinafter defined) but does not include materials or other things intended to form or forming part of the permanent work.
- 1.1.9 'Temporary Works' means all temporary works of every kind required in or about the execution, completion or maintenance of the works.
- 1.1.10 'Drawings' means the drawings, maps, plans and tracings or prints thereof annexes to the contract or referred to in the specification, scope of work and any modification of such drawings approved in writing by the engineer and such other drawings as may from time to time be furnished or approved in writing by the engineer.

- 1.1.11 'Site' means the lands and other places envisaged by the employer on, under, in or through which the works are to be executed or carried out and any other lands or places provided by the employer for the purpose of the contract.
- 1.1.12 'Notice in Writing' or 'Written notice' means a notice in written, typed or printed characters sent (unless delivered personally or otherwise proved to have been received) by registered post to the last known private or business address or registered office of the address and shall be deemed to have been received when in the ordinary course of post it would have been delivered.
- 1.1.13 'Virtual Completion' means that the work is, in the opinion of the engineer, substantially completed and has satisfactorily passed any final test that may be prescribed in the contract.
- 1.1.14 'Letter of Intent' means an intimation by a letter to tenderer that the tender has been accepted in accordance with the provisions contained in that letter.
- 1.1.15 'Telegraphic Acceptance' means an intimation by a telegram/cable gram that the tender has been accepted in accordance with the provisions contained in that letter.
- 1.1.16 'Approved' means approved in writing including the subsequent written confirmation of previous verbal approval and 'Approval' means approval in writing including as aforesaid.
- 1.1.17 'Month' means a calendar month according to Gregorian calendar.
- 1.2 Singular and Plural: Words importing the singular only also include the plural and vice versa where the context requires. Words importing persons include firms and corporations and vice versa where the context requires. Words importing masculine gender include the feminine gender and vice versa where the context so requires.

## **2. ENGINEER**

- 2.1 Duties and Powers of Engineer: The Engineer shall have the right of general supervision and direction of the work including authority to stop the work whenever such stoppage may be necessary, to ensure the proper execution of the contract, to reject all work and materials which do not conform to the contract, to direct the application of Contractor's labour and machinery forces to any portion of the work as in his judgement is required to order the labour and machinery forces increased or diminished and to decide questions which arise in the execution of the work unless otherwise provided for in this contract.
- 2.2 The duties of Engineer's representative are to watch and supervise the works and to test and examine any materials to be used or workmanship employed in connection with the works. Any instructions or approval given by the Engineer's Representative to the Contractor in Connection with the works shall bind the Contractor as though it has been given by the Engineer provided always as follows:
- 2.2.1 The Engineer's Representative shall have no authority to relieve the Contractor of any of his duties or obligations under the contract except as expressly provided hereunder or elsewhere in the contract to order any work involving delay or any extra payment by the employer or to make any variation in the Works.
- 2.2.2 Failure of the Engineer to disapprove any work or materials shall not prejudice the Employer to disapprove such work of materials and to order the pulling down, removal or breaking up thereof at the cost of the contractor.

The decision, opinion, certificates or valuation of the Engineer in respect of any matter under this clause shall be final, binding and conclusive.

- 2.2.3 If the Contractor shall be dissatisfied by reason of any decision of the Engineer he shall be entitled to refer the matter to the Employer who shall thereupon confirm, reverse or vary such decision.

### **3. ASSIGNMENT AND SUB - LETTING**

- 3.1 Assignment: The Contractor shall not transfer or assign the Contract or any part thereof or any benefit or interest herein or thereunder without the written consent of the Employer. In the event of the Contractor contravening this condition, the employer shall be entitled to place the contract elsewhere on the contractor's account and at his risk and the Contractor shall be liable for any loss or damage which the employer may sustain in consequence or arising out of such replacing of contract.
- 3.2 Sub – letting: The contractor shall not sub – let the whole or any part of the works without the written consent of the employer and such consent if given shall not establish any contractual relationship between the sub – contractor and the Employer and shall not relieve the Contractor of any responsibility, liability or obligation under the contract, and the Contractor shall be responsible for the acts, defaults and neglects of any subcontractor or his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the contractor or his agents, servants or workmen, provided always the execution of the details of works by petty contract under the direct and personal supervision of the Contractor or his agent shall not be deemed to be sub – letting under this clause.

### **EXTENT AND SCOPE OF CONTRACT**

- 4.1 Extent of Contract: the Contract comprises the construction, completion and maintenance of the works and the provision of all facilities including but not limited to water, power, transport and facilities for installation, shifting and handling labour, materials constructional Plant, tools and tackles Temporary Works and everything whether of a temporary or permanent nature required in and for such construction, Completion and maintenance.
- 4.2 The Contractor shall carryout and complete the Works in every respect in accordance with the contract and in accordance with the directions and to the satisfaction of the Employer/Engineer. The Employer/Engineer may in his absolute discretion from time to time issue further drawings and/or written instructions, details, directions and explanations which are hereafter collectively referred to as the Employer's instructions in regard to:
- 4.2.1. The variation or modification of the designs quality or quantity of works or the addition or omission or substitution of any works.
  - 4.2.2 Any discrepancy in the drawings or between the Schedule of Quantities and/or Drawings and/or specifications and/or scope of work.
  - 4.2.3 The removal from the site of any materials brought thereon by the Contractor and the substitution of any other materials therefor.
  - 4.2.4 The removal and/or re-execution of any work executed by the contractor.
  - 4.2.5 The dismissal from the works of any person employed thereupon.
  - 4.2.6 The opening up for inspection any work covered up.
  - 4.2.7 The amending and making good of any defects under clause – 10 herein below.
  - 4.2.8 The inspection and carrying out the tests of materials ; plant and finished work on site.

- 4.2.9 Deducting and recovering any amounts, in respect of defective plan, materials, labour and finished work for which advance payments had been made, from any amounts due to the contractor.
- 4.3 The Contractor shall forth with comply with and duly Execute any work comprised in such Engineer's instructions, provided always that verbal directions and explanations given to the contractor or his foreman/Representative upon the work by the Engineer shall if involving a variation, be confirmed in writing by the Contractor within seven days and if not dissented by the Engineer in writing within a period of seven days from the date of receipt of such confirmation in writing. Such instructions shall be deemed to be the Engineer's instructions within the Scope of the Contract. Rates of items not mentioned in the priced Bill of Quantities shall be fixed by the Engineer.
- 4.4 If compliance with the Engineer's instructions as aforesaid involves work and/or loss beyond that contemplated by the contract then unless the same were issued owing to some breach of this contract by the Contractor the Employer shall pay to the Contractor the price of the said work as an extra to be valued as herein after provided in Clause 11.
- 4.5 If a work is transferred from the jurisdiction of the Employer to another Company or a Project Authority or vice versa, while the Contract is in subsistence, the contract shall be binding on the Contractor and the Successor Company/project Authority in the same manner and take effect in all respects as if the Contractor and the Successor Company/Project Authority were parties thereto from the inception and the corresponding office or the competent authority in the Successor Company/Project Authority will exercise the same powers and enjoy the same authority as conferred to the Predecessor Company/Project Authority under the original Contract/Agreement entered into.
- 4.6 If for any reason the contract is transferred to the Successor Company/Project Authority, the contract shall notwithstanding anything contained herein contrary thereto be binding on the Contractor and Successor Company/Project Authority of the Employer and shall take effect in all respects as if the Contractor and the Successor Company/Project Authority of the employer had been parties thereto from the date of this contract.
- 4.7 The Contract shall be governed by the Law for the time being in force in the Republic of India.

## **5.CONTRACT DOCUMENTS**

- 5.1 Documents mutually explanatory: The several documents forming the Contract are to be taken as mutually explanatory of one another and in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions directing in what manner the work is to be carried out.
- 5.2 Custody of drawings: The drawings shall remain in the sole custody of the engineer. But five copies thereof shall be furnished to the Contractor free of cost. Contractor shall return to the Engineer, all drawings provided under the contract. Extra copies if available shall be supplied by the employer at the rates to be fixed by him, at the completion of the contract.
- 5.3 Additional Drawings: The contractor shall give adequate notice in writing to the Engineer of any further drawings or specification that may be required for the execution of the works or otherwise under the Contract.
- 5.4 One copy of Drawings to be kept: One copy of the drawings furnished to the Contractor as aforesaid shall be kept by the Contractor at the Site and the same shall at all

reasonable times be available for inspection and use by the Engineer, Engineer's Representative or any other person authorised by the Engineer.

- 5.5 Further drawings and instructions: The Engineer shall have the right and authority to supply to Contractor from time to time during the progress of the works such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the works and the Contractor shall carry out and be bound by the same.
- 5.6 All drawings and specifications and complied thereof furnished by the employer to the Contractor are deemed to be the property of the Employer. They shall not be used on the works and with the exception of the signed contract set, shall be returned by the Contractor to the Employer on completion of the works or termination of the Contract.
- 5.7 At the completion of the contract, the contractor, shall furnish to the Engineer three sets of As – built drawings showing the agreed modifications, alterations or changes made on site. If so directed by the Engineer with no extra cost to the employer.

