

Client : GAPL, GOA	TENDER DOCUMENT FOR HVAC WORKS	Revision : 01
Project No : HVAC/01	DOCUMENT NO : GAPL/TENDER/CAP/001/2019-2020/	Date : 04.04.2019

CHAPTER 3.1

GENERAL CONDITIONS OF CONTRACT

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GENERAL CONDITIONS

1 The Contract

1.1 Definitions

In the Contract the words and expressions defined below shall have the meanings assigned to them, except where the context requires otherwise:

1.1.1 Documents

- 1.1.1.1 “Contract means these Conditions of Contract (Parts I and II), the Employer’s Requirements, the Tender, the Contractor’s Proposal, the Schedules, the Letter of Acceptance, the Contract Agreement (if completed) and such further documents as may be expressly incorporated in the Letter of Acceptance or Contract Agreement (if completed).
- 1.1.1.2 “Employer’s Requirements” means the description of the scope, standard, design criteria (if any) and programme of work as issued by the Employer and included in the Contract, and any Variations thereto.
- 1.1.1.3 “Tender” means the Contractor’s priced offer to the Employer for the works, as accepted by the Letter of Acceptance.
- 1.1.1.4 Deleted
- 1.1.1.5 “Contractor’s Proposal” means the preliminary design submitted by the Contractor with his Tender and included in the Contract.
- 1.1.1.6 “Schedules” means the information and data submitted by the Contractor with his Tender and included in the Contract.
- 1.1.1.7 “Schedule of Payments” means the Schedule designated as such (if any), referred to in Sub-Clause 13.4.
- 1.1.1.8 “Letter of Acceptance” means the formal acceptance by the Employer of the Tender.
- 1.1.1.9 “Contract Agreement” means the contract agreement (if any) referred to in Sub-Clause 1.5.

1.1.2 Persons

- 1.1.2.1 “Employer” means the person named as such in the Special conditions of contract and the legal successors in title to such person, but not (except with the consent of the Contractor) any assignee of such person.
- 1.1.2.2 “Contractor” means the person who’s Tender has been accepted by the employer and the legal successors in title to such person, but not (except with the consent of the Employer) any assignee of such person.
- 1.1.2.3 “Employer’s Representative” means the person appointed by the Employer to act as Employer’s Representative for the purposes of the Contract and named as such in the Special conditions of contract, or other person appointed from time to time by the Employer and notified as such to the Contractor.
- 1.1.2.4 “Contractor’s Representative” means the person (if any) named as such in the Contract or other person appointed from time to time by the Contractor under Sub-Clause 4.3.
- 1.1.2.5 “Subcontractor” means any person named in the Contract as a subcontractor, manufacturer or supplier for a part of the Works or any person to whom a part of the Works has been subcontracted in accordance with sub-Clause 4.5, and the legal successors in title to such person, but not any assignee of such person.

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1.1.2.6 “Expert” means the person mutually agreed upon by the Employer and the Contractor and named as such in the Contract or other person appointed from time to time under Sub-Clause 20.3.

1.1.2.7 “Purchaser” means the ultimate end user.

1.1.2.8 “Consultant” means engineering consultant appointed by the employer.

1.1.3 Dates, Times and periods

1.1.3.1 “Effective date” means the date on which the Contract entered into legal force and effect..

1.1.3.2 “Commencement Date” means the date on which the Contractor receives the notice to commence issued by the Employer’s Representative under Sub-Clause 8.1.

1.1.3.3 “Time for Completion” means the time for completing the execution of, and passing the Tests on completion of, the Works or a Section (as the case may be), as stated in the Special conditions of contract (or as extended under Sub-Clause 8.3) calculated from the Commencement Date.

1.1.3.4 “**Defects Liability Period**” means the period of 365 days after the date on which the whole of the Works shall have been completed as certified by the Engineer In Charge under Clause 10 (or as extended under Sub-Clause 12).

1.1.3.5 “Day” means a calendar day and “year” means 365 days.

1.1.4 Tests and Completion

1.1.4.1 “Tests on Completion” means the tests specified in the Contract and designated as such, and any other such tests as may be agreed by the Employer’s representative and the Contractor or instructed as a Variation, which are to be carried out before the Works or any section are taken over by the Employer.

1.1.4.2 “Taking-over certificate” means a certificate issued as per Clause 10.

1.1.4.3 “Performance Tests” means the tests specified in the Contract and designated as such, which are to be carried out to verify that the works fulfil the performance requirements of the Contract.

1.1.4.4 “Performance Certificate” means the certificate issued by the Employer’s representative under Sub-Clause 12.9.

1.1.5 Money and Payments

1.1.5.1 “Contract Price” means the sum stated in the work order as payable to the Contractor for the design, execution and completion of the works and the remedying of any defects in accordance with the provisions of the contract.

1.1.5.2 “Local Currency” means the currency of the Country.i.e, INR

1.1.5.3 “Foreign Currency” means a freely convertible currency, named in the Special conditions of contract as a currency in which part of the Contract Price is payable, but not the Local Currency.

1.1.5.4 “Retention Money” means the accumulated retention monies retained by the employer under Sub-Clause 13.2.

1.1.5.5 “Provisional Sum “ means a sum (if any) specified in the contract and designated as such, for the execution of any part of the works or for the supply of Plant, Materials, or services.

1.1.5.6 “Cost” means all expenditure properly incurred (or to be incurred) by the Contractor, whether on or off the site, including overhead and similar charges, but does not include profit.

1.1.5.7 “Interim Payment Certificate” means any payment certificate issued by the employer’s representative under Clause 13.6, other than the Final Payment Certificate.

1.1.5.8 “Final payment Certificate” means the payment certificate issued by the Employer’s Representative under sub-Clause 13.13.

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1.1.5.9 “Final Statement” means the agreed statement defined in Sub-Clause 13.11.

1.1.6 Other Definitions

1.1.6.1 “Construction Documents” means all drawings, calculations, computer software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature, submitted by the Contractor and approved by the employer’s Representative.

1.1.6.2 “Variation” means any alteration and/or modification to the works, which is instructed by the Employer’s Representative or approved as a variation by the Employer’s representative, in accordance with Clause 14.

1.1.6.3 “Works” means the Permanent works and the temporary works or either of them as appropriate.

1.1.6.4 “Permanent works,” means the permanent works to be designed and executed in accordance with the Contract.

1.1.6.5 “Temporary Works” means all temporary works of every kind (other than Contractor’s Equipment) required for the execution and completion of the Works and the remedying of any defects.

1.1.6.6 “Plant” means machinery and apparatus intended to form or forming part of the Permanent Works, including the supply-only items (if any), which are to be supplied by the Contractor as specified in the contract.

1.1.6.7 “Materials” means things of all kinds (other than Plant) to be provided and incorporated in the Permanent Works by the Contractor, including the supply-only items (if any), which are to be supplied by the Contractor as specified in the Contract.

1.1.6.8 “Contractor’s Equipment” means all machinery, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, but does not include Plant, Materials, or other things intended to form or forming part of the Permanent works.

1.1.6.9 “Section” means a part of the Works specifically defined in the Special conditions of contract as a Section (if any).

1.1.6.10 “Site” means the places provided by the Employer where the works are to be executed and to which Plant and Materials are to be delivered and any other places as may be specifically designated in the Contract as forming part of the Site.

1.1.6.11 “Country” means the country in which the Works are to be executed and to which Plant and Materials are to be delivered.

1.2 Headings and Marginal Notes

The headings and marginal notes are not part of these Conditions, and shall not be taken into consideration in their interpretation.

1.3 Interpretation

Words importing persons or parties shall include firms and corporations and any organisation having legal capacity. Words importing the singular also include the plural and vice versa where the context requires. Words importing one gender also include other genders.

1.4 Law and Language

The law of the Contract is named in the Special conditions of contract. Where versions of the Contract are prepared in different languages, the version which is in the ruling language named in the Special conditions of contract shall prevail. The language for day-to-day communications shall be as stated in the Special conditions of contract.

1.5 Contract Agreement

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Either party shall, if requested by the other party, execute a Contract Agreement, in the form annexed with such modifications as may be necessary to record the Contract. The format for Contract Agreement is given as **Annexure-I**.

1.6 Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Employer's Representative shall issue any necessary clarification or instruction to the contractor, and the priority of the documents shall be as follows:

- (a) The Contract Agreement;
- (b) The Letter of acceptance/ Work order;
- (c) The Tender;
- (d) The special conditions of contract,
- (e) The general conditions of Contract,;
- (f) The Schedules

1.7 Documents on Site

The Contractor shall keep on the Site one complete set of the documents forming the Contract, the Construction Documents, Variations, communications given or issued under Sub-Clause 1.8 and the documents mentioned in Sub-Clause 5.4. The employer, the Employer's Representative, and all persons authorised by either of them shall have the right to use such documents at all reasonable times.

1.8 Communications

Wherever provision is made for the giving or issue of any notice, instruction, consent, approval, certificate or determination by any person, unless otherwise specified such communication shall be in writing and shall not be unreasonably withheld or delayed.

Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, type-written or printed communication, including the agreed systems of electronic transmission stated in the Special conditions of contract.

All certificates, notices or written orders to be given to the Contractor by the Employer or the Employer's Representative, and all notices to be given to the employer or to the Employer's representative by the Contractor, shall either be delivered by hand against written acknowledgement of receipt, or be sent by post or one of the agreed systems of electronic transmission. The addresses for the receipt of such communications shall be as stated in the Special conditions of contract.

1.9 Provision of Construction Documents

The Construction Documents shall be in the custody and care of the contractor. The Contractor shall provide a sufficient number for the use of the Employer's Representative, or as specified in the Employer's Requirements.

1.10 Employer's Use of Contractor's Documents

Copyright in the construction Documents and other design documents made by or on behalf of the Contractor shall (as between the parties) remain the property of the Contractor. The employer may, at his cost, copy, use and communicate any such documents (including making and using modification) for the purposes of completing, operating, maintaining, altering, adjusting and repairing the works. They shall not, without the Contractor's consent, be used, copied or communicated to a third party by the Employer or the Employer's Representative for other purposes.

1.11 Contractor's Use of Employer's Documents

Copyright in the Employer's Requirements and other documents issued by the Employer or the Employer's representative to the Contractor shall (as between the parties) remain the property of the

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Employer. The Contractor may, at his cost, copy, use and communicate any such documents for the purposes of the Contract. They shall not, without the Employer's consent, be used, copied or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

1.12 Confidential Details

The Contractor shall, in all matters arising in the performance of the Contract, comply with, give all notices under, and pay all fees required by, the provisions of any national or state statute, ordinance or other law, or any regulation of any legally constituted public authority having jurisdiction over the works. The Contractor shall obtain all permits, licenses or approvals required for any part of the works, in reasonable time taking account of the times for delivery of the plant and materials and for completion of the Works. The Employer and the Contractor shall comply with the laws of each country where activities are performed.

Joint and Several Liability

Joint venture is strictly not acceptable to participate.

2 The Employer

2.1 General Obligations

The Employer shall provide the Site and shall pay the Contractor in accordance with Clause 13.

2.2 Access to and Possession of the Site

The employer shall grant the Contractor right of access to, and possession of, the Site within the time stated in the Special conditions of contract. Such right and possession may not be exclusive to the Contractor.

If the Contractor suffers delay and/or incurs Cost from failure on the part of the Employer to grant right of access to or possession of the site, the Contractor shall give notice to the Employer's Representative. After receipt of such notice the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 to agree or determine:

- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.3 and shall notify the Contractor accordingly.

2.3 Permits, Licenses or approvals

The Employer may, at the request and cost of the Contractor, assist him in applying for permits, licenses or approvals, which are required for any part of the Works, for delivery (including clearance through customs) of Plant, Materials and Contractor's Equipment, and for the completion of the Works. Such requests may also include requests for the Employer's assistance in procuring any necessary government consent to the export of Contractor's Equipment when it is removed from the Site.

2.4 Employer's Entitlement to Terminate

The Employer shall be entitled to terminate contract, at the Employer's convenience, at any time after giving prior notice to the Contractor, with a copy to the Employer's Representative, and returning the performance security. In the event of such termination, the Contractor:

- (a) shall proceed in accordance with Sub-Clause 16.3, and
- (b) shall be paid by the Employer in accordance with Sub-Clause 19.6.

3 The Employer's Representative

3.1 Employer's Representative's Duties and Authority

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The Employer's Representative shall carry out the duties specified in the Contract. The employer's Representative shall have no authority to amend the Contract.

The Employer's Representative may exercise the authority specified in or necessarily to be implied from the Contract. If the Employer's Representative is required, under the terms of his appointment by the Employer, to obtain the specific approval of the Employer before exercising such authority. Any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Employer's Representative.

Except as expressly stated in the conditions of Contract, the Employer's Representative shall have no authority to relieve the Contractor of any of his duties, obligations or responsibilities under the Contract. Any proposal, inspection, examination, testing, consent, approval or similar act by the Employer's Representative (including absence of disapproval) shall not relieve the Contractor from any responsibility, including responsibility for his errors, omissions, discrepancies, and non-compliance with Sub-clauses 5.3 and 5.4.

The Employer's Representative shall copy to the Employer all communications given or received by him in accordance with the Contract.

3.2 Requirements for Employer's Representative

If the Employer's Representative is not a suitably qualified engineer or other professional, having the experience and capability necessary for compliance with this clause, the Employer's Representative shall employ such suitably qualified engineers and / or other professionals, and make them available for the Contract.

3.3 Employer's Representative's Authority to Delegate

The Employer's Representative may from time to time delegate any of his duties to assistants, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy has been delivered to the Employer and the Contractor.

Any determination, instruction, inspection, examination, testing, consent, approval or similar act by any such assistant of the Employer's Representative, in accordance with the delegation, shall have the same effect as though it had been an act of the Employer's Representative. However:

- (a) any failure to disapprove any Plant, Materials, design or workmanship shall not prejudice the right of the Employer's Representative to reject such Plant, Materials, design or workmanship;
- (b) if the Contractor questions any determination or instruction of an assistant of the Employer's Representative, the Contractor may refer the matter to the Employer's Representative, who shall confirm, reverse or vary such determination or instruction.

3.4 Employer's Representative's Instructions

Unless it is legally or physically impossible, the Contractor shall comply with instructions given by the Employer's Representative in accordance with the Contract.

3.5 Employer's Representative to attempt agreement

When the Employer's Representative is required to determine value, Cost or extension of time, he shall consult with the Contractor in an endeavour to reach agreement. If agreement is not achieved, the employer's Representative shall determine the matter in accordance with the Contract.

