

GENERAL CONDITIONS OF CONTRACT

INDEX

CLAUSE NO.	DESCRIPTION
1.	Definitions and interpretation (1) Definitions (2) Singular and plural (3) Clause Headings or marginal notes (4) Terms "specifications"
2.	Parties to the contract
3.	Contractor inform himself fully
4.	Engineers Representative
5.	Assignment
6.	Subletting
6A	Force majeure
7.	Extent of contract
8.	Contract documents – custody of drawings
9.	Further drawings and instructions
10.	General obligations – Contract agreement
11.	Security deposit
12.	Work to the satisfaction of Engineer
13.	Programme to be furnished
14.	Contractors superintendence
15.	Contractors employees
16.	Extra supervision on work
17.	Setting out the work
18.	Use of explosive
19.	Watching and lighting
20.	Care of works
21.	Damage to persons and property
22.	Indemnity by company
23.	Workmen's Compensation Act
24.	Giving of notice and payment of fees
25.	Fossils, etc.
26.	Patent rights and royalties
27.	Interference with traffic and adjoining properties
28.	Extraordinary traffic
29.	Opportunities for other contractors
30.	Supply of Plant, Materials and Labour
31.	Delay in obtaining Materials by the Company'
32.	Site clearance on completion of work
33.	Return of surplus materials
34.	Labour rules, etc.
35.	Return of Labour etc.
36.	Quality of materials workmanship and tests
37.	Access to site
38.	Examination of work before covering up
39.	Removal of improper works and materials
40.	Suspension of works
41.	Commencement of work
42.	Way leaves, etc.
43.	Time of completion

44. Extension of time
45. No night or Sunday work
46. Rate of progress
47. Liquidated damages for delay
48. Completion certificate
49. Definition of period of maintenance
50. Contractor to search defect, etc.
51. Property in materials and plants
52. No approval by vesting
53. Measurement – Quantities
54. Works to be measured
55. Provisional payment – payment on intermediate certificate to be recorded as advance
56. Approval by maintenance certificate
57. Maintenance certificate
58. Forfeiture
59. Illegal gratification and break of the terms of contract
60. Urgent repairs
61. Company will have full liberty to retain and set of all sums due or to become due to contractor
62. Services of notice on contractor
63. Importance of special conditions
64. Adequate shoring to be provided
65. Provision of sheds, store houses, etc.
66. Demurrage
67. Work in or around the running plant
68. Payment of Wages Act
69. Accident
70. Policing work
71. Movement of construction plants and equipments
72. Signature on receipt for amounts
73. Laws in force relating to contracts
74. Change in constitution
75. Settlement of disputes
76. Termination of Contract
77. Employment of Child Labour
78. Cancellation of Order
79. Arbitration
80. Reverse auction

DEFINITIONS AND INTERPRETATION

Definitions:

1. In the contract (as herein after defined) the following words and expressions shall have the meaning herein assigned to them unless there is something in the subject or context inconsistency with such construction.
 - (a) The term "Tender" shall mean & include the online bids and other attachments uploaded while submitting the bids online.
 - (b) "Tenderer" shall mean and include those entering into agreement with MFL, their Heirs, Representatives, Executives, Administrators, Successors and their permitted assignees, as the case may be.
 - (c) "Services" shall mean and include all items of work duties / responsibilities of the Tenderer and / or any other item of work not specified but consistent with general terms of the contract and entrusted by MFL.
 - (d) "Approved" means approved in writing including subsequent written confirmation of previous verbal and "approval" means approval in writing as aforesaid.
 - (e) "Contract" means the invitation to tender, instruction to tenderers, general conditions of contract, special conditions of contract, specifications, drawings, tender schedule showing approximate quantities, quoted rates negotiated and finalized against each item, time schedule, letter of intent, tender and the contract agreement.
 - (f) "Contractor" means the persons, firm or company, whose tender has been accepted by MFL and includes the contractor's personal representatives, successors, heirs, executors and administrators, unless excluded by the contract and permitted assignees.
 - (g) "Contract price" means the sum named in the tender subject to such additions thereto or deductions therefrom as may be made under the provisions of the contract.
 - (h) "Company" means the Madras Fertilizers Limited, Manali, Chennai 600 068.
 - (i) "Constructional Plant" means all appliances or things of whatever 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 or temporary housing, butting, offices, Stores, etc.
 - (j) "Drawing" means the drawings referred to in the specifications and any modifications of such drawing 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.
 - (k) "Engineer" means the Deputy General Manager (Technical & Engineering Services) or other Engineers appointed from time to time by MFL and notified in writing to the contractor to act as the Engineer-in-charge for the purpose of the contract in place of the said Deputy General Manager (Technical & Engineering Services).

- (l) "Engineers Representative" means any Resident Engineer or assistant of the Engineer or any Clerk of works or any other employee or agent appointed from time to time by the Company or the Engineer to perform the duties set forth in clause 4 hereof and whose authority shall be notified in writing to the contractor by the Engineer.
- (m) "Letter of Intent" means intimation by a letter to the tenderer that his tender has been accepted in accordance with provisions contained in that letter.
- (n) "Site" means the lands and other places envisaged by the Company where the work or works are to be executed or carried out.
- (o) "Temporary Works" means all temporary works of every kind required in or about the execution, completion or maintenance of the work.
- (p) "Test" means such tests or tests as are prescribed by the specifications or considered necessary by the Engineer.
- (q) "Work" shall mean and include all works specified or set forth and required in and by the specifications, drawing and schedule here to 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 specification, drawing and schedule) and also such additional instructions and drawings not in conformity as aforesaid as shall from time to time, during the progress of the work hereby contracted for, be supplied by the Company.
- (r) "Writing" shall include any manuscript, typewritten or printed Statement under or over signature or seal as the case may be.

Singular and Plural:

- 2) Words importing the singular only also include the plural and vice versa where the context requires. Words importing persons shall include any incorporated company, or a registered association or body of individuals or a firm of partnership.

Clause Headings or marginal notes.

- 3) The clause headings or marginal notes in these general conditions shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the contract.

Term "Specification":

- 4) The term "Specification" shall mean schedules, detailed designs, statement of technical data performance characteristics and all such particulars mentioned as such in the contract. In the absence of any specifications issued by the company the specifications issued by the Indian Standards Institute will apply.

PARTIES TO THE CONTRACT

- 2. (a) The parties to the contract are the contractor and the company.

Authority of persons signing Documents:

- (b) A person signing the Tender form or any document forming part of the contract on behalf of another, shall be deemed to warrant that he has authority to bind such other and if, on enquiry, it appears that the person so signing had no authority to do so, the Company may, without prejudice to other civil and criminal remedies, cancel the contract and hold the signatory liable for all costs and damages.

Notice on behalf of MFL:

- (c) Notice on behalf of the Company in connection with the contract may be given by the Engineer or any other officer of the company dealing with the contract.

CONTRACTOR TO INFORM HIMSELF FULLY

Clearing of Doubts of contractors:

3. The contractor shall be deemed to have carefully examined the general, special, and technical conditions of contract, specifications, schedules and drawings. If he shall have any doubts as to the meaning of any portion of the general, special and technical conditions or other specifications he shall before signing the contract, set forth particulars thereof and submit them to the Engineer, in writing, in order that such doubts may be removed.

ENGINEER'S REPRESENTATIVE

Duties and Powers of Engineer's Representative:

4. The duties of the Engineer's Representative are to watch and supervise the works and to test examine any materials to be used or workmanship employed in connection with the works. He shall have no authority to relieve the contractor any of his duties or obligations under the contract nor except as expressly provided hereunder as elsewhere in the Contract to order any work involving delay or any extra payment by the Company nor to make any variation of or in the works.