## **6. GENERAL OBLIGATIONS**

- 6.1 Contract Agreement: The Contractor shall enter into and execute a contract agreement in the prescribed form within the time specified in the Letter of Intent and in default thereof the earnest money paid by the contractor shall be forfeited and acceptance of his Tender shall be considered as withdrawn.
- 6.2 Inspection of site: The Contractor shall visit, inspect and examine the site and its surroundings and shall satisfy himself before submitting his tender as to the nature of the ground and sub soils, (as far as is practicable) the form and nature of the site, the conditions, the quantities and the nature of the work and materials, facilities necessary for the construction, completion and maintenance of the works and the means of access to the site, the accommodation and other facilities that may be required and in general shall himself obtain all necessary informations as to working conditions, risk contingencies and other circumstances which may influence or affect his tender.
- 6.3 Sufficiency of Tender: The contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his tender for the works and of the rates and prices stated in the Price Bill of Quantities and that the schedule of rates and Price (if any) cover all his obligations under the contract and all matters and things necessary for the proper construction, completion and maintenance of the works.
- 6.4 Works to the satisfaction of Engineer: The contractor shall execute, complete and maintain the works in strict accordance with the contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter (whether mentioned in the contract or not). The Contractor shall take instructions and directions only from the Engineer (subject to the provision referred to in clause 2 hereof).
- 6.5 Programme to be furnished: Within 30 days of acceptance of his Tender the contractor shall submit to the engineer for his approval, a programme showing the order of procedure and method with the dates and completion times for different units of works which shall be within the frame work of the completion time stated in the tender in which he proposes to carry out the works and shall whenever required by the Engineer furnish for his information particulars in writing of the Contractor's arrangements for the carrying out of the works and of the constructional plant and temporary works which the Contractor intends to supply, use or construct as the case may be. The submission to

and approval by the Engineer of such programme or the furnishing of such particulars shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

- 6.6 Contractor's superintendence: The contractor shall give or provide all necessary superintendence during the execution of the works and as long thereafter as the engineer may consider necessary. The contractor or his Competent and authorised agent or representative approved of in writing by the Engineer (which approval may at any time be withdrawn) is to be constantly on the works and shall give his whole time to the superintendence of the same. Such authorised agent or representative shall receive on behalf of the Contractor, directions and instructions from the Engineer or Engineer's representative (subject to the Provisions of Clause 2 hereof).
- 6.7 Removal of workmen: The contractor shall employ in and about the execution of the works only such persons as are careful, skilled, experienced in their respective trades and the Engineer shall be at liberty to object to and require the Contractor to remove from works any person employed by the contractor in or about the execution of the works who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the proper performance of his duties and such persons shall not be again employed upon the works in any capacity without the prior permission of the Engineer.
- 6.8 Setting out: The Contractor shall be responsible for the true and proper setting out of the works and for the correctness of the positions, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith. If any time during the progress of the Works any error shall appear or arise in the position, levels, dimensions and alignments of any part of the Works, the Contractor on being required as to do by the Engineer shall at his own expense rectify such error to satisfaction of the Engineer unless such error is based on incorrect data supplied in writing by the Engineer in which case the expense of rectifying the same shall be borne by the Employer. The checking of any setting – out of the line or level by the Engineer shall not in any way relieve the contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench marks, site rails, pegs and other things used in setting out the works.
- 6.9 Bore-Holes, exploratory excavation: If any time during the execution of the works, the Engineer shall require the Contractor to make bore-holes or to carryout exploratory excavation such requirement shall be ordered in writing and shall be deemed to be an addition ordered under the provision of Clause-11 hereof, unless a provisional sum in respect of such anticipated work shall have been provided in the Bill of Quantities.
- 6.10 Watching & Lighting : The contractor shall in connection with the works provide and maintain at his own cost, all lights, guards, fencing and watching when and where necessary or required by the engineer or by any competent statutory or other authority for the protection of the Works or for the safety and Convenience of the public or others.
- 6.11 Care of works: From the commencement to the completion of the works, and maintenance thereof the Contractor shall take full responsibility of the care thereof and of all temporary works and in case any damage, loss or injury shall happen to the works or to any part thereof any Temporary works from any cause whatsoever (save and except the excepted risks as defined in sub-clause 6.11.1 of this clause) shall at his own cost repair and make good the same so that at completion the works shall be in good order and condition and in conformity in every respect with the requirement of the Contract and the Engineer's instructions. In the event of any damage loss or injury happening from any of excepted risks the contractor shall it and to the extent required by the Engineer and subject always to the Provisions of Clause – 16 hereof, repair and make good the same as aforesaid at the cost of the employer. The contractor shall also be liable for any

damage to the Works occasioned by him in course of any operations carried out by him for the purpose of complying with obligations under Clause –10 hereof.

- 6.11.1 Excepted risks: The “excepted risks” are riot, war, invasion, act of foreign enemies, hostilities (where was be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power (in so far as these are un-insurable) or a cause solely due to use or occupation by the Employer of any portion of the works in respect of which a Certificate of Completion has been issued or a cause solely due to the design of the works attributable to the Employer (all of which are herein collectively referred to as the Excepted Risks).
- 6.12 Insurance: The contractor shall maintain and shall require his Sub-Contractors to maintain in full force and effect, from Insurance Companies in India acceptable to Engineer, from the time of execution of his Agreement:
- a) All such insurances as are required by law for the purpose of the Contract at the cost of Contractor.
  - b) All such insurances required in respect of equipment purchased out of advance received from Employer at the cost of Contractor.
  - c) Any additional insurance required specifically by the Employer/Engineer at the cost of Employer.
- 6.12.1 Contractor shall ensure that the insurer shall furnish to the engineer and Employer with evidence of such insurance a copy of the issued policy and any amendments thereto and prompt notification of any cancellation or termination thereof. Should Contractor default in paying any premium when due, Engineer or Employer, without prejudice to other remedies set forth in this Agreement shall be at liberty to pay such premium and recover the same from Contractor.
- 6.12.2 Any such insurance requirements are here by established as the minimum policies and coverage which Contractor must secure and keep in force. Contractor shall at all time be free to obtain additional or increased coverage at Contractor’s sole expense.
- 6.12.3 The provisions contained within this Article are not intended and do not impair or in any manner limit the liabilities or obligation assumed by Contractor as may be set forth more fully elsewhere in this Agreement.
- 6.13 Damages to persons & property: The contractor shall (except if and so far as the Contract otherwise provides) indemnify and keep indemnified the employer against all losses and claims for injuries or damages to any person or property whatsoever (including surface or other damages to land or trees or crops being on the site suffered by tenants or occupiers) which may arise out of or in consequence of the construction and maintenance of the works and against all claims, demands, proceedings damages, costs charges and expenses whatsoever in respect thereof or in relation to, provided always that nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the employer against any compensation of damages for or with:
- a) The permanent use or occupation or land by the works or any part thereof (save in respect of damages to crops as aforesaid)

- b) The right of the Employer to construct the works or any part thereof on over, under, in or through any land.
  - c) Interference whether temporary or permanent resulting in any right or-light, air way or other assessment or quasi assessment which is the unavoidable result of the construction of the works in accordance with the contract.
  - d) Injuries or damages to person or property resulting from any act or neglect done or committed during the currency of the contract by the Employer, his agents, servants-other contractors (not being employed by the contractor) or for in respect of any claim demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.
- 6.13.1 Third party Insurance: Before commencing the execution of the works the Contractor (but without limiting his obligations and responsibilities under Clause 6.13 hereof ) shall insure against any damage, loss or injury which may occur to any property (including that of the Employer) or to any Person (including any employee of the Employer) by or arising out of the execution of the works or temporary works or in the carrying out of the contract otherwise than due to the matters referred to in the Provision of Clause 6.13 hereof.
- 6.13.2 Minimum amount of third party Insurance: Such insurance shall be effected with an insurer and in terms, approved by the Employer and for an amount not less the amount stated in the Appendix and the Contractor shall whenever required, produce to the Engineer the valid policy or policies of insurance and the receipts for payment of the current premium.
- 6.14 Accident or injury to Workmen: The employer shall not be liable for or in respect of any damages or compensation payable at Law in respect of or in consequence of any accident or injury to any workman or other person in the employment of the Contractor any sub-contractor save and except an accident or injury resulting from any act or default of the Employer, his agents or servants and the Contractor shall indemnify and keep indemnified the employer against all such damages and compensation (save and except as aforesaid) and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect or in relation thereto.
- 6.14.1 E.S.I Act: The Contractor shall at all times indemnify the Employer against all claims for compensation under the provisions of the ESI ACT 1948 , as amended from time to time or any other law for the time being in force by or in respect of, any workmen employed by the Contractor in carrying out the contract and against all costs and expenses or penalties incurred by the employer in connection there with and (without prejudice to any other means of recovery) the employer shall be entitled to deduct from any money due or to become due to the Contractor (whether under the contract or any other contract) all moneys paid or payable by the employer by way of Compensation aforesaid or for costs or expenses in connection with claims thereto and the contractor shall abide by the decision of the employer as to the sum payable by the Contractor under the provisions of this clause.
- 6.15 Giving Notice and Payment of Fees: The contractor shall give all notices and pay all fees required to be given or paid under any Central or State Statute Ordinance or other Law or any Regulation or bye-law of any local or other duly constituted Authority in relation to the execution of the works or any Temporary works and by the rules and regulations of all public bodies whose property or rights are effected or may be effected in any way the works or any Temporary works.
- 6.16 Compliance with Statute, Regulations etc: The contractor shall conform in all respects with the provision of any such Statute, Ordinance, or Law as aforesaid and the rules,

regulations or bye-laws of any local or other duly constituted authority which may be applicable to the works or to any Temporary Works and with such rules and regulations of public bodies as aforesaid and shall keep the employer indemnified against all penalties and liability of every kind for breach of any such statute, Ordinance, law, Rule, Regulation or Bye-Law.