4 The Contractor

4.1 General Obligations

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The works as completed by the Contractor shall be wholly in accordance with the Contract and fit for the purposes for which they are intended, as defined in the Contract. The works shall include any work which is necessary to satisfy the Employer's requirements. Contractor's proposal and schedules, or is implied by the Contract, or arises from any obligation of the Contractor, and all works not mentioned in the Contract but which may be inferred to be necessary for stability or completion or the safe, reliable and efficient operation of the works.

The contractor shall design, execute and complete the works, including providing construction Documents, within the time for Completion, and shall remedy any defects within the Contract Period. The Contractor shall provide all superintendence, labour, plant, Materials, Contractor's Equipment, Temporary Works and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of defects.

Before commencing design, the Contractor shall satisfy himself regarding the design criteria (if any) included in the Employer's requirements and the accuracy of any setting-out points, lines and levels of reference specified in Employer's Requirements. The Contractor shall give notice to the Employer's Representative, and the employer's representative shall determine whether Clause 14 shall be applied, and shall notify the contractor accordingly.

The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works, irrespective of any approval or consent by the Employer's Representative.

4.2 Performance Security / Security Deposit

The Contractor shall submit an irrevocable performance security of **5 %** of the contract value in addition to other deposits mentioned else-where in the contract for his proper performance of the contract agreement (not with-standing and/or without prejudice to any other provisions in the contract) with-in a period of ten days from the date of issue of Work Order . The performance security/ security deposit shall be in the form of a Bank Guarantee from a Scheduled commercial Bank and shall be valid till the completion of Defects Liability Period (DLP).

4.3 Contractor's Representative

Unless the Contractor's Representative is named in the Contract, the Contractor shall, within 14 days of the Effective date, submit to the Employer's Representative for consent the name and particulars of the person the Contractor proposes to appoint. The Contractor shall not revoke the appointment of the Contractor's Representative without the prior consent of the Employer's Representative.

The Contractor's Representative shall give his whole time to directing the preparation of the Construction Documents and the execution of the Works. Except as otherwise stated in the Contract, the Contractor's representative shall receive (on behalf of the Contractor) all notices, instructions, consents, approvals, certificates, determinations and other communications under the Contract. Whenever the Contractor's Representative is to be absent from the Site, a suitable replacement person shall be appointed, and the employer's representative shall be notified accordingly.

The Contractor's Representative may delegate, to any person, any of his powers, functions and authorities, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Employer's Representative has received prior notice signed by the Contractor's Representative, specifying the powers, functions and authorities being delegated or revoked. The Contractor's Representative and such persons shall be fluent in the language for day to day communications defined in sub-Clause 1.4.

4.4 Co-ordination of the Works

The Contractor shall be responsible for the co-ordination and proper execution of the works, including co-ordination of other contractors to the extent specified in the Employer's requirements. The Contractor

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shall, as specified in the Employer's requirements, afford all reasonable opportunities for carrying out their work to:

- (a) any other contractors employed by the employer and their workmen,
- (b) the workmen of the employer , and
- (c) the workmen of any legally constituted public authorities who may be employed in the execution on or near the site of any work not included in the Contract, which the employer may require.

The contractor shall obtain, co-ordinate and submit to the employer's representative for his information all details (including details of work to be carried out off the site) from subcontractors and suppliers. The contractor shall be responsible for the locations of their work or materials, in order to ensure that there is no conflict with the work or materials, in order to ensure that there is no conflict with the work of other subcontractors, the contractor or other contractors.

4.5 Subcontractors

The contractor shall not subcontract the whole/any part of the Works unless otherwise stated in Part II (Special Conditions):

- (a) the Contractor shall not be required to obtain consent for purchases of Materials or for subcontracts for which the Subcontractor is named in the Contract ;
- (b) the prior consent of the Employer's Representative shall be obtained to other proposed Subcontractors :
- (c) the Contractor shall notify the employer's Representative of each proposed Subcontractor not less than 28 days before the intended date of such Subcontractor commencing work on the Site; and
- (d) Where practicable, the Contractor shall give a fair and reasonable opportunity for contractors from the Country to be appointed as subcontractors.

The contractor shall be responsible for observance by all Subcontractors of all the provisions of the Contract. The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as fully as if they were the acts or defaults of the Contractor, his agents or employees.

4.6 Assignment of Subcontractor's Obligations

If a Subcontractor has undertaken a continuing and assignable obligation to the Contractor for the work designed or executed, or Plant, Materials or services supplied, by such subcontractor, and if such obligation extends beyond the expiry of the Contract Period, the Contractor shall, upon the expiry of the Contract Period, assign the benefit of such obligation to the Employer for its unexpired duration, at the request and cost of the Employer.

4.7 Setting out

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Employer's Requirements or, if not specified, given by the Employer's Representative in writing. The Contractor shall rectify, at his cost, any error in the positions, levels, dimensions or alignment of the works.

4.8 Quality assurance

Unless otherwise stated in Part II (Special Conditions), the contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. Such system shall be in accordance with the details stated in the Contract.

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

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Details of all procedures and compliance documents shall be submitted to the Employer's Representative for his information before each design and execution stage is commenced. When any document is issued to the Employer's representative, it shall be accompanied by the signed quality statements for such document, in accordance with the details stated in the Contract. The Employer's representative shall be entitled to audit any aspect of the system and require corrective action to be taken.

4.9 Site Data

The Employer shall have made available to the Contractor, prior to the Base date, all the data on hydrological and sub-surface conditions at the site, and studies on environmental impact, if any which have been obtained by or on behalf of the Employer from investigations for the works. The Contractor shall be responsible for interpreting all data.

The contractor shall be deemed to have inspected and examined the site, its surroundings, the above data and other available information, and to have satisfied himself (so far as is practicable, taking account of cost and time) before submitting the Tender, as to:

- (a) the form and nature of the Site, including the sub-surface conditions,
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of the work and Materials necessary for the execution and completion of the works, and the remedying of any defects, and
- (d) the means of access to the Site and the accommodation he may require.

The contractor shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the tender.

4.10 Matters Affecting the execution of the works

The contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract price. Unless otherwise stated in the contract, the contract price shall cover all his obligations under the Contract (including those under provisional sums, if any) and all things necessary for the proper design, execution and completion of the works and the remedying of any defects.

4.11 Unforeseeable by sub-surface conditions

If sub-surface conditions are encountered by the Contractor which in his opinion were not foreseeable by an experienced contractor, the contractor shall give notice to the employer's representative so that the employer's representative can inspect such conditions. After receipt of such notice and after his inspection and investigation, the employer's representative shall, if such conditions were not (by the effective date) foreseeable by an experienced contractor, proceed in accordance with sub-Clause 3.5 to agree or determine.

- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.3, and
- (b) the additional cost, which shall be added to the contract price, and shall notify the Contractor accordingly.

4.12 Access Route

The Contractor shall be deemed to have satisfied himself as to the suitability and availability of the access routes he chooses to use. As between the parties, the contractor shall be responsible for the maintenance of access routes. The contractor shall provide any signs or directions, which he may consider necessary for the guidance of his staff, labour and others. The contractor shall obtain any permission that may be required from the relevant authorities for the use of such routes, signs and directions.

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The employer will not be responsible for any claims which may arise from the use or otherwise of any access route. The employer does not guarantee the suitability or availability of any particular access route, and will not entertain any claim for any non-suitability or unavailability for continuous use during construction of any such route.

4.13 Rights of way and Facilities

The contractor shall bear all costs and charges for special or temporary rights-of-way required by him for access to the site. The contractor shall also provide, at his own cost, any additional facilities outside the site required by him for the purposes of the works.

4.14 Programme

Within the time stated in the Special Conditions of Contract, the Contractor shall submit to the Employer's Representative, for information, a programme which shall contain the following:

- (a) the order in which the contractor proposes to carry out the works (including each stage of design, procurement, manufacture, delivery to Site, construction, erection, testing and commissioning),
- (b) the times when submissions and approvals or consents are required, and
- (c) the sequence of Tests on Completion.

The programme shall include all major events and activities in the production of Construction Documents and the periods for the employer's representative's approval or consent, as indicated in the employer's requirements. Unless otherwise stated in the contract, the programme shall be developed using precedence networking techniques, showing early start, late start, early finish and late finish dates. No work shall be programmed to begin on site before the relevant late finish date of the periods for the employer's representative's approval or consent.

The contractor shall, whenever required by the employer's representative, provide in writing, for information, a general description of the arrangements and methods which the contractor proposes to adopt for the execution of the works. No significant alteration to the programme, or to such arrangements and methods, shall be made without informing the employer's representative. If the progress of the works does not conform to the programme, the employer's representative may instruct the contractor to revise the programme, showing the modifications necessary to achieve completion within the time for completion.

4.15 Progress reports

Monthly progress reports shall be prepared by the contractor and submitted to the employer's representative in six copies. The first report shall cover the period up to the end of the calendar month after that in which the commencement date occurred; reports shall be submitted monthly thereafter, each within 14 days of the last day of the period to which it relates. Reporting shall continue until the contractor has completed all work, which is known to be outstanding at the completion date stated in the taking-over certificate for works. Each report shall include:

- (a) photographs and detailed descriptions of progress, including each stage of design, procurement, manufacture, delivery to site, construction, erection, testing and commissioning;
- (b) charts showing the status of construction documents, purchase orders, manufacture and construction;
- (c) for the manufacture of each main item of plant and materials, the name of manufacturer, manufacture location, percentage progress and the actual or expected dates of commencement of manufacture, contractor's inspections, tests and delivery;
- (d) records of personnel and contractor's equipment on site;
- (e) copies of quality assurance documents, test results and certificates of materials;
- (f) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and

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- (g) Comparisons of actual and planned progress, with details of any aspects which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome such aspects.

4.16 Contractor's Equipment

Unless otherwise stated in Part II (Special conditions), the contractor shall provide all contractor's equipment necessary to complete the works. All contractors' equipment shall, when brought on to the site, be deemed to be exclusively intended for the execution of the works. The contractor shall not remove from the site any such contractor's equipment without the consent of the employer's representative.

4.17 Safety precautions

The contractor shall comply with all applicable safety regulations in his design, access arrangements and operations on site. Unless otherwise stated in Part II (Special conditions), the contractor shall, from the commencement of work on site until taking-over by the employer, provide:

- (a) fencing, lighting, guarding and watching of the works, and
- (b) Temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of owners and occupiers of adjacent land, the public and others.
- (c) **The contractor will place necessary warning boards, signals and protective measures as required by any law or rules applicable to the specific work or location or as is required to prevent loss or damage to properties and general public.**

4.18 Protection of the environment

During construction, the contractor shall take all reasonable steps to protect the environment (both on and off the site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The contractor shall ensure that air emissions, surface discharges and effluent from the site during the contract period shall not exceed the values indicated in the employer's requirements, and shall not exceed the values prescribed by law.

4.19 Electricity, Water and Gas

The electricity, (if available) at site will be provided to the contractor at a single point on a chargeable basis. The quantities consumed shall be determined by the Employer's representative, who shall include the amounts due as deductions in Interim and final payment certificates. The contractor shall, at his risk and cost, provide any apparatus necessary for such determination and for his use of these services. **The contractor should make his own arrangements for providing the back up power supply (like D.G sets of required capacity) during the work.**

However, water required for any purposes has to be arranged by Contractor at his own cost.

4.20 Employer supplied Machinery and Materials

The employer undertakes to provide the items of machinery and materials (if any) in accordance with the details given in the employer's requirements. The employer shall, at his risk and cost, transport such machinery and materials to the Contractor, at the time and place specified in the contract.

The contractor shall visually inspect the machinery and materials upon receipt at such place, and shall notify the employer and the employer's representative of any shortage, defect or default; then, either the employer shall immediately rectify any shortage, defect or default, or the contractor (if the contractor and the employer's representative so agree) shall carry out such rectification as a variation. After visual inspection, this machinery and materials shall come under the care, custody and control of the contractor. The contractor's obligations of inspection, care, custody and control shall not relieve the employer of liability for any undetectable shortage, defect or default to this machinery or materials.

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The employer also undertakes to operate the items of machinery and equipment in accordance with the details, arrangements and charges given in the employer's requirements. The contractor shall pay such charges to the employer; the amount due shall be determined by the employer's representative and included as deductions in interim and final payment certificates.

4.21 Clearance of site

During the execution of the works, the contractor shall keep the site free from all unnecessary obstruction, and shall store or dispose of any contractor's equipment or surplus materials. The Contractor shall clear away and remove from the site any wreckage, rubbish or temporary works no longer required.

Upon the issue of any taking-over certificate, the contractor shall clear away and remove, from the part of the site and works to which such taking-over certificate refers, all contractor's equipment, surplus material, wreckage, rubbish and temporary works. The Contractor shall leave such part of the site and the works in a clean and safe condition to the satisfaction of the employer's representative. Except that, the contractor shall be entitled to retain on site, until the expiry of the contract period, such contractor's equipment, materials and temporary works as required by him for the purpose of fulfilling his obligations under the contract.

If the contractor fails to remove any remaining contractor's equipment, surplus material, wreckage, rubbish and temporary works, by 28 days after the issue of the performance certificate, the employer may sell or otherwise dispose of such items. The employer shall be entitled to retain, from the proceeds of such sale, a sum sufficient to meet the costs incurred in connection with the sale or disposal, and in restoring the site. Any balance of the proceeds shall be paid to the contractor. If the proceeds of the sale are insufficient to meet the employer's costs, the outstanding balance shall be recoverable from the contractor by the employer.

4.22 Security of the site

Unless otherwise stated in Part II (Special Conditions):

- (a) the contractor shall be responsible for keeping unauthorised persons off the site, and
- (b) Authorised persons shall be limited to the employees of the contractor, employees of his subcontractors and persons authorised by the employer or the employer's representative.

4.23 Contractor's operations on site

The contractor shall confine his operations to the site and any additional areas, which may be provided by the contractor and agreed by the employer as forming part of the site. The contractor shall take all necessary precautions to keep his personnel and equipment within the site and such additional areas, and to keep and prohibit them from encroaching on adjacent land.

5 Design

5.1 General Obligations

The contractor shall carry out, and be responsible for, the design of the works. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the employer's requirements. For each part of the works, the prior consent of the employer's representative shall be obtained to the designer and design subcontractor, if they are not named as such in the contract. The obligations of designers and design subcontractors shall be undertaken and performed on behalf of the contractor in accordance with the contract. Nothing contained in the contract shall create any contractual relationship or professional obligations between any designer, or a design subcontractor, and the employer.