The Engineer may from time to time writing delegate to the Engineer's representative any other powers and authorities vested in the Engineer and shall furnish to the Contractor a copy of all such written delegations of powers and authorities. Any written instruction or approval given by Engineer's representative to the contractor within the term of such delegation (but not otherwise) shall bind the contractor and the company as though it had been given by the Engineer. Provided always as follows:

- (a) Failure of Engineer's representative to disapprove any work or materials shall prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the pulling down, removal or breaking up thereof.

- (b) If the contractor shall be dissatisfied by reason of any decision of the Engineer's representative he shall be entitled to refer the matter to the Engineer who shall thereupon confirm, reverse or vary such decision.

ASSIGNMENT AND SUBLETTING

Assignment:

5. Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or there under (other than a charge in favour of the Contractors Bankers of any money due or to become due under this contract) without the prior written consent of the company.

Subletting:

6. The contractor shall not sublet the whole or part of works except where otherwise provided in the contract, and even then only with the prior written consent of the company and such consent if given shall not relieve the contractor from any liability or obligation under the contract and he shall be responsible for the acts, defaults or neglects of any Sub-contractor, his agents, servants or workmen. Provided always that the provision of labour on a piecework basis shall not be deemed to be a sub-letting under this Clause.

Work not to be sublet or assigned:

And if the contractor shall assign or sublet his contract, or attempts to do so the Engineer-in-charge shall have powers to adopt any of the courses stated in Clause 60 (I) as he may deem best suited in the interest of the Company. In the event of any of those courses being adopted, the consequences specified in the said Clause 60(f) (i) shall ensure and in addition the contractor shall not be entitled to recover or be paid for any work therefore actually performed under the contract.

6A. Force Majeure

Force majeure shall mean and be limited to the following:

- (a) Any war hostilities
- (b) Any riot or civil commotion
- (c) Any earthquake, flood, tempest, lightning or other natural physical disaster
- (d) Any strike or lockout (only those exceeding 10 continuous days in duration) affecting the performance of the contractor's obligations.
- (e) Any restrictions imposed by the Government (Central or State) or other statutory bodies which prevents or delays the execution of the order by the Contractor.

The contractor shall advise the company by a registered letter duly certified by statutory authorities at the beginning of the above cause for delay within seven days of occurrence and cessation of such force majeure condition in the event of delay lasting over 1 month, if arising

out of causes of force majeure. The company reserves the right to cancel the order and automatically the provisions governing termination stated under Articles shall apply.

For delays arising out of force majeure the contractor shall not claim extension in completion date for a period exceeding the period of delay attributable to the causes of force majeure and neither that company nor the contractor shall be liable to pay extra cost provided it is mutually established that force majeure condition did actually exist. The contractor shall categorically specify the extent of force majeure condition prevalent at the time of submitting the bill and whether the same have been taken into consideration or not in the quotation.

EXTENT OF CONTRACT

Extent of Contract

7. The contract comprises the construction, completion and maintenance of the works and except in so far as the Contract provides otherwise the provision of all labour materials constructional Plant, Temporary works and everything whether of a temporary permanent nature required in and for such construction, completion and maintenance.

CONTRACT DOCUMENTS

Custody of Drawings

8. (1) The drawings shall remain in the sole custody of the Engineer but two copies thereof shall be furnished to the contractor free of cost. Further copies if required by the contractor can be had on payment of charges specified by the Company. At the completion of the contract the contractor shall return to the Engineer all drawings provided under the contract.

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

One copy of Drawings to be kept on site

- 8.(2) 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 time be available for inspection and use by the Engineer and the Engineer's representative and by any other person authorized by the Engineer in writing.

Further Drawings and Instructions:

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

GENERAL OBLIGATIONS

Contract Agreement:

10. The Contractor shall enter into and execute a contract agreement in the form annexed hereto 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. The cost of the stamp paper for the agreement is to be borne by the contractor.

Performance Security Deposit :

11. The Contractor shall within the time specified in the "Award of Work" deposit with the Company an amount equivalent to 5% of the contract value towards Performance Security Deposit.

In the event of this not being furnished within the period specified in the Award of Work the Earnest Money Deposit shall stand forfeited and the acceptance of the Contractor's tender shall stand withdrawn.

The Contractor, if he so desires, may convert the Security Deposit into one of the recognized forms of the Government Securities.

The Security deposit shall remain at the entire disposal of the Company as a security for the satisfactory execution and completion of works in accordance with the conditions of the contract. The Company shall be a liberty to deduct and appropriate from the security deposit such penalties and dues as may be payable by the contractor under the contract and the amount by which the security deposit is reduced by such appropriations will be made good by further deduction from the Contractor's subsequent interim bills in the same manner as aforesaid until the Security deposit is restored as mentioned above.

On due satisfactory performance and completion of the contract in all respects, the security deposit will be returned to the Contractor without any interest on presentation of an "absolute no demand certificate" from the Engineer in the contract and upon return in good condition of any specifications, drawings, samples or other property belonging to the Company which may have been issued to the Contractor. No interest shall be payable on cash deposit.

Work to be to the satisfaction of Engineer

- 12.(a) The Contractor shall execute, complete and maintain the works in strict accordance with the contract to the satisfaction of Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter (whether mentioned in the Contract or not) touching or concerning the works. The contractor shall take instructions and directions only from the Engineer or (subject to the limitation referred to in clause 4 thereof) from the Engineer's representative.

Works to be executed in accordance with Specifications, Drawings, Orders, etc.

- (b) The Contractor shall execute the whole and every part of the work in the most substantial and workman manner and both as regards materials and otherwise in every respect in strict accordance with the specification. The contractor shall also confirm exactly, fully and faithfully to the designs, drawings, and instructions in writing relating to the work signed by the Engineer-in-charge and lodged in the office, and to which the contractors shall be entitled to have access at such office, or on the site of the work for the purpose of inspection during office hours, and the contractor shall, if he so requires, be entitled at his own expense to make or cause to be made copies of the specification and of all such designs, drawings and instructions aforesaid.

Programme to be furnished

13. As soon as practicable after the acceptance of his tender the Contractor shall, if required submit to the Engineer for his approval a programme showing the order of procedure and method in which he proposes to carry out the works and shall whenever required by the engineer or engineer's representative furnish for his information particulars in writing of the contractor's agreements for 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 or Engineer's representative of such programme or the furnishing of such particular shall not relieve the Contractor of any his duties or responsibilities under the contract.

Contractor Superintendence:

14. The Contractor shall give or provide all necessary superintendence during the execution of the works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under Contract. The Contractor or one of his competent and authorized agents 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. If such approval shall be withdrawn by the Engineer the Contractor shall as soon as practicable (having regard to the requirement of replacing him as hereinafter mentioned) after receiving/written notice of such withdrawal remove the agent from the site and shall not thereafter employ him again on the site in any capacity and shall replace him by another agent approved by the Engineer. Such authorized agent shall receive on behalf of the Contractor directions and instruction from the Engineer or (subject to the limitations of clause 4 hereof) the Engineer's representative.

Contractor's Employees

- 15.(1)The contractor shall provide and employ on the Site in connection with the execution and maintenance of works.
- (a)Only such technical assistants and other staff as are skilled and experienced in their respective callings and such sub agents, foremen and leading hands as are competent to give proper supervision to the works they are required to supervise and.
 - (b)Such skilled, semi-skilled labour as is necessary for the proper and timely execution and maintenance of the works.
- (2)The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the works any person employed by the Contractor in or about the execution or maintenance of the works who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by the Engineer to be undesirable and such person shall not be again employed upon the works without written permission of the Engineer. Any person so removed from the works shall be replaced without delay by a competent substitute approved by the Engineer.
- (3)The Contractor shall, if required by the Engineer, deliver to the Engineer or to the Engineer's representative returns in such form and at such intervals as the Engineer may prescribe showing in detail the supervisory staff and the numbers of the several classes of labour from time to time employed by the contractor on the site. Such returns should be got signed by the Engineer's representative at site.