- 6.17 Fossils etc: All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological and other interest discovered on the site shall be (as between the Employer and the Contractor) deemed to be the absolute property of the Employer and the Contractor shall take all precautions to prevent his workmen or any other persons from removing or damaging any such article or things and shall immediately upon discovery thereof and before removal acquaint the Engineer of such discovery and carry out at the expense of the employer, the Engineer's order as to the disposal of the same.
- 6.18 Patent rights & Royalties: the contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design, trademark or name or other protected rights in respect of any constructional plant, machine work or material used for or in connection with the Works or Temporary Works of any of them and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever, in respect thereof or in relation thereto.
- 6.19 Except where otherwise specified the contractor shall pay all tollages and other royalties, rent and other payments (if any) for getting stone, sand, gravel, clay and all other materials to the site required for the Works or Temporary Works or any of them.
- 6.20 Interference with traffic & adjoining properties: All operations necessary for the execution of the Works and for the construction of any Temporary Works shall so far as compliance with the requirements of contract permits, be carried on so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and footpaths or to or of properties whether in the possession of the Employer or of any other person and the Contractor shall save harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters.
- 6.21 Extra-ordinary Traffic: The contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the Site from being subjected to extraordinary traffic within the meaning of the Road Act by any traffic of the contractor or any of his sub-contractors and in particular shall select routes and use vehicles and restrict and distribute loads so that any such extra – ordinary traffic as will inevitably arise from the moving of the plant and materials and from and to the site shall be limited as far as reasonably possible and so that no unnecessary damages or injury may be occasioned to such highways and bridges.
- 6.22 Facilities for other Contractors: The contractor shall in accordance with the requirement of the engineer afford all reasonable facilities for any other contractors employed by the employer and their workmen and for workmen of the employer and of any other property authorised authorities or statutory bodies who may be employed in execution on or near the site of any work not included in the contract or of any contract which the employer may enter into in connection with or ancillary to the works.
- 6.23 Supply of Plant Materials and Labour: Except where otherwise specified by the contractor shall at his own expense supply and provide all the constructional plant materials both for temporary and for permanent works. Labour (including the supervision thereof) transport

to or from site and in and about the works and other things of every kind required for the construction, completion and maintenance of the works.

- 6.24 Delay in obtaining materials by the employer: If the employer has undertaken to supply materials specified in the Special Conditions at rates stated therein the contractor shall keep himself in touch with the day – to – day position regarding the supply of materials from the Engineer and to so adjust the progress of the work that their labour may not remain idle nor may there be any other claim due to or arising from delay in obtaining the materials. No claim whatsoever shall be admitted by the employer on account of delay in supplying materials.
- 6.25 Clearance of site on completion: On the completion of the works the contractor shall clear away and remove from the site all construction plant, surplus material, rubbish and temporary works of every kind, leave the whole of the site and works clean and in a workmen like condition to the satisfaction of the engineer. In the events of the contractor's failure to comply with this provision, the Engineer shall after giving 7 days notice in writing, get the site cleared as above at the expense and risk of the contractor and the contractor shall have no claim whatsoever.
- 6.26 Return of surplus materials: Notwithstanding anything contained to the contrary anywhere in this contract wherever any materials for the execution of the contract are procured with the assistance of the Employer either by issue from Employer's stock, or purchase made under orders or permits or licences issued by the employer, the contractor shall use the said materials economically and solely for the purpose of the contract and not dispose them of without the permission of the Employer and if require by the engineer shall return to the Employer all surplus or unserviceable materials that may be left with the contractor after the completion of the contract or at its termination for any reason whatsoever on being paid or credited such price as the engineer shall determine, having due regard to the initial cost and the present condition of the materials at the time of such return thereof. The credit to be allowed to the contractor shall not exceed the amount charged to him excluding the departmental and storage charges etc., if any in the event of breach of the aforesaid condition the contractor shall(in addition to making himself liable for action for contravention of the terms of the licences or permit and/or for criminal breach of trust) be liable to the employer for all moneys, advantages or profits accrued or which in the usual course would have accrued to the contractor by reason of such breach.
- 6.27 Vesting of certain plant: All constructional plant, temporary works and materials owned by the contractor or by any company in which the contractor has controlling interest shall when brought on to the site immediately be deemed to be vested with the Employer till the completion of work.
- 6.28 Irremovability of certain Plant etc.: No constructional Plant, Temporary Works materials of any partthereof shall be removed from the site without the written consent of the engineer, which consent shall not be unreasonably withheld where the same is no longer immediately required for the purpose of completion of the works but, the employer will permit the contractor the exclusive use of all such constructional plant, temporary works and materials in and for the completion of the works until the occurrence of any event which gives the employer the right to exclude the contractor from the site and proceed with the completion of the works.
- 6.29 Liability of loss or injury to Plant: The employer shall not at any time be liable for the loss or of injury to any of the constructional plant, temporary works or materials which have been deemed to be vested with the employer under sub-clause 6.27 above same as mentioned in Clause 16 hereof.

- 6.30 Materials obtained from dismantlement & excavation etc: All materials (eg. Stone and other materials) obtained in the work of dismantling, excavation etc., will be considered Employer's property and issued to the contractor (if he requires the same for his own use) at rates approved by the Engineer, if these materials are not required by him they will be disposed off to the best advantage of the Employer.
- 6.31 Explosives shall not be used on the work by the contractor without the permission in writing of Engineer and then only in the manner and to the extent to which he has prescribed, where explosives are used the same shall be stored in a special magazine to be provided by and the cost of the contractor who shall be liable for all damages, loss or injury to any person or property and shall be responsible for complying the statutory obligations in these respects.

## **LABOUR**

- 7.1 Labour Rules etc.: In respect of all labour directly or indirectly employed on the Works, the contractor shall comply with all legislations and rules of State and /or Central Government or other local authority governing the protection of health, sanitary arrangements, wages, welfare and safety applicable for labour employed on building and constructions works. The Minimum Wages Act, 1948, ESI ACT 1948 , as amended from time to time, Contract Labour (Regulation & Abolition ) Act 1970 and other Statutory obligation with regard to fair wages, welfare, amenities and safety measures, maintenance of register etc. will be deemed to be part of the contract. The Contractor shall take out necessary Licence under the Contract Labour (Regulation & Abolition) Act, 1970 within the time limit allowed by the appropriate Government and on his failing to do so, the Contract shall automatically come to an end immediately on the expiry of such time limit and the earnest money/security deposit shall stand forfeited.
- 7.2 Reporting accidents to labour: The contractor shall be responsible for the safety of all employees and / or workmen employed or engaged by him on and in connection with the work and shall report to the employer and other local authorities concerned, all cases of serious accidents howsoever caused and wherever occurring on the works and shall make adequate arrangements for rendering immediately all possible aid to the victims of the accidents.
- 7.3 ESI ACT : The contractors shall at all times indemnify the Employer against all claims for compensation under the provision of the ESI ACT 1948 , as amended from time to time or any other Law for the time being in carrying out the contract and against all cost and expenses insured by the Employer in connection therewith and (without prejudice to and other means of recovery). The Employer shall be entitled to deduct from any money due or to become due to the contractor all moneys paid or payable by the employer by way of compensation aforesaid or for costs or expenses in connection with any claim thereto and the contractor shall abide by the decision of the employer as to the sum payable by the contractor under the provision of this clause.
- 7.4 Age limit of Labour: The age limit for employment of labour shall be in strict accordance with the existing Labour Rules & Regulations.
- 7.5 Return of Labour: The contractor shall submit returns in such form and at such interval as the Engineer may prescribe showing numbers of different labour employed on the works from time to time by the contractor.
- 7.6 Observance by subcontractors: The contractor shall also be responsible for the observance of the provisions of clause 7 by sub-contractors employed by him in the execution of the contract.

## **8. WORK MATERIALS AND PLANT**

- 8.1 Quality of materials & workmanship and tests: All materials and workmanship shall be of the respective kinds described in the contract and in accordance with the Engineer's instructions and shall be subject from time to time to such tests as the Engineer may direct at the place of manufacture of fabrication or on the site or at all or any of such places. The contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any material used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer.
- 8.2 Cost of samples: All samples shall be supplied by the contractor at his own cost of the supply thereof clearly intended or provided for in the contract.
- 8.2.1 Cost of Test: The cost of making any test shall be borne by the Contractor if such test is clearly intended by or provided for in the contract.
- 8.3 Cost of tests not provided for etc: If any test is ordered by the Engineer which is either not so intended by or provided for or (in the cases above mentioned) is not so particularised or though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place other than the site or the place of manufacture of fabrication of the material tested, then the cost of such test shall be borne by the contractor if the test shows the workmanship or materials not to be in accordance with the provision of the contract or the engineers instructions but otherwise the cost of such test shall be borne by the employer.
- 8.4 Access to site: The Engineer and any person authorised by him shall at all times have access to the works and to the site and to all workshops and places where work is being prepared or when materials manufactured, articles and machinery are being obtained for the works and the contractor shall afford every assistance in obtaining the right to such access.
- 8.5 Examination of work before covering up: No work shall be covered up or put out of view without the approval of the engineer and the contractor shall afford full opportunity for the engineer to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent pavement work is placed thereon. The contractor shall give due notice to the Engineer whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer, shall without unreasonable delay, unless he considers it unnecessary and advises the contractor accordingly, attend for the purpose of examining and measuring such work or of examining such foundations.
- 8.5.1 Uncovering & making openings: The contractor shall uncover any part or parts of the works or make openings in or through the same as the Engineer may from time to time detect and shall reinstate and make good such part or parts to the satisfaction of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of Clause 8.5 and are found to be executed in accordance with the contract the expenses of uncovering, making openings in or through, reinstating and making good the same shall be borne by the contractor and shall be recoverable from him by the employer or may be deducted by the employer from any moneys due or which may become due to the contractor under the contract or any other contract between the contractor and the employer or employer's Subsidiary units/Companies.

