

MUMBAI PORT TRUST
Civil Engineering Department

Tender No. E. 90 /2021: Appointment of an Event Management Agency for planning,
organising and conducting Events/Activities related to the visit of the VVIP in Mumbai
Port Trust

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MUMBAI PORT TRUST
Civil Engineering Department

CONDITIONS OF CONTRACT

1. Definitions and Interpretations:

1.1 Definitions:

In the Contract (as hereinafter defined) the following words and expressions shall have the meaning hereby assigned to them except where the context otherwise requires.

- (a) **'Employer'** means the Board of Trustees of the Port of Mumbai i.e. "MbPT" constituted by the Major Port Trusts Act 1963.
- (b) **'Contractor'** means the person or persons, firm or company whose tender has been accepted by the Employer and includes the Contractor's personal representatives, successors and permitted assigns.
- (c) **'Engineer'** means the Chief Engineer/ Chief Mechanical Engineer of the Port of Mumbai or other Engineer authorised from time to time by the Employer/ Chief Engineer/ Chief mechanical Engineer to act as Engineer for the purpose of the Contract.
- (d) **'Engineer's Representative'** means any Engineer Namely Dy. Chief Engineer/ Superintending Engineer/ Executive Engineer/ Assistant Executive Engineer/ Jr. Engineer authorised from time to time by the Engineer to be in direct supervision of the Works.
- (e) **'Works/ Permanent Works'** means the works to be executed in accordance with the Contract.
- (f) **'Contract'** means and includes the entire document comprising of the following.

FIRST COVER (Separate Booklet)

- 1. Undertaking by the Tenderer.
- 2. Tender Notice.
- 3. Annexure '1,2,3,4.'
- 4. Proforma.
- 5. Instructions for Preparation and Submission of Tender.
- 6. Conditions of Contract – Index.
- 7. Conditions of Contract with Annexures.
- 8. Technical Specifications for Civil and Electrical works.

SECOND COVER (Separate Booklet)

and

The correspondence exchanged between MbPT and the tenderer upto issue of the letter of acceptance.

and

The letter of acceptance.

and

When completed, the Contract Agreement.

- (g) **'Tender'** means the Contractor's priced offer to the Employer for the execution and completion of the works and the remedying of any defects therein in accordance with the provisions of the contract, as accepted by the Letter of Acceptance.
- (h) **'Contract Price'** means the sum named in the Tender subject to such additions thereto or deductions there from as may be made under the provisions hereinafter contained.
- (i) **'Construction Plant'** means all appliances or things of whatsoever nature, required in or about the execution or completion of the Works or Temporary Works (as hereinafter defined) but does not include materials or things intended to form or forming part of the permanent work.
- (j) **'Temporary Works'** means all temporary works of every kind required in or ancillary to or about the efficient execution and completion of the Works.
- (k) **'Drawings'** means the drawings indicated in this document and any modifications of such drawings approved in writing by the 'Engineer' and such other drawing as may from time to time be furnished or approved in writing by the 'Engineer'.
- (l) **'Site'** means the land or other places, on which the Works are to be executed or carried out and any other lands or places provided by the Employer for the purpose of the Contract.
- (m) **'Approved'** means approved in writing, including subsequent written confirmation of previous verbal approval and 'Approval', means approval in writing including as aforesaid.
- (n) **'Letter of Acceptance/ Work Order'** means a formal letter with accompaniments issued by Engineer or Engineer's representative addressed to the tenderer, conveying the acceptance of his tender.

1.2. Singular and Plural: Words importing the singular only also include the plural and vice versa where the context requires.

1.3. Applicability of Clauses / Conditions: All the clauses/ conditions of this 'Contract' are applicable for the subject tender work unless otherwise specified.

2. Duties and Powers of Engineer's representative:

The duties of the Engineer's Representative are –

- to monitor and supervise the Works & workmanship employed.
- to test and examine materials to be used in the works.
- to direct removal of improper work and materials in connection with the Works.
- to take measurements of works and material.
- To ensure compliance of all the conditions of contract & specifications by the contractor.

3. Subletting and Partnership:

The Contractor shall not sublet the Works or any portion thereof without the written permission of the Engineer nor assign his right and interest in these presents, nor assume a fresh partner or partners nor dissolve the partnership at present subsisting between them in reference to this Contract, without the written permission of the Engineer 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 and neglects of any sub-Contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor/his agents, servants or workmen provided always that the provision of labour on a piece work basis shall not be deemed to be a subletting under this Clause.

4. Extent of Contract:

The Contract comprises the construction, completion and maintenance of the Works and the provision of all labour, materials, constructional plant, temporary works and everything whether of a temporary or permanent nature required in and for such construction, completion and maintenance of works upto Defect Liability Period.

5. Contract Documents:

5.1. Documents mutually explanatory:

The several documents forming the Contract are to be taken as mutually explanatory of one another.

In the case of discrepancy/ ambiguities, if any, found in these documents, the Engineer will decide which document would prevail and his decision shall be final and binding on the contractor. The contractor shall execute the works according to such decision without any variation in the price quoted by the contractor.

5.2. Further Drawings and Instructions:

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 the works accordingly and be bound by the same.

5.3. Drawings for The Temporary Works:

The Contractor shall submit to the Engineer for his approval and / or record full details and drawings of any temporary works / working platforms etc. which he proposes to construct / erect necessary for execution of works. These details shall be submitted well in advance before erection of any such Temporary works at site. The submission to and approval by the Engineer or Engineer's representative of such particulars shall not relieve the contractor of any of the duties or responsibilities under the contract in connection with the Works or Temporary works.

6. General Obligations:

6.1. Contract Agreement:

The successful tenderer will be required to enter into a formal Agreement with the Employer incorporating the documents detailed in clause No.1.1 (f) hereto before, with such modifications as may be necessary and the correspondence exchanged upto and including the stage of award of the contract and the letter of acceptance. The Contract Agreement will be prepared by the Employer as per the format enclosed as Annexure-I. All costs, charges and expenses including stamp duty incurred in this connection will be borne by the Employer. Until such Contract Agreement is executed, the acceptance of the tender in terms of the Contract as defined in Clause No.1.1 (f) shall be binding upon the MbPT & the Contractor, and shall be the Contract.

The Contractor's bills will not be passed for payment until the contract agreement is executed.

6.2. Security Deposits:

6.2.1. The security deposit for due performance of the contract shall comprise of the following.

(a) Initial Security Deposit (ISD) equivalent to the Earnest Money Deposit (EMD) stipulated for the tender. For this purpose, the Earnest Money deposited by the Contractor for the tender will be retained toward the initial Security Deposit.

Plus

- (b) Additional Security Deposit (ASD)** equivalent to four percentage (4%) of the Contract Price and rounded off to the next higher thousand in Rupees, in the form of either (i) cash deposit or (ii) G.P. Notes/ Fixed Deposit Receipts from the Mumbai office of any Nationalised Bank endorsed for payment to the Mumbai Port Trust or (iii) Bank Guarantee from Scheduled/ Nationalised Banks from the Mumbai Office of any Scheduled/ Nationalised Bank carrying on business in Mumbai and to be approved by the Employer.

No costs/ charges will be recovered from the Contractor for approval of the Bank Guarantee by the Employer's Chief Law Officer & Advocate but all other costs of and in respect of furnishing the Guarantee shall be borne by the Contractor. The format of Bank Guarantee towards Security Deposit is enclosed as Annexure-II.

The value of G.P. Notes lodged towards the Additional Security Deposit (ASD) will be taken at ten percent (10%) below the market rate ruling on the date the same are submitted or the face value thereof whichever is lower. The endorsement on the G.P. Notes should be 'Pay to the Trustees of the Port of Mumbai' and should bear the 'Examined' stamp of the Public Debt Office, Reserve Bank of India.

Plus

- (c) Retention Money (RM)** equivalent to three percent (3%) of Contract Price and rounded off to the next higher thousand in Rupees deducted at the rate of five percent (5%) and rounded off to the next higher thousand Rupees of the gross value of work certified in each bill, until an amount of three percent (3%) of Contract Price and rounded off to the next higher thousand in Rupees is reached.

Plus

10% of the amount of executed waterproofing work and Anti-termite treatment under item Nos. 31,32,66 & 70 of Part I (Civil works) and item Nos. 12 & 13 of Part II (Electrical works) will be recovered from the bills and will be refunded to the contractor after successful completion of the free maintenance period of 3 years.

Plus

- (d)** In case contractors offer is more than fifteen percent (15%) below the cost of work put to tender, such contractor shall have to pay Extra Additional Security Deposit (EASD) worked out as per the formula given below, in the form of Demand Draft/ Banker's Cheque/ Bank Guarantees. EASD shall be valid upto scheduled completion and subsequently be extended upto actual completion and shall be in favour of the 'Board of Trustees of the Port of Mumbai'. The

Additional Security Deposit will be released on satisfactory completion of work.

Formula:

$$\text{Extra Additional Security Deposit (EASD)} = \frac{A}{100} \times \text{cost of work put to tender}$$

Where 'A' =

For Example :- If the contractor has quoted twenty five percent (25%) below the cost put to tender, for any particular part of this tender, then the Extra Additional Security Deposit shall be worked out as under.

$$\text{EASD} = \frac{25-15}{100} \times \text{cost of work put to tender for that particular part of tender}$$

The Security Deposit under sub clause (a) and (b) above and also (d) if applicable, shall be lodged by the Contractor within **21 days** from the date of award of contract.

The security deposit and retention money shall not bear any interest and these shall be refunded to the Contractor in the manner detailed in the clause No 15.c of Conditions of Contract.

6.3. Delay/ Failure to lodge Security Deposit:

Unless the Additional Security Deposit and Extra Additional Security Deposit (if applicable), is furnished by the Contractor within **21 days** from the date of award of contract or such further period as may be allowed by the Engineer in writing, the Earnest Money lodged with the tender will be liable to forfeiture and the contract is liable to be terminated and the tenderer will be responsible to the Employer for the damage thereby incurred by the Employer.

6.4. Inspection of site:

The buildings are presently occupied and repairs are to be carried out in occupied conditions. Being the rooms are occupied, the timing of availability of room for internal repairs are to be assessed by the contractor wherein a likely possibility of work in piece meal basis. The Contractor shall be deemed to have inspected and examined the site and its surroundings and have satisfied himself before submitting his tender regarding the nature and condition of structure, availability of timings of room for repairs, nature and scope of the work, materials necessary for the completion of the Works, the physical and climatic conditions there, the availability and conditions affecting labour, the facilities for obtaining materials necessary for the completion of the Works, the condition of the existing roads/ access, under-ground services etc. and shall himself

obtain all necessary information as to risks, contingencies and other circumstances which may influence or affect his tender.

6.5. Sufficiency of tender:

The Contractor shall be deemed to have satisfied himself before tendering as to the practicability and the suitability of the design and his method of working and to the correctness and sufficiency of his tender for the Works; and the rates and prices stated in the Schedule of Quantities and Rates shall be held to cover all his obligations under the Contract and all matters and things necessary for the proper execution, completion and maintenance of the work.

6.6. Work to the satisfaction of Engineer:

The Contractor shall execute, complete and maintain the works in strict accordance with the Contract to the satisfaction of the Engineer/ Engineer's Representative and shall comply with and adhere strictly to his instructions and directions on any matter,

Whether, mentioned in the Contract or not, concerning the Works, The Contractor shall take instructions and directions only from the Engineer or from the Engineer's Representative.

For the execution of works under Part I of this tender, the contractor shall coordinate with Civil Engineering Department and for Part II, Mechanical and Electrical Engineering Department.

6.7. Programme to be furnished:

The execution of the works shall be so planned as to cause as little impediment as practicable to the working of the Port and other persons using the site and the organisations in the vicinity in general.

After the award of the contract, the Contractor shall prepare network-based programme of work and will further breakdown his 'work/s' into weekly/ fortnightly/ monthly targets, as required by the Engineer's representative.

The progress of the work shall be reviewed periodically with reference to the network-based programme of work. The network shall be up-dated by the Contractor periodically so as to ensure completion within completion period and the Contractor must mobilise at no extra cost to the Employer, additional resources if required for completion of the whole work in the completion period.

The contractor shall also co-ordinate with Third Party Inspection agency for monitoring the progress of work.