Extra supervision on work

16. If in the opinion of the Engineer due progress is not made with the works in accordance with the contract and or the execution there of becomes contrary to specifications, and/or any directions given by the Engineer are not properly complied with or attended to, the Engineer may, if he considers it necessary or proper for the due execution of work in accordance with the contract, of which his certificate in writing will be sufficient evidence for the employment of extra supervising staff to supervise the work and the expenses of such employment including the salary of the supervising staff shall be borne by the Contractor, provided that the Engineer shall give to the Contractor not less than 7 days previous notice in writing of his intention to exercise the power.

Setting out the works

17. The contractor shall be responsible for the true and proper setting out of the works and for the correctness of the position, levels, dimensions and alignment of all parts of the works and for the provision of all necessary instruments, appliances and labour in connections therewith. If at any time during the progress of the Works any error

shall appear or arise in the position, levels, dimensions of alignment of any part of the Works, the Contractor being required to do so by the Engineer's representative shall at his own expense rectify such error to the satisfaction of the Engineer or Engineer's representative shall unless such error is based on incorrect data supplied in writing by the Engineer or Engineer's representative in which case the level by the Engineer or the Engineer's representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench marks, site rails pegs and other things used in setting out the works.

Use of the explosives

18. Explosives shall not be used on the work by the contractor without the permission in writing of the Engineer and then only in the manner and to the extent to which he has prescribed. When explosives are used the same shall be stored in a special magazine to be provided by and at the cost of the Contractor, who shall be liable for all damage loss or injury to any person or property and shall be responsible for complying with all statutory obligations in these respects.

Watching and lighting

19. The Contractor shall in connection with the work provide and maintain at his own all lights, guards, fencing and watching when and where necessary or required by the Engineer or Engineer's representative or by a duly constituted authority for the protection of the works or for the safety and convenience of the Public or others.

Care of works

20. From the commencement to the completion of the Works, the contractor shall take full responsibility for the care thereof and all temporary works and in case any damaged, loss or injury shall happen to the works or to any part thereof or to any Temporary Works from any cause whatsoever (save and except the expected risks as defined in sub clause (2) 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 requirements of the contract and the Engineer's instructions. In the event of any such damage loss or injury happening from any of the expected risks Contractor shall and if to the extent required by the Engineer repair and make good the same as aforesaid cost of the company. The contractor shall also be liable for any damage to Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under clause 49 hereof.

(1) The expected risks mentioned in sub-clause (2) above are war hostilities (whether war be declared or not) invasion action of foreign enemies, rebellion, revolution, insurrections, or military or usurped power, civil war or (otherwise than among the Contractor's own employees) riot, commotion or disorder or any such operation of the forces of nature at responsible foresight and ability on the part of the

Contractor could not foresee or reasonably provide against (all of which are herein collectively referred to as "expected risks").

Damage to persons and property

- 21 (1) The Contractor shall (except it and so far as the specification provided otherwise) indemnify and keep indemnified the company against all losses and claims for injuries or damage to any person or any property whatsoever which may arise out of or in consequence of the construction and maintenance of the Works and against all thereof. Provided always that nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Company against any compensation or damages for or with respect to:-
- (a) The permanent use or occupation of land by the Work or any part thereof or (save as herein after provided) surface or other damages as aforesaid i.e., surface or other damages caused by contract works in the normal course.
 - (b) The right of the Company to construct the Works of any part thereof on over under in or through any land.
 - (c) Interference-whether temporary or permanent with any right of light, air way or other easement or quasi-easement which is the unavoidable result of the construction of the works in accordance with the Contract.
 - (d) Injuries or damage to persons or property resulting from any act or neglect done or committed during the currency of contract of the Company, its agents servants or other contractor (not being employed by the contractor) or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

Provided further that for the purpose of this clause the expression "the land" shall be deemed to be limited to the area defined in the specification or shown on the drawings, in which land, crops, trees and structures will be disturbed or damaged as an inevitable consequence of the carrying out of the works.

Indemnity by Company

- (2) The company will save harmless and indemnify the contractor from and against all claims demands, proceeding, damages, costs, charges, and expenses in respect of the matters referred to in the provision to sub-clause (1) of this clause.

Accident or injury to Workmen

22. The company 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 or any sub-contractor save and except an accident or injury resulting from any act or default of the Company, its agents or servants and the Contractor shall indemnify and keep indemnified the

claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Workmen's Compensation Act

23. Contractor shall at all times indemnify the Company against all claims for compensation under the provision of the Workmen's Compensation Act, 1923 (VIII of 1923) or ESI Act 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 incurred by the Company in connection therewith and (without prejudice to any other means of recovery) the company shall be entitled to deduct from any money due or to become due to the contractor (whether under this contract or any other contract) all money paid or payable by the Company by way of compensation aforesaid for cost or expenses in connection with claim there to and the contractor shall abide by the decision of the Company as to the sum payable by the Contractor under the provision of this clause.

Notwithstanding the above, the contractor shall faithfully comply with the provision of the Factories Act, 1948, Contract Labour (Regulation and Abolition) Act, 1970, Workman's Compensation Act, 1923/ESI act, 1948, Employees Provident Fund and Family Pension Act and any other law applicable to the contract workmen. The contractor shall fully indemnify MFL for any loss or damage or any liability incurred by MFL due to any default or non-observance by the contractor or any of his representatives of any of the provisions of the above-mentioned enactments and the rules framed there under. Eventhough the Contractor shall be solely liable for settlement of any claim made by any person due to non-observance by the Contractor of any of the provisions or otherwise of the enactments cited, MFL reserves its right to settle directly any amount due by the Contractor as mentioned above and to recover such amount from any of the amounts payable by MFL to the Contractor or in the absence of the same as debt due to MFL by the contractor.

Giving of Notice and Payment of Fees

24. 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 Rule, Regulation or Bye-Law of any local or other duly constituted authority in relation to the execution of the work or of any temporary works and by the rules and regulations of all public bodies whose property or rights are affected or may be affected in any way by the works or any temporary works.

Compliance with Statutes, 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 works or to any Temporary Works and with such rules and regulation of public bodies as aforesaid and shall keep the

Company indemnified against all penalties and liability of every kind shall keep the such Statute, Ordinance, Law Rule, Regulation or Bye-Law.

Fossils, etc.

25. All fossils, coins, articles, value of antiquity and structures and other remains or things of geological or archaeological interest discovered on the site of the Work shall as between the company and the Contractor be deemed to be the absolute property of the Company and the Contractor shall take reasonable precautions to prevent his workman any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint the Engineer's representative of such discovery and carry out at the expense of the company the Engineer's representative's orders as to the disposal, removal or otherwise of the same.

Patent Right and Royalties

- 26.(a) The Contractors shall save harmless and indemnify the Company from and against all claims and proceedings for or on account of infringement of any patent right, design, trade mark or name or other protected rights of any Constructional Plan, machine, worker material used for in connection with the Works or Temporary Works or and of them and form and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- (b) Except where otherwise specified the Contractor shall pay all tollage and other royalties rent and other payment or compensation (if any) for getting stone, sand, gravel clay or other materials required for the Works or Temporary Works or any of them.

Interference with Traffic and adjoining Properties

27. 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 the Contract permits be carried on so as not to interfere unnecessarily or improperly with the Public convenience or the access to use and occupation of public or private roads and footpath or of properties whether in the possession of the company or of any other person and the contractor shall save harmless and indemnify the Company in respect of all claims, demands, proceedings, costs, charges and expenses whatsoever arising out of or in relation to any such matters.

Extraordinary Traffic

28. The contractor shall use every reasonable means to prevent any of the highways and bridges communicating with or on the routes to the site from being damaged or injured by any traffic to the contractor or any of his subcontractors and in particulars shall select routes, choose

and use vehicles and restrict and distribute loads so that any such extraordinary traffic as well inevitably arise from the moving of plant and materials from and to the site shall be limited as far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such highway and bridges. For any damages caused by the breach of the Contract, he shall be solely responsible.