- 8.6 Removal of improper work and materials: The engineer shall, during the progress of the works have the right to order in writing from time to time.
- a) The removal from the site within such time or times as may be specified in the order of any materials which, in the opinion of the engineer, are not in accordance with the contract.
  - b) The substitution of proper and suitable materials and
  - c) The removal and proper re-execution (notwithstanding any previous tests thereof or interim payment therefor) of any work which in respect of materials or workmanship is not in the opinion of the Engineer in accordance with the contract.
- 8.7 Default of contractor in compliance: In case of default on the part of contractor in carrying out the order/orders mentioned under clause 8.6 above, the employer shall be entitled to employ and pay other persons to carryout the same and all expenses consequent thereon or incidental thereto shall be borne by the contractor and shall be recoverable from him by the employer for or may be deducted by the employer under this contract or any other contract between the contractor and the employer or employer's subsidiary units/companies from any money due or which may become due to the contractor.
- 8.8 Suspension of work: The contractor shall on the written order of the engineer suspend the progress of the works or any part thereof for such time or times and such manner as the Engineer may consider necessary and shall during such suspension, properly protect and secure the work so far as is necessary in the opinion of the Engineer. The extra cost (if any) incurred by the Contractor in giving effect to the Engineer's instructions under this clause shall be borne and be paid by the Employer unless such suspension is:
- a) Other-wise provided for in the contract or
  - b) Necessary for the proper execution of the work or by reason of weather or other force-majure conditions or by some default on the part of the contractor or
  - c) Necessary for safety of works or any part thereof
- provided that the contractor shall not be entitled to recover any such extra cost unless he gives notice in writing of his intention to claim to the Engineer within 30 days of the Engineer's order. The Engineer shall settle and determine the extra payment to be made to the contractors in respect of such claims as Engineer shall consider fair and reasonable.
- 8.9.1 Suspension lasting more than three months: If the progress of the works or any part thereof is suspended on the written order of the Engineer for more than three months, the contractor may serve a written notice on the Engineer requiring permission within 30 days from the receipt thereof to proceed with the works or that part thereof in regard to which the progress is suspended and if such permission is not granted within that time the contractor by a further written notice so served may (but is not bound to) elect to treat the suspension, where it affects part only of the works as an omission of such part under Clause-11 here or where it affects the whole works as an abandonment of the contract by the employer, without attaching any liability therefore on the employer.

## **9. COMMENCEMENT AND DELAYS**

- 9.1 Commencement of work: The contractor shall commence the works within thirty days after the issue of the Letter of Intent and shall proceed with the same with due expedition and without delay except as may be expressly sanctioned or ordered by the engineer.
- 9.2 Possession of site: Save in so far as the contract may prescribe; the extent of portions of the site of which the contractor is to be given possession from time to time and the order in which such portions shall be made available to him and subject to any requirement in the contract as to the order in which the work shall be executed, the employer will, with

the Engineer's written order to commence the works, give to the contractor, possession so much of the site as may be required to enable the contractor to commence and proceed with the construction of the works in accordance with the approved programme referred to in Clause 6.5 hereof (if any) and otherwise in accordance with such reasonable proposal of the contractor as he shall by notice in writing to the Engineer make and will, from time to time as the works proceed, give to the contractor possession of such further portions of the site as may be required to enable the contractor to proceed with the construction of the works with due despatch in accordance with such approved programme or approved proposals (as the case may be). If there is delay in handing over the possession of the site to the contractor, in accordance with the terms of this clause, the Engineer shall grant suitable extension of time for the completion, of the works.

- 9.2.1 Way-Leaves etc: The contractor shall bear all expenses and charges for special or temporary way-leaves required by him in connection with the access to the site. The contractor shall also provide at his own cost any additional accommodation outside the site required by him for the purpose of the work.
- 9.3 Time of Completion: Subject to any requirement in the contract as to completion of any portion of the works before completion of the whole, the whole of the works shall be completed within the time stated in the Appendix calculated from the date of the Employer's issue of Letter of Intent or such extended time as may be allowed under Clause 9.4 hereof.
- 9.4 Extension of time for completion: Should the amount of extra or additional work of any kind or other special circumstances of any kind whatsoever which may occur be such as fairly to entitle the contractor to an extension of time for the completion of the work, the engineer is not bound to take into account any extra or additional work or other special circumstances unless the contractor has within 30 days after such work has been commenced or such circumstances have arisen or as soon thereafter as is practicable but not later than 30 days delivered to the Engineer full and detailed particulars of any claim to extension of time to which he may consider himself entitled in order that such claim may be investigated at the time.
- 9.5 No night or Sunday work: Subject to any provision contained in the contract none of the permanent work shall as hereinafter provided be carried on during the night or on Sundays or on holidays without the permission in writing of the engineer save when the work is unavoidable or absolutely necessary, for the saving of life or property or for the works in which case the contractor shall immediately advise the Engineer, provided always that the provision of this clause shall not be applicable in the case of any work which it is customary to carry not be rotary or double shifts and the employer has been advised in writing about the contractor prior to its commencement.
- 9.6 Rate of Progress: The whole of the materials, plant and labour to be provide by the contractor under Clause 4 hereof and mode, manner and speed of execution and maintenance of the Works are to be of a kind and conducted in a manner approved buy the Engineer. Should the rate of progress of the works or any part thereof be at any time in the opinion of the Engineer too slow to ensure the completion of the works by the prescribed time or extended time for completion the Engineer shall so notify the contractor in writing and the contractor shall thereupon take such steps as he may think necessary to expedite the progress so as to complete the works by the prescribed time or extended time for completion. If the work is not being carried on by day and the contractor shall request permission to work by night as well as by day then if the Engineer shall grant such permission, the contractor shall not be entitled to any additional payment for so doing but if such permission shall be refused and there shall be no equivalent practicable method of expediting the progress of the work the time for

completion of the works shall be extended by the Engineer by such period as is solely attributable to such refusal subject, however to the provisions under Clause 9.7 hereof. All works at night shall be carried out without unreasonable noise and disturbance. The contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while carrying out the work, and from against all claims, demands proceedings, damages, costs, charges and expenses whatsoever in regard or in relation to such liability.

- 9.7 Liquidated damages for delay: If the contractor shall fail to complete the works within the time prescribed by Clause 9.3 hereof or the extended time then the contractor shall pay to the Employer the sum stated as liquidated damages in Appendix for such default and not as a penalty for every week or part of a week which shall elapse between the time prescribed by Clause 9.3 hereof or the extended time as the case may be and the date of completion of the works. The employer may without prejudice to another method of recovery deduct the amount of such damages from any moneys in his hands due or which may become due to the contractor under the contract or any other contract between the contractor and the Employer or Employer's Subsidiary units/Companies. The payment or deduction of such damages shall not relieve the contractor from his obligation to complete the works or from any other of his obligations and liabilities under the contract.
- 9.7.1 Reduction of liquidated damages: If before the completion of the whole of the works any part of the works has been certified by the Engineer as completed pursuant to Clause 9.3 hereof and occupied or used by the Employer the liquidated damages for delay shall for any period of delay after such certification be reduced in the proportion which the value of the part so certified bears to the value of the whole of the works.
- 9.8 Certificate of completion of works: As soon as in the opinion of the Engineer the works shall have been virtually completed, Engineer shall, on receiving a written undertaking by the Contractor to finish any outstanding work during the period of maintenance, issue a certificate of virtual completion in respect of the works and the period of maintenance of works shall commence from the date of such certificate provided that Engineer may give such a certificate with respect to any substantial part of the works which has been both completed to the satisfaction of the Engineer and occupied or used by the Employer and when any such certificate is given in respect of a part of the works such part shall be considered as completed and the period of maintenance of such part shall commence from the date of such certificate . Provided always that a certificate of virtual completion given in accordance with the foregoing provisions of any part of the works occupied and used aforesaid shall not be deemed to certify completion of any ground or surface requiring reinstatement unless such certificate shall expressly so state.

## **10. MAINTENANCE AND DEFECTS**

- 10.1 Definition of Period of Maintenance: In these conditions the expression Period of Maintenance shall mean the period of maintenance named in the Appendix calculated from the date of completion of the works as certified by the Engineer in accordance with Clause 9.8 hereof or in the event of more than one certificate having been issued by the Engineer under the said Clause, from the respective dates so certified and in relation to the period of Maintenance the expression "the works" shall be construed accordingly.
- 10.2 Execution of work or repair etc: To the extent that the Works shall at or as soon as practicable after the expiration of the Period of Maintenance, be not delivered up to the Employer in as good as perfect a condition (fair wear and tear expected) to the satisfaction of the Engineer as that in which they were at the commencement of the Period of Maintenance the contractor shall forthwith execute all such work of repair amendment reconstruction, rectification and making good of defects, imperfections,

shrinkages or other faults as may be required of the contractor in writing by the Engineer during the period of maintenance or within fourteen days after its expiration as a result of an inspection made by or on behalf of the Engineer, prior to its expiration.