6.8. Contractor's Employees:

6.8.1. The Contractor shall provide and employ on the Site in connection with the

- execution and maintenance of the Works,
- a) Only such technical assistants as are skilled and experienced in their respective trades, as are competent to give proper supervision to the work they are supposed to supervise;
 - b) Such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution and maintenance of the Works.
 - c) Contractor shall **engage One full time Project Manager** on the work capable of managing and guiding the work and understanding the specifications and contract conditions. The Project Manager shall have Bachelor Degree in civil Engineering with 15 years' experience in building construction or repairs
 - d) and 1 senior Engineer who will be Bachelor Degree in Civil Engineering with 8 to 10 years' experience for full time
 - e) 3 Site Engineers who will be Diploma holder in Civil Engineering with 5 to 6 yrs Experience for full time. Out of 3 Site Engineers at least 1 Site Engineer shall have fair knowledge of Electrical works.
 - f) 4 Supervisors having 5 years' experience in building repair works shall be posted at full time for Civil works.
 - g) 1 Licenced Electrical Supervisor having 5 years' experience in Electrical works shall be posted at full time.
 - h) 2 store keeper having experience in the field shall be posted at site for full time.

Project Manager will receive instructions from the Engineer or his representatives and shall be responsible for following them. The Project Manager shall not be changed without prior intimation to the Engineer or his representative on the work site.

6.8.2. The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person or Sub-Contractor employed by the Contractor in or about the execution or maintenance of the Work 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 re-employed.

6.8.3. Employment of retired Class-I Officers of MbPT:

The Employer shall be at liberty to terminate the Contract if the contractor himself or any of his partners/ employees or any of his directors who having held Class-I post in the Mumbai Port Trust prior to his retirement has failed to obtain the Mumbai Port Trust Chairman's specific permission to undertake an occupation or any outside employment before the expiry of two years from the date of his retirement, in accordance with the provisions of the Mumbai Port Trust Class-I employees (Acceptance of employment after retirement) Regulations 1975.

6.9. Setting out of work:

The Contractor shall be responsible for the true and proper setting out of the Works in relation to original points, lines and levels of references given by the Engineer/ Engineer's Representative in writing and for the correctness of the positions, levels, dimensions and alignment of all parts of the work and for the provision of all necessary instruments, appliances and labour in connection therewith. If at any time during the progress of works any error shall appear or arise in the positions, levels dimensions or alignment of any part of the works, the Contractor on being required so to do by the Engineer or Engineer's Representative shall at his own expense rectify such error to the satisfaction of the Engineer or Engineer's Representative. The checking of any setting-out of any line or level or dimension by the Engineer or the Engineer's Representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof. The Contractor shall carefully protect and preserve all benchmarks, sight-rails, pegs and other things used in setting out the works.

6.10. Care of works:

- 6.10.1. From the commencement to the completion of the Work the Contractor shall take full responsibility to care the work and temporary work. In case any damage, loss shall happen to the Works or to any part thereof or to any temporary Works from any cause whatsoever, shall at his own cost repair and make good the same so that on 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.
- 6.10.2. There are various utility services like oil pipe lines, electrical services, water mains, drainage lines, telephone cables etc near the working area under of subject work. These services shall be safeguarded and protected by the contractor at his own cost, during the execution of repairs works at locations and its surroundings where work is being executed.
- 6.10.3. The Contractor at his own cost shall make such provisions for lighting the works, storage area and plant and shall provide all such marks and lights as may be required by the Engineer or any other authority having jurisdiction in connection with the site together with all labour, stores and services required for their efficient working and use at any time of day and night. He shall require to protect and secure all places dangerous whether to the Contractor's workmen or to other persons until the work shall be handed over to the Employer unless the Engineer shall decide that such services are no longer required.
- 6.10.4. The buildings shall be covered with Hessain clothe/ green clothe curtain around the

buildings/ temporary arrangement to close the window openings as directed to avoid dust nuisance to the occupants of the building and nearby users. Safety net shall be provided wherever necessary as directed.

6.11. **Insurance:**

6.11.1. **CONTRACTOR ALL RISK INSURANCE POLICY**

Without limiting his obligations and responsibilities under Clause No.6.11 hereof the Contractor shall insure in the joint names of the Employer and the Contractor against all loss or damage from whatever cause arising for which damage he is responsible under the terms of Contract and in such manner that the Employer and the Contractor are covered during the period of construction of the Works and are also covered during the Defect Liability period for loss or damage arising from a cause occurring prior to the expiry of Defect Liability period and for any loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clause No.10 hereof.

- a) the Works and the temporary Works to the full value of such works executed from time to time
and
- b) the materials, constructional plant and other things brought on to the site by the Contractor to the full value of such materials, constructional plant and other things.

Such insurance shall be effected with the General Insurance Corporation of India or other insurance company approved by the Employer and in terms approved by the Employer and the Contractor shall whenever require, produce to the Engineer or the Engineer's Representative the policy or policies of insurance and the receipt for payment of the current premium.

6.11.2. **THIRD PARTY INSURANCE POLICY:**

Before commencing the execution of the Works the Contractor shall insure in the joint names of the Employer & the Contractor against any damage, loss or injury which may occur to any property or persons inter-alia including any property of the Employer and any employee of the Employer by or arising out of the execution of the Works or temporary Works or in carrying out of the Contract.

Such Insurance shall be affected with the General Insurance Corporation of India or other Insurance company approved by the Employer and in terms approved by the Employer. Third party Insurance policy shall be for an amount of Rupees **Twenty Five Lakhs (25 lakhs)** in any one incident and to be recouped after every incident till completion of the entire work. The Contractor shall whenever require, produce to

the Engineer or the Engineer's Representative the policy or policies of insurance and receipt for payment of the current premium.

6.11.3. **WORKMEN COMPENSATION POLICY:**

The Contractor shall indemnify and keep indemnified the Employer against all damages or compensation payable at Law in respect or in consequence of any accident or injury to any workmen or other person in the employment of the Contractor or any Sub-Contractor and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto and the Employer shall be at liberty to deduct or adjust from the Contractor's bills any amount that Employer may be called upon to pay toward claims, demands, proceedings, costs, charges and expenses whatsoever in respect of or in relation to any accident or injury referred to above without any reference to the Contractor.

The Contractor shall insure against such liability with the General Insurance Corporation of India or other insurance company approved by the Employer and shall continue such insurance during the whole of the time that any persons are employed by him in the Works and shall when required produce to the Engineer or the Engineer's Representative such policy of insurance and the receipt for payment of the current premium provided always that in respect of any persons employed by any Sub- Contractor the Contractor's obligations to insure as aforesaid under this sub-clause shall be satisfied if the sub-Contractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy but the Contractor shall require such sub-Contractor to produce to the Engineer or the Engineer's Representative when required such policy of insurance and the receipt for payment of the current premium.

In case of department's requirement for early completion of work requires deployment of additional labour and the contractor is prevailed upon for additional labour deployment, the premium of additional policy/ies shall also be recommended along with the bills for reimbursement. The same shall be paid to the contractors with their interim/final bill.

6.11.4. Insurance against war risk:

If during the course of Contract there occurs war or threat of war and the Government impose War Risk Insurance, in that event the Contractor shall take out War Risk Insurance.

6.11.5. Payment of insurance premia:

The premia and other charges for the various policies required to be furnished by the Contractor shall initially be paid by the Contractor to the insurance companies. The actual amount paid towards premia will be reimbursed to the Contractor

through the next measured bill, after the perusal of the insurance policies by the Engineer and after production of satisfactory proof of payment of the premia by the Contractor.

6.11.6. Remedy on Contractor's failure to insure:

If the Contractor shall fail to effect and keep in force the insurance referred to above the contract will be liable to be terminated and the Contractor will be responsible to the Employer for the damage thereby incurred by him.

6.12. Damage to persons and property:

6.12.1. The Contractor shall indemnify and keep indemnified the Employer against all losses and claim for injuries or damage to any persons or any property whatsoever which may arise out of or in consequence of the construction and maintenance of the Works and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.

6.12.2. In case of any damage to Employer's property, a preliminary formal enquiry will be held by the person nominated by the Employer. The enquiry will be held in the presence of the concerned Representative of the Engineer and of the Contractor's authorised representative. If, as a result of the enquiry, a prima-facie case is established against the Contractor, recovery towards making good the damage will be made from the Contractor.

6.12.3. In case Insurance coverage is available for making good the damages, the contractor may claim from the Insurance Company for the same. However, the Employer will effect the recovery as stated above at the first instant and the contractor may then claim to the Insurance Company.

6.13. Giving of notices and payment of fees:

The Contractor shall at his own expense give all notices and provide in his rates for the payment of all fees, income tax, import duties, and other charges, duties and taxes excluding GST required to be given or paid by an act of the Central or State Government or any regulation or bye-law of any local or any other statutory authority in relation to the materials, labour and plant and all other things obtained by him or used by him for the execution of the works or temporary works and by the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the works or temporary works.

6.14. Compliance with statutes, regulations etc.:

The Contractor shall conform in all respects with the provisions of any such Statutes Ordinance or Law as aforesaid and the Regulations or Bye-laws or any local or other duly

constituted authority which may be applicable to the Works or to any temporary Works and with such rules and regulations of public bodies and companies as aforesaid and shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such Statutes, Ordinance or Law, Regulations or Bye-Laws.

6.15. Patents, Rights and Royalties:

The Contractor shall save harmless fossils and indemnify the Employer from and against all claims and proceedings for or an account of infringement of any patent rights, design trade mark or name or other protected rights in respect of any construction plant, machine, work or material used for or in connection with the works or temporary works or any of them and from against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. The contractor shall pay all tonnage and other royalties, rent and other payments or compensation (if any) for getting stone, sand, gravel, clay or other materials required for the works or temporary works. The contractor shall also pay all royalties, rents and other payments for the disposal of material from demolition and other surplus material.

6.16. Interference with traffic and adjoining properties:

All operations necessary for the execution of the Works and for the construction of temporary Works shall so far as compliance with the requirements of the Contract shall be carried in such manner so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and footpaths or to properties whether in the possession of the Employer or of any other person

6.17. Bribes, Commission and Corrupt Gifts:

Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner, agent or employee or anyone in his or their behalf to any officer, servant, representative or agent of the Engineer or to any person on his behalf in relation to the obtaining or to the execution of this or any other Contract with the Employer shall in addition to any original liability which he may incur, subject the Contractor to the cancellation of this and all other Contracts with the Employer and also to the payment of any loss or damage resulting from any such cancellation and the Employer shall be entitled to deduct the amount so payable from any money otherwise due to the Contractor during this or any other Contract. Any question or dispute as to the commission of any offence under the present Clause shall be settled by the Engineer in such manner and on such evidence or information as he shall think fit and consider sufficient and his decision shall be final and binding on the Contractor.

6.18. Official secrets and drawings and photographs of works:

6.18.1. The Contract involves an obligation of secrecy and the commission by the Contractor, the agents servants, or sub-Contractor or their agents or servants of any offence under the Indian Official Secret Act 1923 or any statutory modifications or re-enactments thereof will apart from being a criminal offence constitute a breach of the Contract.

6.18.2. The Contractor shall not disclose the detail of drawings furnished to him and of Works on which he is engaged without the approval of the Engineer. No photographs of the Works or any part thereon or plant employed thereon shall be taken or permitted by the Contractor to be taken by any of his sub-contractors' employees without the approval of the Engineer and no such photographs shall be published, or otherwise circulated without the approval of the Engineer.

6.19. Precautions:

6.19.1. Anti-malarial precautions:

Every precaution shall be taken by the Contractor to prevent the breeding of mosquitoes on the Site and all receptacles used for the storage of water must be suitably protected for this purpose.

6.19.2. Precaution against air and water pollution:

Every precaution shall be taken by the Contractor to reduce air and water pollution resulting from his operations. He shall fully comply with the relevant provisions of the Maharashtra Prevention of Water Pollution Act, 1969 or subsequent legislation thereof.

6.20. Custom and Security requirements:

The Contractor shall comply with all the regulations imposed by the Customs and Port Security Authorities in respect of the passage of Plant, vehicles, material and personnel through Custom's barriers.

6.21. Water supply for construction purposes:

6.21.1. The contractor may seek fresh water for construction purposes from the Employer's water main existing in the vicinity of site on chargeable basis at the prevailing rates along with extra water charges, if any levied by the MCGM. MCGM tested water meter and water supply network shall be arranged by the contractor as necessary. In case the water supply from Employers main is insufficient to meet the requirements at the site, the contractor shall make the arrangements at his own

cost to bring fresh water from outside sources. Inadequate supply of water, if any, from Employer's water main will not be accepted as an excuse for delay or deficiencies in the work.