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The contractor holds himself, his designers and design subcontractors as having the experience and capability necessary for the design. The contractor undertakes that the designers shall be available to attend discussions with the employer's representative, at all reasonable times during the contract period.

5.2 Construction Documents

The contractor shall prepare construction documents in sufficient detail to satisfy all regulatory approvals, to provide suppliers and construction personnel sufficient instruction to execute the works, and to describe the operation of the completed works. The employer's representative shall have the right to review and inspect the preparation of construction documents, wherever they are being prepared.

In accordance with the details (if any) specified in the employer's requirements, the contractor shall submit his proposed construction documents for the employer's representative's approval. For each part of the works, construction shall not commence prior to receipt of such approval to the relevant proposed construction documents, and shall be in accordance with such construction documents.

The contractor shall notify the employer's representative if the contractor wishes to modify any design or document to which approval has previously been given, and shall submit revised documents to the employer's representative for further approval.

If the employer's representative instructs that further construction documents are necessary for carrying out the works, the contractor shall upon receiving the employer's representative's instructions prepare such construction documents. Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects shall be rectified by the Contractor at his cost.

5.3 Contractor's Undertaking

The contractor undertakes that, if legally and physically possible, the design, the construction documents, the execution and the completed works will be in accordance with the following, in order of priority:

- (a) the law in the country, and
- (b) The documents forming the contract, as altered or modified by variations.

5.4 Technical standards and Regulations

The design, construction documents, execution and completed works shall comply with the country's national specifications, technical standards, building, construction and environmental regulations, regulations applicable to the product being produced from the works, and the standards specified in the employer's requirements, applicable to the contractor's proposal and schedules, or defined by law. References in the contract to such specifications and other matters shall be understood to be references to the edition applicable on the base date, unless stated otherwise. If substantially changed or new applicable national specifications, technical standards or regulations come into force after the Base Date, the Contractor shall submit proposals for compliance to the employer's representative. In the event that the employer's representative determines that such proposals constitute a variation, he shall then initiate a variation in accordance with Clause 14.

5.5 Samples

In accordance with the details specified in the employer's requirements, the contractor shall submit his proposed samples for the employer's representative's approval, together with any relevant information. The contractor shall also submit, for the employer's representative's approval, manufacturer's standard samples of materials (with relevant information) and any additional samples instructed by the employer's representative under Clause 14. All these samples shall be labelled as to origin and intended use in the works. For each part of the works, construction shall not commence prior to receipt of such approval to the relevant samples.

5.6 As-Built drawings

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The contractor shall prepare, and keep up-to-date, a complete set of “as-built” records of the execution of the works, showing the exact “as-built” locations, sizes and details of the work as executed, with cross references to relevant specifications and data sheets. These records shall be kept on the site and shall be used exclusively for this purpose. Two copies shall be submitted to the employer’s representative prior to the commencement of the Tests on completion.

In addition, the contractor shall prepare and submit to the employer’s representative “as built drawings” of the works, showing all works as executed. The drawings shall be prepared as the works proceed, and shall be submitted to the employer’s representative for his inspection. The contractor shall obtain the consent of the employer’s representative as to their size, the referencing system, and other pertinent details.

Prior to the issue of any taking-over certificate, the contractor shall submit to the employer’s representative one microfiche copy, one full-size original copy and six printed copies of the relevant “as built drawings”, and any further construction documents specified in the employer’s requirements. The works shall not be considered to be completed for the purposes of taking-over under sub-Clause 10.1 until such documents have been submitted to the employer’s representative.

5.7 Operation and Maintenance Manuals

Prior to commencement of the tests on Completion, the Contractor shall prepare, and submit to the employer’s representative, operation and maintenance manuals in accordance with the employer’s requirement and in sufficient detail for the employer to operate, maintain, dismantle, reassemble, adjust and repair the works. The works shall not be considered to be completed for the purposes of taking-over under sub-Clause 10.1 until such operation and maintenance manuals have been submitted to the employer’s representative.

5.8 Error by contractor

If errors are found in the construction documents, and the construction documents the works shall be corrected at the contractor’s cost.

5.9 Patent Rights

The contractor shall indemnify the employer against all claims of infringement of any patent, registered design, copyright, trademark or trade name, or other intellectual property right, if:

- (a) the claim or proceedings arise out of the design, construction, manufacture or use of the works;
- (b) the infringement (or allegation of infringement) was not the result of part (or all) of the works being used for a purpose other than that indicated by, or reasonably to be inferred from, the contract;
- (c) the infringement (or allegation of infringement) was not the result of part (or all) of the works being used in association or combination with anything not supplied by the contractor, unless such association or combination was disclosed to the contractor prior to the Base Date or is stated in the contract; and
- (d) The infringement (or allegation of infringement) was not the unavoidable result of the contractor’s compliance with the employer’s requirements.

The contractor shall be promptly notified of any claim under this sub-clause made against the employer. The contractor may, at his cost, conduct negotiations for the settlement of such claim, and any litigation or arbitration that may arise from it. The employer or the employer’s representative shall not make any admission which might be prejudicial to the contractor, unless the contractor has failed to take over the conduct of the negotiations, litigation or arbitration within a reasonable time after having been so requested.

Except to the extent that the employer agrees otherwise, the contractor shall not make any admission which might be prejudicial to the employer, until the contractor has given the employer such reasonable security as the employer may require. The security shall be for an amount, which is an

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assessment of the compensation, damages, charges and costs for which the employer may become liable, and to which the indemnity under this sub-clause applies.

The employer shall, at the request and cost of the contractor, assist him in contesting any such claim or action, and shall be repaid all reasonable costs incurred.

6 Staff and Labour

6.1 Engagement of staff and Labour

The contractor shall make his own arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

6.2 Rates of Wages and conditions of Labour

The Contractor shall pay rates of conditions of wages, and observe labour, as favourable as those established for the trade or industry where the work is carried out. If no such established rates or conditions are applicable, the contractor shall pay rates of wages and observe conditions as favourable as the general level of wages and conditions observed by employers whose trade or industry is similar to that of the contractor. While doing so, the contractor shall comply with the labour laws of the Country and ensure that minimum wages prescribed there in, the labour welfare measures and non engagement of child labour.

6.3 Persons in the Service of others

The contractor shall not recruit, attempt to recruit his staff and labour from amongst persons in the service of the employer or the employer's representative.

6.4 Labour Laws

The contractor shall comply with all the relevant labour laws applying to his employees, and shall duly pay and afford to them all their legal rights. The contractor shall require all such employees to obey all applicable laws and regulations concerning safety at work.

6.5 Working Hours

No work shall be carried out on the Site apart from the normal working hours stated in the Special conditions of contract, or on the locally recognised days of rest, unless:

- (a) the contract so provides,
- (b) the work is unavoidable, or necessary for the saving of life or property or for the safety of the works, in which case the contractor shall immediately advise the employer's representative, or
- (c) The employer's representative gives his consent.

6.6 Facilities for staff and Labour

Unless otherwise stated in Part II (Special Conditions), contractor shall provide and maintain all necessary accommodation and welfare facilities for his (and his subcontractor's) staff and labour. The contractor shall also provide the facilities specified in the employer's requirements, for the employer's and employer's representative's personnel. The Contractor shall not permit any of his employees to maintain any temporary or permanent living quarters within the structures forming part of the works.

6.7 Health and Safety

Precautions shall be taken by the Contractor to ensure the health and safety of his staff and labour. The Contractor shall, in collaboration with and to the requirements of the local health authorities, ensure that medical staff, first aid facilities, sick bay and ambulance service are available at the accommodation and on the site at all times, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The contractor shall maintain records and make

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reports concerning health, safety and welfare of persons, and damage to property, as the employer's representative may reasonably require.

The contractor shall appoint a member of his staff at the site to be responsible for maintaining the safety, and protection against accidents, of personnel on the site. This person shall be qualified for his work and shall have the authority to issue instructions and take protective measures to prevent accidents. The contractor shall send, to the employer's representative, details of any accident as soon as possible after its occurrence.

6.8 Contractor's Superintendence

The contractor shall provide all necessary superintendence during the design and execution of the works, and as long thereafter as the employer's representative may consider necessary for the proper fulfilling of the contractor's obligations under the contract. Such superintendence shall be given by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe execution of the works.

6.9 Contractor's personnel

The Contractor shall employ (or cause to be employed) only persons who are careful and appropriately qualified, skilled and experienced in their respective trades or occupations. The employer's representative may require the contractor to remove (or cause to be removed) any person employed on the site or works, including the Contractor's representative, who in the opinion of the employer's representative:

- (a) persists in any misconduct,
- (b) is incompetent or negligent in the performance of his duties,
- (c) fails to conform with any provisions of the contract, or
- (d) Persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

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

6.10 Disorderly Conduct

The contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour, and to preserve peace and protection of persons and property in the neighbourhood of the Works against such conduct.

7 Plant, Materials and Workmanship

7.1 Manner of Execution

All Plant and materials to be supplied shall be manufactured, and all work to be done shall be executed, in the manner set out in the contract. Where the manner of manufacture and execution is not set out in the contract, the work shall be executed in a proper, workmanlike and careful manner, with properly equipped facilities and non-hazardous materials, and in accordance with recognised good practice.

7.2 Delivery to Site

The Contractor shall be responsible for procurement, transport, receiving, unloading and safekeeping of all plant, materials, contractor's equipment and other things required for the completion of the works.

7.3 Inspection

The employer and the employer's representative shall be entitled, during manufacture, fabrication and preparation at any places where work is being carried out, to inspect, examine and test the materials and

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workmanship, and to check the progress of manufacture, of all plant and materials to be supplied under the contract. The contractor shall give them full opportunity to inspect, examine, measure and test any work on site or wherever carried out.

The Contractor shall give due notice to the Employer's representative whenever such work is ready, before packaging, covering up or putting out of view. The employer's representative shall then either carry out the inspection, examination, measurement or testing without unreasonable delay, or notify the Contractor that it is considered unnecessary. If the contractor fails to give such notice, he shall, when required by the employer's representative, uncover such work and thereafter reinstate and make good at his own cost.

7.4 Testing

If the contract provides for tests, other than the performance tests, the contractor shall provide all documents and other information necessary for testing and such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as are necessary to carry out such tests efficiently.

The contractor shall agree, with the employer's representative, the time and place for the testing of any plant and other parts of the works as specified in the contract. The employer's representative shall give the contractor not less than 24 hours notice of his intention to attend the tests. The contractor shall provide sufficient suitably qualified and experienced staff to carry out the tests specified in the contract.

If the employer's representative does not attend at the time and place agreed, or if the contractor and the employer's representative agree that the employer's representative shall not attend, the contractor may proceed with the tests, unless the employer's representative instructs the contractor otherwise. Such tests shall be deemed to have been made in the employer's representative's presence.

The contractor shall promptly forward the reading to the employer's representative if he has not attended the tests; and the employer's representative shall accept the readings as accurate. When the specified tests have been passed, the employer's representative shall endorse the contractor's test certificate, or issue a certificate to him, to that effect.

7.5 Rejection

If, as a result of inspection, examination or testing, the employer's representative decides that any plant, materials, design or workmanship is defective or otherwise not in accordance with the contract, the employer's representative may reject such plant, materials, design or workmanship and shall notify the contractor promptly, stating his reasons. The contractor shall then promptly correct the defect and ensure that the rejected item complies with the contract.

If the employer's representative requires such plant, materials design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If such rejection and Retesting cause the employer to incur additional costs, such costs shall be recoverable from the contractor by the employer, and may be deducted by the employer from any monies due, or to become due, to the contractor.

7.6 Ownership of Plant and Materials

Each item of plant and materials become the property of the employer at the following times:

- (a) when it is delivered to site;
- (b) When by virtue of sub-Clause 8.9, the contractor becomes entitled to payment of the value of the plant and materials.

Whichever is the earlier.

8 Commencement, Delays and Suspension

8.1 Commencement of Works

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The contractor shall commence the design and execution of the works as soon as is reasonably possible after the receipt of a notice to this effect from the employer's representative. Such notice shall be issued within the time stated in the Special Conditions of Contract after the effective Date. The contractor shall then proceed with the works with due expedition and without delay, until completion.

8.2 Time for completion

The works, and each section (if any), shall be completed and shall have passed the Tests on completion within the time for completion for the works or such section (as the case may be).

8.3 Extension of Time for completion

The contractor may apply for an extension of the time for completion if he is or will be delayed either before or after the Time of completion by any of the following causes:

- (a) a variation (unless an adjustment to the time for completion is agreed under sub-Clause 14.3),
- (b) a force Majeure event (as defined in sub-Clause 19.1),
- (c) a cause of delay giving an entitlement to extension of time under a sub-clause of these conditions, unless the contractor has not complied with such sub-clause,
- (d) physical conditions or circumstances on the site, which are exceptionally adverse and were not (by the effective date) foreseeable by an experienced contractor, or
- (e) Any delay, impediment or prevention by the employer.

The contractor shall, within 28 days of the start of the event giving rise to the delay, give notice to the employer's representative of the contractor's intention to apply for an extension of the time for completion, together with any other notice required by the contract and relevant to such cause. The contractor shall keep such contemporary records as may be necessary to substantiate any application, either on the site or at another location acceptable to the employer's representative, and such other records as may reasonably be requested by the employer's representative.

The contractor shall permit the employer's representative to inspect all such records, and shall provide the employer's representative with copies as required.

Within 28 days of the first day of such delay (or such other period as may be agreed by the employer's representative), the contractor shall submit full supporting details of his application. Except that, if the contractor cannot submit all relevant details within such period because the cause of delay continued for a period exceeding 7 days, the contractor shall submit interim details at intervals of not more than 28 days (from the first day of such delay) and full and final supporting details of his application within 21 days of the last day of delay.

The employer's representative shall proceed in accordance with sub-Clause 3.5 to agree or determine either prospectively or retrospectively such extension of the Time for completion as may be due. The employer's representative shall notify the contractor accordingly. When determining each extension of time, the employer's representative shall review his previous determinations and may revise, but shall not decrease, the total extension of time.

8.4 Delays caused by Authorities

If the following conditions apply, namely:

- (a) the contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the country,
- (b) such authorities delay, impede or prevent the contractor, and
- (c) The resulting delay to the works was not (by the effective date) foreseeable by an experienced contractor, then such delay will be considered as a cause of delay giving an entitlement to extension of time under sub-Clause 8.3.