- 10.3 Cost of execution of repair etc.: All such work shall be carried out by the contractor at his own expenses if the necessity thereof is in the opinion of the Engineer due to the use of materials or workmanship not in accordance with the Contract or due to the neglect or failure on the part of Contractor to comply with any obligation expressed or implied on the Contractor's part under the contract.
- 10.4 Remedy on Contractor's failure to carry out work: If the Contractor shall fail to do any such work as aforesaid required by the Engineer the Employer shall be entitled to carry out such work by his own workmen or by other Contractors and if such work which the Contractor should have carried out at the Contractor's own cost, the Employer shall be entitled to recover from the Contractor the cost thereof, may deduct the same from any moneys due or that may become due to the Contractor under this contract or any other contract between the Contractor and the Employer or Employer's subsidiary units/companies.
- 10.5 Temporary Requirement : Provided always that if in the course or for the purpose of the execution of the works or any part thereof any highway or other road or way shall have been broken into, then notwithstanding any thing herein contained, the provisions contained in the following sub-clauses shall apply.
  - 10.5.1 If the permanent reinstatement of such highway or other road or way is to be carried out by the appropriate Highway Authority or by some persons other than the Contractor (or any sub-contractor to him) the Contractor shall at his own cost and independently of any requirement of notice from the Engineer be responsible for the making good of any Subsidence or shrinkage other defect, imperfection or fault in the temporary reinstatement of such highway or other road or way and for the execution of any necessary repair and amendment thereof from whatever cause the necessity arises until the end of the Period of Maintenance in respect of the works beneath such highway or other road or way, or, until the highway Authority or other person as aforesaid shall have taken possession of the site for purpose of carrying out permanent reinstatement whichever is the earlier and shall indemnify and save harmless the Employer against and from any damage or injury to the Employer or to third parties arising out or in consequence of any neglect or failure of the Contractor to comply with the foregoing obligations or any of them and against and from all claims, demands proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
  - 10.5.2 Where the Highway Authority or other person as aforesaid shall take possession of the site as aforesaid in section of lengths the responsibility of the Contractor under Clause 10.5.1 shall cease in regard to any such sections or length at the time possession thereof is so taken but shall during the continuance of the said Period of Maintenance continue in regard to any length of which possession has not been so taken and the indemnity given by the Contractor under the said paragraph shall be construed and have effect accordingly.

## **11. ALTERATIONS, ADDITIONS AND OMISSIONS**

- 11.1 Variations: The Engineer shall have the right to make any variation of the form, quality or quantity of the Works or any part thereof that may in his opinion be necessary and for that purpose or if for any other reason it shall in his opinion be desirable he shall have power to order the Contractor to do and the Contractor shall do any of the following:
  - a) Increase or decrease the quantity of any work included in the Contract.

- b) Omit any such work
- c) Change the character of quality or kind of any such work.
- d) Change the levels, lines, position and dimensions of any part of the works.
- e) Execute additional work of any kind necessary for the completion of the works.

And no such variation shall in any way vitiate or invalidate the contract but the value (if any) all such variations shall be taken into account in ascertaining the account of the contract price.

- 11.2 Orders for variations to be in writing: No such variation shall be made by the Contractor without an order in writing of the engineer. Provided that no order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of any order given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.

Provided also that if for any reason the Engineer shall consider it desirable to give any such order, verbally, the Contract shall comply with such order and confirmation by the Contractor in writing of such verbal order given by the Engineer shall be deemed to be an order in writing subject to Clause 4.3 hereof.

- 11.3 Valuations of variations and Power of the Engineer to fix rates: The Engineer shall determine the amount (if any) to be added to or deducted from the sum named in the tender in respect of any extra or additional work done or work omitted by his order. All such work shall be valued at the rates set out in the contract if in the opinion of the Engineer the same shall be applicable. If in the opinion of the Engineer the contract does not contain any rates applicable to the additional, altered omitted or substituted items then the rates shall be fixed by the Engineer for such items by deriving the rates from the analogous item, if any, in the agreement. In the absence of analogous items, the rates shall be fixed by the Engineer on the basis of basic rates and norms as available in standard schedules/analysis of rates of materials/wages which shall be supported by vouchers and other relevant documents and the contractor shall submit the analysis on these lines. The cost element on account of provisions of profit including overheads shall not exceed 12.5% of the direct cost.

Provided also that no increase of the Contract Price and Clause 11.3 shall be made unless the Contractor notifies to the Engineer his intention to claim extra payment within one month from the (receipt of the contract variation) date the work relating to the variation is taken up for execution.

- 11.4 Day work: Where a particular item of work has not been included in the Bill of Quantities and where an analogous rate cannot be computed or a reasonable rate cannot be determined or agreed with the Engineer then if such item of work shall not be measurable the Engineer, may if in his opinion it is necessary or desirable, order in writing that any additional or substituted work shall be executed on a day work basis. The contractor shall then be paid for such work under the conditions set out in the day work schedule included in the Bill of Quantities and at the rates and prices affixed thereto by him in his tender.

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

- 11.4.2 In respect of all work executed on a day work basis the contractor shall during the continuance of such work deliver each day to the Engineer exact list in duplicate of the names, occupation and time of all workmen employed on such work and statement also in duplicate showing the description and quantity of all materials and plant used thereon

or therefore (other than plant which is included in the percentage addition in accordance with the Schedule under which payment for day work is made). One copy each of list and statement will if correct or when agreed be signed by the Engineer and returned to the contractor. At the end of each month the Contractor shall deliver to the Engineer a priced statement of the labour, material and plant (except as aforesaid) used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered.

## **12. MEASUREMENTS**

- 12.1 Quantities: The quantities set out in the Bill of Quantities are the estimated quantities of the work but they are not to be taken as the actual and correct quantities of the works to be executed by the Contractor in fulfilment of his obligation under the contract. Any fluctuation in the quantity of the work from the estimated quantity as a result of measurement carried out after the actual execution of the work shall not entitle the contractor to claim any compensation/loss of profit/damages for the shortfall in the estimated quantity of work or excess above the estimated quantity of the work as the case may be, besides the price due to him for the actual quantity of work executed at the rate contained in the Contract.
- 12.2 Works to be measured: The Engineer shall except as otherwise stated, ascertain and determine by measurement the value of work done in accordance with the Contract. He shall when he requires any party or parts or parts of the Works to be measured, give notice to the contractor who shall forthwith attend or send a qualified agent to assist the Engineer in making such measurement and shall furnish all particulars required by him. Should the Contractor not attend or neglect or omit to send such agent on the date/s fixed by the Engineer for taking measurement as per notice given to the Contractor, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work.
- 12.3 Methods of Measurement: Except where any general or detailed description of the work in the Bill of Quantities expressly shows to the Contrary, Bill of Quantities shall be deemed to have been prepared and measurements shall be made according to the procedure set forth in the Indian Standard Method of Measurement for building work IS:1200 and any subsequent amendment or modification thereof notwithstanding any general or local custom. All dimensions and measurements shall be in metric units.
- 12.4 Period of final Measurement: The final measurements and valuations in respect of the contract shall be completed within the "Period of Final Measurement" stated in the Appendix calculated from the date of completion of the works as certified by the Engineer in accordance with Clause 9.8 hereof.

## **13. CERTIFICATE OF PAYMENT**

- 13.1 Monthly Payments: The Contractor shall submit to the Employer, at the end of each month an on-account bill showing the estimated contract value of the permanent work executed up to the end of the month (if such value shall justify issue of an interim certificate) accompanied by detailed measurements and a statement of permanent materials at site. The contractor will be paid monthly on the Certificate of the Engineer the amount due to him on account of the estimated value of the permanent work executed up to the end of the previous month together with such amount (if any as the Engineer may consider proper on account of materials for permanent work delivered by the Contractor on the site) subject to a retention of the percentage named in the Appendix until the amount retained shall reach the limit of "Retention money" named in the Appendix (hereinafter called the Retention Money") provided always that no interim certificates shall be issued for a sum less than named in the Appendix at one time.

- 13.2 Payment of Retention Money: One half of the retention money shall become due and shall be paid to the Contractor when the Engineer shall certify in writing that works have been substantially completed and have satisfactorily passed final test and the other half shall be paid to the Contractor thirty days after the expiration of the Period of Maintenance and based on the no objection certificate from the Employer. Provided always that if at such time there shall remain to be executed by the Contractor any works ordered during such period pursuant to Clause 10.1 to 10.5.2 hereof, the Employer shall be entitled to withhold payment until the completion of such works so much of the second half of the retention money as shall in the opinion of the Engineer represent the cost of the works so remaining to be executed.

Provided further that the second half of the retention money shall not be released without the contractor furnishing certificate required under Clause 13.6 hereof and that in the event of different maintenance periods having become applicable to different parts of the works pursuant to Clause 9.8 hereof the expression expiration of the Period of Maintenance, shall for the purpose of this sub-clause be deemed to mean the expiration of the latest of such periods.

- 13.3 Time of Payments: Every effort shall be made by the Employer to release the payment upon each of the Engineer's certificates within the number of days named in the Appendix after such certificate has been delivered to the Employer.
- 13.4 Correction of Certificates: The engineer may by any certificate make any correction or modification to any previous certificate which shall have been issued by him.
- 13.5 Approval only by Maintenance Certificate: No certificate other than the Maintenance Certificate referred to in Clause 13.6 hereof shall be deemed to constitute approval of any work or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Contract or any part thereof or of the accuracy of any claim or demand made by the Contractor or of additional or varied work having been ordered by the Engineer nor shall any other certificate abridge or prejudice any of the powers of the Engineer.
- 13.6 Maintenance Certificate: The Contract shall not be considered as completed until a Maintenance Certificate shall have been signed by the Engineer and delivered to the Employer stating that the works have been completed and Maintained to his satisfaction. The Maintenance Certificate shall be given by the Engineer fourteen days after the expiration of the period of Maintenance or as soon thereafter as any works ordered during such period pursuant to clause 10.1 to 10.5.2 hereof shall have been completed to the satisfaction of the Engineer and full effects shall be given to this clause notwithstanding any previous entry on the works or the taking possession working or using thereof any part thereof by the Employer.
- 13.7 Cessation of Employer's Liability: The Employer shall not be liable to the contractor for any matter or thing arising out of or in connection with the Contract of the execution of the works unless the contractor shall have made a claim in writing in respect thereof before requesting for issue of the Maintenance Certificate under this clause.