6.21.2. For obtaining water supply from Employer's water main, the Employer will provide a connection at suitable location from where the contractor will draw water for construction purposes. The contractor at his own cost lay and maintain the water pipe lines and storage tanks etc as may be required by him for further use. The charges for the water supplied by the Employer shall be recovered through the contractor's bills for the works. The Contractor shall at his own cost construct and maintain at the Site, to the approval of the Engineer, a temporary water storage tank of capacity sufficient to meet at least two days peak requirements. The Contractor will not be permitted to commence, on any day, work requiring use of water, unless the temporary water storage tank provided as per (a) above is at least 3/4th full.

6.22. Electric supply for Civil part:

6.22.1. All costs in connection with the procurement of all electrical energy required for the construction and maintenance of the works shall be borne by the Contractor.

6.22.2 The Contractor may seek electrical energy for construction purposes from the Employer's electrical distribution system available at site on chargeable basis at the prevailing rates. In the event of non-supply or inadequate load from Employer's Electrical System, the contractor has to make his own arrangement to produce the required electricity at their cost.

6.22.3. In case of electric connection from the Employer's electrical network, the Electrical Department of the Employer will provide, at the cost of the Employer, a meter at the location of supply. The Contractor shall at his own cost, lay and maintain the cable and install and maintain a distribution board with good quality switch gear through a licensed electrical Contractor and the Contractor shall submit Insulation Test Certificate issued by the licensed electrical Contractor. The contractor shall approach Mechanical Engineering & Electrical Department for electrical connection and make requisite security Deposit and complete the requisite formalities of MEED.

6.22.4. The Employer reserves the right to disconnect or switch off the electric connection given from its electrical network if

- (a) it becomes necessary to do so for maintaining electric supply to the Employer's installations
- (b) the Contractor's installation is defective
- (c) the Contractor fails to comply with any of the conditions under which the connection has been given.

In the event of disconnection/ switching off of the electric connection as above the Contractor will have to make his own arrangements at his cost for diesel generating sets etc. and the Contractor will have no claim to extra cost for completing the Works. In case of (b) above the electric supply will be restored only after the Contractor rectifies the fault and submits a fresh Insulation Test Certificate through a licensed electrical Contractor.

- 6.22.5. The electrical energy consumed will be charged on the basis of meter reading at the prevailing rate at the time of use. The Contractor shall fulfil all other formalities necessary for electrical connection, from the employer's electrical network.
- 6.22.6. Electric supply for Electrical part
- 6.22.7. Contractor will be allowed to tap/use electric power to the extent of 1 KW free of cost, if electric supply from this Port Trust network is available at work site subject to the contractor's complying with the rules and regulations and temporary load safety precaution laid down by this Port Trust from time to time. Use of power is restricted to single phase, electrical drilling machine, temporary lighting and testing of the lighting installation
- 6.22.8. The additional power supply requirement will be on chargeable basis during the period of contract as per applicable electricity tariff of Mumbai Port Trust. The contractor will provide cables, switchgears etc to receive electricity from MbPT's nearest electric supply service. For use of such electricity, all supply and safety regulations including Indian Electricity Rules to be abide by the contractor System, the contractor has to make his own arrangement to produce the required electricity at their cost.

6.23. Restrictions for safety, security and co-ordination:

6.23.1. General safety rules:

Contractor shall adhere to safe construction practice and guard against hazardous and unsafe working conditions and shall comply with safety rules regulations of the Employer and other concerned authorities. The cost of the same is deemed to be included in the rates quoted by the Contractor.

i. First-aid and industrial injuries:

- 1. Contractor shall maintain first aid facilities for his employees and those of his sub-contractors and also for Employer's representative working / supervising the work.
- 2. Contractor shall make necessary arrangements of and ambulance (land transport leg) for the treatment of industrial injuries requiring hospitalisation, without loss of time. Names of those providing these services and their telephone numbers shall be prominently displayed at the

site.

3. All critical industrial injuries shall be reported promptly to Employer, and a copy of Contractor's report covering each personal injury requiring the attention of a physician shall be furnished to the Employer.

ii. No smoking:

Smoking within the dock areas, extended dock area and on the Jetty is strictly prohibited. Violators of the no smoking rules shall be removed immediately.

iii. Contractor's Barricades and lights:

1. Contractor shall erect and maintain barricades and lighting required in connection with his operation to guard or protect,
 - i) Hoisting areas.
 - ii) Areas adjudged hazardous.
 - iii) Employer's existing property subject to damage by Contractor's operations.
 - iv) Road, unloading spots.
 - v) Any other area directed by the Engineer.
2. Contractor's employees and those of his sub-contractors shall become acquainted with the Employer's barricading practice and comply with the provisions thereof.
3. Red flasher lanterns shall mark barricades and hazardous areas adjacent to but not located on normal routes of travel at nights.

iv. Scaffolding:

1. Suitable strong suspended or otherwise scaffolding should be provided for workmen for all works that cannot safely be carried out from the available access/approaches or from existing permanent structures.
2. Scaffolding or staging and swing suspended from an overhead support or erected with stationary support shall have a guard rail properly attached bolted braced and otherwise guarded at least 1 m. high above the floor or platform of such scaffolding or staging and extending along the entire length of the outside and ends thereof with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the structure.
3. Working platform, gangways and stairways should be so constructed that they should not sag unduly or unequally and should be closely boarded, should have adequate width and should be suitably fastened.
4. Every opening in a working platform shall be provided with suitable means to

prevent the fall of persons or materials by providing suitable fencing or railing whose minimum height shall be 1 metre.

5. Safe means of access shall be provided to all working platforms and other working places. Adequate precautions shall be taken to prevent danger from electrical equipment. No material on any of the sites of work shall be so stacked or placed to cause danger or inconvenience to any person or public. The Contractor shall also provide all necessary fencing and lights to protect the workers and staff from accidents, and shall be bound to bear the expenses of defence of every suit, action or other proceeding of law and that may be brought by any person for injury sustained owing to neglect of necessary precautions and pay any damage and costs which may be awarded in any such suit or action or proceedings to any such person or which may with the consent of the Contractor be paid to compromise any claim by any such person.

i. **Excavation and Trenching:**

All trenches 1.2 Metres or more in depth, shall at all times be supplied with at least one ladder for each 50 Metres length or fraction thereof. Ladder shall be extended from bottom of the trench to at least 1 Metre above the surface of the ground. The sides of the trenches, which are 1.5 Metres in depth shall be stepped back to give suitable slope or securely held by timber bracing, so as to avoid the danger of sides to collapse. The excavated materials shall not be placed within 1.5 Metres of the edge of the trench or half of the trench width whichever is more. Cutting shall be done from top to bottom. Under no circumstances undermining or undercutting shall be done.

v. Demolition:

Before any demolition work is commenced and also during the progress of the work,

- i) All areas adjacent to the work site prone to accidents shall either be closed or suitably protected.
- ii) Sufficient care shall be taken for electric cable or apparatus which are potential source of danger
- iii) All practical steps shall be taken to prevent danger to persons employed from risk of fire, explosion etc.

vi. Safety equipment:

1. The Contractor shall take adequate steps to ensure proper use of all necessary personnel safety equipments like, safety belt, industrial helmet, gum boot, gloves, mask and other personnel protection equipments as considered adequate by the Engineer throughout the working time.
2. Workers employed on mixing chemicals, cement concrete, mortars etc.

shall be provided with protective footwear and protective gloves.

3. Those engaged in white washing and mixing or stacking of cement or any materials, which are injuries to the eyes, shall be provided with protective goggles.
4. Those engaged in welding and cutting works shall be provided with face & eye shields and hand gloves.

vii. General:

1. All ladders / temporary supporting platforms and other safety devices mentioned or described herein shall be maintained in safe condition and no scaffold, ladder or equipment shall be altered or removed while it is in use. Adequate washing facilities should be provided near places of work.
2. These safety provisions should be brought to the notice of all concerned by displaying on a notice board at a prominent place at the work-spot. The person responsible for compliance of the safety code shall be named therein by the Contractor.
3. To ensure effective enforcement of the rules and regulations relating to safety precautions, the arrangements made by the Contractor shall be open to inspection by the Employer's Welfare Officer, Engineer or Safety Officer or their representatives.
1. Notwithstanding the above clauses there is nothing in these to exempt the Contractor for the operations of any other Act or rules in force. The work throughout including any temporary works shall be carried out in such a manner as not to interfere in any way whatsoever with the traffic on any roads or foot-paths at the site or in the vicinity thereto or any existing works whether the property of the Employer or of a third party.
2. In addition to the above, the Contractor shall abide by the safety code provision as per CPWD Safety Code and IS:3696 (Part-I and Part-II), IS:3764 and IS:4081.

6.23.2. Carrying out welding, gas cutting or other hot work:

Whenever welding, gas cutting or other hot work is to be carried out, the Contractor shall give at least one week's prior notice to the Employer's Port Safety & Fire Officer (and copy to Engineer's Representative) who in turn will issue the permission along with the guidelines and precautions required to be taken while carrying out the hot work. The Contractor shall at his own cost, immediately comply with all the requirements intimated to him, such as provision of fire buckets, water, sand, portable fire extinguishers etc. The Contractor shall not commence hot work until he receives clearance in writing from Employer's Port Safety & Fire Officer to do so. In case the hot work is required to be suspended for safety reasons, the Contractor shall immediately suspend the hot work upon receiving instructions

from the Engineer's Representative and the hot work shall not be resumed until further instructions are issued by the Engineer's Representative to do so.

6.23.3. Facilities for works of other agencies:

The Contractor shall take care to see that his works do not, in anyway, hamper the concurrent progress of works of other agencies in and around the premises. The Contractor shall afford all facilities to them like lockable & open place for storing their materials, place for their site office, etc., as may be directed by the Engineer's Representative, so that they can concurrently carry on their works. These agencies will make their own arrangements for the security of their stores, works, offices, etc.

6.24. Life saving appliances and First-Aid equipment: The Contractor shall provide and maintain upon the works sufficient, proper and efficient life saving appliances and first aid equipments to the approval of the Engineer and Port Safety Officer.

7. Labour:

7.1. Compliance with statutes and payment of wages:

7.1.1. The Contractor shall make his own arrangements for the engagement of all labour preferably local.

7.1.2. The Contractor shall comply fully with all Central and State laws dealing with the employment of persons, apprentices etc. including the Employment of Children Act, 1938, Payment of Wages Act, 1936, the Workmen's Compensation Act, 1923, the Factories Act, 1948, the Minimum Wages Act, 1948, Dock Labour Regulations, Contract Labour (Regulation and Abolition) Act 1970 and any statutory amendment or re-enactment thereof for the time being in force.

The successful Contractor shall also obtain certificate of registration under rule No.24 of the 'Building and Other Construction Workers Central Rules 1988' from the office of the Deputy Chief Labour Commissioner (Central)-IV, Mumbai.

7.1.3. The Contractor shall display on the site of the Work notices regarding wages etc. as are required under the law. The Contractor shall also maintain Wage Books and Wage Slips and other records concerning labour/ workers as are required under the law.

7.1.4. The Contractor shall submit periodical return records concerning the labour employed on the Works, to the Engineer's representative.

7.1.5. The Contractor shall ensure that none of his or his Sub-Contractor's employees camp at the site/ working area or at the Employer's lands/ premises without written permission.

7.1.6. The Contractor shall be responsible for the observance by his sub-contractors of the foregoing provisions.

7.1.7. The Employer shall have the right to deduct from the moneys due to the Contractor, any sum required or estimated to be required for making good loss suffered by a worker or workers by reason of non-compliance by the Contractor to the existing laws and regulations concerning the labour employed on the Work.

7.1.8. The contractors are hereby directed to comply with the following conditions while deploying of casual labours on the contracts awarded to them by MbPT and submit the required documents in support thereof.

- (i) Registration with Employees Provident Fund (EPFO), Organisation & intimation of P.F. Registration code No.
- (ii) Registration with Employees State Insurance Corporation and submission of ESI code No and updating the contribution towards the ESIC,
- (iii) Workmen Compensation Policy shall be invariably taken irrespective of labour strength,
- (iv) Labour License shall be obtained if the deployed man power is more than 19,
- (v) All the workmen shall be paid as per Minimum Wages Act.
- (vi) Payment to the workers shall be made through Bank accounts only;
- (vii) All the workmen should be covered under Life Insurance under Pradhan Mantri Bima Scheme.

All the conditions mentioned above, shall be scrupulously followed failing which payment of bills will not be recommended.