8.5 Rate of Progress

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If, at any time, the contractor's actual progress falls behind the programme referred to in Sub-Clause 4.14, or it becomes apparent that it will so fall behind, the contractor shall submit to the employer's representative a revised programme taking into account the prevailing circumstances. The contractor shall, at the same time, notify the employer's representative of the steps being taken to expedite progress, so as to achieve completion within the Time for completion.

If any steps taken by the contractor in meeting his obligations under this sub-clause cause the employer to incur additional costs, such costs shall be recoverable from the contractor by the employer, and may be deducted by the employer from any money due, or to become due, to the contractor.

8.6 Liquidated Damages for Delay

If the contractor fails to comply with Sub-Clause 8.2, the contractor shall pay to the employer the relevant sum stated in the special conditions of contract as liquidated damages for such default (which sum shall be the only monies due from the contractor for such default) for every day or part of a day which shall elapse between the relevant time for completion and the date stated in the Taking-Over Certificate; except that the total payment shall not exceed the limit of liquidated damages (if any) stated in the Special Conditions of Contract. The employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due, or to become due, to the contractor. In the event of an extension of time being granted under sub-Clause 8.3, the amount due under this sub-clause shall be recalculated accordingly, and any over-payment refunded. The payment or deduction of such damages shall not relieve the contractor from his obligation to complete the works, or from any other of his duties, obligations or responsibilities under the contract.

8.7 Suspension of work

The employer's representative may at any time instruct the contractor to suspend progress of part or all of the works. During suspension, the contractor shall protect, store, secure and insure such part or the works against any deterioration, loss or damage.

8.8 Consequences of Suspension

If the contractor suffers delay and/or incurs cost in following the employer's representative's instructions under sub Clause 8.7, and in resumption of the work, and if such delay and/or cost was not (by the effective Date) foreseeable by an experienced contractor, the contractor shall give notice to the employer's representative shall proceed in accordance with sub-Clause 3.5 to agree or determine:

- (a) any extension of time to which the contractor is entitled under sub-Clause 8.3 and
- (b) The amount of such cost, which shall be added to the contract price, and shall notify the contractor accordingly. Except that the contractor shall not be entitled to such extension and payment of cost if the suspension is due to a cause attributable to the contractor, or is necessitated by a contractor's risk as defined in sub-Clause 17.5.

The contractor shall not be entitled to extension of time for, or payment of the costs incurred in, making good any deterioration, defect or loss caused by faulty design, workmanship or materials, or by the contractor's failure to take the measures specified in sub-Clause 8.7.

8.9 Deleted

8.10 Prolonged Suspension

If suspension under sub-Clause 8.7 has continued for more than 84 days, and the suspension is not due to a cause attributable to the contractor, the contractor may by notice to the employer's representative require permission to proceed within 28 days. If permission is not granted within that time, the contractor may treat the suspension as an omission under Clause 14 of the affected part of the works. If such suspension affects the whole of the works, the contractor may terminate his employment, under sub-Clause 16.2.

8.11 Resumption of Work

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After receipt of permission or of an instruction to proceed, the contractor shall, after notice to the employer's representative, and together with the employer's representative, examine the works and the plant and materials affected by the suspension. The contractor shall make good any deterioration or defect in or loss of the works or plant or materials, which has occurred during the suspension.

If the employer has taken over risk and responsibility for the suspended works under sub-Clause 8.9, risk and responsibility shall revert to the contractor 14 days after receipt of the permission or instruction to proceed.

9 Tests on Completion

9.1 Contractor's Obligations

The contractor shall carry out the tests on completion in accordance with this clause and sub-Clause 7.4, after providing the documents in accordance with sub-Clause 5.6 and 5.7. The contractor shall give, to the Employer's representative, 21 days notice of the date after which the contractor will be ready to carry out the tests on completion. Unless otherwise agreed, such tests shall be carried out within 14 days after this date, on such day or days as the employer's representative shall instruct.

In considering the results of the Tests on completion, the employer's representative shall make allowance for the effect of any use of the works by the employer on the performance or other characteristics of the works. As soon as the works, or a section, have passed the tests on completion, the contractor shall provide the employer's representative and the employer with a certified report of the results of all such tests.

9.2 Delayed tests

If the tests on completion are being unduly delayed by the contractor, the employer's representative may by notice require the contractor to carry out such tests within 21 days after the receipt of such notice. The contractor shall carry out such tests on such day or days within that period as the contractor may fix and of which he shall give notice to the employer's representative.

9.3 Retesting

If the works, or a section, fail to pass the tests on completion, sub-Clause 7.5 shall apply, and the employer's representative or the contractor may require such failed Tests, and the Tests on completion on any related work, to be repeated under the same terms and conditions.

9.4 Failure to Pass Tests on Completion

If the works, or a section, fail to pass the Tests on completion repeated under sub-Clause 9.3, the employer's representative shall be entitled to:

- (a) order further repetition of tests on completion under sub-Clause 9.3;
- (b) reject the works or section (as the case may be), in which event the employer shall have the same remedies against the contractor as are provided under Clause 15; or
- (c) Issue a taking-over certificate, if the employer so requires, the contract price shall then be reduced by such amount as may be agreed by the employer and the contractor (in full satisfaction of such failure only), and the contractor shall then proceed in accordance with his other obligations under the contract.

10 Employer's Taking Over

10.1 Taking-Over Certificate

Except as stated in sub-Clause 9.4, the works shall be taken over by the employer when they have been completed in accordance with the contract (except as described in paragraph (a) below), have passed the tests on completion and a taking-over certificate for the works has been issued, or has deemed to have been issued in accordance with this sub-clause. If the works are divided into sections, the contractor shall be entitled to apply for a taking-over certificate for each section.

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The contractor may apply by notice to the employer's representative for a taking-over certificate not earlier than 14 days before the works or section (as the case may be) will, in the contractor's opinion, be complete and ready for taking over. The employer's representative shall, within 28 days after the receipt of the Contractor's application:

- (a) issue the taking-over certificate to the contractor, stating the date on which the works or section were completed in accordance with the contract (except for minor outstanding work that does not affect the use of the works or section for their intended purpose) including passing the Tests on completion; or
- (b) Reject the application, giving his reasons and specifying the work required to be done by the contractor to enable the taking over certificate to be issued ; the contractor shall then complete such work before issuing a further notice under this sub-clause.

If the employer's representative fails either to issue the Taking-over certificate or to reject the contractor's application within the period of 28 days, and if the works or section(as the case may be) are substantially in accordance with the Contract, the taking-over certificate shall be deemed to have been issued on the last day of that period.

10.2 Use by Employer

The Employer shall not use any part of the works unless the employer's representative has issued a taking-over certificate for such part. If a taking-over certificate has been issued for any part of the works (other than a section), the liquidated damages for delay in completion of the remainder of the works (and of the section of which it forms a part) shall, for any period of delay after the date stated in such taking-over certificate, be reduced in the proportion which the value of the part so certified bears to the value of the works or section (as the case may be); such values shall be determined by the employer's representative in accordance with the provisions of sub-Clause 3.5. The provisions of this paragraph shall only apply to the rate of liquidated damages under sub-Clause 8.6, and shall not affect the limit of such damages.

If the employer does use any part of the works before the taking-over certificate is issued:

- (a) The part which is used shall be deemed to have been taken over at the date on which it is used.
- (b) The employer's representative shall, when requested by the contractor, issue a taking-over certificate accordingly, and
- (c) The contractor shall cease to be liable for the care of such part from such date, when responsibility shall pass to the employer.

After the employer's representative has issued a Taking over certificate for a part of the works, the contractor shall be given the earliest opportunity of taking such steps as may be necessary to carry out any outstanding tests on completion, and the contractor shall carry out such tests on completion as soon as practicable, before the expiry of the contract period.

10.3 Interference with Test on Completion

If the Contractor is prevented from carrying out the tests on Completion by a cause for which the employer (or another contractor employed by the employer) is responsible, the employer shall be deemed to have taken over the works or section (as the case may be) on the date when the tests on completion would otherwise have been completed. The employer's representative shall then issue a taking-over certificate accordingly, and the contractor shall carry out the tests on completion as soon as practicable, before the expiry of the contract period.

The employer's representative shall require the Tests on completion to be carried out by 14 days' notice and in accordance with the relevant provisions of the contract. If the contractor incurs additional cost as

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a result of this delay in carrying out the Tests on Completion, such Cost plus reasonable profit shall be determined by the employer's representative in accordance with the provisions of sub-Clause 3.5 and shall be added to the contract price.

11 Performance Tests

11.1 Employer's Obligations

If Performance Tests are specified in the Contract, the employer Shall provide the necessary labour, materials, Electricity, fuel and water, and shall carry out the Performance Tests in accordance with the manuals provided by the Contractor under Sub- Clause 5.7 and such guidance as the Contractor may be required to give during the course of such tests.

The performances Tests shall be carried out as soon as is reasonably practicable after the Works, or Section, have been taken over by the Employer. The Employer shall give, to the Contractor, 21 days' notice of the date after which the Performance Tests will be carried out. Unless otherwise agreed, such Tests shall be carried out within 14 days after this date, on the day or days determined by the Employer. If the Contractor does not attend at the time and place agreed, the Employer may proceed with the Performance Tests, which shall be deemed to have been made in the Contractor's presence, and the Contractor shall accept the readings as accurate.

The results of the Performance Tests shall be complied and evaluated by the Employer and the Contractor. Any effect on the results of the Performance Tests, which can reasonably be shown to be due to the prior use of the Works by the Employer, shall be taken into account in assessing such results.

11.2 Delayed Tests

If the Contractor incurs additional Cost as a result of any unreasonable delay by the Employer in carrying out the Performance Tests, such Cost plus reasonable profit shall be determined by the Employer's Representative in accordance with the provisions of Sub – Clause 3.5 and shall be added to the Contract price.

If, for reasons not attributable to the Contractor's, a Performance Tests of the Works or any Section cannot be completed during the Contract Period (or any other period agreed upon by the Employer and the Contractor), then the Works or such Section shall be deemed to have passed such Performance Tests.

11.3 Retesting

If the Works, or a Section, fail to pass the Performance Tests, the Employer or the Contractor may require such failed Tests, and the Performance Tests on any related work, to be repeated under same terms and conditions, If such failure and Retesting result from a default of the Contractor and cause the Employer to incur additional costs, such costs shall be recoverable from any monies due, or to become due, to the Contractor.

11.4 Failure to Pass Performance Tests

If the following conditions apply, namely:

- (a) the Works, or a Section, fail to pass any or all of the Performance Tests,
- (b) the relevant sum payable as liquidated damages for such failure is stated (or its method of calculation is defined) in the Special Conditions of Contract, and
- (c) The Contractor pays such relevant sum to the Employer during the Contract Period.

Then the Works or such Section shall be deemed to have passed such Performance Tests.

12 Defects Liability

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12.1 Completion of Outstanding Work and Remedying Defects

In order that the Construction documents and the Works shall be in the condition required by the Contract (fair wear and tear excepted) at, or as soon as practicable after, the expiry of the Contract Period, the Contractor shall:

- (a) complete any work which is outstanding on the date stated in a Taking – Over Certificate, as soon as practicable after such date, and
- (b) execute all work of amendment, reconstruction, and remedying defects or damage, as may be instructed by the Employer or the Employer’s Representative during the Defects Liability Period.

If any such defect appears or damage occurs, the Employer or the Employer’s Representative shall promptly notify the Contractor in writing.

12.2 Cost of Remedying Defects

All work referred to in Sub-Clause 12.1 (b) shall be executed by the Contractor at his own cost, if the necessity for such work is due to:

- (a) the design of the works,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, or
- (c) Failure by the Contractor to comply with any of his other obligations.

If such necessity is due to any other cause, the Employer’s Representative shall notify the Contractor accordingly and seek agreement to an adjustment to the Contract Price. In this event, Sub-Clause 14.3 shall apply to such work.

12.3 Extension of Contract Period

The contract Period shall be extended by a period equal to the sum of any periods, after the Works are taken – over, during which the Works or any Section or item of Plant cannot be used, for the purposes for which they are intended. By reason of a defect or damages; except that the Contract Period shall not be extended by more than two years.

When delivery of Plant and / or Materials, or erection of Plant, or installation of Materials, has been suspended under Sub-Clause 8.7, the Contractor’s obligations under this Sub-Clause shall not apply to any defects or damage occurring more than three years after the Plant and / or Materials would otherwise have been delivered, erected and taken-over.

12.4 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, the Employer or the Employer’s Representative may fix a date on or by which to remedy the defect or damage, and give the Contractor reasonable notice of such date. If the Contractor fails to remedy the defect or damage by such date, the Employer may (at his sole discretion):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor’s risk and cost, but the Contractor shall have no responsibility for such work : the costs properly incurred by the Employer in remedying the defect or damage shall be recoverable from the Contractor by the Employer;
- (b) require the Employer’s Representative to determine and certify a reasonable reduction in the Contract Price; or
- (c) if the defect or damage is such that the Employer has been deprived of substantially the whole of the benefit of the Works or parts of the Works, terminate the Contract in respect of such parts of the Works as cannot be put to the intended use : the Employer shall then be entitled to recover all sums paid for such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor, or otherwise disposing of them in accordance with the Contractor’s instructions, and Sub-Clause 15.1 shall not apply.

12.5 Removal of Defective Work

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If the defect or damage is such that it cannot be remedied expeditiously on the Site, the Contractor may, with the consent of the Employer's Representative or the Employer, remove from the Site for the purposes of repair any part of the Works which is defective or damaged.

12.6 Further Tests

If the rectification of any defect or damage is such that it may affect the performance of the Works, the Employer may require that Tests on Completion or Performance Tests, or both, be repeated to the extent necessary. The requirement shall be made by notice within 28 days after the replacement or renewal. Such Tests shall be carried out in accordance with Clause 9 or Clause 11 (as the case may be).

12.7 Right of Access

Until the Performance Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and records of the working and performance of the Works, except as may be inconsistent with any reasonable security restrictions by the organisations responsible for operating the Works.

12.8 Contractor to Search

The Contractor shall, if required by the Employer's Representative, search for the cause of any defect, under the direction of the Employer's Representative. Unless the defect is one for which the Contractor is liable, the Cost of such search, plus reasonable profit, shall be added to the Contract Price.

12.9 Performance Certificate

The Contract shall not be considered to be completed until the Performance Certificate has been signed by the Employer's Representative and delivered to the Contractor, stating the date on which the Contractor completed his obligations to the Employer's Representative's satisfaction.