#### **14. REMEDIES AND POWERS**

- 14.1 Termination of Contract by the Employer: If the Contractor shall become bankrupt or have a receiver's order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the contract under a committee of inspection of his creditors or shall agree to carry out the Contract under a committee of inspection of his or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purpose of

amalgamation or reconstruction) or if the Contractor shall assign the contract without the consent in writing of the Employer first obtained or shall have an execution levied on his goods or if the Engineer shall certify in writing to the Employer that in his opinion the contractor:

- a) Has abandoned the contract or
- b) Without reasonable excuse has failed to commence the works or has suspended the progress of the works for 14 days in a month at a stretch or intermittently after receiving from the Engineer written notice to proceed or,
- c) Has failed to execute the work according to the programme agreed upon or,
- d) Has failed to proceed with the Works with the due diligence or
- e) Has failed to remove materials from the site or to pull down and replace work for 14 days after receiving from the Engineer written notice that the said materials or work have been condemned and rejected by the Engineer, or
- f) Is not executing the works in accordance with the contract or is persistently or flagrantly neglecting to carry out his obligations under the contract or
- g) Has to the detriment of good workmanship or in defiance of the Engineer's instructions to the contrary sublet any part of the contract.

Then the employer may after giving 7 days notice in writing to the contractor enter upon the site and the works and expel the contractor therefrom without avoiding the contract or releasing the contractor from any of his obligations or liabilities under the contract or affecting the rights and powers conferred on the employer or the Engineer by the contract and may himself complete the works or may employ any other contractor to complete the works, and the Employer or such other contractor may use for such completion all such of the constructional plant. Temporary works and materials which have been deemed to become the property of the Employer under Clause 6.27 hereof on the Site as he or they may think proper and the Employer may at any time sell any of the said constructional Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sum due or which may become due to him from the Contractor under the contract.

- 14.2 Valuation to date of termination of Contract: The Engineer shall as soon as may be practicable after any such entry and expulsion by the employer, fix and determine exparte or by or after reference to the parties or after such investigation or enquiries as he may think it to make or institute and shall certify what amount (if any) had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the contractor in respect of work then actually done by him under the contract and what was the value of any unused or partially used materials, any constructional plant and Temporary works which have been deemed to become the property of the Employer Under Clause 6.27 hereof upon the site.
- 14.3 Payment after termination of Contract: If the Employer shall enter and expel the contractor under this Clause, he shall not be liable to pay to the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the costs of completion and maintenance, damages for delays in completion (if any) and all other expenses incurred by the employer have been ascertained and the amount thereof certified by the Engineer. The contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him upon

due completion by him after deducting the said amount. But if such amount shall exceed the sum which would have been payable to the contractor the Contractor shall upon demand pay to the Employer the amount of such excess and it shall be deemed a debt due by the contractor to the Employer and shall be recoverable accordingly.

- 14.4 Urgent Repairs: If by reason of any accident or failure or other event occurring to in or in connection with the works or any part thereof, either during the execution of the works or during the period of maintenance, any remedial or other work or repair shall in the opinion of the Engineer, be urgently necessary for security and the Contractor is unable/unwilling at once to do such work or repair, the Employer may by own or other workmen do such work or repair as the Engineer may consider necessary. If the work or repair so done by the Employer is work which in the opinion of the Engineer the Contractor was liable to do at his own expense under the contract, all costs and charges properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any moneys due or which may become due to the contractor under this contract or any other contract between the contractor and the employer or employer's subsidiary units/companies. Provided always that the Engineer shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the contractor thereof in writing.

- 14.5 Termination of contract by Contractor: If the Employer commits any Act of insolvency or if the Employer shall be adjudged an insolvent or shall make an assignment or composition for the benefit of the greater part in number or amount of his creditors or shall have an order made against him or pass an effective resolution for winding up either compulsory or subject to the supervision of the court or voluntarily or if the Official Assignee of the Employer shall repudiate the Contractor if the Official Assignee or the Liquidator in any such winding up shall be unable within 14 days after notice to him requiring him so to do to show to the reasonable satisfaction of the Contractor that he is able to carry out and fulfil the contract and to make all payments due and to become due thereunder and if the work be stopped for three months or more at a stretch under the order of the Engineer or by an injunction or other order of any court of law for reasons not attributable to the Contractor then and in any of the said cases the Contractor subject to Provision contained in Clause 8.9 hereof shall be at liberty to determine the Contract by notice in writing to the Employer through the Engineer and he shall be entitled to recover from the Employer payment for all works executed and for any loss he may sustain upon any plant or materials supplied or purchased or prepared for the purpose of the Contract.\

In arriving at the amount of such payment the net rates contained in the Contractor's original tender shall be followed or where the same may not apply valuation shall be made in accordance with Clause 11.3 hereof.

Provided always the Employer shall not be liable for payment of any claims of losses arising on account of suspension or stoppage of work under force majeure circumstances beyond the sum payable for the work already executed.

## **15. WAR CLAUSE**

- 15.1 Works to be continued for 28 days on outbreak of war: If during the currency of the contract there shall be an out break of war (whether war is declared or not) in which India shall be engaged on a scale involving general mobilisation of the armed forces of the Republic, the Contractor shall for a period of 28 days reckoned from midnight of the date on which the order for general mobilisation is given continue so far as is physically possible to execute the Works in accordance with the Contract.

- 15.2 Effect of completion within 28 days: If at any time before the expiration of the said period of 28 days the works shall have been completed so far as to be usable, all the provisions of the contract shall continue to have full force and effect save that.
- 15.2.1 The contractor shall in lieu of fulfilling his obligations under Clause 10.1 to 10.5.2 hereof be entitled at his option to allow against the sum due to him under the provisions hereof the cost (calculated at the prices ruling at the beginning of the said period of 28 days) as certified by the Engineer at the expiration of the period of Maintenance of repair, rectification and making good any work for the repair, rectification or making good of which the Contractor would have been liable under the said clauses had they continued to the applicable.
- 15.2.2 The Employer shall not be entitled at the expiration of the period of Maintenance to withhold payment under Clause 13.2 hereof the second half of the retention money or any part thereof except such sum as may be allowable by Contractor under the provision of the last preceding paragraph, which sum may (without prejudice to any other mode of recovery thereof) deducted by the employer from such second half.
- 15.2.3 Right of Employer to determine: If the works shall not have been completed as aforesaid the Employer shall be entitled to determine the Contract (with the exception of this Clause 16 and 17 hereof) by giving notice in writing to the Contractor at any time after the aforesaid period of 28 days has expired and upon such notice being given the Contractor shall (except as above mentioned) forthwith determine but without prejudice to the claims of either part in respect of any antecedent breach thereof.
- 15.2.4 Removal of plant on the determination: If the Contract shall be determined under the provisions of the last preceding Clause, the Contractor shall with all reasonableness, despatch, remove from the site all his constructional plant and shall give facilities to his sub-contractors to remove similarly all Constructional plant belonging to them and in the event of any failure to do so the employer shall have the power to sell any such construction plant and after deducting from any proceeds of sale the costs, changes and expenses of and in connection with such sale shall pay the balance (if any) to the Contractor but to the extent that the proceeds of any sale are insufficient to meet all such costs, charges and expenses, the excess shall be a debt due from the Contractor to the Employer and shall be deductible or recoverable by the Employer from any moneys due to the Contractor under the Contract or any other Contract between the Contractor and the Employer or Employer's Subsidiary Units/Companies.
- 15.5 Payment on determination: If the Contract shall be determined as aforesaid, the Contractor shall be paid by the Employer (in so far as such amounts of items shall not have been already covered by payment on account made to the Contractor) for all work executed prior to the date of determination at the rates and prices provided in the Contract and in attention.
- 15.5.1 The amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out or performed and a proper portion of any such items as certified by the engineer, the work or service comprised there in has been partially carried out or performed.
- 15.5.2 The cost of materials or goods reasonably ordered for the works or temporary works which shall have been delivered to the Contractor or of which the contractor is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payment being made by him).
- 15.5.3 A sum to be certified by the Engineer being the amount of any expenditure reasonably incurred by the contractor in the expectation of completing the whole of the works in so

far as such expenditure shall not have been covered by the payments in this sub-clause before mentioned.

15.5.4 Any additional sum payable under the provisions of sub-clause 15.6.1, 15.6.2 hereof.

15.5.5 The reasonable cost of removal under Clause 15.4 hereof.

15.6 Provisions to apply as from outbreak of war: Whether the Contractor shall be determined under the provision of Clause 15.3 or not, the following provisions shall apply or be deemed to have applied as from the date of the said outbreak of war notwithstanding anything expressed in or implied by the other terms of the Contractor viz.

15.6.1 The Contractor shall be under no liability whether by way of indemnity or otherwise for or in respect of damage to the works or to the property (other than property of the Contractor or property hired by him for the purpose of executing the works) whether of the Employer or of third parties or for in respect of injury, loss of life to persons, which is the consequence whether direct or indirect of war, hostilities (whether war has been declared or not), Invasion Act of India's enemies, civil war, rebellion, revolution, insurrection, military or usurped power.