Opportunities for other contractors

29. The Contractor shall in accordance with the requirements of the Engineer afford all reasonable opportunities for carrying out their work to any other contractors employed by the Company and their workmen and to the workmen of the Company and of any other duly constituted authorities who may be employed in the execution on or near the Site any work not included in the Contract or of any Contract which the company may enter into in connection with or ancillary to the works.

Supply of Plant, Material and Labour

30. Except where otherwise specified the Contractor shall at his own expense supply and provide all the Constructional Plant, Temporary Works, materials both for Temporary and for Permanent Works and other things of every kind required for the constructions completion and maintenance of the works.

Delay in obtaining materials by the Company

31. If the company has undertaken to supply materials specified in the special conditions at rates stated thereon 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 to his claim due to arising from delay in obtaining the materials. It should be clearly understood that no claim whatsoever shall be entertained by the company on account of delay in supplying materials.

Site clearance on completion of work

32. On the completion of the work all rubbish, debris, kilns, vats, materials and temporary structures of any sort or kind used for the purpose of or connected with its construction are to be removed by the contractor and all pits and excavation filled up and the site handed over in a tidy and workmanlike condition and no final payment in settlement of the accounts for the said work shall be held to be due or shall be made to the contractor, till such site clearance shall have been effected by him, and such clearance may be made by the Engineer, at the expense of the Contractor in the event of his failure to comply with this provision within 7 days after receiving notice in writing from the engineer to that effect. If it becomes necessary for the Engineer to have the site cleared as indicated above at the expense of the contractor, the company shall under a circumstances be held liable for any losses or damages to such of contractor's property as may be on such site due to such removal there from, which removal may be effected by means

of public sale of such materials and property or in such way of seems fit and most convenient to the Engineer.

Return of Surplus Materials

33. Notwithstanding anything contained to the contrary any where in the contract wherever any materials for the execution of the contract are procured with the assistance of the company either by the issue from the company stocks or purchase made under order or permits or licenses issued by the Company, the Contractor shall use the said materials economically and solely for the purpose of this contract and not dispose of them without the permission of the company, and if required by the engineer shall return to the company all surplus or unserviceable materials they 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 condition of the materials at the time of such return thereof. The price to be allowed to Contractor however shall not exceed the amount charged to him excluding the storage charge, if any. The decision of the Engineer shall be final and conclusive. In the event of breach of the aforesaid condition, the Contractor shall (in addition to make himself liable for action for contravention of the terms of the licenses of permit and / or for criminal breach of trust) be liable to the Company for payment of all money advantages or profits resulting or which in the usual course would have resulted to him by reason of such breach.

LABOUR

Labour Rules, etc.

34. In respect of all labour directly or indirectly employed on the works, the Contractor shall comply with all rules framed from time to time by Government Central or State or other local authority and legislator governing labour for the protection of health, sanitary arrangements, wages, welfare and safety or workers in building and construction works. The rules and the other statutory obligations in regard to fair wages, the welfare measure and safety of labour etc, will be deemed to part of the contract.

Return of labour, etc.

35. The contractor shall if required by the Engineer, delivery to the Engineer's representative or at his office a return in detail on such form and at such intervals as the Engineer may prescribe showing the numbers of the several classes of labour from time to time employed by the contractor on the site.

WORK MATERIALS AND PLANTS

Quality of Materials and Workmanship and Tests

36.(1) All materials and workmanship shall be of the respective kinds described in the Contract and in accordance with the Engineer's instruction and shall be subject from time to time to such tests as the Engineer may direct at the place of manufacture or fabrication or on the site or any of such places. The contractor shall provide such assistance, instruments machines, labour and materials as are normally and shall supply samples of materials before incorporation in the works for testing as may be selected and required by the Engineer.

Cost of Samples

All samples shall be supplied by the contractor at his own cost.

Cost of Tests

The cost of making any test in performance of the works shall be borne by the contractor.

Cost of tests not provided for etc.

If any test is ordered by the Engineer which is

(a) not so intended by or provided for or

(b) is not so particularized or,

(c) though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place other than the site or the place of manufacture or fabrication of the 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 provisions of the Contract or the Engineer's instruction but otherwise, by the company.

Access to site

37. All work under or in course of execution or executed in pursuance of the contract shall at times be open to the inspection and supervision of the Engineer-in-charge and his authorized subordinates and the contractor shall at all times during the usual working hours and at all other times at which reasonable notice of the intention of the Engineer in charge or his subordinate to visit the works shall have been given to the contractors, either himself be present to receive order and instruction or have a responsible agent duly accredited in writing present for the purpose. Orders given to the contractor's agent shall be considered to have the same force as if they had been given to the contractor himself.

Examination of work before covering up

38.(1) The contractor shall give not less than 7 days notice in writing to the Engineer-in-charge or his subordinate in charge of the work before covering up or otherwise placing beyond the reach of measurement

may work in order that the same may be measured, and correct dimensions thereof be taken before the same is so covered up or placed beyond the reach of measurement and shall not cover up and place beyond the reach of measurement any work without the consent in writing of the Engineer-in-charge or his subordinate in charge of the work shall within the aforesaid period of seven days inspect the work if any work shall be covered up or placed beyond the reach of measurement without such notice having been given or Engineer-in-charge's consent being obtained, the same shall be uncovered at the contractor's expense, or in default thereof no payment or allowance shall be made for such work or the materials with which the same was executed.

Uncovering and making openings

38.(2) The Contractor shall uncover any part or parts of the works or make opening in or through same as the Engineer may from time to time direct and shall reinstate and make good such parts to the specification of the Engineer. If any such part or parts have been covered up or put out of view after compliance with the requirements of such clause (1) of the Clause and are found to be executed in accordance with the expenses Contract the expenses of uncovering making openings in or through reinstating and making good the same shall be borne by the Company but in any other case all such expenses shall be borne by the Contractor and shall be recoverable from him by the Company or may be deducted by the Company from any money due or which may become due to the Contractor.

Removal of Improper Works and Materials

39.(1) The Engineer shall during the progress of the Works have power to order in writing from time to time.

- (a) the removal from the site within such time or times may as 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 test thereof or interim payment therefore) any work which in respect of materials or workmanship is not in the opinion of the Engineer in accordance with the contract.

Default of Contractor in compliance

39.(2) In case of default on the part of the Contractor in carrying out such order the Company shall be entitled to employ and pay other persons to carry out the same and all expenses, costs or damages consequent thereon or incidental thereto shall be borne by the contractor and shall be recoverable from him by the Company or may be deducted by the Company from any money due or which may become due to the contractors.

Suspension of work

- 40.(1) The Contractor shall on the written order of the Engineer suspend the progress of the works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the Engineer.

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 28 days of the Engineer's order. The Engineer shall settle and determine the extra payment to be made to the Contractor in respect of such claim as the engineer shall consider fair and reasonable.

Suspension lasting more than 90 days

If the progress of the works or any part thereof is suspended on the written order of the Engineer for more than 90 days the Contractor may serve a written notice on the Engineer requiring permission within 28 days from the receipt thereof to proceed with the works or that part thereof in regard to which progress is suspended and if such permission is not granted within that time the Contractor by a further written notice so 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 51 thereof or where it affects the whole works an abandonment of the Contract by the Company.

COMMENCEMENT TIME AND DELAYS

Commencement of Works:

41. The contractor shall commence the works on site within the period named in the Contract and shall proceed with the same with due expedition and without delay except as may be expressly sanctioned or ordered by the Engineer.

Way leaves, etc.

42. The Contractor shall bear all expenses and charges for special or temporary wayleaves required by him in connection with access to the site. The contractor shall also provide at his own cost any additional accommodation outside the site required by him for the purpose of the Works, except when otherwise specially agreed and provided for.