The Performance Certificate shall be given by the Employer's Representative by the date 28 days after the expiry of the Contract Period, or as soon after such date as the Contractor has provided all the Construction Documents and completed and tested all the Works, including remedying any defects.

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

12.10 Unfulfilled obligation

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

13 Contract Price And Payment

13.1 The Contract Price

Unless otherwise stated in Part II (Special Conditions):

- (a) payment for the Works shall be made on a fixed lump sum basis;
- (b) the Contract Price shall not be adjusted for changes in the cost of labour, materials or other matters;
- (c) the Contractor shall pay all duties and taxes in consequence of his obligation under the Contract, and the Contract Price shall not be adjusted for such costs.

If any part of the Works is to be paid according to quantity Supplied or work done, the provisions for measurement and valuation shall be as stated in Part II (Special Conditions).

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13.2 Deleted

13.3 Application for Interim Payment Certificates

The Contractor shall submit a statement in four copies to the Employer's Representative after the end of the each month, in a form approved by the Employer's Representative, showing the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the detailed report on the progress during the month in accordance with Sub-Clause. 4.15. The statement shall include the following items. As applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Construction Documents produced and the Works executed up to the end of the month (including Variations but excluding item described in (b) to (f) below);
- (b) Amounts for changes in legislation in accordance with Sub-Clause. 13.16;
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Special Conditions of Contract to the total of the above amounts, until the amount so retained by the Employer reaches the Limit of Retention Money (if any) stated in the Special Conditions of Contract;
- (d) any amounts to be added and deducted for the advance payments and repayments;
- (e) Any other additions or deductions which may have become due in accordance with the Contract other than under Sub-Clause. 8.6; and
- (f) The deduction of the amounts certified in all previous Interim Payment Certificates.

13.4 Schedule of Payments

If the Contract includes a Schedule of Payments specifying the instalments in which the Contract Price will be paid, then, unless otherwise stated in such Schedule:

- (a) The instalment quoted in such Schedule shall be used to determine the contract value for the purposes of paragraph (a) of Sub-Clause. 13.3;
- (b) Sub-Clause. 13.5 shall not apply; and
- (c) If the payment instalments are not defined by reference to the actual progress achieved in executing the Works, the Employer's Representative shall be entitled to amend such Schedule: such amendment shall be made in accordance with the provisions of sub-Clause. 3.5 and shall only take account of the extent to which the actual progress achieved is less than that on which the instalments in the Schedule were based.

Payment terms and conditions:

Refer Schedule of Fiscal Aspects

13.5 Plant and Materials for the Permanent Works

If the Sub-Clause applies, interim Payment Certificates shall include (i) an additional amount for Plant and Materials which have been brought to the Site for incorporation in the Permanent Works, and (ii) a deduction when they have been incorporated in the Permanent Works. The Employer's Representative shall determine each condition and deduction in accordance with the following provisions:

- (a) no addition shall be include in the Interim Payment Certificate unless, in the opinion of the Employer's Representative :
 - (i) the Plant and Materials are considered to be in accordance with the contract
 - (ii) the Plant and Materials have been delivered to the Site and are properly stored on Site and protected against loss, damage or deterioration;

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- (iii) the Contractor's records of the requirement, orders, receipts and use of Plant and Material are kept in a form approved by the Employer's Representative, and such records are available for inspection by the Employer's Representative
 - (iv) the Contractor has submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, together with such documents as may be required for the purpose of evidencing such Cost; and
 - (v) The Plant and Material are those listed in the Special Conditions of Contract.
- (b) the additional amount to be certified shall be the equivalent of eighty percent of the Cost of the Plant and Materials delivered to the Site, as determined by the Employer's Representative after review of the documents mentioned in paragraph (a) above, taking account of the contract value of such Plant and Materials as determined and considers appropriate by the Employer's Representative;
 - (c) the amount of the deduction for any Plant and Materials incorporated in the Permanent Works shall be equivalent to the addition previously certified by the Employer's Representative for such Plant and Materials under paragraph (b) above; and
 - (d) the currencies for such additions and deductions shall be determined by the Employer's Representative as follows:
 - (i) in the case of each addition, the currencies shall be those in which the payment will eventually become due for the relevant item of Plant and Materials, upon their incorporation in the Permanent Works; and
 - (ii) in the case of a deduction, the currencies shall be those in which the addition for the respective item of Plant or Materials had been certified.

13.6 Issue of Interim Payment Certificates

- (a) No amount will be certified or paid until the Employer has received and approved, the performance security in accordance with Sub-Clause. 4.2. Thereafter the Employer's Representative shall, within 30 days of receiving a bill / applications for payment (and supporting documents), deliver to the Employer an Interim Payment Certificate showing the amount which the Employer's Representative considers being due. Except that the Employer's Representative shall not be bound to certify any payment under this Sub-Clause, if the net amount to be certified (after retention and other deductions) would be less than the minimum amount of Interim Payment Certificates (if any) stated in the Special conditions of contract.

The Employer's Representative may in any payment certificate make any correction or modification that should properly be made to any previous certificate.

13.7 Payment

Unless otherwise stated in Part II (Special Conditions), the Employer shall pay the amount certified within 30 days from the date of issue of each Interim Payment Certificates. In the case of Final payment Certificate, the Employer shall pay the amount certified within 60 days from the date of issue of Certificate.

Payments shall be made into a bank account, nominated by the Contractor, in the payment country named as such in the Contract. If payments are to be made in more than one currency, separate bank accounts may be nominated by the Contractor for each currency, and payments shall be made by the Employer accordingly.

13.8 Deleted

13.9 DELETED

13.10 Statement at Completion

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Not later than 84 days after the issue of the Taking-Over Completion Certificate for the Works, the Contractor shall submit to the Employer's Representative, four copies of a statement at completion with supporting documents showing in detail, in the form approved by the Employer's Representative under Sub-Clause. 13.3:

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

The estimated amounts shall be shown separately in such statement at completion. The Employer's Representative shall certify payment under Sub-Clause. 13.6.

13.11 Application for Final Payment Certificate

Not later than 60 days after issue of the Performance Certificate, the Contractor shall submit to the Employer's Representative four copies of a draft final statement with supporting documents showing in detail, in a form approved by the Employer's Representative:

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

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

If the following discussions between the Employer's Representative and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Employer's Representative shall deliver to the Employer (with a copy of the Contractor) an Interim Payment Certificate for those parts of the draft final statement which are not in dispute. The dispute may then be resolved under Clause. 20, in which case the Contractor shall then prepare and submit to the Employer (with a copy to the Employer's Representative) a final statement in accordance with the outcome of the dispute.

13.12 Discharge

When submitting the Final Statement, the Contractor shall submit a written discharge, which confirms that the total of the Final Statement represents full and final settlement of all monies due to the Contractor under the Contract. Such discharge may state that it shall become effective only after payment due under the Final Statement Certificate has been made and the performance security referred to in Sub-Clause. 4.2 have been returned to the Contractor.

The discharge does not free him from the obligations of Annual Maintenance Contract agreed as per this tender.

13.13 Issue of Final Payment Certificate

The Employer's Representative shall issue to the Employer, with a copy to the Contractor, the Final Payment Certificate within 60 days after receiving the Final Statement and written discharge in accordance with Sub-Clauses.13.11 and.13.12, stating:

- (a) the amount which finally due, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, other than under Sub-Clause 8.6 the balance, if any,

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due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clauses 13.11 and 13.12, the Employer's Representative shall request the Contractor to do so. If the Contractor fails to make such an application within a period of 60 days, the Employer's Representative shall issue the Final payment Certificate for such amount as he considers being due.

13.14 Cessation of Employer's Liability

The Employer shall not be liable to the Contractor for any matter or thing arising out of (or in connection with) the Contract or execution of the Works, unless the Contractor shall have included a claim for it in his Final Statement and (except for matters or things arising after the issue of the Taking-Over Certificate for the works) in the statement at completion described in Sub-Clause 13.10.

13.15 Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from changes in legislation of the Country, made after the Base Date. Such legislation means any law, order, regulation or by-law having the force of law, including currency restrictions, which affects the Contractor in the performance of his obligations.

If the Contractor suffers (or will suffer) delay and / or incurs (or will incur) additional Cost resulting from such changes in legislation, made after the Base Date, the Contractor shall give notice to the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 to agree or determine:

- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.3, and
- (b) The amount of such cost, which shall be added to the Contract Price, and shall notify the Contractor accordingly.

14 Variations

14.1 Right to Vary

The employer's Representative may at any time during the contract period require alterations and/or modifications in the form of additions to, omissions from, or amendments of the works. Such variations may be initiated by the employer's representative, either by instruction or by a request from the contractor to submit a proposal. If the employer's representative requests the contractor to submit a proposal and subsequently elects not to proceed with the change, the Contractor shall be reimbursed for the cost incurred, including design services.

The contractor shall not make any alteration and /or modification of the works, unless and until the employer's representative instructs or approves a variation. If the construction Documents or works are not in accordance with the contract, the rectification shall not constitute a variation.

14.2 *Deleted.*

14.3 *Deleted*

14.4 *Deleted*

14.5 *Deleted.*

15. Default of Contractor

15.1 Notice to Correct

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If the contractor fails to carry out any of his obligations, or if the contractor is not executing the works in accordance with the contract, the employer's representative may give notice to the contractor requiring him to make good such failure and remedy the same.

15.2 Termination

If the Contractor:

- (a) fails to comply within a reasonable time with a notice under sub-Clause 15.1,
- (b) abandons or repudiates the contract,
- (c) without reasonable excuse fails :
 - i). to commence the works promptly in accordance with sub-Clause 8.1,
 - ii). to proceed with the works in accordance with Clause 8, or
 - iii). To demonstrate that sufficient design capability is employed in the design of the works to achieve completion within the time for completion.
- (d) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under any applicable law) has a similar effect to any of these acts or events.
- (e) fails to comply with a notice issued under sub-Clause 7.5 within 28 days after having received it, or
- (f) Assigns the contract or subcontracts the works without the required consent, then the employer may, after having given 14 days' notice to the contractor, terminate the contractor's employment under the contract and expel him from the site. The contractor shall then deliver all construction documents, and other design documents made by or for him, to the employer's representative. The contractor shall not be released from any of his obligations or liabilities under the contract. The rights and authorities conferred on the employer and the employer's representative by the contract shall not be affected.

The employer may upon such termination complete the works himself and/or by any other contractor.

The employer or such other contractor may use for such completion so much of the construction documents, other design documents made by or on behalf of the contractor, contractor's equipment, temporary works, plant and materials as he or they may think proper. Upon completion of the works, or at such earlier date as the employer's representative thinks appropriate, the employer's representative shall give notice that the contractor's equipment and temporary works will be released to the contractor at or near the site. The contractor shall remove or arrange removal of the same from such place without delay and at his cost.

If it is found that the employer was not entitled to terminate under this sub-clause, the contract shall be deemed to have been terminated under sub-Clause 2.4.

15.3 Valuation at Date of Termination

The employer's representative shall, as soon as possible after such termination, determine and advise the contractor of the value of the Construction Documents, plant, materials, contractor's equipment and works and all sums then due to the contractor as at the date of termination.

15.4 Payment after Termination

After such termination, the employer shall not be liable to make any further payments to the contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the employer, have been established.

The employer shall be entitled to recover from the contractor the extra costs, if any, of completing the works after allowing for any sum due to the contractor under sub-Clause 15.3. If there are no such extra costs, the employer shall pay any balance to the contractor.

15.5 Bribes

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If the contractor, or any of his subcontractors, agents or servants gives or offers to give to any person any bribe, gift, gratuity or commission as an inducement or reward:

- (a) for doing or forbearing to do any action in relation to the contract or any other contract with the employer, or
- (b) for showing or forbearing to show favour or disfavour to any person in relation to the contract or to any other contract with the employer, then the employer may, after having given 14 days' notice to the contractor, terminate the contractor's employment under the contract and expel him from the site, and the provisions of this clause shall apply as if such termination and expulsion had been made under sub-Clause 15.2.

15.6 Integrity Pact

The Integrity Pact Annexed as Annexure-III shall be part and parcel of this tender and has to be signed by the bidder(s) at the pre tendering stage itself as a pre-bid obligation and should be submitted along with the financial & technical bids. All the bidders are bound to comply the Integrity Pact Clauses. Bids submitted without signing Integrity Pact will be ab initio rejected without assigning any reason.

16 Default Of Employer

16.1 Contractor's Entitlement to Suspend Work

If the Employer fails to pay the Contractor the amount due under any certificate of the Employer's Representative, and fails to explain why the Contractor is not entitled to such amount, within 21 days after the expiry of the time stated in Sub-Clause 13.7 with in which payments is to be made, except for any deduction that the Employer is entitled to make under the contract, the contractor may suspend work or reduce the rate of work after giving not less than 7 days' prior notice to the employer (with a copy to the employer's representative). Such action shall not prejudice the contractor's entitlements to payment under sub-Clause 13.8 and to terminate under sub-Clause 16.2.

If the contractor suspends work or reduces the rate of work, and the employer subsequently pays the amount due (including payment in accordance with sub-Clause 13.8), the contractor's entitlement under sub-Clause 16.2 shall lapse in respect of such delayed payment, unless notice of termination has already been given, and the contractor shall resume normal working as soon as is reasonably possible.

If the contractor suffers delay and/or incurs cost as a result of suspending work or reducing the rate of work in accordance with this sub-clause, the contractor shall give notice to the employer's representative. After receipt of such notice, the employer's representative shall proceed in accordance with sub-Clause 3.5 to agree or determine:

- (a) any extension of time to which the contractor is entitled under sub-Clause 8.3, and
- (b) the amount of such cost plus reasonable profit, which shall be added to the contract price, and shall notify the contractor accordingly.

16.2 Termination

If the employer:

- (a) fails to pay the contractor the amount due under any certificate of the employer's representative within 90 days after the expiry of the time stated in sub-Clause 13.7 within which payment is to be made (except for any deduction that the employer is entitled to make under the contract),
- (b) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under any applicable law) has a similar effect to any of these acts or event,

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- (c) consistently fails to meet the employer's obligations under the contract, or
- (d) assigns the contract without the contractor's written consent, or, if a prolonged suspension affects the whole of the works as described in sub-Clause 8.10, then the contractor may terminate his employment under the contract by giving notice to the employer, with a copy to the employer's representative. Such notice shall take effect 14 days after the giving of the notice.