15.6.2 If the works or Temporary Works or any materials on the site (whether for the former or the latter) shall sustain destruction or any damage by reason of any of the causes mentioned in the last preceeding paragraph, the Contractor shall nevertheless be entitled to payment for any permanent work(executed by the Contractor) so destroyed or damaged and the Contractor shall be entitled to permanent work or to the Temporary Works so far as may be required by the Engineer or as may be necessary for the completion of the works on a prime cost basis plus such profit as the Engineer may certify to be reasonable.

## **16. SETTLEMENT OF DISPUTES**

16.1.0 ARBITRATION CLAUSE WHERE THE CONTRACT PRICE IS BELOW RS.5.00 LAKHS

16.1.1 Disputes to be finally determined by the Engineer: The decisions, Opinions, direction, Certificate or valuation of the Engineer with respect to all or any part of the matters under Clauses 2.2.2, 4.5., 6.4 to 6.11, 6.25, 8,9..2, 9.4, 9.6 to 9.8, 10,11,12,13.6,14.0 & Special Conditions of Contract for the decision of which specific provisions have been made hereof (which matters herein referred to as Excepted matters) shall be final and conclusive and binding on the parties hereto and shall be without appeal.

16.1.2 Sole-Arbitration Clause: Except the matters covered under 16.1.1 above, if at any time, any question, dispute or difference whatsoever shall arise between the Employer and the Contractor upon, or in relation to or in connection with the Contract either party may forthwith give to the other notice in writing of the existence of such question dispute or difference and the same shall be referred to the adjudication of an arbitrator to be nominated by the employer. The award of the arbitrator shall be final and binding on both the parties and the provisions of the Indian Arbitration Act,1940 and the rules thereunder and any statutory modification thereof shall be deemed to apply to and be incorporated in this contract.

The further progress of any work under the contract shall unless otherwise directed by the Engineer continue during the Arbitration proceedings and no payment due or payable by the employer shall be withheld on account of such proceedings. It shall be open to Arbitrator to consider and decide whether or not such work shall continue during the Arbitration proceedings.

The Sole-arbitrator shall make a reasoned award.

The venue of Arbitration shall be at Visakhapatnam, Andhra Pradesh, India.

**16.2.0 ARBITRATION CLAUSE WHERE THE CONTRACT PRICE IS RS.5.00 LAKHS OR MORE.**

**16.2.1** Disputes to be finally determined by the Engineer: The decisions, Opinions, directions, certificates or valuation of the engineer with respect to all or any part of the matters under Clauses 2.2.2, 4.5, 6.4 to 6.11, 6.25, 8, 9.2, 9.4, 9.6 to 9.8, 10, 11, 12, 13.6, 14.0 & Special Conditions of Contract for the decision of which specific provisions have been made hereof (which matters herein referred to as 'Excepted matters') shall be final and conclusive and binding on the parties hereto and shall be without appeal.

**16.2.2** Settlement of Disputes by Arbitration: Except the matters covered under 16.2.1 above all disputes and differences whatsoever arising between the parties out of or relating to the constructions, meaning and operation or effect of this contract or the breach thereof shall be settled by Arbitration in accordance with Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties. Provided that withholding of any of the certificate, decision, opinion, direction, valuation etc., by the Engineer for a period of more than six months shall be referable to Arbitration and shall not be barred as Excepted matter.

The further progress of any work under the contract shall unless otherwise directed by the Engineer continue during the Arbitration proceeding and no payment due or payable by the Employer shall be withheld on account of such proceedings. It shall not be open to Arbitrators to consider and decide whether or not such work shall continue during the Arbitration Proceedings.

Provided further that no reference to Arbitration whether the final bill for the work has been passed or not shall be made later than 6 months from the date of satisfactory completion of the work under the contract.

The Arbitration bench shall make a reasoned award.

The venue of Arbitration shall be at Visakhapatnam, Andhra Pradesh, India.

The Arbitrator's fee, and all other costs and other expenses relating to the holding of arbitration shall be borne by both the parties equally. However, the fees and expenses of the Advocates and expenses relating to the presentation of witnesses shall be borne by the respective parties. Should the Arbitrator give a specific award in respect of costs then it would prevail.

## **17. NOTICES**

**17.1** Service of Notices on Contractor: Any notice to be given to the Contractor under the terms of the Contract shall be considered as duly served, if the same shall have been delivered to, left for or posted by Registered Post to the Contractor's principal place of business (or in the event of the Contractor being a Company to or at its Registered Office) or at the site.

**17.2** Services of Notices on Employer: Any notice to be given to the Employer under the terms of the Contract shall be considered as duly served, if the same shall have been delivered to, left for or posted by Registered Post to the Employer's last known address.

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CONTRACTOR

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EMPLOYER

## APPENDIX HEREIN BEFORE REFERRED TO

### Clause No.

6.12	Insurance	Same as Contract Price
6.13.2	Third Party insurance	Rs.50,000(Rupees fifty thousand only. as mentioned in the work order.
9.3	Time for Completion	
9.7	Amount of liquidated damages	1% (one percent) per week of the value of the work not completed upto a maximum of 5% (five percent) of value of whole work.
10.1	Period of Maintenance/Defect Liability period mentioned in Work order	as
12.4	Period of final measurement	Three (3) months
13.1	Rate of percentage of retention money	<p>1) <b><u>For contracts of value upto and including Rs.100 lakhs:</u></b></p> <p>a) <b>7.5%</b> of the value of on-account bills for contracts for which defect liability period is not <b><u>NIL</u></b>.</p> <p>b) <b>5.0 %</b> of the value of on-account bills for contracts with <b><u>NIL</u></b> defect liability period.</p> <p>2) <b><u>For contracts of value above Rs.100 lakhs</u></b></p> <p><b>7.5%</b> of the first Rs.100 lakhs plus <b>5%</b> of the balance value of on-account bills exceeding the first Rs.100 lakhs.</p>
13.1	Limit of retention money (including the initial security deposit)	<p>1) <b><u>For Contracts of value upto and including Rs.100 lakhs:</u></b></p> <p>a) <b>7.5%</b> of the value of on-account bills for contracts for which defect liability period is not <b><u>NIL</u></b>.</p> <p>b) <b>5.0 %</b> of the value of on-account bills for contracts with <b><u>NIL</u></b> defect liability period.</p> <p>2) <b><u>For contracts of value above Rs.100 lakhs:</u></b></p> <p><b>Rs.7.5 lakhs plus 5%</b> of the contract value exceeding Rs.100 lakhs.</p>

3) The accumulated retention money in multiples of Rs.1.00 lakh each could be released against Bank Guarantee ;in VSP's approved proforma, if the contractor so desires.

4) Bank Guarantee for the full value covering the security deposit and retention money in VSP's approved proforma will be accepted, if the contractor so desires and no deduction towards retention money will be made from the Running Account Bills except for variations in the Contract values.

13.1 Minimum amount of final certificate

NIL

13.3 Time within which payment to be made after certificate.

**R.A. Bills:**

***Payment against RA bills shall be made on 15th day from submission of bill by the Contractor.***

**FINAL BILLS:**

Payment will be released within 60 days of recommendation/pass order by the Engineer, which he will give after ensuring that all contractual requirements are met with.

**FIRST & FINAL BILLS:**

Payment will be released within 30 days of recommendation/ pass order by the Engineer, which he will give after ensuring that all contractual requirements are met with.

**TO BE EXECUTED ON A STAMP PAPER OF VALUE NOT LESS THAN RS.100.00 BOUGHT IN THE NAME OF THE EXECUTING BANK.**

**BANKGUARANTEE FORMAT FOR EARNEST MONEY DEPOSIT**

1.Name and address of the Bank:  
2.Guarantee No.-----date-----  
3.Limit of Liability-----Expiry date-----  
4.Tender Notice No.\*-----date-----  
5.Name of the work as given in the tenders.\*\* \_\_\_\_\_  
To  
Rashtriya Ispat Nigam Limited.,  
Visakhapatnam Steel Plant,  
Visakhapatnam (A.P.)

**Sub: Earnest Money Deposit**

In consideration of M/s. Rashtriya Ispat Nigam Limited, Visakhapatnam Steel Plant having its Registered Office at Administrative Building, Visakhapatnam 530 031 (hereinafter called the Company) which expression shall unless repugnant to the subject or context includes his successors and assignees having agreed to exempt M/s.

..... (hereinafter called "the Contractor/Supplier") from demand under the terms and conditions of the tender document issued by the company for the work(\*\*)

.....  
(hereinafter called the said 'Document') from deposit of Earnest Money for the due fulfilment of the Contractor/Supplier of terms and conditions contained in the said documents on production of a \_\_\_\_\_ Bank \_\_\_\_\_ Guarantee \_\_\_\_\_ for Rs. .... (Rupees.....only).

1.We, the .....Bank (hereinafter referred .....to as "the said Bank") a Company under the Companies Act, 1956 and having our Registered Office at \_\_\_\_\_do hereby undertake and agree to indemnify and keep indemnified the Company to the extent of Rs. .... only) against any loss..... or damage costs, Charges and expenses caused to or suffered by of that may be caused or suffered by the Company by reasons of any breach or breaches by the Contractor/Supplier of any of the terms and conditions contained in the said documents and unconditionally pay the amount claimed by the company on demand and without demur to the extent aforesaid.

Note: Instructions to the Bank not to be reproduced in stamp paper.