Time for completion

43. Subject to any requirement in the Contract as to completion of any portion of the Works before completion of the whole, the whole work shall be completed within the time stated in the contract.

Extension of time

44. If the contractor shall desire an extension of time for completion of the work on the grounds of his having been unavoidably hindered in his execution or any other grounds, he shall apply in writing to the Engineer-in-charge within 30 days of the date of hindrance on account of which he desires such extension as aforesaid but before the expiry of the time limit and the Engineer-in-charge shall, (which shall be final) authorize such extension of time.

No Night or Sunday Work

45. Subject to any provisions to the contrary contained in the Contract none of the permanent work shall save as hereinafter provided be carried on during the night or on Sunday (if locally recognized as days of rest) or their locally authorized equivalent without the permission in writing of the Engineer's representative save when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works in which case the Contractor shall immediately advise the Engineer's representative. Provided always that the provisions of this clause shall not be applicable in the case of any work, which it is customary to carry out by rotary or double shifts.

Rate of Progress

46. The whole of the materials, plant and labour to be provided by the Contractor under Clause 7 hereof and the mode, manner and speed of execution and maintenance of the Works are to be of a kind and conducted in a manner of the satisfaction of the Engineer. Should the rate of progress of the works or any part thereof be at any time in the opinion of the Engineer to slow to ensure the completion of the Works by the prescribed time or extended time for the completion the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as the Contractor may think necessary and the Engineer may approve the expedite progress so as to complete the works by the prescribed time or extended time for completion.

If the works is not being carried on by day and by night and the Contractor shall request permission to work by night as well as by day then if the Engineer shall grant such permission to the Contractor the contractor shall not be entitled to any additional payment for so doing but if such permission shall be refused there shall be no equivalent practical method of expediting the progress of the work the time for the completion shall be extended by the such period as is solely attributable to such refusal.

All work at night shall be carried out without unreasonable noise and disturbance.

Liquidated Damages for Delay

- 47.(1) The time of completion as stated in the contract shall be deemed to be the essence of the contract. If the Contractor fails to complete the works within the time prescribed by the Clause 43, hereof or extended time as sanctioned according to Clause 44, the Contractor shall pay to the Company a sum equal to 0.5 % per week of delay or part thereof of the estimated cost of the whole work as shown by the tender or such smaller amount as the Company (whose decision in writing shall be final conclusive and binding) may decide as liquidated damages 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 47 (2) hereof or extended time as the case may be and the date of completion of the works. The Company may without prejudice to any other method of recovery deduct the amount of such damages from any money in his hands due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligations to complete the works or from any other of his obligations and liabilities under the Contract.

Reduction of Liquidated Damages

- (2) 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 43 hereof and taken over or used by the Company the liquidated damages for delay shall for any period of delay after such certification be reduced in proportion of the value of the parts so certified bears to the value of the whole of the work.

Limit of Liquidated Damages

(3) Provided always that the entire amount of liquidated damages to be paid under the provisions of this clause shall not exceed 10% of the value of the whole of Works .

COMPLETION CERTIFICATE

48. Within ten days of the completion of the work, the contractor shall give notice of such completion to the Engineer-in-charge. The Engineer-in-charge shall inspect the work and if there is no defect in the work shall furnish the contractor with a certificate of completion, otherwise a provisional certificate of completion indicating defects (a) to be rectified by the contractor and / or (b) for which payment will be made at reduced rates, shall be issued but no certificate of completion provisional or otherwise shall be issued, nor shall the work be considered to be complete until the contractor shall have removed from the premises on which the work shall be executed all scaffolding, surplus materials, rubbish all huts and sanitary arrangements required for his / their work people on the site in connection with the execution of the work as shall have been required for his / their work people on the sit in connection with the execution of the work as shall have been

erected or constructed by the contractor(s) and cleaned off the dirt from all wood work, doors, windows, wall floors or other parts of any building in upon or about which the work is to be executed or of which he may have had possession for the purpose of the execution thereof, and not until the work shall have been measured by the Engineer-in-charge. If the contractor shall fail to comply with the requirements of this clause as to removal of scaffolding, surplus materials and rubbish and all huts and sanitary arrangements as aforesaid and clearing off dirt on or before the date fixed for the completion of the work, the Engineer-in-charge may, at the expense of the contractor, remove the scaffolding, surplus materials and rubbish etc. and dispose of the same as he thinks fit and clean off such dirt as aforesaid; and the contractor shall forthwith pay the amounts of all expenses so incurred and the contractor shall have no claim in respect of any such scaffolding or surplus materials as aforesaid except for any sum actually authorized by sale thereof. If the Contractor shall fail to comply with the requirements of this Clause as to removal of scaffolding, surplus materials and rubbish and all huts and sanitary arrangements as aforesaid and clearing off dirt on or before the date fixed for the completion of the work, the Engineer-in-charge may, at the expense of the contractor, remove the scaffolding, surplus materials and rubbish etc. and dispose of the same as he thinks fit and clean off such dirt as aforesaid; and the contractor shall forthwith pay the amounts of all expenses so incurred and the contractor shall have no claim in respect of any such scaffolding or surplus materials as aforesaid except for any sum actually authorized by sale thereof.

MAINTENANCE AND DEFECTS

Definition of Period of Maintenance

- 49.(1) In these conditions the expression "Period of Maintenance" shall be either six months or any other period if specifically specified in the special conditions of this contract and calculated from the date of completion of and works certified by the Engineer in accordance with clause 48 hereof or in 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.

Execution of work or repair, etc.

- 49 (2) To the intent that the works shall at or as soon as practicable after the expiration of the Period of Maintenance be delivered up to the Company in as good and perfect condition (fair wear and tear excepted) to the satisfaction of the Engineer as that in which they were at the commencement of the Period of Maintenance the Contractor shall execute all such work of repair, amendment, reconstruction, rectification and making good the 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. .

Cost of Execution of Works or Repair, etc. :

49 (3) All such work shall be carried out by the Contractor at his own expense if the necessity thereto shall in the opinion of the Engineer be due to the use of the materials of workmanship not in accordance with the contract or to neglect or failure part of contractor to comply with any obligation expressed or implied on the contractor's part under the contract. If in the opinion of the Engineer such necessity shall be due to any other cause the value of such work shall be ascertained and paid for as if it was additional work.

Remedy on Contractors failure to carry out work required :

49 (4) If the contractor shall fail to do any such work as aforesaid required by the Engineer, the Company shall be entitled to carry out such work by its own workmen or by other Contractors and, if such work is the work which the contractor should have carried out at the Contractor's own cost shall be entitled to recover from the Contractor, the actual direct expenditure incurred by the Company plus 100% or may deduct the same from any money due or that become due to the contractor.

Contractor to search defect, etc.

50. The Contractor shall if required by the Engineer in writing search for the cause of any defects imperfection or fault, under the directions of Engineer. Unless such defect, imperfection or fault shall be one for which the contractor is liable under the contract the cost of the work carried out by the contractor in searching as aforesaid shall be borne by the company. But if such defect, imperfection or fault shall be one for which the contractor is liable as aforesaid, the cost of the work carried out in searching as aforesaid shall be borne by the contractor and he shall in such case repair, rectify and make good such defect imperfection or fault at his own expense in accordance with the provisions of clause 49 thereof.