16.3 Cessation of Work and Removal of Contractor's Equipment

After termination under sub-Clause 2.4 or sub-Clause 16.2, the contractor shall:

- (a) cease all further work, except for such work as may be necessary and instructed by the employer's representative for the purpose of making safe or protecting those parts of the works already executed, and any work required to leave the site in a clean and safe condition,
- (b) Hand over all construction documents, plant and materials for which the contractor has received payment.
- (c) hand over those other parts of the works executed by the contractor upto the date of termination, and
- (d) Remove all contractors' equipment which is on the site and repatriate all his staff and labour from the site.

Any such termination shall be without prejudice to any other right of the contractor under the contract.

16.4 Payment on Termination

After termination under sub-Clause 16.2, the employer shall return the performance security, and shall pay the contractor an amount calculated and certified in accordance with sub-Clause 19.6 plus the amount of any loss or damage, including loss of profit, which the contractor may have suffered in consequence of termination.

17. Risk and Responsibility

17.1 Indemnity

The contractor shall indemnify and hold harmless the employer, the employer's representative, their contractors, agents and employees from and against all claims, damages, losses and expenses arising out of or resulting from the works, including professional services provided by the contractor.

These indemnification obligations shall be limited to claims, damages, losses and expenses which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the works), including consequential loss of use. Such obligations shall also be limited to the extent that such claims, damages, losses or expenses are caused in whole or in part by a breach of a duty of care, imposed by law on the contractor or anyone directly or indirectly employed by the contractor.

17.2 Contractor's care of the Works

The contractor shall take full responsibility for the care of the works from the commencement date until the date of issue of the Taking-Over Certificate, when responsibility shall pass to the employer. If the employer's representative issues a Taking-Over Certificate for any section or part of the works, the contractor shall cease to be responsible for the care of that section or part from the date of issue of such taking-over certificate, when responsibility shall pass to the Employer.

The Contractor shall take responsibility for the care of any outstanding work which is required to be completed prior to the expiry of the Contract Period, until the employer's representative confirms in writing that such outstanding work has been completed. If any loss or damage happens to the works, arising from any cause other than the employer's risks listed in sub-Clause 17.3, during the period for which the contractor is responsible, the contractor shall rectify such loss or damage, at his cost, so that the works conform with the contract. The contractor shall also be liable for any loss or damage to the works caused by any operations carried out by the contractor after the date of issue of the taking-over certificate.

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17.3 Employer's Risks

The employer's risks are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war,
- (c) Ionising radiation's, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly,
- (d) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (e) Riot, commotion or disorder, unless solely restricted to employees of the contractor or of his subcontractors and arising from the conduct of the works,
- (f) Loss or damage due to the use or occupation by the employer of any section or part of the works, except as may be provided for in the contract, and
- (g) Any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.

17.4 Consequences of Employer's Risks

The contractor shall give notice, to the employer's representative, of an employer's risk upon it being foreseen by, or becoming known to, the contractor. If an employer's risk results in loss or damage, the contractor shall rectify such loss or damage to the extent required by the employer's representative. If the contractor suffers delay and/or incurs cost as a result of an employer's risk, the contractor shall give further notice to the employer's representative. After receipt of such further notice the employer's representative shall proceed in accordance with sub-Clause 3.5 to agree or determine:

- (a) any extension of item to which the contractor is entitled under sub-Clause 8.3, and
- (b) the amount of such cost, which shall be added to the contract price, and shall notify the contractor accordingly.

17.5 Contractors' Risks

The contractor's risks are all risks other than the employer's risks listed in sub-Clause 17.3.

18. Insurance

18.1 Insurance for Design

The contractor shall effect and maintain professional indemnity insurance, which shall insure the contractor's liability by reason of error, omission or professional negligence in the design of the works. Such insurance shall be for a limit of not less than the amount specified in the special conditions of contract. Such amount shall be available to cover the liability of the contractor, irrespective of any other claims made against, or losses incurred by, the contractor (whether arising from the works or his other activities,) during the contract period.

The contractor shall use his best endeavours to maintain such professional indemnity insurance in full force and effect throughout the periods of his liability, under the contract and under the law of the country. The contractor undertakes to give the employer reasonable notice in the event of difficulty (if any) in extending or renewing such insurance.

18.2 Insurance for Supply and Installation till Testing, Commissioning and validation

The insurance for supply and installation till testing and commissioning shall be under the scope of purchaser. However, for arranging the transit insurance, the shipment details have to be immediately mailed to the purchaser.

18.3 Insurance against Injury to Persons and damage to Property

The contractor shall insure against liability to third parties, in the joint names of the employer, the contractor and subcontractors, for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under sub-Clause 18.2) or to any person (except persons

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insured under sub-Clause 18.4), which may arise out of the performance of the contract and occurring before the issue of the Performance Certificate. Such insurance shall be for a limit of not less than the amount specified in the special conditions of contract if any.

18.4 Insurance for Workers

The contractor shall effect and maintain insurance against losses and claims arising from the death or injury to any person employed by the contractor or any subcontractor, in such a manner that the employer and the employer's representative are indemnified under the policy of insurance. For a subcontractor's employees, such insurance may be affected by the subcontractor, but the contractor shall be responsible for compliance with this clause.

18.5 General Requirements for Insurances

The contractor shall, within the respective periods stated in the special conditions of contract (calculated from the commencement Date), submit to the employer:

- (a) evidence that the insurances described in this clause have been effected, and
- (b) copies of the policies for the insurances described in sub-Clause 18.3

When each premium has been paid, the contractor shall submit copy receipts to the employer. The contractor shall also when providing such evidence, policies and receipts to the employer, notify the employer's representative of so doing.

The contractor shall affect all insurances for which he is responsible with insurers and in terms approved by the employer. Each insurance policy shall be consistent with the general terms agreed prior to the effective date. Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify such loss or damage. Payments received from insurers shall be used for the rectification of such loss or damage.

The contractor (and, if appropriate, the employer) shall comply with the conditions stipulated in each of the insurance policies. The contractor shall make no material alteration to the terms of any insurance without the prior approval of the employer. If an insurer makes (or purports to make) any such alteration, the contractor shall notify the employer immediately.

If the contractor fails to effect and keep in force any of the insurances required under the contract, or fails to provide satisfactory evidence, policies and receipts in accordance with this sub-clause, the employer may, without prejudice to any other right or remedy, effect insurance for the coverage relevant to such default, and pay the premiums due.

Such payments shall be recoverable from the contractor by the employer, and may be deducted by the employer from any monies due, or to become due, to the contractor.

Nothing in this clause limits the obligations, liabilities or responsibilities of the contractor or the employer, under the other terms of the contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the contractor and/or the employer accordingly.

19. Force Majeure

19.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an event beyond the control of the Employer and the Contractor, which makes it impossible or illegal for a party to perform, including but not limited to:

- (a) act of God ;
- (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo;
- (c) rebellion, revolution, insurrection, or military or usurped power, or civil war;

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- (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- (e) Riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors.

19.2 Effect of Force Majeure Event

Neither the Employer nor the Contractor shall be considered in default or in contractual breach to the extent that performance of obligations is prevented by a Force Majeure event which arises after the Effective Date.

19.3 Contractor's Responsibility

Upon occurrence of an event considered by the Contractor to constitute Force Majeure and which may affect performance of his obligations, he shall promptly notify the Employer's Representative, and shall endeavour to continue to perform his obligations as far as reasonably practicable. The Contractor shall also notify the Employer's Representative of any proposals, including any reasonable alternative means for performance, but shall not effect such proposals without the consent of the Employer's Representative.

19.4 Employer's Responsibility

Upon occurrence of an event considered by the Employer to constitute Force Majeure and which may affect performance of his obligations, he shall promptly notify the Contractor and the Employer's Representative, and shall endeavour to continue to perform his obligations as far as reasonably practicable. The Employer shall also notify the Employer's Representative and the Contractor of any proposals, with the objectives of completing the works and mitigating any increased costs to the Employer and the contractor.

19.5 Payment to Contractor

If, in consequence of Force Majeure, the Works shall suffer loss or damage, the Contractor shall be entitled to have included, in an Interim Payment Certificate, the cost of Work executed in accordance with the Contractor, prior to the event of force Majeure.

If the Contractor incurs additional Cost in complying with Sub-Clause 19.3, such Cost shall be determined by the Employer's Representative in accordance with the provisions of Sub-Clause 3.5 and shall be added to the Contract Price.

19.6 Optional Termination Payment and Release

Irrespective of any extension of time, if a force Majeure event occurs and its effect continues for a period of 182 days, either the Employer or the Contractor may give to the other a notice of termination, which shall take effect 28 days after giving of the notice. If, at the end of the 28-day period, the effect of the force Majeure continues, the Contract shall terminate. If the Contract is terminated under this Sub Clause, Sub-Clause 2.4 or Sub-Clause 16.2, the Employer's Representative shall determine the value of the work done and:

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

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19.7 Release from Performance under the Law

If an event of Force Majeure occurs, and under the law of the Contract the Employer and the Contractor are released from further performance, the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 if the Contract had been terminated under that Sub-Clause.

20 Claims, Disputes And Arbitration

20.1 Procedure for claims

If the Contractor intends to claim any additional payment under any Clause of these Conditions or otherwise, he shall give notice to the Employer's Representative within 28 days of the start of the event giving rise to the claim.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Employer's Representative. Without admitting the Employer's liability, the Employer's Representative shall, on receipt of such notice, inspect such records and may instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer's Representative to inspect all such records, and shall (if instructed) submit copies to the Employer's Representative.

Within 28 days of such notice, or such other times as may be agreed by the Employer's Representative, the Contractor shall send to the Employer's representative an account, giving detailed particulars of the amount and basis of the claim. Where the event-giving rise to the claim has a continuing effect, such account shall be considered as Interim. The Contractor shall then, at such intervals as the Employer's Representative may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the Employer's Representative, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event.

If the Contractor fails to comply with this Sub-Clause, he shall not be entitled to additional payment.

20.2 Payments of Claims

The Contractor shall be entitled to have included in any Interim Payment Certificate such amount for any claim as the Employer's Representative considers due. If the particulars supplied are insufficient to substantiate the whole of the claim. The Contractor shall be entitled to payment for such part of the claim as has been substantiated.

20.3 Expert

Unless the Expert has been previously mutually agreed upon the parties and named in the Contract, the parties shall, within 28 days of the Effective Date, jointly agree upon and appoint a suitably qualified person as Expert. The Expert shall be (and the terms of his appointment shall so provide) independent of the parties and shall act impartially and in accordance with the Contract. The terms of the remuneration of the Expert, including the remuneration of any specialist from whom the Expert may require to seek advice, shall be mutually agreed upon among the Employer, the Contractor and the Expert. The Employer and the Contractor shall each pay one-half of the Expert's remuneration in accordance with such terms. The Expert's appointment may be terminated only by mutual agreement of the Employer and the Contractor. The Expert's term of appointment shall expire when the discharge referred to in Sub-Clause 13.12 shall have become effective, or at such other time as the parties may mutually agree.

If the parties so agree, they may appoint a suitably qualified person to replace the Expert. The appointment will come into effect if at any time the Expert declines to act or is unable to act as a result of his death, disability, resignation or termination of his appointment.

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If the parties fail to agree on the appointment or the replacement of the Expert, the person or administration named by Purchaser employer shall appoint the Expert, after due consultation with the Parties and such appointment shall be final and conclusive.

20.4 Procedure for Obtaining Expert's Decision

If a dispute arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any opinion, instruction, determination, certification or valuation of the Employer's Representative, the dispute shall initially be referred in writing to the Expert for his decision, with a copy to the other party. Such reference shall state that it is made under this Sub-Clause. The parties shall promptly make available to the Expert all such information, access to the Site, and appropriate facilities, as the Expert may require for the purposes of rendering his decision. No later than the forty-second day after the day on which he received such reference, the Expert, acting as an expert and not as an arbitrator, shall give notice of his decision to the parties. Such notice shall include his reasons and shall state that it is given under this Sub-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 decision of the Expert, unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either party is dissatisfied with the Expert's decision, then either party, on or before the twenty-eighth day after the day on which it received notice of such decision, may notify the other party of its dissatisfaction. If the Expert fails to give notice of his decision on or before the forty-second day after the day on which he received the reference, then either party, on or before the twenty-eighth day after the day on which the period of 42 days has expired, may notify the other party of its dissatisfaction. In either event, such notice of dissatisfaction shall state that it is given under this Sub-Clause, set out the matters in dispute and the reason(s) for dissatisfaction and, subject to Sub-Clause 20.7 and 20.8, no arbitration in respect of such dispute may be commenced unless such notice is given.

If the Expert has given notice of his decision as to a matter in a dispute to the Employer and the Contractor and no notice of dissatisfaction has been given by either party on or before the twenty-eighth day after the day on which the parties received the Expert's decision, then Expert's decision shall become final and binding upon the Employer and the Contractor.

20.5 Amicable Settlement

Where notice of dissatisfaction has been given under Sub-Clause 20.4, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that unless the parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

20.6 Arbitration

Disputes, if any, shall be invariably sorted out by mutual discussions and resolved. In case of disputes, not resolved by this process shall be referred to the Sole Arbitrator, to be appointed by the Chairman & Managing Director, of employer. Based on the recommendations of the Arbitrator, the decision of the Chairman & Managing Director, employer shall be binding on both the parties.

20.7 Failure to Comply with Expert's Decision

Where neither party has given notice of dissatisfaction within the period stated in Sub-Clause 20.4 and the Expert's related decision, if any, 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

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failure itself to arbitration under Sub-Clause 20.6. The provisions of Sub-Clauses 20.4 and 20.5 shall not apply to any such reference.

20.8 Expiry of Expert's Appointment

When the term of appointment of the Expert and his replacement (if any) has expired, any such dispute referred to in Sub-Clause 20.4 shall be finally settled by arbitration pursuant to Sub-Clause 20.6. The provisions of Sub-Clause.20.4 and.20.5 shall not apply to any such reference.

Note: In case of discrepancy in tender conditions the chapter 3.2 (Special Condition of Contract) shall supercede

20.9 Jurisdiction

The courts at Goa, shall have exclusive jurisdiction for all disputes and difference arising out of this contract.

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CHAPTER – 3.2

SPECIAL CONDITIONS OF CONTRACT

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3.2 SPECIAL CONDITIONS

3.2.1 GENERAL

These special conditions shall be read in conjunction with the General Conditions of contract, Job Specifications, Drawings and other documents forming part of this contract wherever the context so requires.