1. The following are to be filled up in the blank space indicated thus:  
(\*) Tender No. of the tender (i.e.) No. of the covering letter of the tender of the contractor.  
(\*\*) Name of the works as given in the Tender Notice
2. all pages of bank guarantee shall have the rubber stamp and signature of the officer of the bank
3. All corrections shall be attested by Rubber Stamp and Stamp of the officer of bank.\

2. We, the ..... Bank further agree that if the contractor/supplier commits any breach of the terms and conditions of the said documents in respect of which the Contractor/Supplier has been exempted from depositing the Earnest Money because of the guarantee furnished by the bank to the Company and the Company has become

entitled to forfeit the Earnest Money or any part thereof, the Bank hereby unconditionally and irrecoverably agrees and undertakes to pay to the Company on demand and without demur the amount of the Earnest Money required to be furnished by the Contractor/Supplier under the conditions of the said documents in respect of which the breach is committed to the extent of Rs.....(Rupees..... only).

3. We, .....Bank further agree that the company shall be the sole judge of and as to whether the Contractor/supplier has committed any breach or breaches or any of the terms and conditions of the said documents and the extent of loss, damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by the Company on account thereof to the extent of the Earnest Money required to be deposited by the Contractor/Supplier by the Contractor/Supplier in respect of the said document and the decision of the company that the contractor/supplier has committed such breach and as to the amount or amounts of loss, damage, costs, charges and expenses caused to or suffered by or that may be caused to or suffered by the Company shall be final and binding on us.

4. We, the said Bank further, agree that the guarantee herein contained shall remain in full force and effect, until it is released by the Company provided always this guarantee shall in no event remain in force after the .....day of.....without prejudice to the claims of the company arisen and demanded from or otherwise notified to us in writing on or before the said date which will be enforceable against us notwithstanding that the same are enforced after the said date.

5. The Company shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee or indemnity, from time to time to vary any of the terms and conditions of the said contract; supply or to extend time of performance by the Contractor/Supplier or to postpone for any time and from time to time any of the powers exercisable by it against the Contractor/Supplier and either to enforce or forbear from enforcing any of the terms and conditions governing the said documents or securities available to the Company and the said Bank shall not be released from its liability under these presents by any exercise of the company of the liberty with reference to the matters aforesaid or by reason of time being given the Contractor/Supplier or any other forbearance act or omission on the part of Company or any indulgence by the Company to the Contractor/Supplier or of any other matter or thing whatsoever which under the law relating to sureties would but for these provision have the effect or so releasing the Bank from its liability.

6. It shall not be necessary for the company to proceed against the contractor/supplier before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank notwithstanding any security which the company may have obtained or obtain from the contractor/supplier shall at the time when proceedings are taken against the Bank hereunder be unrealised.

7. We, the said Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the company in writing and agree that any change in the constitution of the company or the Contractor/Supplier or of the Bank shall not discharge our liability hereunder.

8. All claims arising out of this Bank Guarantee may be filed with us in writing within six months of the expiry of the validity period of the Bank Guarantee.

9. We .....(mention the Name of the Bank), hereby agree that any claim due and arising under this guarantee shall be enforceable against our bank' branch .....(mentioning the name & address of the branch) at Visakhapatnam and they shall honour such demand in any case not later than next working day.

10. Issuance of this bank guarantee may also be got confirmed from our controlling branch/ office / higher Authority ( Name & Address)

Place: .....

Date: .....

**( To be executed on non-judicial stamp paper of value not less than Rs.100.00 bought in the name of the executing bank)**

**BANK GUARANTEE FORMAT FOR SECURITY DEPOSIT**

Name and Address of the Bank :  
Bank Guarantee No :  
Date of Expiry :  
Limit of Liability :  
Ref. VSP's Order No. :  
For (Name of Work) :  
Subject : Security Deposit

To  
Rashtriya Ispat Nigam Limited,  
Visakhapatnam Steel Plant,  
VISAKHAPATNAM-530 031.

In consideration of Rashtriya Ispat Nigam Limited, Visakhapatnam Steel Plant, a Government Company incorporated under the Companies Act, 1956 having its Registered Office at Main Administrative Building, Visakhapatnam – 530 031 (AP) (hereinafter called the Company) having agreed to accept this Bond towards the Security Deposit of Rs..... (Rupees.....) under the terms and conditions of the Agreement Letter of Intent/Work Order Vide No:..... dated..... (hereinafter called the said Work Order made between the company and M/s..... (hereinafter called the Contractor) for “..... (Name of Work)” under the said Work Order as a guarantee for the Security of the services rendered/work done/materials despatched to the custody of the Company in terms of the said Work Order also for the due fulfilment of all the terms and conditions contained in the said Work Order, on furnishing of a Bank Guarantee for Rs..... We..... (hereinafter referred as the said bank) do hereby covenant and agree with you as under.

1. We undertake to indemnify you and keep you indemnified from time to time to the extent of Rs...../(Rupees.....) against any loss or damage or costs caused to or suffered by or that may be caused or suffered by you by reason of any breach or breaches on the part of the Contractor of any of the terms and conditions contained in Work Order and in the event of the Contractor shall make any defaults in carrying out any of the works under the said Work Order or otherwise in the observance and performance of any of the terms and conditions relating thereto, we shall forthwith without any protest or demur pay to you such sum or sums not exceeding in total the said sum of Rs.....(Rupees.....) as may be claimed by you as your losses and/or damages, costs, charges or expenses by reason or such default/defaults on the part of the contractor.
2. Not with standing any thing to the contrary, your decision as to whether the Contractor has made any such default or defaults and the amount or amounts to which you are entitled by reason thereof shall be binding on us and we shall not be entitled to ask you to

establish your claim under this Guarantee but will pay the same on demand without any objection.

3. The company shall have the fullest liberty to claim payment of the amount or amounts from time to time under this guarantee, subject to the ceiling limit of Rs.....(Rupees.....) as referred to above and this Guarantee shall not become invalid or infructuous because of the partial demands made by the Company upon us for payment under the circumstances stipulated herein above and this Guarantee shall hold good in favour of the Company to the extent of the balance amounts covered under this Guarantee.
4. This Guarantee shall continue and hold good until it is released by you on the application by the contractor after the Contractor had discharged all its obligations under the said contract and produced a certificate of the due completion of the work under the said contract and submitted a No Demand Certificate. Should it be necessary to extend this Guarantee beyond the said date on account of any extension of time being granted by you to the Contractor under the said contract or otherwise we undertake to extend the period of this Guarantee, and confirm to you in writing the extension of time on your request till such time as may be required.
5. You will have the fullest liberty without our consent and without affecting this Guarantee from time to time to vary any of the terms and conditions of the said agreement or extend time of performance of the Contractor or to postpone for any time or from time to time any of your rights or powers against the contractor and either to enforce or forebear to enforce any of the terms and conditions of the said contract and we shall not be released from our liability under this guarantee by the exercise of your liberty with reference to matters aforesaid or by reason of any time being given to the contractor or any other forbearance, act or omission on your part or any indulgence by you to the Contractor or by any variation or modification of the said contract/ of any other act. Matter or thing whatsoever which under the law relating to sureties would but for the provisions hereto have the effect of so releasing us from our liability hereunder provided always nothing herein contained will enlarge our liability herein beyond the limit of Rs..... (Rupees.....) as aforesaid or extended the period of the Guarantee beyond the said day of.....unless expressly agreed to by us in writing.
6. This Guarantee shall not in any way be affected by your taking or varying or giving up any sureties from the Contractor or any other person, firm or company on its behalf or by the winding up, dissolution, insolvency, reconstruction or death as the case may be, of the Contractor.
7. In order to give full effect to the Guarantee herein contained you shall be entitled to act as if we were your principal debtors in respect of all your claims against the Contractor hereby guaranteed by us as aforesaid and we hereby expressly waive all our rights of the suretyship and other rights, if any which are in any way inconsistent with the above or any other provisions of this guarantee.
8. Subject to the maximum limit of our liability as aforesaid this Guarantee will cover all your claim or claims against the contractor from time to time arising out of or in relation to the said contract and in respect of which your demand or notice in writing is received by us.
9. This Guarantee and the powers and provisions herein contained are in addition to and not by way of limitation of our substitution for any other guarantee or guarantees thereto given to you by us (whether jointly with other or alone) and now existing uncanceled and that this Guarantee is not intended to and shall not revoke or limit such guarantee or guarantees.

10. This Guarantee shall not be affected by any change in the constitution of the Contractor or us nor shall it be affected by any change in your constitution or by any amalgamation absorption or reconstruction thereof or therewith but will ensure for and be available to and enforceable by the absorbing or amalgamated, reconstructed company or concern.
11. This Guarantee during its currency shall not be revocable by us except with your previous consent in writing.
12. It shall not be necessary for you to proceed against the Contractor before proceeding against us and the guarantee herein contained shall be enforceable against us, notwithstanding any security which you may have obtained or obtain from Contractor at any time or when proceedings are taken against us hereunder be outstanding or realised.
13. NOTWITHSTANDING ANYTHING CONTAINED HEREIN:
- A) Our Liability under this Bank Guarantee shall not exceed Rs.....  
(Rupees.....only)
- B) \* This Bank Guarantee shall be valid up to.....
- C) We are liable to pay the Guaranteed Amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before .....(\*date of expiry of Guarantee)
14. We .....(Name of the Bank), hereby agree that any claim due and arising under this guarantee shall be enforceable against our bank's branch at Visakhapatnam -----  
( Name & address of the bank) and they shall honour such demand in any case not later than next working day.
15. Issuance of this bank guarantee may also be got confirmed from our controlling branch/ office / higher Authority ( Name & Address)

Dated the.....day of.....200

SIGNATURE WITH SEAL

\* Validity of BG to cover contract period + defect liability period + 6 months (claim period)