Property in Materials and Plants

51. (1) If the specification or estimate of the work provides for the use of any special description of materials to be supplied from the Engineer's store, or if it is required that the Contractor shall use certain stores to be provided by the Engineer (such materials and stores, and the prices to be charged thereof as herein after mentioned being so far as practicable for the convenience of the Contractor, but not so as in any way to control the meaning or effect of this Contract specified in the schedule or memorandum hereto annexed) the Contractor shall be supplied with such materials and stores as required from time to time to be used by him for the purposes of the contract only this being calculated out from specifications, drawing etc., and the value of the full quantity of material and stores so supplied at the rates specified in the said schedule or memorandum may be set off or deducted from any sum then due, or thereafter to become due, to the Contractor

under the contract or otherwise or against or from the security deposit, or the proceeds of sale thereof; if the same is held in Government securities, the same or a sufficient portion thereof being in this case sold for the purpose. All materials supplied to the Contractor shall remain in the absolute property of the Company and shall not on any account be removed from the site of the work; and shall at all times be open to inspection by the Engineer. Any such materials unused and in perfectly good condition at the time of the completion or determination of the contract shall be returned to the Engineer's stores if by a notice in writing under his hand he shall so require but the Contractor shall not be entitled to return such materials unless with such consent, and shall have no claim for compensation on account any such materials, so supplied to him as aforesaid being unused by him, or for and wastage in or damage any such materials.

Materials obtained from dismantlement and excavation etc.

The Contractors in the course of their works, should understand that all materials (e.g. stone and other materials) obtained in the work of dismantling excavation etc., will be considered Company property and issued to the Contractor (if they require the same for their own use) at rates approved by him. If these materials are not required by them, they will be disposed of to the best advantages of Company.

Relics, Gold Silver found in or upon the site

All gold, silver, oil and other minerals of any description and precious stones, coins, treasures, relics, antiquities and other similar things which shall be found in or upon the site shall be the property of the company and the Contractor shall duly preserve the same to the satisfaction of the Company and shall, from time to time, deliver the same to such persons or person at the Company may appoint to receive the same.

No approval by vesting

- 52 The operation of the Clause numbered 53 shall not be deemed to imply any approval by Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

MEASUREMENT

Quantities

53. The quantities set out in the Tender Schedule are the estimated quantities of the work but they are not to be taken as the actual and correct quantities or works to be executed by the Contractor, in fulfillment of his obligations under the Contract.

Works to be Measured

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

The contractor shall be paid on the quantities resulting from measurement of the executed work.

PROVISIONAL PAYMENT

Payment on intermediate certificate to be recorded as advance.

55. (a) No payment shall ordinarily be made for works estimated to cost less than rupees one thousand till after the whole of the works shall have been completed but if any payment during the course of the execution of the works is considered desirable in the interest of work, the Contractor may be paid at the discretion of the Engineer, But in the case of works estimated to cost more than one thousand monthly Payments for the portion of work already done, may be made either on the basis of measurement to be recorded by the Engineer or the Contractor shall on submitting the bill therefore be entitled to receive

a monthly payment proportionate to the part thereof then approved and passed by the Engineer, whose certificate of such approval and passing of the sum so payable shall be regarded as payments by way of advance against the final payment only and not as payments for work actually done and completed and shall not preclude the requiring of bad, unsound and imperfect or unskillful work to be removed and taken away and reconstructed or re-erected or be considered as an admission or due performance of the contract, or any part thereof, in any respect or the accruity, any claim, nor shall it conclude, determine, or affect in any the powers of the Engineer under these conditions or any of them as to final settlement and adjustment of the accounts or otherwise, or in any other way vary or affect the contract. The final bill shall be submitted by the Contractor within one month of the date fixed for completion of work, otherwise the Engineer's certificate of the measurement and of the total amount payable for the work accordingly shall be final and binding on all parties.

Bills to be submitted monthly

A bill shall be submitted by the contractor each month on or before the date fixed by the Engineer shall take or cause to be taken the requisite measurement for the purpose of having the same verified and the claim, as far as admissible, adjusted, if possible, before the expiry of ten days from the presentation of the bill if the contractor does not submit the bill within the time fixed as aforesaid, the Engineer may depute his representative to measure up the said work in the presence of the Contractor, whose counter signature to the measurement list will be sufficient warrant, and the Engineer may prepare a bill from such list which shall be binding on the Contractor in all respects.

Bill to be in Printed forms

The contractor shall submit all bills on the printed forms to be had on application at the office of the Engineer and the charges in the bills shall always be entered at the rates specified in the tender or in the cause of any extra work ordered in pursuance of these conditions, and not mentioned or provided for in the tender at the rates hereinafter provided for such work.

Additional Security deposit

As and by way of additional security from every progressive on account bill of the contractor 5% of the value of the work executed, shall be deducted and kept as security deposit until the total of the amount so deducted plus the security (including the Earnest Money) already deposited will be equal to the prescribed security deposit, which is 10% of the value of the work.

Company not responsible for any loss of Securities

The Company shall not be liable for any loss of securities of any description, nor for any depreciation in the value of securities while in its charge nor for any loss of interest wherefrom.

Payment of contractor's bills to Banks

Payment due to the contractor may, if so desired by him, be made to his bank instead of direct to him provided that the contractor furnishes the Engineer-in-charge (a) an authorization, in the form of a legally valid document such as a power of attorney conferring authority on the bank to receive payment, and (2) his own acceptance of the correctness of the amount made out as being due to him by Company or his signature on the bill or their claim preferred against company before settlement by the Engineer-in-charge of account or claim by payment to the bank. While the receipt given by such bank shall constitute a full and sufficient discharge for the payment, the contract or should, wherever possible, present his duly receipted and discharged through his bankers.

Nothing herein contained shall operate in favour of the bank any rights or equities vis-à-vis the Company.

Approved by Maintenance Certificate

No certificate other than the maintenance certificate referred to in clause 59 hereof shall be deemed constitute approval of any work or other matter in respect of which it is issued or shall be taken as admission or 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 Engineer nor shall any other certificate conclude or prejudice any of the powers of the Engineer.

Maintenance Certificate

57.(1) The contract shall not be considered as completed until a Maintenance Certificate shall have been signed by the Engineer and delivered to the Company stating that the Works have been completed and maintained to his satisfaction. The Maintenance certificate shall be given by the Engineer twenty-eight days after the expiration of the period on Maintenance (or if different periods Maintenance shall become applicable to different Part of the work the expiration of the latest such period) or as soon there after as any works ordered during such periods pursuant to clauses 49 and 50 hereof shall have been completed to the satisfaction of the Engineer and full effect shall be given to the Clause notwithstanding any previous entry on the work or the taking possession working or using thereof or any part thereof by the Company.

Cessation of Company's Liability

- (2) The Company shall not be liable to the contractor for any matter of thing arising out of or in connection with the Contract unless the Contractor shall have made a claim in writing in respect thereof before the giving of the Maintenance Certificate under this Clause.

Unfulfilled Obligation

- (3) Notwithstanding the issue of the Maintenance Certificate the Contractor and (subject to sub clause (2) of this Clause) the Company shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issue of the Maintenance Certificate which remains unperformed at the time such certificate is issued and for the purpose of determining the nature and extent of any such obligation the Contract shall be deemed to remain in force between the parties hereto.

REMEDIES AND POWERS

Forfeiture

- 58.(1) If the Contractor shall become bankrupt or have an order for appointment of any Receiver made against him or shall present any 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 (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Contractor shall assign the Contract without the consent in writing of the Company first obtained or shall have an execution levied on his goods or if the Engineer shall certify in writing to the company that in his opinion to the Contractor.
- (a) has abandoned the Contractor or
 - (b) without reasonable excuse has failed to commence the works or has suspended the progress of the work for 28 days after receiving from the Engineer written notice to proceed or
 - (c) has failed to remove materials from the site or to pull down and replace work for 28 days after receiving from the Engineer written that the said materials or work had been condemned and rejected by the Engineer under these conditions or
 - (d) is not executing the works in accordance with the Contract or is persistently or flagrantly neglecting to carry out his obligations under the Contract, or.
 - (e) has to the detriment of good workmanship or in defiance of the Engineer's instruction to the Contractor sub-let any part of the Contract, or.