Notwithstanding the sub-division of the documents into these sections and volume every part of each shall be deemed to be supplementary to and complementary of every other part and shall be read with and into the context in so far as it may be practicable to do so.

The several documents forming the contract are to be taken as mutually explanatory of one another. In case of discrepancy the following order of precedence shall be observed:

- a. The works described in drawings and notes thereon.
- b. The items in the schedule of quantities.
- c. Particular specifications (given in Tender documents)
- d. Special conditions of contract.
- e. General conditions of contract.

The intending Contractor / contractor shall be deemed to have visited the site and familiarized himself thoroughly with the site conditions before submitting the tender or before signing the contract. Non-familiarity with the site conditions will not be considered a reason either for extra claims or for not carrying out the work in strict conformity with the drawings and specifications.

The rate quoted by the tenderer for any item of work for a particular building shall be applicable for other buildings also. If different rates are quoted, lowest of the rates quoted will be applicable for all buildings.

Contractor shall submit registration nos. for Service Tax, VAT, Works Contract Tax, IT PAN No., PF Contract Labour License, ESIC along with bid documents. The prices quoted should include supply, installation, testing & commissioning at site & should include all applicable taxes & duties.

3.2.2 COMPLETION TIME & LIQUIDATED DAMAGES

Over all completion time shall be as mentioned in the Schedule of Fiscal Aspect. The LD shall be levied at the rate of 0.5% per week maximum being 5% of Total Contract Value, if the work is delayed beyond the stipulated completion time.

Contractor on receipt of the LOI / Work Order shall submit to Owner/Engineer, a further detailed schedule showing the way the work is proposed to be carried out so as to achieve all milestones in time. The Schedule so submitted will be scrutinized by Owner and if not found suitable will be changed by the contractor. The agreed schedule shall form a part of the contract and shall be strictly adhered to and all necessary arrangements shall be made to guarantee the fulfillment of overall construction schedule and milestones.

The Completion time is inclusive of monsoon period and no extension of time shall be granted on this account. During inclement weather, the contractor shall suspend all such work where quality is likely to be affected due to such weather conditions. Loss of time due such exigencies shall be made up during good weather without any cost implication to Owner.

3.2.3 PROGRESS REPORTS

The Contractor shall submit brief weekly report & an exhaustive monthly report to Owner/Engineer-in-charge. The structure of the report will be in line with the Agreement. The Contractor shall also maintain at site a regular and proper record of progress on a continuous basis. Such record shall include Bar /PERT charts, Material movement, consumptions, rate of progress of various activities and any other

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record as may be advised by Owner from time to time. The contractor whenever demanded by Owner shall produce all such reports, record, progress charts etc.,

The Contractor shall submit sufficient number of Coloured photographs. Every month indicating the progress of execution. These photographs shall be taken from same points each time, covering entire field activities.

3.2.4 WORK ON SUNDAYS, HOLIDAY AND DURING NIGHT HOURS

Contractor will be expected to work extended hours (2 shifts minimum) and on Sundays, Holidays and during night hours after obtaining the prior written approval of Owner/engineer-in-Charge. It is also expected that the Contractor shall make his own arrangement for lighting etc. for the purpose of night working. Owner however, shall not entertain any claim for extra cost or charges on account of such extended hour working or working on Sundays, Holidays and during night hours.

3.2.5 PRIORITISING THE WORK

The Contractor shall work on areas in accordance with the priorities assigned by Owner and shall complete the same in the sequence as directed by Owner.

3.2.6 EXECUTION OF WORK

The whole of the work must proceed within such sections at such times and in such manner as described in specifications and as directed by Owner. Drawings and details will be issued keeping in view the progress of works and the requirements of schedule of sequence of construction activities. Such drawings and details, if required, will be issued in advance to the Contractor before commencement of related construction activity at site. No extra time or relaxation of construction schedule will be permitted on account of this.

3.2.7 MINIMUM RE-WORKING

The contractor shall ensure strict quality control at site. In no case more than 2% re-work on any individual item shall be allowed. For the purpose of determining the re-worked % either volumetric or surface area shall form the basis. Such basis shall be decided by Owner/engineer-in-Charge or his representative and shall be binding on the Contractor. Failure to comply with re-working requirement shall be treated as breach of contract in which case Owner shall take punitive action against the defaulting Contractor, as deemed fit.

3.2.8 FAILURE TO ARRANGE COMMITTED MANPOWER /MACHINERY

The Contractor shall submit manpower and machinery / equipment proposed to be deployed to carry out the work within the stipulated time. Such committed manpower/machinery shall be considered as minimum requirement and failure to maintain the same at site shall be treated as deemed fit.

3.2.9 ACCESS TO SITE

All necessary access to working area will have to be made and maintained by the Contractor. Such temporary constructions shall have to be removed after completion of the work or if so advised by Owner at any point of time at no extra cost.

3.2.10 PROPERTY RIGHTS

All materials / goods / items at site whether free issue or otherwise, other than the Contractor's construction machinery, will be property of Owner, which shall not be removed from site of work and shall be open to inspection by Owner. The Contractor shall be responsible for any theft, loss and damage to such material, items, goods etc.

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3.2.11 INSURANCE

The insurance for supply and installation till testing and commissioning shall be under the scope of purchaser. All other insurances which required to complete the project shall be under the scope of contractor.

3.2.12 SECURITY / WATCH & WARD

The Contractor shall make his own arrangement for safety/Security and Watch & Ward of his staff, materials and also the materials supplied by Owner as free issue or on chargeable basis. If Owner decides to have additional security at site then the Contractor is expected to work within the regulations of such security.

3.2.13 LABOUR AT SITE

Owner will not allow any temporary or permanent hutments or colonies at the Work Site. The Contractor will have to make his own arrangement for such labour camp(s) away from site at his own cost.

3.2.14 WATER AND ELECTRICITY FOR CONSTRUCTIONS

The electricity, if available at site will be provided to the contractor at a single point on a chargeable basis. The contractor shall pay the employer at the prices stated. The quantities consumed shall be determined by the Employer's representative, who shall include the amounts due as deductions in Interim and final payment certificates. The contractor shall, at his risk and cost, provide any apparatus necessary for such determination and for his use of these services. The contractor should make his own arrangements for the providing back up power supply (like D.G sets of required capacity) during the work.

However, water required for any purpose has to be arranged by Contractor at his own cost.

3.2.15 ASSIGNING THE WORK/SUB-CONTRACTING/VENDOR SELECTION

- a) Owner/Engineer-in-charge approval shall be obtained before engaging any sub contractors/vendors.
- b) Assignment to another agency shall not be allowed unless specifically approved by Owner.
- c) Approval of such sub-contractors/vendors by Owner will not relieve the contractor from over-all contractual obligations.

3.2.16 OTHER CONTRACTS/CONCURRENT WORKS

- a) Owner reserves the right to let other contractors work in the same area in connection with his work under similar Agreement. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and co-ordinate his work with theirs. If any part of Contractor's or sub-contractor's work depends for proper execution or results upon the work of any other Contractor or Sub-Contractor, the Contractor shall inspect and promptly report to Owner any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work.
- b) During the progress of this contract, other construction works will also be concurrently in operation. The contractor shall co-operate with the other Contractors working at site to the fullest extent and shall allow reaching other every facility and co-operation for execution of this work, simultaneously and satisfactorily during the erection of machinery or execution of any other activity. Contractor may have to suspend his work partially or totally in the interest of the whole project. He may also be required to dismantle or to shift his construction plant and equipments for erection of machinery and

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/or any other operation. In such cases, he shall not be given any compensation on account of reduction or stoppage of labour force or dismantling, shifting of his construction plant and equipments, etc.

3.2.17 SAFETY PRECAUTIONS AT WORK

The contractor shall make all necessary arrangements for safety of personnel working at site and ensure that all safety precautions in line with established industry practices are taken and Guide Lines issued by Statutory Authorities are complied with.

3.2.18 PROTECTION AND CLEANING

The contractor shall protect and preserve the work from all damage or accident providing any temporary roof, window and door coverings, boxing or other construction as required by the Architect. This protection shall be provided for all property adjacent to the site as well as on the site.

The contractor shall properly clean the work as it progresses and shall remove all rubbish and debris from the site from time to time as is necessary and as directed. On completion, the Contractor shall ensure that the premises and / or site are cleaned, surplus materials debris, sheds etc. removed, areas under floors cleared of rubbish, gutters and drains cleared, doors and sashes eased, locks and fastenings oiled, keys clearly labelled and handed over to the Clerk-of Works so that the whole is left fit for immediate occupation or use and to the satisfaction of the Architect/Company.

3.2.19 PROTECTION OF WILD LIFE

The Contractor shall ensure the safety of wild Life animals in and around the site and ensure that all Statutory Regulations are complied with. He shall indemnify Owner against violation of Wild Life Protection Act or any such Government Regulations.

3.2.20 BOQ & PRICE SCHEDULE

The contract shall be based on Item wise Price for the Items listed in the Bill of quantities. The unit price quoted shall remain irrespective of quantity variation.

3.2.21 EARNEST MONEY DEPOSIT

The tenderer shall furnish along with its tender, earnest money for amount as shown under chapter 3.2 schedule of Fiscal aspects. The earnest money is required to protect the purchaser against the risk of the tenderer's unwarranted conduct. The EMD should be furnished in the name of **"Goa Antibiotics & Pharmaceuticals Ltd, payable at Goa"**.

The earnest money shall be denominated in Indian Rupees The earnest money shall be furnished in one of the following forms:

- i) Account Payee Demand Draft
- ii) Bank Guarantee (format enclosed as **Annexure-IV**)

The demand draft shall be drawn on any commercial bank in India or country of the tenderer, in favour of the **"Goa Antibiotics & Pharmaceuticals Ltd"** payable at Goa. In case of bank guarantee, the same is to be provided from any from scheduled commercial bank in India.

The earnest money shall be valid for a period of forty-five (45) days beyond the validity period of the tender.

Unsuccessful tenderers' earnest money will be returned to them without any interest, after expiry of the tender validity period, but not later than thirty days after conclusion of the resultant contract. Successful

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tenderer's earnest money will be returned without any interest, after receipt of performance security from that tenderer.

Earnest Money is required to protect the owner against the risk of the Tenderer's conduct, which would warrant the forfeiture of the EMD. Earnest money of a tenderer will be forfeited, if the tenderer withdraws or amends its tender or impairs or derogates from the tender in any respect within the period of validity of its tender or if it comes to notice that the information/documents furnished in its tender is incorrect, false, misleading or forged without prejudice to other rights of the purchaser. The successful tenderer's earnest money will be forfeited without prejudice to other rights of Purchaser if it fails to furnish the required performance security within the specified period.

3.2.22 DELETED

3.2.23 PERFORMANCE SECURITY/SECURITY DEPOSIT

The successful tenderer shall furnish a Bank Guarantee within Ten (10) days from the date of issue of LOA,, in the format as acceptable to the Company for a sum of **5%** of the contract value from any Nationalized/Scheduled commercial bank **valid for the period of the Contract** plus 12 months towards the security for the execution and fulfillment of the contract. The contract agreement shall be signed after receipt of PBG.

- i. The security deposit recovered from the contractor and held with the owner will be released on the expiry of the defects liability period (12 months from the date of work completion certificate).

The security deposit of the successful tenderer will be forfeited, if he fails to comply with any of the conditions of the contract.

3.2.24 DELETED

3.2.25 VALIDITY OF OFFER/RATES / PRICES

- a. The Offer remains valid for a period of 120 days from the date of opening of tender.
- b. After placement of Work Order all the rates/prices quoted by Contractor shall remain valid till the Final Acceptance Certificate / Measurement Certificate is issued by Owner/Engineer-in-Charge.
- c. The unit rates / prices quoted by the Contractor in the Schedule of Rates / Prices / BOQ shall be firm irrespective of any quantity of individual items of work and/or in the total contract price.
- d. Prices and unit rates shall be valid even if the contract is split.
- e. Prices and unit rates of any or each item shall be valid irrespective of whether the item to be executed is located at any height/depth, any floor, inside or outside the building unless otherwise specifically mentioned in the description of item in the Schedule of Rate / Price / BOQ.

3.2.26 The rates quoted shall be deemed to be for the finished work to be measured at site. Tenderers must include, transportation of materials to site, VAT, Excise Duty, Octroi and any other tax and duty or other levy levied by the Central Govt or any State Govt. or Local Authorities, if applicable, in their rates.. No claim in respect of any of the above levies will be entertained by the Company.

Necessary deductions towards the Employee's State Insurance as per the Act, will be made in the contractor's bills if necessary. The contractor shall provide the proof of ESI payments and

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its adherence. The Contractor should maintain all records of labour payments (including subcontractors) and product as and when required by the Company or ESI Authorities for assessment and recovery. In case any additional amount is demanded from the Company by the authorities on any account, the Company shall have the right to recover the same from the Contractor.

3.2.27 CONFIDENTIALITY

The Contractor shall not reveal the scope of work/rates/quantities/facilities appearing in the Work Order/Contract to any body without the knowledge of owner. Violation of this Clause will be treated as breach of Contract, in which case Owner will reserve the right to take necessary punitive action against the Contractor.

3.2.28 TERMS OF PAYMENT

Refer Schedule of Fiscal aspects

3.2.29 NON TENDERED ITEMS:

3.2.29.1 The rates furnished in the Schedule of Quantities will apply for the entire project. Any item of work which is not covered in the Schedule of Quantities which may be required to be carried out on Site shall be executed by the Contractor and payment for such items of work shall be based on the rates that may be derived from the rates quoted for similar comparable items.

3.2.29.2 And for such items which cannot be derived from the quoted rates the payment shall be based on rate analysis of materials , labour, plus 10% towards overheads and profit.

3.2.30 TESTING OF MATERIAL

Owner/Engineer-in-Charge reserves the right to ask for any kind of test to be carried out on any construction material / consumables / finished structures or goods or items / bought outs. The Contractor shall bear all necessary charges for all such tests. Such tests shall be carried out by a laboratory / person approved by Owner/Engineer-in-Charge.

3.2.31 ESCALATION

The rates of contractor shall remain fixed till the completion of the work and NO price variation on account of any increase in taxes, duties or any other reason, whatsoever, shall be payable. It is clarified that No escalation clause is applicable for this work.