7.2. Supply of drinking water to labour:

The Contractor as far as practicable, having regard to local conditions, provide on the Site, to the satisfaction of the Engineer's Representative an adequate supply of drinking and other water for the use of the Contractor's staff and workmen.

7.3. Festivals and religious customs:

The Contractor shall in all dealings with labour in his employment have due regard to all recognised festivals and observe days of rest as applicable to the outdoor staff of the Engineering Department of Mumbai Port Trust.

7.4. Epidemics:

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

7.5. Disorderly conduct etc.:

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or among his employees, officers or agents and for the preservation of peace and protection of persons and property in the neighbourhood of the works against the same.

7.6. Foot wear, gloves etc.:

The Contractor shall at his own expense provide footwear and gloves for all labour engaged on concrete mixing work and all other types of work involving the use of tar and cement, glass shields for welder and diving equipment for divers etc. to the satisfaction of the Engineer or his Representative and on his failure to do so, the Employer shall be entitled to provide the same and recover the cost from the Contractor.

7.7. Accidents:

The Contractor shall within 24 hours of the occurrence of any accident at or about the site or in connection with the execution of the Work report such accidents to the Engineer and the Engineer's Representative. The Contractor shall also report such accidents to the concerned constituted authorities.

7.8. Fair wages clause:

- (i) The Contractor shall pay the labourers engaged by him on the work not less than fair wages which expression shall mean whether for time or piece work the respective rates of wages as fixed by the Central Public Works Department as Fair Wages for Greater Mumbai payable to the different categories of labourers as set out in the schedule annexed thereto. However, subject to the

other provisions in the Conditions of Contract herein and to provision of any other law for the time being in force in the country.

- (ii)** Contractor shall notwithstanding the provision of any contract to the contrary cause to be paid a fair wages to the labourers directly engaged on the work including any labour engaged by the sub-Contractor in connection with the said works as if the labourers had been immediately employed by him.

- (iii)** Display of notices regarding wages, etc.:-
The Contractor shall, before he commences his work of contract, display and correctly maintain and continue to display and correctly maintain in a clean and legible condition at conspicuous places on the work site notices in English and in the local Indian language spoken by the majority of the workers stating therein the rates of wages which have been fixed as fair wages and the hours of work for which such wages are earned and send a copy of such notices to the Engineer, Mumbai Port Trust.

- (iv)** Wages, Books and Wage Slips: -
The Contractor shall maintain Wage book of each worker in such form as may be convenient but the same shall include the following particulars.
 - i) Rate of daily or monthly wages.
 - ii) Nature of work on which employed.
 - iii) Total number of days worked during each wage period.
 - iv) Total amount payable for the work during each wage period.
 - v) All deductions made from the wages with all indications in each case of the ground for which the deductions are made.
 - vi) Wages actually paid for each wage period.

A wage slip for each worker employed on the work.

Provided that the Engineer may grant exemption from the maintenance of the wage slip if in his opinion not more than 10 persons are likely to be employed directly or indirectly on the work but in any case he will have to maintain wage books.

- (v)** Preservation of books and slips:-
The wage books and the wage slips shall be preserved for a period of not less than 12 months after the date of last entry made in it.

- (vi)** Inspection of books and slips:-
The Contractor shall allow inspection of the aforesaid wage books and wage slips to any of his workers or to an agent at a convenient time and place after due notice is received or to the Engineer, MbPT or any other person authorised by him or on his behalf.

- (vii)** Power of the Engineer, MbPT to make investigation and enquiries:-
The Engineer, MbPT or any other person authorised by the Engineer on his

behalf shall have power to make enquiries with a view to ascertaining and enforcement due and proper observance of the fair wage clause. He shall also have the power to investigate into any complaint regarding any default made by the Contractor or sub-Contractor in regard to such provision.

- (viii) The Engineer shall have the right to deduct from the money due to the Contractor any sum required or estimated to be required for making good the loss suffered by a worker or workers for the reason of non-payment of the aforesaid fair wages except on account of any deductions that may be permissible under any law for the time being in force.
- (ix) The contractor will be required to submit evidence of payment of wages to the labour/ workmen in to their bank account, the statement of remittance towards wages, EPF & ESIC for all labours engaged for the subject work along with their bills duly verified by the Executing Engineer and an Officer of the Welfare Division of Mumbai Port Trust. The wages and remittances for ESIC, EPF etc. shall be in accordance with the prevailing labour laws, rules and regulations governing the minimum wages Act. The contractors bills will not be processed / passed/ in case of non-compliance of these provisions in the contract

8. Materials and Workmanship:

a) Quality of materials, workmanship and tests:

- i. All material and workmanship shall be of the respective kinds described in the Specification and in accordance with the Engineer's Instructions and shall be subjected from time to time to such test as the Engineer may direct at the place of manufacture or fabrication, on the Site or any approved Testing Laboratories. The scale of sampling and testing shall be as per norms prescribed by the Bureau of Indian Standard, and where not prescribed by BIS the same shall be as directed by the Engineer.
- ii. The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for inspection, sampling, measurement or testing any work and the quality, weight or quantity of any material used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer.
- iii. The material under test shall be stacked by the Contractor separately and he shall not use a material unless and until it is tested and accepted by the Engineer or his Representative. In case of violation of this requirement by the Contractor, payment may not be made for the work executed with such materials. If the Contractor repeatedly violates the above requirement, the Employer will be at liberty to determine the contract and the Contractor will be responsible to the Employer for the damage thereby incurred by the latter.

- iv. Acceptance/ rejection of the material(s) will normally be communicated to the Contractor as per the test result findings. Rejected material shall be removed from the site by the Contractor within three days of rejection or such period as may be specified by the Engineer or his Representative.
- v. The Contractor shall arrange to test any of the materials/ finished items/ concrete cubes etc. as per relevant IS Specifications or as suggested by Third Party Inspection Agency in laboratories of Engineer's choice. All other costs (except the testing charges) i.e. cost of material, packaging, transportation of materials to the laboratories etc. shall be borne by the Contractor. The testing charges shall be borne by the Employer if the test results are satisfactory. If approved and the testing is carried out at the Contractors Material Testing Laboratory at site, No testing charges are reimbursable. If the test results are unsatisfactory/not as per relevant IS Specifications/ MbPT's Specifications, the testing charges shall be borne by the Contractor. The payment of testing charges for satisfactory test results will be reimbursed through the Contractor's measured interim bill.

b) Access to place of manufacture / works etc.:

The Employer and the Engineer and any person authorised by them shall at all times have access to the Contractor's plant, Works and to the site and to all workshops and places where work is being prepared or where material, manufactured articles or machinery are being obtained for the Works and the Contractor shall afford every facility for and every assistance in obtaining right to such access.

c) Examination of work before covering up:

No work shall be covered up or put out of view without the approval of the Engineer or the Engineer's Representative. The Contractor shall afford full opportunity for the Engineer or the Engineer's Representative to examine and measure any work, which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the Engineer's Representative whenever any such work is ready or about to be ready for examination and the Engineer's Representative shall without unreasonable delay attend for the purpose of examining and measuring of such work.

d) Removal of improper work and materials:

The Engineer or his Representative shall, during the progress of the works, have power to order in writing from time to time.

- (i) the removal from the site within such time or times as may be specified in the order, of any materials which in the opinion of the Engineer or his Representative are not in accordance with the Contract, and
- (ii) the substitution of the materials so removed by proper and suitable materials, and
- (iii) The removal and proper re-execution (notwithstanding any previous test thereof or interim payment thereof) of any Work which in the opinion of the Engineer or his representative is not in accordance with the Contract in respect of materials or workmanship.

In case of default on the part of the Contractor in carrying out such order the Employer shall after giving a notice to the Contractor, be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto shall be borne by the Contractor and shall be recovered from him by the Employer or may be deducted by the Employer from any moneys due or which may become due to the Contractor.

e) Right to use before tests:

If the Contractor neglects to make the tests on completion within the time stipulated by the Contractor, the Engineer / Employer shall nevertheless have the right of using the works at the Contractor's risk until the test on completion are successfully carried out.

9. Commencement and Delays:

9.1. Release of site for carrying out the works:

The Contractor shall complete all initial formalities for the tender such as payment of Security deposit, taking out necessary insurance policies, Labour License etc. under this contract within **21 days** after the date of receipt of the letter of acceptance of his offer. If the Contractor delays these activities, the contract will be liable for termination and the Earnest money deposited by him will be forfeited and the Contractor will be responsible for the losses suffered by the Employer.

The permission for execution of contract shall be granted only after the contractor is registered himself online with EPFO (Employees Provident Fund Organization) and ESIC.

The site will be released in whole/ parts within a week after Contractor fulfilling all above mentioned formalities. The buildings are in mostly occupied condition and the repairs to these buildings are to be carried out in as-is-where-is basis in occupied condition. The works need to be carried out in close coordination with the residents

and all care shall be taken to avoid/ minimize the hindrance/ disturbance to the tenants. The building being in occupied condition, availability of room for repairs may not be continuous in vertical or horizontal in-line and therefore contractor shall plan the activities to avoid idling of workers, materials/ scaffolding/ machinery as desired. However, it will be obligatory on the part of the contractor to complete the whole work within the scheduled completion period.

9.2. Commencement & execution of works: Contractor shall commence the work immediately at the site or part site(s) released to them. The works shall be carried out as described in the 'Schedule of Quantities & Rates' and as specified and as directed and in consultation with Civil Engineering Department and Mechanical and Electrical Engineering Department.

9.3. Remedy for Contractor's failure to make proper progress:

Upon the Engineer certifying that, in his opinion, the Contractor, after receiving from the Engineer a written notice,

1. has suspended progress on any portion or any item of the Works for seven days, or
2. has failed to make proper progress on any portion of item of the works for seven days, or
3. has failed to complete any portion or items of the works by the time specified by the Engineer, or
4. has failed to remove from site within seven days, materials which have been condemned and rejected, or
5. has failed to pull down within seven days and rebuild within the time stipulated by the Engineer, works which have been condemned and rejected, or
6. has failed to give to the Engineer or his Representative proper facilities for inspecting the works or any part thereof for three days, or
7. has failed to carry out proper tests for three days on any work or materials,

Then the Employer, without restricting/prejudice to their rights under relevant Clause in the 'Conditions of Contract' and without expelling the contractors from the site of works, without determining the contract and while permitting the Contractor to carry out other balance works under this contract, may carry out at the risk and cost of the Contractor

- (i) the execution of such portion or items of the works which the Contractor has suspended or failed to make proper progress in or failed to complete within the specified time,
- (ii) removal of condemned and rejected materials from the site,
- (iii) pulling down and rebuilding of condemned and rejected work,
- (iv) the provision of proper facilities for inspecting the works, and
- (v) Testing of any work or materials.

In such cases, additional expenditure incurred if any by the Employer over and above that which would have been incurred by him had the above works been carried out by the Contractor under the terms of this contract shall be paid by the Contractor to the Employer. The Employer reserves his right to recover such additional expenditure from the money's payable to the Contractor or from deposits or such amount that may have been lodged by the Contractor with the Employer for due performance of the contract. The Employer further reserves his right to recover such additional expenditure from the money's Payable to the Contractor for any other contracts or transactions of any nature whatsoever existing between the Employer and the Contractor.

9.4. **Suspension of work on order of Engineer:**

The Contractor shall on the written order of the Engineer or his representative suspend the progress of the Works or any part thereof for such time or times and in such manner as the Engineer or his representative may consider necessary and shall, during such suspension, properly protect and secure the Work so far as is necessary in the opinion of Engineer or his representative and shall not resume the execution of the same until a written order is received from the Engineer or his Representative to proceed. Cost, if any, incurred by the Contractor in giving effect to the instructions of the Engineer or his Representative under this clause shall not be borne or paid by the Employer.

9.5. **Completion Period:**

The completion period for the work covered under this tender is mentioned in the tender Notice herebefore. The completion period will commence from the date of release of part/ full portion of the site.

The work shall be completed in accordance with the provisions of the Contract with any authorised alterations, amendments, additions or omissions within the completion period stipulated or such further period as may be allowed by the Engineer under Clause No.9.6 hereunder and shall not be considered as completed until the Engineer has certified in writing that it has been completed to his satisfaction.

- 9.5.1. If the work is delayed beyond the completion period stipulated in the contract or extended period as may be allowed by the Engineer in accordance with Clause No.9.6 hereunder, the Contractor shall be liable to pay liquidated damage to the Employer as set out in Clause No.9.8 hereunder.
- 9.5.2. If the delay in completion of the work is more than twenty five percent (25%) of the stipulated completion period, the contract is liable to be terminated.