- (f) otherwise failed to perform his part of the contract according to the true intent and meaning thereof than the Engineer-in-charge on behalf of the Company shall have power:
- (i) To rescind the contract for which termination of recession notice in writing to the contractor under the hand of Engineer-in-charge shall be conclusive evidence). Upon such determination of rescission, the security deposit of the contract shall be liable to be forfeited and shall absolutely at the disposal of the company.
- (ii) To employ labour paid by the Company and to supply material to carry out the works or any part of the work debiting the contractor with the cost of the labour and the price of the materials (of the amount which cost and price certified by the engineer-in-charge shall be final and conclusive against the contractor) and crediting him with value of the work done in all respects in the same manner and at the same rates as if it had been carried out by contractor under the terms of his contract. The certificate of the Engineer-in-charge as to the value of the work done shall be final and conclusive against the contractor, provided always that action under the sub-clause shall only be taken after giving notice in writing to the contractor. Provided also that if the expenses incurred by the company are less than the amount payable to the contractor at his agreement rates, the difference should not be paid to the contractor.
- (iii) After giving notice to the contractor to measure up the work of the contractor and to take such part thereof as shall be unexecuted out of his hands and to give it to another contractor to complete in which case any expenses which may be incurred in excess of such amount which would have been paid to the original contractor if the whole work had been executed by him (of the amount of which the excess the certificate in writing of the engineer-in-charge shall be final and conclusive) shall be borne and paid by the original contractor and may be deducted from any money due to him by the company under this contract or on any other account whatsoever or from his security deposit or the proceeds of sales thereof or of a sufficient portion thereof or from the interest arising thereof as the case may be.

Valuation at Date of Forfeiture

(2) The Engineer shall as soon as may be practicable after any such entry and expulsion by the company fix and determine ex-party or after reference to the parties or after such investigation of enquiries as he may think fit to make or institute and shall certify what amount (if any) had at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the contractor in respect of work then actually done by him under the contract and what was the value of any unused or partially used

materials of constructional plant and any temporary works which have been deemed to become the property of the company under the provisions of the contract.

Payment after forfeiture

(3) If the company shall enter and expel the contractor under this clause it 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 delay in completion (if any) and all other expenses incurred by the company 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 on due completion by him then the contractor shall upon the demand pay to the company the amount of such excess and it shall be deemed a debt due by the contractor to the company and shall be recoverable accordingly.

Deduction of amounts due to company on any account

- (4) Any excess payment made to the contractor inadvertently or otherwise under this contract or any account whatsoever and any other sum found to be due to the company by the contractor in respect of his contract or any other contract, or work-order or on any account by any other department of the company.
- (5) The company has the right to make any investigation necessary to satisfy itself of compliance by the contractor or of the specifications and instruction and reject any material / work that does not conform the specifications or instructions stipulated by the company. Losses, damages occurring to the company owing to the Contractor's failure to adhere to any of the instruction given by the company shall be recovered from the contractor.

Illegal gratification and breach of the terms of contract

- 59 The contract may also be rescinded and the contractor shall be liable to make good any loss or damage resulting from such cancellation to the like extent provided in case of cancellation under clause 58 (f) hereof.
- (a) If any bribe, gratuity, gift, loan, perquisite, reward or advantage, pecuniary or otherwise shall either directly or indirectly be given, promised or offered by the contractor or any of his servants or agents to any public officer or person in the employment of the company in any way relating to his office or employment, or if any such officer or person shall become in any way directly or indirectly interested in the contract, or
 - (b) if the contractor has committed a breach of the terms of the Contract, and in particular fair wages clause and labour regulations.

Urgent repairs

60. If by reason of any accident or failure or other event accruing in or in connection with the works or during the period of maintenance any remedial or other work or repair shall in the opinion of the Engineer or the Engineer's representative be urgently necessary for security and the contractor is unable or unwilling at once to do such work or repair, the company may be its own other workman do such work or repairs as the Engineer or the Engineer's representative may consider necessary. If the work or repair so done by the company 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 company in so doing shall on demand be paid by the contractor to the company or may be deducted by the company from money's due of which may become due to the contractor. Provided always that the Engineer or the Engineer's representative as the case may be shall as soon after the occurrence of any such emergency as may be reasonably practicably notify the contractor thereof in writing. Company will have full liberty to retain and set off all sum due or to become due to contractor.
61. The company will have full liberty to retain and set off all sums due or to become due to the contractor (including security deposits and earnest money) whether under this contractor or under any other transaction or claim whatsoever, against any sum due to the company under this contractor or under any transaction or claim whatsoever.

NOTICE

Service of Notice on Contractor

- 62.(1) Any notice to be given to the Contractor under the terms of the contract shall be served by sending the same to the address indicated in the pre-qualification documents by the contractor either by post or leaving the same at the contractor's principal place of business.

Service on Notice on Company

- (2) Any notice to be given to the Company under the terms of the contract shall be served by sending the same by post to or leaving the same at the company's registered office.

Important Special Conditions

63. The special conditions attached hereto where they differ from the general conditions and specification shall override them. Similarly the description of work in the tender schedule where it differs from the specification or drawings, shall over-ride them.

MISCELLANEOUS

Adequate shoring to be provided

64. The contractor shall at his own cost provide the material for and execute all such shoring, timbering and strutting as is necessary during the execution of work for the stability and safety of all structures, excavations and works such that no damage, injury or loss is caused or likely to be caused to any person or property.

Provision of sheds, store houses, etc.

65. The contractor shall at his own cost provide such sheds, or damp proof store houses as the company may consider necessary for storage of materials and shall also at his own cost provide batching plant/concrete mixer, soaking wash, etc.

Demurrage

66. Any demurrage charges, according to the Railway rules, which may be charged from time to time, that may be incurred on Railway wagons or trucks due to contractor's account and shall be paid by him to the proper officer on demand or deducted from any sum which may be due to him from the company.

Work in or around the Running Plant

67. When work is being carried out in or around a running plant where the plant must run uninterrupted the contractor can only work at specified places and times as mutually arranged. Progress of work in certain areas might have to be expedited as required by the Company and the Contractor must take this factor into consideration when specifying for completion and work out his rates.

Payment of Wages Act

68. The Contractor shall comply with the provisions of the Payment of wages Act, 1936, and the rules made thereunder in respect of all employees employed by him in carrying out this contract as he himself and not the Company, is responsible under the said Act for compliance thereof.

If in compliance with terms of the contract, the contractor supplies any labour to be used wholly or partly under the direct orders and control of the Company, such labour shall for the purpose of this clause, still be deemed to be persons employed by the contractor, if any money shall, as the result of any claim or application as aforesaid, be ordered to be paid by the company such as money shall be deemed to be money payable to the company to the contractor and on failure by the contractor to repay to the company any money paid by it as aforesaid within seven days after the same shall have been demanded the Company shall be entitled to recover the same from any money due or accruing to the contractor under this or other contract(s) with the company.

Accident

69. The contractor shall be responsible for the safety of his workmen and employees. All serious accidents to them on the construction are to be immediately reported. The contractor shall be responsible that all such accidents, however and wherever occurring on his works, are reported without delay to the Engineer.

Policing work

70. Should the general conduct of the works including the premises of the company under occupation of the contractor lead to infringement of the Indian Penal code, either in the consequence of the riotous or illegal proceedings of the contractors labour, supervising staff or others to, such an extent as to necessitate the employment of special extra police or Magistrates the cost of such extra force is to be defrayed by the contractor and not by the company.

Movement of construction plants and equipment

71. The contractor must take sufficient care in moving his construction plants and equipment from one place to another so that they may not cause any damage to the property of the Company, particularly to the overhead and underground cables, and in the event of his failure to do so the cost of such damages including eventual loss of working hours in any plant as estimated by the company is to be borne by the contractor.