3.2.32 DELETED

3.2.33 CONTRACTOR'S INABILITY TO SUPPLY MATERIAL

In case of Contractor fails to supply any item of material covered under contract then Owner will be at liberty to procure the same from open market at the risk & cost of the contractor and recover the same from forthcoming running bill or Security Deposit/Bank Gurantee.

3.2.34 PUNITIVE MEASURES

Owner will decide on punitive measures wherever reference to punitive measures or otherwise due to breach of contract is indicated in the clauses above. Decision of Owner in such matters shall be binding on the Contractor.

3.2.35 AMBIGUITIES IN TERMS & CONDITIONS/ QUANTITIES.

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In case of any dispute or ambiguity in the interpretation of any condition contained both in the Agreement and the Special Conditions of Contract the interpretation of the Special Conditions of Contract shall prevail.

In case of interpretation of any item description in the schedule of quantities and the equivalent specifications, the item description given in the schedule of quantities shall prevail.

3.2.36 CHANGES IN CONSTITUTION

Before any change is made in the constitution of the firm, the prior approval is to be obtained by the Contractor in writing of the Accepting Authority. If the Contractor is an individual or a proprietary concern and the individual or the proprietor dies and if the Contractor is a partnership concern and one of the partners dies, then the Accepting Authority reserves the right to cancel the contract, if the Accepting Authority is not satisfied that the legal representatives of the individual firm or the proprietor of the proprietary concern and in the case of partnership, the surviving partners are capable of carrying out and completing the contract.

3.2.37 UNDER PAYMENT / OVER PAYMENT

The owner reserves the right to carry out past payments, audit and technical examinations of the trial bill including all supporting vouchers, abstracts, etc., If as a result of such audit and technical examination any overpayment is discovered, it shall be recovered from any other sum due to the contractor, which may be available with the Owner or he shall pay the claim on demand.

Any amount due to the Contractor under this Contract for underpayment may be adjusted against any amount then due or which may at any time thereafter become due before payment is made to the Contractor.

3.2.38 CONFLICT IN INTERPRETATION OF CONDITIONS

If there is any conflict or difference in the interpretation of conditions stipulated in various sections of this tender document the reading and interpretation of the conditions stated shall prevail in the following order of priority:

- I) Scope of work and technical requirements
- II) Special conditions of contract
- III) General conditions of contract

In case of any discrepancy between the description of items in schedule of quantities, specifications, drawings and other tender documents, the decision of the Engineer-in-charge, in writing, shall be final binding and conclusive for the purpose of this contract. The contractor in any case shall not delay or stop the work for the questions or disputes being referred to arbitration but shall proceed with work with all diligence until the decision of the arbitrator and shall abide by arbitrators decision.

3.2.39 The contractor shall submit a bill giving details of measurement of works executed for interim payments to the Employer. The bill for interim payment shall include only those items as applicable as per the terms of payments.

In addition to the above, following will also be taken into consideration:

- A. Deleted
- B. Deduction of Income Tax and other applicable statutory deductions shall be made on the gross amount of each bill as per the provision of the Income Tax Act and other statutory act in force.
- C. Within three weeks of the receipt of the bill for interim payment, in case where there is difference in opinion as to the value of any item, the Employer's / Consultants view shall prevail.

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D. Deleted

E. All interim payments shall be treated as advance payments. On completion of the entire work, the contractor shall submit his final bill. After verifying the bill, the final amount shall be released.

F. The rates for each item shall include all taxes, duties including VAT etc. that may be levied according to the laws and regulations on the constructional plant, materials and supplies acquired for the purpose of the contract and on the services performed under the contract.

G. The contractor shall submit computerized statement of total BOQ, completed BOQ and weekly schedule to Employer.

H. The contractor shall submit room wise schedule activities for better monitoring and co-ordination with other agencies such as HVAC, electrical, Piping etc. to Employer.

3.2.40 The Contractor for HVAC Works shall be fully responsible, in all respects, for the co-ordination of all the services work including electrical, piping and modular works or works of other Employer appointed agencies. Contractor shall ensure proper co-ordination for the inter-dependent / related activities between himself, services sub-contractors and other nominated, Specialist Contractors etc.

a. The contractor shall arrange the water, electricity and scaffoldings required on their own.

b. The HVAC Contractor shall be responsible to work out a co-ordinated work schedule with the Modular, Electrical, Plumbing and other nominated Contractors.

c. No other claim shall be entertained from the contractor on the plea that the work has been executed in the above circumstances or under difficult conditions. It shall be the responsibility of the contractor to enforce necessary discipline among his workers and staff to ensure smooth working at the site in a spirit of co-operation and amity with all other agencies. In case of any dispute, decision of Employer or Employer's representative shall be final and binding to the contractor.

3.2.41 The contractor is made explicitly clear that the work is to be carried out in co-ordination with HVAC agency and other nominated contractors/ agencies, which shall be engaged to execute other services of the project.

The contractor shall submit to the Employer's approval, immediately the following information in order to proceed with the work.

A. Exact Layout and details of the temporary work that the contractor wants to carry out to fulfil his obligations under the contract.

B. A general layout of storage space for material for the execution of work within stipulated time period.

3.2.42 Depending on the exigencies at the site the temporary offices, stores etc. may have to be moved or shifted and the contractor shall do so, if so required by the Employer / Consultant at no extra cost to the Employer.

3.2.43 After the award of the contract the contractor shall furnish Samples, Mock-ups and Shop Drawings (where appropriate) of all the materials and work listed elsewhere in these conditions, for approval by the Consultant / Employer. These samples / Shop Drawings / Mock-ups shall be prepared either at the site or at the Contractor's workshop as directed by the Consultant / Employer and delivered at the site to meet the time schedule finalised with the Employer.

All samples shall be made to the size and in the manner required by the Consultant / Employer.

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All such sample work, shop drawings etc. shall be produced by the contractor at his cost and no extra payment shall be made for the same.

- 3.2.44** Employer shall have full power to get any materials of work to be tested by an independent agency at contractor's expense in order to prove the soundness and adequacy.
- 3.2.45** If any material / equipment are supplied by the Employer to the contractor free of cost, the contractor shall receive the same at site, handle with care and store them as directed by the Employer. The contractor shall be responsible for the safe custody and shall insure all materials against theft and damage by fire. The contractor shall maintain records of consumption on daily basis.
- 3.2.46** The contractor shall ensure cleanliness and keep the site free from all debris, hazardous material, loose wires, open fires or any other materials and avoid damage due to accidents, negligence etc. All the above measures including fencing etc. required to be provided during the time period of the contract, shall be provided by the contractor at no expense to the Employer. The provision of all these measures does not absolve the contractor of his liabilities as per the contract.
- 3.2.47** It shall be the responsibility of the Contractor to ensure that his workmen do not trespass into areas and buildings adjacent to the construction site. The contractor shall enforce proper discipline in this regard by making proper arrangements.
- 3.2.48** The project will be executed in phased manner and each phase of the project will be executed in a single stretch and each phase is proposed to be completed in a span of 12 months
- 3.2.49** Penalty: If the Contractor fails to complete and hand over the completed work to the Employer within the stipulated period as per the Contract, penalty of 1% of the Contract Value per week of delay will be charged from the Contractor upto a maximum of 5% of the Contract Value.
- 3.2.50** Along with the submission of bid, the contractor will submit a detailed schedule. The schedule program will show the completion targets for major milestones of the job.
The Contractor shall mobilise equipment, tools, plant, material, labour etc. in sufficient quantities so as to complete the work to meet the above agreed scheduled program. In the event of delay in the execution activities, the contractor shall mobilise additional resources to complete the job in the specified time period and at no extra cost to the Employer.
- The Consultant / Employer may suggest an alternative scheduling of operations, should they find it necessary, to accomplish the targets and the contractor shall accordingly mobilise additional resources at no extra cost to the Employer.
- 3.2.51** To facilitate satisfactory completion of the work under this contract, and to co-ordinate work with other agencies working at the site, meetings will be held at the time and venue decided by the Consultant / Employer.
During these meetings progress of various works will be reviewed and those matters needing clarifications / decisions to expedite the work will be taken up.
- 3.2.52** During progress of the work, completed portion of the building may be occupied and put to use by the Employer. The Contractor shall however remain fully responsible for the maintenance of all the work till the entire work covered by the contractor is satisfactory completed and handed over to the Employer.
- 3.2.53** Safe custody of all materials and products supplied by the contractor shall be his own responsibility till the final taking over by the Employer. He should therefore employ sufficient staff for watch and ward at his own expenses.
- 3.2.54** It shall be the responsibility of the Contractor to study carefully all the drawings, instructions etc and point out discrepancies and obtain clarifications, if any, in writing before taking up the work. He shall

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also be responsible to ensure that the work is carried out in accordance with Local Bye-Laws in all respects, and to ensure that he obtains all prior sanctions from all the Competent Local Authorities before he takes up the work. If, as a result of his failure to do so, in spite of the works having been carried out as per the drawings and instruction issued by the Consultant and /or the Employer, and/or in the presence of the representative(s) of the Consultant / Employer, the Contractor himself shall be solely responsible and if so directed, dismantle and reconstruct at his own cost the work/item(s) of work as per such directions. No claims in this regard will be entertained.

- 3.2.55** It shall be the sole responsibility of the Contractor to ensure all safety measures giving proper prior notices etc. and obtaining prior permission from concerned local authorities as per Bye-Laws or directions issued by them, all at his own cost. No claim of the contractor in this regard shall be entertained.
- 3.2.56** With the submission of the tender, the Contractors declares and agrees that all the labour and requisite materials required for the work are available for completion of the work within the period stipulated for completion of the work.
- 3.2.57** It shall be the responsibility of the contractor to submit sample and obtain prior approval of the Consultant in respect of all materials, fittings and fixtures and any other items as decided by the Consultant. One such approved sample of each shall be kept with the Consultant and at site for future reference.
- 3.2.58** Any material / item / fitting / fixtures rejected by the Employer / Consultant shall be removed from the site within 48 hours of issue of instructions to this effect by the consultant. Failing this, the employer shall have the rights to get these so removed at the contractor's cost and the contractor shall have no claim whatever in this regard.
- 3.2.59** It shall be the entire responsibility of the Contractor to initiate action well in time with regard to extra/substituted items before taking up such items. The same shall apply to items, which have deviated as per the terms of the Contract. Contractor's failure in this regard shall be entirely at his own risk and cost.
- 3.2.60** Carrying out / taking of joint measurements along with the Employer's representative and / or getting the measurements of the various items included in any bill shall be the sole responsibility of the Contractor. Failure to get such measurements verified may entail non payments for such items for which the contractor himself shall be solely responsible and so also for all consequences flowing there from.
- 3.2.61** The contractor is alone responsible, for any discrepancy arising out of the definition / interpretation etc. of any matter connected with the execution of the work, which has not been got clarified prior to submission of tenders as required and all consequences arising there from.
- 3.2.62** The Contractor as per the given proforma shall submit a program of work. The agreed programme shall form a part of the contract.
- 3.2.63** The contractor shall adhere to the programme in its detail. Any modification to this shall be subject to the approval of the Employer / Consultant. Interim bills shall be raised upon completion of stages of work marked on the agreed program.
- 3.2.64** The contractor shall also include in his quoted rate barricading / fencing of construction activity area. All materials, fabrication yards, stores, manpower are to be contained within the barricaded area. The contractor shall not be allowed to extend his activities beyond this area.
- 3.2.65** Electricity, if available at site will be provided to the contractor at a single point on a chargeable basis. The contractor should make his own arrangements for the providing back up power supply (like D.G sets of required capacity) during the work.

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- 3.2.66** Water has to be arranged by the contractor at his own cost.
- 3.2.67** No place and no temporary constructions will be allowed at the site for workers' accommodation during the construction work.
- 3.2.68** The Contractor will be provided with open space free of cost for constructing temporary site office near the construction area.
- 3.2.69** It is essential that the works site be kept in an orderly and neat manner at all times. Stacking of materials, arrangement of fabrication yards, water tank for construction, equipment etc. shall be free from obstructions and easy to survey and inspect. The Employer should have the right to get such work as is necessary to ensure proper maintenance of the works site at the contractors cost, in case the contractor fails to comply with the requirements.
- 3.2.70** The contractor has to meet all construction safety requirements as laid down by Purchaser at their own cost.
- 3.2.71** The contractor shall use only steel scaffolding and not bamboos for any kind of work.

(Contractor)

(Employer)

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SCHEDULE OF FISCAL ASPECTS

Sr. No.	Particulars	Description
1	Submission of completed Tender	On or before 24.04.2019 - 15:00 Hrs
2	Opening of Bid	On 24.04.2019, 15:30 Hrs
3	Possession of Site	As per project requiriement
4	Date of Commencement	Within 15 days of award of work
5	Time of completion	Over all 2 (Two) months from the date of Award of Work order.
6	Payment terms for Purchase Order	a. 50% against delivery of actual material at site b. 20% against installation of material at site. c. 20% within 30 days on successful commissioning, validation and submission of all documentation and on receipt of Final Acceptance Certificate from GAPL. d. 10% on completion of warranttee period.
7	Payment Terms for Service order	a. 50% against Installation of material at site b. 40% wihtin 30days on Successfull Commissioning, validation and submission of all documentation and on receipt of Final Acceptance Certificate from GAPL. c. 10%on completion of the warrantee period.
8	Period of submitting Final bills	Immediate on completion of work.Payment shall be made within 30 days from the date of submission of the final bills.
9	Liquidated damages/per week	0.5% per week inclusive of Sundays and Holidays upto a maximum of 5% of contract value. Delay shall be accessed periodically based on the cumulative mile-stones
10	Defects Liability Period	12 (Twelve) months from the date of completion of work
11	Earnest Money Deposit	Rs.1,50,000/- (Rupees one Lakh only)
12	Tender Fee	Rs. 1,180/- (Rupees one Thousand only)
13	Refund of Earnest Money Deposit to unsuccessful bidders	On award of contract to successful bidder
14	Insurance	For supply, installation, testing and commissioning under the scope of Purchaser
15	Transportation	On account of Contractor

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Sr. No.	Particulars	Description
16	B.G / DD in favour of	Goa Antibiotics & Pharmaceuticals Ltd, payable at Goa
17	All queries / communication to be addressed to	The Dy.Manager Purchase, Goa Antibiotics & Pharmaceuticals Ltd, Near Tuem Industrial Estate, Tuem, Pernem, goa. 403512 Ph.no. 0832 2201256, 2201416 Email: tlraut@gaplgoa.com
21	Pre-bid meeting	12.04.2019 at 11.00am

(Contractor)

(Employer)