9.6. **Extension of time:**

In the event of

- (i) any delay, impediment or prevention by employer
- (ii) Any extra or additional works
- (iii) Exceptionally adverse climatic conditions
- (iv) Other special circumstances which may occur other than through a default of or breach of contract by the contractor or for which he responsible.

which may occur be such as may in the opinion of the Engineer fairly entitle the Contractor to an extension of time for the completion of the work, the Engineer shall determine the period of such extension, subject to the condition that any and every extension of time granted by the Engineer shall be deemed to be in full compensation and satisfaction for and in respect of any and every actual or possible loss/ damage or injury sustained or sustainable by the Contractor in respect of the cause or causes giving rise to such extension. Provided further that the Engineer is not bound to take into account above circumstances / event unless the Contractor has within 28 days after such circumstances / event have arisen or as soon thereafter as is practicable delivered to the Engineer's Representative particulars of any claim to an extension of time to which he may consider himself entitled in order that such claim may be investigated at that time.

9.7. **Working hours:**

The Working Hours shall normally be from 09.00 A.M. to sunset. No work shall be carried out between sunset and 09.00 A.M. and on Sundays and on public holidays except with the previous sanction in writing of the Engineer or his Representative. However, granting of such permission will be entirely at the discretion of the Engineer or his Representative and cannot be claimed by the Contractor as a matter of right. The refusal to grant such permission will not be accepted as a ground or excuse for not completing the Works within the contract period stated above or as a ground for the Contractor to claim additional payment.

9.8. **Liquidated damages for delay in completion:**

THIS CLAUSE IS NOT APPLICABLE FOR TENDER NO.E.90/2021

If the Contractor fails to complete the Work within the time prescribed in the Contract or extended time as may have been granted by the Engineer, then the Contractor shall pay to the Employer, liquidated damages for such default (and not as a penalty).

However, if the work is delayed by more than 25% of the contracted completion period of that part, the contract for that particular part is liable to be terminated and the balance work of that part are liable to be got completed by Mumbai Port Trust through any other agency at the risk and cost of the defaulting Contractor.

The Employer may without prejudice to any other method of recovery deduct the amount of such damages from any moneys 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 under tender or from any other of his obligations and liabilities under the Contract.

9.9. Certificate of substantial completion of works:

- 9.9.1. As soon as, in the opinion of the Engineer the works have been substantially completed and have satisfactorily passed any final test that may be prescribed by the Contract, and the site shall have been handed back by the Contractor to the Employer, the Engineer may on receiving a written undertaking by the Contractor to finish all outstanding work during the first two months of Defect liability period, issue a certificate of substantial completion. The Defect Liability Period for the Works shall commence from the date of such certificate. In the event of the outstanding works not being completed within two months from the date of issue of the Substantial Completion Certificate, the Work shall be deemed not to have been taken over on the date of the Substantial Completion Certificate and the Defect liability period thereof shall begin only when the outstanding works are completed in all respects and handed over to the Engineer.
- 9.9.2. The issue of such certificate of Substantial Completion is a matter to be decided by the Engineer in his absolute discretion and the discretion will be exercised in cases of the following types.
- i) Work has been completed to such an extent that the Employer is enabled to occupy and make gainful use of it to the extent he intended to and such gainful use can be made by him without being unduly inconvenienced by concurrent execution of the balance of works by the Contractor.
 - ii) The work has been absolutely handed over to another agency and the balance of works is small and the Contractor cannot undertake these small balance works efficiently concurrently with the work of the other agency.
- 9.9.3. In cases where the Engineer decides that the circumstances justifying issue of certificate of Substantial Completion do not exist, the date of completion means the date on which the work has been completed in all respects (barring rectification of minor defects, which rectification does not interfere with the gainful use).

10. Maintenance and defects:

10.1. Defect during execution:

The Contractor shall at his own cost and within three days after notice in writing to that effect has been given, commence to re-execute such portion of the works under each part of the tender as the Engineer or his Representative may consider have been executed in an unsatisfactory manner, even though the works may have been previously passed, or even if the Contractor's attention had not been previously drawn to the unsatisfactory nature thereof. No certificate that may be granted by the Engineer to the Contractor under these presents shall relieve the Contractor from his liability for and in respect of unsound work discovered prior to the date of issue of the final certificate.

10.2. Defect liability period:

The Defect Liability Period is mentioned in Tender Notice herebefore in Tender Notice.

10.3. Repair and remedies during defect liability period:

During the Defect Liability Period, the Contractor shall execute all such works of repair, amendment, reconstruction, rectification and making good of defects, imperfections, shrinkages or other faults as may be instructed to the Contractor in writing by the Engineer. Such repair or remedial measures shall be attended within fourteen days from the date of receipt of written instructions.

As regards to the procedure of carrying out the repair/s, rectification and making good of defects, the decision of Engineer shall be final and binding upon the Contractor. The works carried out during the Defect Liability Period shall also be maintained till the end of Defect Liability Period.

Free maintenance period for the works covered under this contract for post construction Anti termite & pest control treatment is **Three (3) Years** from the date of completion of work. During this 3 years' period, contractor has to carry out every half yearly inspection of the structures, obtain acknowledgement from the occupant and to submit report to Assistant Executive Engineer. In case of any specific complaints during the Free Maintenance period, the contractor shall attend the same within a period of 7 days from the receipt of the notice. In case of failure 10% security Deposit towards the item will be forfeited and the work will be carried out through any other agency at the risk & cost of the contractor.

10.4. Cost of repairs and remedies:

All such work of repairs and remedies shall be carried out by the Contractor at his own expense, if in the opinion of the Engineer, the same is due to the use of materials or workmanship not in accordance with the Contract or due to neglect or

failure on the part of the Contractor to comply with any obligations expressed or implied under the contract.

10.5. Remedy on Contractor's failure to carry out work as required:

If the Contractor fails to do any such work of repairs and remedies and as required by the Engineer, the Employer shall be entitled to carry out such work by his own workmen or by other Contractor. The cost so incurred shall be deducted from any money's due or that become due to the Contractor.

11 Additions, Alterations and Omissions:

11.1. Variations:

- (i) The Engineer may make any variations in the, quality or quantity of the Works, or any part thereof that may in his opinion be necessary, and for that purpose or if for any other reason it shall in his opinion be desirable, shall have powers to order the Contractor to do and the Contractor shall do any of the following.
 - (i) Increase or decrease the quantity of any work included in the Contract.
 - (ii) Deletion of any work.
 - (iii) Change the character or quality or kind of any work.
 - (iv) Change the levels, lines, position and dimensions of any part of the Works, and
 - (v) Execute additional work of any kind necessary for the completion of the Works.

Such variation shall not in any way vitiate or invalidate the Contract but the value (if any) of all such variations shall be taken into account in ascertaining the amount of the Contract Price.

- (ii) No such variation shall be made by the Contractor without an order in writing of the Engineer, provided that no order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this clause but is the result of the quantities required to be executed for completion of the work being more or less than those stated against the respective items in the Schedule of Quantities and Rates, and provided further that in such cases, variation from the rates in the accepted Schedule of Quantities and Rates shall not be allowed.
- (iii) The valuation of extra item / substituted item / modified item shall be made in accordance with Clause No.11.2 hereunder, provided that the varied work has been executed with the prior approval of the Engineer.
- (iv) If extra item / substituted item / modified items are executed by the Contractor without the prior approval of the Engineer, such work is liable to be rejected and shall be re-executed by the Contractor at no extra cost. However, the Engineer,

at his sole discretion, may accept such works, but the payment for the same will be made after reduction of ten percent (10%) from the valuation of such works made as per Clause No.11.2.

11.2. Valuation of extra item / substituted item / modified item:

The rate for any extra item / substituted item / modified item shall be determined by the Engineer as detailed below.

- a) From a similar item if such an item exists in the tender.
- b) From a comparable item, if such an item exists in the tender.

If (a) & (b) are not available then, in the following order of preference

- c) From a similar or comparable item from the Mumbai Port Trust Schedule of Rates.
- d) From CPWD Analysis of Rates/ All India Standard Schedule of Rates -Standard Analysis of Rates published by Government of India, Ministry of Works and Housing, National Buildings Organisation and using current costs of labour and materials and with an allowance of 10% on direct costs toward contractors' profit and overheads.
- e) From actual direct costs of labour and materials consumed and with an allowance of 10% towards contractors' profit and overhead.

In case of (d) and (e) above, the Contractor shall submit vouchers in respect of the rates of labour, material and hire charges of hired plant and equipment paid by him. In case of plant and equipment owned by the Contractor, the rates of hire charges to be billed will be fixed by the Engineer.

Provided that no increase of the Contract price under this clause of variation of rate or price shall be made unless as soon after the date of the order as is practicable, and in the case of extra or additional work before the commencement of the work or as soon thereafter as is applicable, notice shall have been given in writing:

Provided further that in the event of the Contractor disagreeing with the rate determined by the Engineer, the Contractor shall not stop the work but shall expeditiously execute the same and the Employer will make provisional payment at the rate determined initially pending review and final decision.

If the valuation of rates of extra items/ substituted/ modified items are determined as per Clause Nos.11.2(a), 11.2(b) & 11.2(c) then the percentage on total amount/ offered/ quoted by the Contractor above or below the estimated cost put to the Tender shall be applied to these rates and if the valuation of rates of extra items/ substituted items are determined as per Clause Nos.11.2(d) & 11.2(e) then the percentage on total amount/ offered/ quoted by the Contractor above or below the estimated cost put to the Tender Notice, shall not be applied to these rates.

11.3 Payments for extra work. –

The contractor shall send to the Engineer once in every month an account giving particulars (as full and detailed as possible) of all payments for any additional works to which the contractor may consider himself entitled and of all extra and additional works ordered by the Engineer which he has executed during the preceding months and no claim for payment for any such works will be considered which has not been made within such time as may be possible for the Engineer to physically check the said extra or additional work done by the contractor. Provided always that the Engineer shall be entitled to authorise payment to be made for any such works notwithstanding the contractor's failure to comply with this condition, if the contractor has at the earliest practicable opportunity, notified the Engineer that he intends to make a claim for such works.

12. Plant, temporary works and materials:

12.1. Exclusive use for the works:

All Construction Plant, Temporary Works and materials provided by the Contractor shall when brought on to the site be deemed to vest in the Employer and the Contractor shall not remove the same without the consent in writing of the Engineer's representative. Provided that nothing contained in these conditions shall prevent the Employer from retaining on the site for the due completion of the Works any item of construction plant, Temporary Works and materials after the happening of any event, which gives to the Engineer the right to exclude the Contractor from the site and proceed with the completion of the Works. Upon the completion of the Works, or certification by the Engineer that the plant, Temporary Works or materials are no longer required for the Works, the same shall be deemed to re-vest in the Contractor, who may then remove them from the site of work within the period stipulated by the Engineer.

12.2. Removal of plant etc.:

Upon completion of the works, the Contractor shall remove from the site all the said construction plant and temporary works remaining thereon and any unused and surplus materials provided by the Contractor and rubbish of every kind and leave the whole of site and Works clean and in a workmanlike condition to the satisfaction of the Engineer. If the Contractor fails to remove any of the said construction plant, temporary works or unused materials or rubbish within such reasonable time after the completion of the Works as may be allowed by the Engineer, then the Employer may sell the same and shall after deducting from the

proceeds, the costs, charges and expenses of and in connection with such sale, pay the balance if any to the Contractor.

12.3. Employer not liable for damage to the plant etc.:

The Employer shall not at any time be liable for the loss or damage of said construction plant, temporary Works or materials.

12.4. Employer's plant and equipment:

The Contractor may be permitted the use of the Employer's plant and other equipments (if the same can be conveniently spared) only on payment of deposit and such charges as may be determined, and on execution of Agreements as may be prescribed by the Employer. Such plant and equipment will be given on commercial terms as applicable to other users.

While using the equipment the Contractor shall carry out such directions as may be given by the Docks Manager or other office in-charge of such equipment and pay to the Employer the charges that are due but in event of his failure to do so, the amounts due shall be recovered from any amount that shall become due and payable to the Contractor.

The Employer does not guarantee availability of his plant and equipment for use by the Contractor.

13. Measurement:

13.1 Quantities:

The quantities set out in the Schedule of Quantities and Rates are the estimated quantities and are liable to altered or omitted to any extent.