Signature on receipt for amounts

72. Every receipt for money which may become payable or for any security deposit which may become transferable to the contractor under these conditions shall, notwithstanding anything to the contrary contained in the partnership deed, if signed in the name of the partnership by any one of the partners of a contract-firm, be a good and sufficient discharge to the company in respect of the money or security purported to be acknowledged thereby, and in the event of death of any of the contractor partners during the tendency of the contract, it is hereby expressly agreed that every receipt by way of the surviving contractor-partners shall, if so signed as aforesaid, be a good and valid discharge as aforesaid, provided nothing in this clause shall be deemed to prejudice or affect any claim which the company may hereafter have against the legal representatives of any deceased contractor-partner for in respect of any of the conditions of the contract and provided also that nothing in this clause shall be deemed to prejudice or affect the respective rights, or obligation of the contractor-partners and of legal representatives of any deceased contractor-partner etc.

Laws in force relating to contracts.

73. (i) All contracts or terms thereof entered into between the Company and Contactor under these General Conditions of Contract shall be governed and regulated by the relevant laws for the time being in force in the territory of India relating to contracts. The contract shall in all respects be constructed and operated as an Indian Contract and in conformity with Indian Laws and Regulation in force and is subject to the jurisdiction of the High Court of Madras.

Laws bye-laws etc. relating to works etc.

- (ii) The Contractor shall strictly conform to the provisions, for the time being in force, of any law relating to works or any regulations and bye-laws made by any local authority or any water and lighting companies or any undertakings within the limits of the jurisdiction of which it is proposed to execute the work or obtain connections with their systems or undertaking for the purpose of such work and where the Contractor considers that variation in drawings or specifications, of such work are necessary to enable him to comply with provisions of the law or regulations or bye-laws, as aforesaid, he shall give to the Engineer notice in writing specify proposed and the reasons for such variations, and no action in this behalf shall be taken by the Contactor until he receives instruction in writing from the Engineer in respect thereof. The Contractor shall be bound to give to the authorities concerned such notices as may be provided, in the law, regulations or bye-laws as aforesaid, and to pay all fee and taxes payable to such authorities in respect thereof.

Change in Constitution

74. Where the contractor is a partnership firm, a duly attested copy of the partnership deed should be deposited with the Engineer-in-charge and the previous approval in writing of the Engineer-in-charge shall be obtained before any charge is made in the construction of the firm where the contractor is an individual or a Hindu Undivided family business concern, such approval as aforesaid shall likewise be obtained before the contractor enters into any partnership agreement where under the partnership firm would have the right to carry out the work hereby undertaken by the Contractor. If previous approval as aforesaid is not obtained the contract shall be deemed to have been assigned in contravention of Clause 60 (1) thereof and the same may be taken and the same consequences shall ensue as provided in the said Clause 60 (1) (f).

Settlement of Disputes

75.(1) Disputes to be finally determined by the Engineer.

The decision opinion direction certificate or valuation of the Engineer with respect to all or any of matters under clauses 4(a), 4(b), 77, 12(a), 13, 14, 15, 20, 33, 36, 37, 38, 39, 40, 43, 44, 45, 46, 47, 48, 49(2), 49(3), 49(4), 49(5), 53, 54, 57, 58 (which matters are herein referred to as Excepted) shall be final conclusive and binding on the parties hereto and shall be without Appeal. Any other decision, opinion direction, certificate or valuation of the Engineer or any refusal of the Engineer to give any of the same shall be subject to the right of Arbitration and review in the same way in all respects (including the provision as to opening the Reference) as if it were a decision of the Engineer under Clause. 75 (2).

(2) Settlement of Disputes by Arbitration.

Any disputes and differences of any kind whatever arising out of or in Connection with the Contract on the carrying out of the works (whether during the progress of the works or after their completion and whether before or after the determination abandonment or breach of the Contract) shall be referred to an settled by the Engineer who shall state his decision in writing. Such decision of the Engineer with respect to any of the Expected matters shall be final conclusive and binding on the parties hereto and without any Appeal as stated in Clause 75.1. But if either the Company or the Contractor be dissatisfied with the decision of the Engineer any matter, question or dispute of any kind (except on any Excepted Matters) or as to the with-holding by the Engineer of any certificate to which the contractor may claim to be entitled then and in any such case either party (the Company or the Contractor) may within 4 weeks after receiving notice of such decision give a written notice to other party requiring that such matters in dispute be arbitrated upon. Such notices shall specify the matters which are in dispute and such dispute or difference of which such written notice has been given and no other shall be and is hereby referred to the difference of which such written notice has been given and no other shall be and is hereby referred to the arbitration and final decision of single Arbitrator being the Member of the Institution of Engineers (India) to be agreed upon and appointed by both the parties or in case of disagreements as to the appointment of a single Arbitrator to the Arbitration of two Arbitrators being both Members of the Institution of Engineers (India) one to be appointed by each party which arbitrators shall before taking upon themselves the burden of Reference appoint an Umpire being a Member of the Institution of Engineers (India).

The arbitrators or the Umpire shall have power to open up view and revise any certificate opinion decision, requisition or notice save in regard to the Excepted Matters referred to in Clause 75.1 and to determine all matters in dispute which shall be submitted to him or them and of which notice shall have been given as aforesaid.

Upon every or any such Reference the cost of and incidental to the Reference and Award respectively shall be in the direction of the Arbitrator or the Umpire who may determine the amount thereof or Direct the same to be taxes as between Arbitrator and the client or as Company and the contractor shall direct by whom and in what manner The same shall be borne and paid. This submission shall be deemed to be submission Arbitration within the meaning of the Indian Arbitration And Conciliation Act, 1996, or any statutory modifications thereof. The Award of the Arbitrator or Arbitrators or the Umpire shall be final and binding on the parties. Such reference except as to the withholding by the Engineer of any certificate under Clause 60 to which the Contractor claims to be entitled shall not be opened or entered upon until the completion or alleged completion of the works or until after the practical cessation of the Works arising from any cause unless with the written consent of the Employer and the Contractor. Provided always that the Employer shall not withhold the payment of Interim Certificate nor the Contractor except with consent in writing of the Engineer in any way delay the carrying out of the works by mason for any such matter question or dispute being referred to Arbitration but shall proceed with the work with and due diligence and shall until the decision of the Arbitrators or the Umpire be given abide by the decision of the Engineer and no Award of the Arbitrator or the Arbitrators of Umpire shall receive the Contractor of his obligations to adhere strictly to the Engineer's Instructions with regard to the actual carrying out of the Works.

76 Termination of Contract

In case the performance of the contractor during the currency of the contract is not found satisfactory or the contractor is not able to complete the work within the stipulated time frame or if there is a breach of any of the terms and conditions of the contract, MFL shall have the right to terminate forthwith the contract and get the work done thru another agency at the contractor's risk and cost.

77. Employment of Child Labour

Women and child labourers will not be allowed to work inside the plant battery limits.

78. Cancellation of Order

Failure to comply with specification, terms & conditions or to perform or deliver as promised shall entitle the Purchaser to cancel all or any part of this order. In the event of such cancellation, the Purchaser shall not be required to make any payment on such cancelled items. Nothing herein shall limit the Purchaser's right in the event of the failure to perform by the Seller.

79. Arbitration

Any or all disputes arising out of the contract / agreement shall be settled by mutual discussions and in the event of failure to do so, such dispute (s) shall be referred to a sole arbitrator, who will be appointed by mutual consent for settlement of such dispute (s) and whose decision shall be final and binding. In the event of failure to appoint such a sole arbitrator, with mutual consent, then the sole arbitrator will be appointed through the high court of judicature at Madras Subject as aforesaid, the arbitration and conciliation act 1996 shall apply to the arbitration proceedings under this clause and such arbitration shall be in English and take place in the city of Chennai, Tamil Nadu.

80. Reverse Auction

MFL reserves the right to go for Reverse Auction process, if required or may finalize the tender without Reverse Auction. However, the decision to conduct Reverse Auction or not will be conveyed to short-listed bidders. The business Rules for Reverse Auction will be circulated, if Reverse Auction is necessary and the same needs to be accepted and signed by the technically shortlisted bidder.