13.2 Works to be measured:

The Engineer shall ascertain and determine by measurement, the value of the work done in accordance with the Contract. From time to time during the execution of the works and whenever required by the Engineer or his Representative, detailed measurements of any part or parts of the Work shall be taken jointly by the Engineer's Representative and the authorised representative of the Contractor. If any work is likely to be covered up or put out of view the Contractor shall give due notice to the Engineer's Representative to enable him to examine and measure such work before it is covered up or put out of view (see Clause No.8.c of 'Conditions of Contract'). The Contractor shall provide qualified staff and appropriate equipment to assist the Engineer or his Representative in taking such joint measurements and shall

furnish all particulars required by either of them. The measurements will be recorded by the Engineer's Representative in the Measurement Books, which shall be countersigned by the authorised representative of the Contractor at the time of recording the measurements.

If the Contractor has any difference of opinion as to the recorded measurements, he shall submit, in writing, to the Engineer, within one week from the date of the measurement, the details as to the points of differences claimed, which will be examined and decided upon by the Engineer separately.

Should the Contractor or his authorised representative fail to forthwith attend for taking the measurements along with qualified staff and appropriate equipment after having been intimated by the Engineer or his Representative,

and/ or

fail to countersign the measurements in the Measurement Books,

and/ or

fail to submit to the Engineer, in writing, within one week from the date of the measurement, the details of the points of differences claimed, if any,

then the measurements taken and recorded by the Engineer's Representative shall be taken to be the correct measurements which shall be final and binding on the Contractor and the Contractor shall have no right to dispute the same.

Should the Contractor fail to give due notice to enable the Engineer's Representative to examine and measure works before the same are covered up or put out of view, such work will not be measured and the Contractor shall have no right to claim payment for the same.

The authorised representative of the Contractor is also required to countersign the Progress Books, cement register, material register and all other record books, in which the Engineer's Representative records the progress in connection with the contract work. In case the contractor's representative does not countersign the above records, the records maintained by the engineer's representative shall be treated as final and binding on the contractor.

13.3. Method of measurement:

The Works shall be measured net, notwithstanding any general or local custom except where otherwise specifically described or prescribed in the Contract.

14. **Price variation & Price adjustment:**

14.1. The Contractor will be paid Price Variation for the labour & material components and Price

Adjustment for cement, steel & bitumen in accordance with the following formulae.

Price variation:

(I)(A) Formula for Labour Component:

$$V_1 = 0.85 \times (R-C) \times \frac{K_1}{100} \times \frac{I - I_0}{I_0}$$

Where,

- V1 = Amount of variation payable for a value R of work done.
- R = Value of work done during the period under consideration.
- C = Cost of Cement, steel and bitumen calculated on star rates for quantity as per design, incorporated in to the work during the period under consideration to be taken from II A and II B.
- K1 = Percentage of Labour Component to be taken as 35%.
- I0 = Basic Consumer Price Index for Mumbai Centre (Base 2001=100) for industrial workers declared as per the Labour Gazette, published by the Commissioner of Labour, Government of Maharashtra as prevailing on the Base Date (28 days prior to the last date for submission of the Tender).
- I = Average Consumer Price Index for Mumbai Centre (Base 2001=100) for industrial workers declared by Labour Gazette, published by the Commissioner of Labour, Government of Maharashtra for the period in which the value R of work is done. If the period covered by a bill does not coincide with a calendar month, then weighted time average for the period will be taken for I.

(I)(B) **Formula for Balance Material Component (excluding cement, steel & Bitumen):**

$$V_2 = 0.85 \times (R-C) \times \frac{K_2}{100} \times \frac{M - M_0}{M_0}$$

Where,

- V2 = Amount of variation payable for a value R of work done on account of material.
- R = Value of work done during the period under consideration.
- C = Cost of Cement and steel and Bitumen at Star rate calculated on star rates for quantity as per design, incorporated in to the work during the period under consideration to be taken from II A and II B.
- K2 = Percentage of Material Component to be taken as 60%.
- M0 = Wholesale price index for all commodities prepared by the office of Economic Advisor, Ministry of Industry, Government of India as prevailing on the Base Date (28 days prior to the last date for submission of the Tender).
- M = Average wholesale price index for all commodities prepared by the office of Economic Advisor, Ministry of Industry, Government of India, during the period under consideration. If the period covered by a bill does not coincide with a calendar month, then weighted time average for the period will be taken for M.

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

$$V_3 = 0.85 \times (R-C) \times \frac{K_3}{100} \times \frac{P - P_0}{P_0}$$

Where,

- V3 = Amount of variation payable for a value R of work done on account of POL component.
- R = Value of work done during the period under consideration.
- C = Cost of Cement, steel and bitumen calculated on star rates for quantity as per design/specification, incorporated in to the work during the period under consideration to be taken from II A and II B.
- K3 = Percentage of POL Component to be taken as 5%.
- P0 = Star rate of HSD.
- P = Average Price (average of the prices declared by IOC/ HPCL/ BPCL) of HSD for Mumbai during the period under consideration.

After removal of actual cost of cement, steel and bitumen for B above, price adjustment for the cost of cement, steel and bitumen will be made as follows.

(II)(A) **Price adjustment for Cement:**

$$P_c = R_c \times Q_c \times \frac{I_c - I_{0c}}{I_{0c}}$$

Where,

- Pc = Price adjustment for cement.
- Rc = Star rate of cement.
- Ic = Average Index for cement published by the Reserve Bank of India under "Index numbers of Wholesale Prices by Group and Sub-Groups (Monthly data) under Group (1) – Non Metallic Mineral Products Sub-Group (C) - Cement, forming the base of calculation for index of wholesale prices during the period under consideration.
- Ioc = Index for cement published by the Reserve Bank of India under Index numbers of Wholesale Prices by Group and Sub-Group (Monthly data) under Group (1) – Non Metallic Mineral Products Sub-Group (C) - Cement forming the base of calculation for index of wholesale prices on the date 28 days preceding the date prescribed for the receipt of the Tender.
- Qc = Quantity in MT of cement as per design incorporated into the work, during the period under consideration.

(II)(B) **Price adjustment for Steel:**

$$P_s = R_s \times Q_s \times \frac{I_s - I_{0s}}{I_{0s}}$$

I_{0s}

Where,

P_s = Price adjustment for steel.

R_s = Star rate of steel.

I_s = Average Index for iron and steel published by the Reserve Bank of India under "Index numbers of Wholesale Prices by Group and Sub-Groups (Monthly data) under Group (J) – Basic Metals, Alloys & Metal Products, Sub-Group (a) Basic Metals and Alloys – (1) Iron & Steel" forming the base of calculation for index of wholesale prices during the period under consideration.

I_{0s} = Average Index for Iron and Steel published by the Reserve Bank of India under 'Index numbers of Wholesale Prices by Group and Sub-Groups (Monthly data) under Group (J) – Basic Metals, Alloys & Metal Products, Sub-Group (a) Basic Metals and Alloys – (1) Iron & Steel' forming the base of calculation for index of prices on the date 28 days preceding the date prescribed for the receipt of the Tender.

Q_s = Quantity in MT of steel as per design incorporated in to the work during the period under consideration.

A) The quantities of cement & steel considered for working out price variation shall be certified by the Engineer based on approved designs and as consumed in the work excluding wastage. The quantity of bitumen shall be worked out based on the percentage of bitumen specified in the Technical specifications for asphaltic materials like asphaltic macadam and asphaltic concrete.

(B) The time of completion of the contract shall mean the period commencing from the date of the commencement of the contract and ending on the date when the time allowed for the work specified expires, taking into consideration the extension of time, if any, for completion of the work granted by Engineer under the relevant clause or the conditions of contract in cases other than those where such extension is necessitated on account of default of the contractor. The decision of the Engineer as regards the time of completion of the contract shall be final, conclusive and binding on the contractor, where compensation for delay is levied on the contractor on account of delay in completion or inadequate progress under the relevant contract provision the escalation amount for the balance work from the date of levy of such compensation shall be worked out as follows.

- a) Indices I, M, P, Ic, Is and B1 will be pegged/ freeze to the levels corresponding to the date from which such compensation for delay is levied.
- b) Pegged indices as well as actual indices prevailing at the time of calculation of escalation for the period under consideration will be compared and lower of the two will be taken for calculating actual escalation amount.
- c) The price variation under this clause shall not be payable for the extra items required to be executed during the completion of the work, where the rates payable for the extra items are to be fixed as per the current market rates provided under relevant clause of Conditions of Contract.
- d) This clause is operative both ways, i.e. if the price variation in the said Wholesale Price Index for all commodities, Consumer Price Index (New Series) or price of HSD of Mumbai or cost of cement or steel or bitumen is on the plus side,

payment on account of the price variation shall be allowed to the Contractor and if it is on the negative side, the MbPT shall be entitled to recover the same from the contractor and the amount shall be deductible from the Contractor's bill for the respective period in which there are fluctuation.

- e) In order to facilitate computation of price variation to be made under this clause the contractor shall keep such books of accounts and other documents as are necessary. The contractor shall allow inspection of the same by a duly authorised representative of the Port and shall at the request of the Engineer may require, true copies of any document so kept and such other information as the Engineer may require for verification.
- f) Calculation of Price Variation and Price Adjustment amount at the time of preparation of interim measured and final bill will be based on confirm indices and the prices of the POL products and bitumen products declared by IOC/ BPCL/ HPCL.
- g) Save and except for what is provided in the foregoing clause, nothing herein shall be construed to entitle the Contractor to reimbursement of any increase in the price of materials or in the wages of labour occurring at any time and for any reason whatsoever, including the imposition of any tax, duty or fee or an increase in the price of any petroleum product, coal, electricity or water effected by or under the order of the Central Government of a State Government.
- h) In case of Marine works, the Price Variations and Price Adjustments formulae will be similar as detailed in Para 2 above and the cost quoted by the contractor for mobilisation and demobilisation shall not be considered for calculation of Price Variations.

Star Rates:

STAR RATES will be declared after Pre-Bid meeting.

15 Certificates and Payments:

a. Mode of payment:

i. Mode of payment for works:

1. The Contractor shall submit to the Engineer after the end of each month his bills for the Works executed upto the end of the month together with particulars of other amounts to which he is entitled under the Contract. The minimum amount of an interim bill shall be of **Fifty Lakhs**. However, in exceptional cases, the Engineer/ Engineer's representative at his discretion, may issue an interim bill even if the amount is less than the above.
2. These bills shall be submitted on a printed Proforma to be prepared at the cost of the Contractor as per the proforma at Annexure-III (A) or Annexure-III(B) in triplicate for completed works.
3. In a cycle of three interim bills, two consecutive bills will be based on estimated value of work done as certified by the Engineer (referred to as estimated interim bills) and the third bill (referred to as measured interim bill) will be based on detailed measurements as certified by the Engineer.

4. For the purpose of estimated interim bill, the amount to be billed will be worked out by the Engineer's Representative and the Contractor shall submit the bill accordingly.
5. The measured bill shall be based on detailed measurements of the Works taken jointly by the Engineer's Representative and the authorised representative of the Contractor, subject to the provisions of Clause No.13.2 of 'Conditions of Contract'.
6. If the Contractor has any difference of opinion as to the estimated value of work/ measured quantities of work billed, he may indicate the same by way of a separate Annexure to the bill and not by altering the estimated value of work/ measured quantities of work recorded by the Engineer's Representative. The differences claimed by the Contractor will be examined and decided upon by the Engineer separately in terms of the contract.
7. All payments against interim bills shall be treated as 'on account' payments subject to adjustment at any time until the date of payment of final bill.
8. The Employer/ Engineer reserves the right to adjust the amount of any bill against the Contractor's dues to the Employer in connection with this contract or in connection with any other dealings of the Contractor with the Employer.
9. In case of interim bills based on estimated value of work, one hundred percentage (100%) of the amount certified by the Engineer shall generally be paid by the Employer within ten (10) working days from the date of certification of the bill by the Engineer.
10. In case of interim bills based on detailed measurement of work Eighty percentage (80%) of the amount certified by the Engineer shall generally be paid by the Employer within ten (10) working days from the date of certification of the bill by the Engineer and the balance twenty percentage (20%) of the amount will be paid by the Employer within twenty one (21) working days from the date of certification of the bill by the Engineer.
11. The Contractor's final bill shall be passed for payment after the Engineer certifies completion/ substantial completion of the work and the Contractor complies with all the Conditions of the Contract excluding the Condition regarding Defect Liability Period.
12. The date, on which a cheque of payment is handed over to the Contractor by the Employer, will be considered as the date of payment for all purposes.
13. The Engineer may at any time make any correction or modification to any certificate, which shall have been issued by him and shall have powers to withhold any certificate if the works or any parts thereof are not being carried out to his satisfaction.
14. In case the Contractor fails to prepare and submit interim or final bills, the Engineer reserves the right to prepare and certify the bills for payment/ recovery as the case may be.

b. Refund of security deposits:

- i. Upon the Engineer certifying in writing that the Works have been completed the four percent (4%) Additional Security Deposit mentioned in Clause No.6.2.1.(b) and Extra Additional Security Deposit mentioned in clause no. 6.2.1(d) (if applicable) herein will be refunded to the Contractor, provided there are no breaches of any conditions of the contract as on the date of completion and only after final bill for the work has been certified (excluding any claims referred to arbitration & pending settlement).
- ii. Upon the expiry of the Defect Liability Period, the Initial Security Deposit mentioned in Clause No.6.2.1 (a) and the three percent (3%) Retention Money mentioned in Clause No.6.2.1.(c) and 10% towards waterproofing & Anti-termite treatment items will be refunded to the Contractor, provided always that if at such time if any work remain to be executed by the Contractor ordered during the Defect Liability Period pursuant to Clause 10 hereof, the Employer shall be entitled to recover from the Security Deposit and the Retention Money the actual expenditure incurred by the Employer in the completion of such works or if such works have yet to be completed, the Engineer's estimate of the cost of completion of such works, plus any other amounts due from the Contractor.
- c. No interest payable:

No claim for interest from the contractor will be entertained by the Employer in respect of any deposits or with respect to any moneys or balances which may be in the hands of the Employer owing to any dispute between the Employer or the Engineer and the Contractor, or with respect to any delay on the part of the Employer in making monthly or final payments or otherwise.

16 Remedies and Powers:

16.1 Employer's lien:

The Employer shall have a lien on and over all or any moneys that may become due and payable to the Contractor under these presents, and/or also on and over the deposit or security amount or amounts paid under the Contract and which may become repayable to the Contractor under the conditions on that behalf herein contained for or in respect of any debt or sum that may become due and payable to the Employer by the Contractor either alone or jointly with another or other, and either under this or under any other contracts or transactions of any nature whatsoever between the Employer and the Contractor.

16.2 Liquidation and re-entry:

In the event of the Contractor going into liquidation or passing an effective resolution for winding up or upon the Contractor becoming bankrupt or making an arrangement with or assigning in favour of his creditors or upon his assigning this Contract or upon an

execution having been levied on the Contractor's goods or upon the Engineer certifying under his hand to the Contractor that in his opinion the Contractor.

- i) has abandoned the Contract, or
- ii) has suspended the progress of the Works for seven days after receiving from the Engineer written notice to proceed without any lawful excuse under these conditions, or
- iii) has failed to make proper progress with the Works for seven days after receiving from the Engineer written notice to employ more men, and/ or items of Plant equipment and/ or materials, or
- iv) has failed to remove materials from the site or re-execute work seven days after receiving from the Engineer written notice that the said materials or Works were rejected by the Engineer, or
- v) has failed to give the Employer or the Engineer proper facilities for inspecting the Works or any part of them for three days after receiving from the Employer or the Engineer written notice demanding the same, or
- vi) has failed to complete all or any part of the Work by the time or extended time for completion, or
- vii) has failed to submit any work or material to proper tests for three days after receiving a written notice from the Engineer requiring the same, or
- viii) has failed to give proper account of the materials issued to him, or
- ix) has removed from the Site without the Engineer's written permission any plant or material brought to the site, or
- x) has committed repeated breaches of any of the conditions of the contract or Specifications for the materials and workmanship, or
- xi) has failed to complete the work within twenty five percent (25%) of the contracted completion period over the completion period as stipulated under Clause No. 9.5 herein above.

then the Employer after giving fourteen (14) days' notice in writing to the Contractor, may enter upon the site and the Works and expel the Contractor therefrom and may use the materials and plant upon the premises for completion of the Work and employ any other Contractor to complete or may himself complete the Works and upon such entry the Contract shall be determined save as to the rights and powers conferred upon the Employer and the Engineer hereby. The Engineer's Certificate under this clause shall be conclusive proof as between the Contractor and the Employer of the statements contained therein.

16.3 Damages and forfeiture of security deposit:

In case of failure on the part of the Contractor at any time during the currency of the Contract to comply with any of the conditions herein contained or in case of any breach of any of the terms and Conditions of the Contract or if the Employer shall enter and determine the Contract under relevant Clause above no right of action for any work done or for materials or plant of which the Employer may have taken possession in

accordance with relevant Clause in any other respect shall arise until the Engineer has certified that the Work has been satisfactorily completed and the costs of completion and penalties due for delay in completion and the periodical payments which have been made to the Contractor have been ascertained and the amount thereof certified by the Engineer in writing. The Contractor shall be liable to make good to the Employer the difference, if any, between the costs of the completion of the Works by the Employer or through other Contractors as aforesaid and the costs on the basis of the Schedule of Quantities and Rates hereunder and all other charges and expenses as shall or may in anyway be incurred or sustained. The Employer shall be at liberty to retain the said sums from any amount that shall become due and payable to the Contractor under this or any other contract without prejudice to the provision hereof. The Employer shall be entitled to forfeit the Security Deposit lodged by the Contractor with the Employer and the Retention Money retained by the Employer under Clause 6.2 above or to assess the loss or damage which the Employer has suffered by reason of such failure or breach and to appropriate the said Security Deposit towards such loss and damage without recourse to a Court of Law and without prejudice to any right of recovery by and any other means. If however, upon this being done, it appears from the Engineer's certificate that the aggregate amount of the cost of construction and the penalty if any payable by the Contractor is less than the sum which will be justly due to the Contractor in respect of the work actually executed by him upon the basis of the rates and prices hereunder written then the Employer shall pay the balance to the Contractor within a reasonable time after the issue of such certificates and if it so appears that such amount is more the sum aforesaid then the balance shall be paid by the Contractor to the Employer.

16.4 Extra Expenses:

Any extra expenses in addition to the amount specified in the Schedule of Quantities and Rates which may be incurred by the Employer in the performance of the Works, required owing to the neglect or omission on the part of the Contractor or his workmen during the execution of the Contract shall be deducted from any sums due or which may thereafter become due to the Contractor, or the Contractor may be called upon to pay the amount of such extra expense to such person or persons as the Employer may appoint to receive the same and in the event of the Contractor failing to make such payment the said amount shall be recoverable from him in such manner as the Employer may determine.

17 Law and Language:

The Contract shall be interpreted and have effect in accordance with the Law of India and no suit or other proceeding relating to this Contract shall be filed or taken up by the Contractor in any Court of Law except in Mumbai.

The Language for communications shall be English in which the Tender / contract is written.

18 Engineer Decision Final

The whole of the work under this contract shall be carried out under the direction of the Engineer and his decision upon all questions relating to the details of construction or the meaning of the drawings, conditions of contract, Specifications, Schedule of quantities and rates and the methods of carrying out the work shall be final and any dispute arising under in connection with this contract or the carrying out thereof including any question as to construction and meaning of this contract or any clause therein shall be final and binding upon the Contractor whether such decision shall have given by way of certificate or otherwise and whether it shall have been given during the progress of the work or after completion of the same.

19 Notice to Statutory bodies:

The Contractor shall give the notices to traffic police, municipal corporation, police, and other statutory and non statutory authorities, etc. that may be required by law and obtain all requisite licences for temporary obstructions, enclosures and for any other purposes whatsoever and pay all fees, taxes and charges which may be leviable on account of his/ their own operations in executing the contract.

The contractor shall also give notices to Central Industrial Security Force (CISF), Mechanical Engineering Department, MSSC, Local Police, MCGM, Port Department and Port Fire and Safety Officer of Mumbai Port Trust and shall abide by their terms and conditions.

The contractor shall also prepare the necessary documents and perquisites and obtain the necessary approvals from Special Planning Authority of Port if required and instructed.

20 Safety of existing services:

The Contractor shall take due care and adopt such measures to ensure that the existing underground utility services of Mumbai Port Trust as well as other Public Utility Bodies viz. TATA, BEST, MTNL, MCGM, MGL etc. are not damaged during the execution of the work. Exact location and nature of a service shall be ascertained by the contractor from the concerned agencies by taking trial pits at strategic points as directed by the Engineer or his representative. The work in the vicinity of such services shall be carried out to meet the specific requirements of the concerned authority to which the service belongs. Any damage caused to a service, irrespective of the fact that the utmost precautions are taken to avoid damage shall be at the

entire risk and cost of the Contractor.

21 Contractor's site office:

The contractor will be allowed, rent free, the use of such ground, as is available at or near the site of work, for his site office, Laboratory & store, as in the opinion of the Engineer's Representative may be absolutely necessary for the execution of works.

In case if the contractor desires to have store/ office in MbPT residential buildings and in the absolute discretion of the Engineer, such rooms will be allotted to the contractor subject to the availability and recovery of rental charges as per MbPT rules. The electricity charges shall be recovered at the prevailing MbPT rates from the running bills. If allotted such units shall be vacated within 30 days of the completion of contract period failing which penal rent as per MbPT rules will be recovered from the contractor. The maintenance of such units shall be the sole responsibility of the contractor.

22 Removal of Surplus Excavated Materials & Debris:

All the surplus excavated materials/ debris/ cement plaster/ brick bats/concrete/ wooden scrap materials/ scrap etc. after back filling and debris arising out of the work as ordered by the site Engineer shall be removed by Contractor by making necessary arrangement to dispose it of anywhere out of Mumbai Port Estate. The material shall not be dumped anywhere in Mumbai Port Trust Estate. If any of such materials are found dumped anywhere in Mumbai Port Trust Estate, a fine of Rs.25,000/- per lorry load will be recovered from the Contractor.

23 Records:

The contractors Site Engineer shall record, keep and maintain progress book, work instruction book, material registers, instruction register, hindrance register, work diary, and all such other records as per CVC guidelines and Third Party Inspection. The contractor shall submit the measurements of executed items for the verification of MbPT Engineers.

24 Facilities to be provided by the Contractor:

24.1 Vehicle:

The contractor at his own cost shall provide within 15 days, from the issue of Letter of acceptance, TWO (2) Air conditioned vehicles (Transport permit), which are not more than five years old, of any model of Mahindra bolero, Enjoy, Xylo or similar vehicle of any other manufacturer as approved by the Engineer, for the entire contract and up to Three months after the final completion period or till the final certification of Final bill whichever is later for exclusive use of MbPT Engineer and his representative. The vehicles shall be well maintained to the entire satisfaction

of Engineer/ Engineer's representative. All expenses for fuel, lubricant oil, other consumables, service and maintenance, drivers, repairs and replacements etc. to be borne by the contractor. The vehicle should be made available on all the days during the contract period except on Sundays & port trust holidays from 9.00 A.M to 7.00 P.M or during the site working hours as directed. In case on any day the work is extended beyond 7.00 P.M the work is required to be carried out on Holidays, the vehicles shall be provided on such days till such time the work is carried out at site. However, the usage of each vehicle will not exceed 80 Kms. per day calculated on monthly average basis. Kilo Meter will be counted from the requisitioning point (means the location directed by the Engineer) to the dispensing point (means the trip ending point). The such vehicles shall be allowed to pass through MbPT toll gates free of cost. In case of failure to provide vehicles on any day an amount of Rs. 5,000 per vehicle per day shall be deducted from the contractor's bills as a penalty.

24.2 Site Office for MbPT staff:

Subsequent to award of work within 15 days, the contractor at his own cost shall modify if necessary, furnish & maintain 1 site office at Nadkarni Park in any rooms as directed including necessary electrical fittings and fixtures, for the exclusive use of Engineer and his representative during the tenure of contract. The site offices shall be equipped with the following facilities:

Sr. No.	Item	Qty.
1.	Pedestal Fans	2
2.	Tube lights	3
3.	Tables of size 4'6" x min 2'6" feet with storage	3
4	New 1.0 Ton Split AC of approved manufacturer	2
5	Aqua guard water filter or equivalent	1
6.	Steel cupboard with locking arrangement. 3'x 6'	2
7.	White board	2
8.	Executive Chairs revolving	3
9.	Visitor chairs	6
10.	Plastic chairs	6
11.	Desktop Computer – Pentium i5 or higher version with necessary software along with Printer scanner copier along with trolley	1
12.	Office stationary.	as required

Note: Contractor shall arrange at his own cost the cleaning, maintenance and up keep of this site office during the currency of the contract. An office attendant shall be deployed at MbPT site office through out the contract period. After completion of the work, contractor shall repair and hand over the rooms as directed. After completion of the

contract the items mentioned under Sr.No. 8 to 12 will be the property of MbPT. The electric charges required for site office shall be borne by the Mumbai Port Trust.

25. Adjustments for Changes in Legislation:

The contract price shall be adjusted to take account of any increase or decrease in cost resulting from a change in the laws (including the introduction of new laws and the repeal or modification of existing laws) or in the judicial or official government interpretation of such law, made after cut off date (i.e. 28 days prior to submission of tender), which affect the contractor in the performance of his obligations under the contract.

If the contractor suffers (or will suffer) delay and / or incurs (or will incur) additional cost as a result of these changes in the laws or in such interpretations made after the cut off date, the contractor shall give notice to the Engineer and shall be entitled to (i) an extension of time for any delay (to be established by the contractor) and (ii) payment of such costs arising out of such changes in legislations.

26. Force Majeure

(A) In this clause, 'Force majeure' means an exceptional event or circumstances:

- a)** Which is beyond party's (Employer or contractor) control
- b)** Which such party could not reasonably have provided against before entering into the contract.
- c)** Which, having arisen, such party could not reasonably have avoided or overcome and
- d)** Which is not substantially attributable to the other party

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

- War, hostilities (whether war to be declared or not), invasion, act of foreign enemies
- Rebellion, terrorism, revolution, insurrection, military or usurped power or civil war,
- Riot, commotion, disorder, strike or lockout by persons other than contractor's personnel and other employees of the contractor and sub-contractors,
- Munitions of war, explosive materials, ionising radiations or contaminations by radio-activity, except as may be attributable to the contractor's use of such munitions, explosives, radiations or radio-activity and

- Natural catastrophes such as earthquakes, tsunami, hurricane, typhoon or volcanic activity.

(B) No Breach of Contract –

The failure of the party to fulfil any of its obligations hereunder shall not be considered to be breach of, or default under this contract in so far as such inability arises from any event of Force Majeure, provided that the party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this contract.

(C) Measures to be taken –

- A party affected by an event of Force Majeure shall take all reasonable measures to remove such party's inability to fulfil its obligations hereunder with a minimum of delay.
- A party affected by an event of Force Majeure shall notify other party of such event as soon as possible, and in any event not later than 14 days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of the normal conditions as soon as possible.
- The parties shall take all reasonable measures to minimise the consequences of any event of force majeure.

27. Rate of progress:

The contractor shall submit a progress report along with the bill to the Employer giving details of the progress achieved in earlier period. The format for the report shall be decided in consultation with the employer to meet the work schedule requirement.

If for any reason, the rate of progress of the works or any section thereof at any time in the opinion of the employer is too slow to comply with the time for completion, the employer shall so notify the contractor who shall there upon take such steps as are necessary, subject to the consent of the Employer to expedite progress so as to comply with the time of completion. The contractor is not entitled to any additional payment for taking such steps, as a result of any notice given by the Employer, under this clause. If the contractor considers that it is necessary to do any work at night or on locally recognized days of rest, he has to seek the consent of the Employer to do so. Employers consent may be granted subject to fulfilment of conditions necessary on account of security, safety and ensuring quality of works

28. As made drawing and progress photographs:

The Contractor shall at his cost and expenses supply to the Employer prints of colour photographs of Before, In Progress & Completed work of major activities from time to

time as directed. The negative and photographs shall become the property of the Employer. The photographs shall be of approximate size 5" x 7" each. The album shall be handed over to the Employer. No prints or soft copy shall be supplied to any person or persons without the previous permission of the Employer in writing. Videography shall be done before the commencement, during the progress and after the completion of major activities of the work and the Video CD shall be submitted on every month.

29. **Manager / Supervisory staff:**

The contractor shall engage authorized full time Project Manager on the work capable of managing and guiding the work and understanding the specifications and contract conditions. The contractor shall deploy a team of qualified and experienced Engineers that shall consist of

- (i) 1 project Manager who will be Bachelor Degree in civil Engineering with min.15 years' experience
- (ii) 1 senior Engineers who will be Bachelor Degree in Civil Engineering with 8 to 10 years' experience in building repairs
- (iii) 4 Supervisors having 5 years' experience in building repair works shall be posted at full time for Civil works.
- (iv) 1 Licensed Electrical Supervisor having 5 years' experience in Electrical works shall be posted at full time.

In addition to Store keepers, Lab Assistant and supporting staff. Project Manager will receive instructions from the Engineer or his representatives and shall be responsible for following them. The Project Manager shall not be changed without prior intimation to the Engineer or his representative on the work site. **Failure to appoint the personnel as mentioned above will attract levy of charge as per Annexure-6.** In addition, the contractor shall provide sufficient mucedams to carry out the works.

All necessary records required by the quality control authority/ Third Party Inspection/ MbPT, CVC etc. shall be maintained on site by the contractor which shall be also checked by Engineer-in-charge or his representative. All the registers will be signed by contractor as well as Engineer's representative. The contractor shall furnish the copy of all material challans, bills, labour payments, test results, insurance premiums etc. on regular basis.

30 **Setting of Field Testing Laboratory**

- 30.1 All the materials incorporated/all works performed shall be strictly in conformity with the specifications and the contractor shall be responsible for the quality of the work in the entire repairs/ construction within the contract. The contractor shall set his own one independent field laboratory at the locations approved by the Engineer-in-Charge. This laboratory shall be equipped with sufficient number of modern and efficient equipments regularly calibrated, suitable to carry out the tests for different material and or finish products accordingly to the specifications. Qualified Engineer duly assisted by Technical staff shall man the above laboratory. The staff of setting up a field laboratory cost of

equipments, assessments, salaries of the laboratory staff etc shall be borne by the contractor and these expenses shall be deemed to be included in his quoted price. No charges will be paid by MbPT for the tests carried out in field laboratory.

- a) Compressive strength testing machine (for cement cube test) of minimum 200 tonne capacity. The Calibration Certificate of recent calibration made shall be produced at the time of installation of the machine. Testing machine should be maintained properly. In case of fault in the machine, the same shall be repaired or replaced within 2 days.
- b) Set of sieves.
- c) Slump cone, cube moulds of various size as required
- d) Equipment for testing of silt content in sand.
- e) Electronic weighing balances of various capacity up to 100 Kgs.
- f) Other equipments as may be directed by Engineer's representative.

- 30.2 Contractor shall carry out all necessary field/laboratory tests as per specifications mentioned in the tender documents as well as any other field/laboratory tests are ordered by the Engineer-in-Charge or Third Party Inspection team or as per CVC guidelines.
- 30.3 In case of doubt or ambiguity, MbPT's decision shall be final and binding on the contractor including number of tests to be carried out.
- 30.4 All above tests including setting of laboratory etc. will be carried out at contractor's cost for which no extra payment whatsoever will be made.
- 30.5 In addition to field tests required to be carried out as stipulated in tender, MbPT may send material for testing at laboratories in Mumbai or Navi Mumbai Material testing Laboratory at MbPT's discretion. Testing charges will be reimbursed to the contractor on actuals if the test results are satisfactory. All cost involved in collecting, sampling, packing and transportation of materials for testing shall be deemed to be included in the rates quoted by the contractor.

For ensuring the requisite quality of construction / repair, the material & the works shall be subjected to quality control tests as described hereinafter. Where specific procedure is not indicated for quality control test in these specifications the same shall be carried out as per the prevailing accepted engineering practice except for materials where the manufacturer has given standard procedure of tests / quality control etc with the directions of the Engineer's representative.

Testing of Materials:

Sr. No.	Item	Test	Test Method	Frequency
1.	Cement	i) Physical and chemical test	IS 12269 / IS:8112 As applicable to cement grade proposed for use	Once for each source of supply and subsequently when called for.
		ii) Strength Test		Each lot of supply or when called for.

2.	Fine Aggregates	Gradation and deleterious constituents including soundness & alkali reactivity	IS:2386	Once for each source and subsequently or when called for.
3.	Coarse Aggregates	Gradation and deleterious constituents including soundness & alkali reactivity. Los Angeles Abrasion Value, Aggregate Impact Value, Crushing value, Flakiness Index, Elongation Index.	--- do ---	---- do ----
4.	Water	Chemical test	IS:456	---- do ----
5.	Reinforcement bars	As per IS:432 & IS:1786	IS:432 & IS:1786	Each lot of supply or when called for.
6.	Structural steel	As per IS 226	IS 2062	-----do-----
7	Paints		As per relevant IS	Each manufacturer or when called for
8	Aluminium sections	Physical properties	As per relevant IS	-----do-----
		Anodise coating thickness		On every lot or when called for

31. Safety Conditions:

The contractor shall comply with all precautions as per I.L.O. Convention (No.62) so far as they are applicable to this contract.

- a) The contractor shall provide all safety equipments such as jacket, safety belt, safety shoes, helmet, gloves etc. to his workers during the execution of work
- b) If the contractor does not follow the safety precautions as prescribed in the tender conditions/ instructed/ required as per construction practices, the contractor will be imposed a penalty of Rs. 1,00,000/- per occasion
- c) If the contractor fails to follow the safety instructions continually for 3 occasions during the execution of any particular work, the contractor shall be debarred for 6 months from participating in MbPT tenders.
- d) During the execution of work if any fatal accidents ocured to the labourers employed by the contractor due to the negligence and also not adhering to the instructions on safety, the contractor shall be blacklisted for minimum 3 years and/ or as may be decided by the Chief Engineer and will not be allowed to participate in any of the tenders of MbPT.
- e) If the labourers are required to work at a height of 20 feet an above, the contractor shall provide safety net as per the site requirement and a separate supervisor shall be posted to monitor the same.

32. Goods and Service Tax (GST) as applicable shall be reimbursed to the contractor through the interim bills. However, the taxes like Income Tax etc. will be deducted at source as

applicable as per prevailing rules and regulations.

33. Settlement of Disputes and Arbitration:

Following procedure will be followed for settlement of Claims, Disputes etc.

33.1 Engineer's Decision: If a dispute of any kind whatsoever arise between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the works, whether during the execution of the works or after their completion and whether before or after repudiation or termination of the contract, including any disputes to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy of the other party. Such reference shall state that it is made pursuant to this clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award. If either the employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty –forth day after the day on which he received the reference, then either he Employer or the Contractor, may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement or the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 33.4, no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.

33.2 Amicable Settlement:

Where notice of intention to commence arbitration as to a dispute has been given in accordance with Sub-Clause, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that, unless the parties otherwise agree, arbitration may be commenced on or after the Fifty-Sixth (56) day after the day on which notice

of intention to commence arbitration of such dispute was given, even if no attempt at amicable settlement thereof has been made.

33.3 Arbitration:

Any dispute in respect of which:

(a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause 33.1, and

(b) amicable settlement has not been reached within the period stated in Sub Clause 33.2 shall be finally settled, unless otherwise specified in the contract, under the Government of India's Arbitration and Conciliation Act, 1996 by one or more arbitrators appointed under such act. The said arbitrator(s) shall have full powers to open up, review and revise any decision, opinion or instruction or determination, certificate or valuation of the Engineer related to the dispute.

Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision pursuant to Sub-Clause 33.1. No such decision shall disqualify the arbitrator/s on any matter whatsoever relevant to the dispute.

Arbitration may be commenced prior to or after completion of the works, provided that the obligation of the Employer, the Engineer and the contractor shall not be altered by reason of the arbitration being conducted during the progress of the works.

The work under the contract shall, however, continue during the arbitration proceedings and no payment due or payable to the contractor shall be withheld on account of such proceedings. The arbitrators shall be deemed to have entered on the reference on the dates they issue notice to both the parties fixing the date of their first hearing. The venue of arbitration shall be Mumbai, India. The fees, if any, of the Arbitrator(s) if required to be paid before award in respect of disputes is made and published, shall be paid half by each of the parties.

33.4. Failure to comply with Engineer's decision: Where neither the employer nor the contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 33.1 and the related decision has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to arbitration in accordance with Sub-Clause 33.3. The provisions of subclause 33.1 and 33.2 shall not apply to any such reference.

34. The permission for execution of contract shall be granted only after the contractor is registered himself online with EPFO (Employees Provident Fund Organization) and ESIC.

Chief Engineer

