

ALTERATIONS, ADDITIONS AND OMISSIONS

51.1 Variations

The Engineer shall make any variation of the form, or the Scope Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:

- (a) change the character or quality or kind of any such work.
- (b) change the levels, lines, position and dimensions of any part of the Works,
- (c) execute additional work of any kind necessary for the completion of the Works
- (d) change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause 52.1 to 52.4. Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of contract by the contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the contractor.

51.2 Instructions for Variations

The Contractor shall not make any such variation without an instruction of the Engineer. Provided that no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities as per approved drawings issued for construction.

52.1 Valuation of Variations

All variations referred to in Clause 51.1 to 51.2 and any additions to the Contract Price which are required to be determined in accordance with Clause 52.1 to 52.4 (for the purposes of this Clause referred to as "varied works"), shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable, failing which, after due consultation by the Engineer with the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate based on CPWD norms and shall notify the Contractor accordingly. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.1 to 60.14.

52.2 Power of Engineer to Fix Rates

Provided that if the nature or amount of any varied work relative to the nature or amount of the whole of the Works or to any part thereof, is such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such varied work, rendered inappropriate or inapplicable, then after due consultation by the Engineer with the Contractor, a suitable rate or price shall be agreed upon between the Engineer and the

Contractor. In the event of disagreement the Engineer shall fix such other rate or price as is, in his opinion, appropriate and shall notify the Contractor accordingly. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.1 to 60.14.

The rates of such items shall be worked out on the basis of market rate analysis. In the event of disagreement between the Engineer and the Contractor on these rates, the Engineer shall fix such rates and prices as are in his opinion appropriate and shall notify the Contractor accordingly. Provided also that no varied work instructed to be done by the Engineer pursuant to Clause 51.1 to 51.2 shall be valued under Sub-Clause 52.1, or under this Sub-Clause unless, within 14 days of the date of such instruction and, other than in the case of omitted work, before the commencement of the varied work, notice shall have been given either:

- (a) by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or price, or
- (b) by the Engineer to the Contractor of his intention to vary a rate or price.

52.3 Deleted

52.4 Daywork

The Engineer may, if in his opinion it is necessary or desirable, issue an instruction that any varied work shall be executed on a day work basis. The Contractor shall then be paid for such varied work under the terms set out in day work schedule which shall be the minimum wages applicable in Hissar (Haryana) to the category of workers employed as on the day the work is carried out.

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

In respect of such of the Works executed on a day work basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and Contractor's Equipment used thereon or thereof other than Contractor's Equipment which is included in the percentage addition in accordance with such day work schedule. One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor.

At the end of each month the Contractor shall deliver to the Engineer a priced statement of the labour, materials and Contractor's Equipment, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorise payment for such work, either as day work, or being satisfied as to the time employed and the labour, materials and Contractor's Equipment used on such work, or at such value thereof as shall, in his opinion, be fair and reasonable.

PROCEDURE FOR CLAIMS

53.1 Notice of Claims

Notwithstanding any other provision of the Contract, if the Contractor intends to claim any additional payment pursuant to any clause of these Conditions or otherwise, he shall give notice of his intention to the Engineer, within 28 days after the event giving rise to the claim has first arisen.

53.2 Contemporary Records

Upon the happening of the event referred to in Sub-Clause 53.1, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Employer's liability, the Engineer shall, on receipt of a notice under Sub-Clause 53.1, inspect such contemporary records and may instruct the Contractor to keep any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall permit the Engineer to inspect all records kept pursuant to this Sub-Clause and shall supply him with copies thereof as and when the Engineer so instructs.

53.3 Substantiation of Claims

Within 28 days, or such other reasonable time as may be agreed by the Engineer, of giving notice under Sub-Clause 53.1, the Contractor shall send to the Engineer an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effect resulting from the event. The Contractor shall, if required by the Engineer to do so, copy to the Employer all accounts sent to the Engineer pursuant to this Sub-Clause.

53.4 Failure to Comply

If the Contractor fails to comply with any of the provisions of this Clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Engineer or any arbitrator or arbitrators appointed pursuant to Sub-Clause 67.3 assessing the claim considers to be verified by contemporary records (whether or not such records were brought to the Engineer's notice as required under Sub-Clause 53.2 and 53.3).

53.5 Payment of Claims

The Contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to Clause 60.1 to 60.14 such amount in respect of any claim as the Engineer, after due consultation with the Contractor, may consider due to the Contractor provided that the Contractor has supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient particulars to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer. The Engineer shall notify the Contractor for any determination made under this Sub-Clause.

CONTRACTOR'S EQUIPMENT, TEMPORARY WORKS AND MATERIALS

54.1 Contractor's Equipment, Temporary Works and Materials, Exclusive use

for the Works

All Contractor's Equipment Temporary Works and materials by the Contractor shall when brought on to the site, be deemed to be exclusively intended for the execution of the works and the contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent of the Engineer. provided that consent shall not be required for vehicles engaged in transporting any staff labour, contractor's equipment, temporary works, plant or materials to or from the site.

54.2 Employer Not Liable for Damage

The Employer shall not at any time be liable, save as mentioned in Clauses 20.1 to 20.4 and 65.1 to 65.8, for the loss of or damage to any of the said Contractor's Equipment, Temporary Works or materials.

54.3 Customs Clearance

The Employer will use his best endeavours in assisting the Contractor, where required, in obtaining clearance through the Customs of Contractor's Equipment, materials and other things required for the Works. However the responsibility for getting clearance from customs shall rest with the contractor.

54.4 Re-export of Contractor's Equipment

In respect of any Contractor's Equipment which the Contractor has imported for the purposes of the Works, the Employer will use his best endeavours to assist the Contractor, where required, in procuring any necessary Government consent to the re-export of such Contractor's Equipment by the Contractor upon the removal thereof pursuant to the terms of the Contract.

54.5 Conditions of Hire Contractor's Equipment

With a view to securing, in the event of termination under Clause 63.1 to 63.4, the continued availability, for the purpose of executing the Works, of any hired Contractor's Equipment, the Contractor shall not bring on to the Site any hired Contractor's Equipment unless there is an agreement for the hire thereof (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner thereof will, on request in writing made by the Employer within 7 days after the date on which any termination has become effective, and on the Employer undertaking to pay all hire charges in respect thereof from such date, hire such Contractor's Equipment to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of execution and completion the Works and remedying any defects therein, under the terms of the said Clause 63.1 to 63.4.

54.6 Costs for the Purpose of Clause - 63.1 to 63.4

In the event of the employer entering into any agreement for the hire of contractor's equipment pursuant to Sub-Clause 54.5, all sums properly paid by the employer under the provisions of any such agreement and all costs incurred by him (Including stamps duties) in entering into such agreement shall be deemed, for the purpose of clause 63.1 to 63.4, to be part of the cost of executing and completing the works and the remedying of any defects therein.

54.7 Incorporation of Clause in Sub-contracts

The contractor shall, where entering into any subcontract for execution of any part of the works, incorporate in such subcontract (by reference or other wise) the provisions of this Clause in relation to Contractor's Equipment, Temporary Works or Materials brought on to the Site by the Subcontractor.

54.8 Approval of Material not Implied

The operation of this clause shall not be deemed to imply any approval by the engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any materials at any time by the Engineer.

MEASUREMENT

55.1 Quantities

The quantities set out in the Bill of Quantities, if any, are the estimated quantities for the Works, and they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract. The work shall be required to be executed on 'turnkey basis' as per the scope of works. The offered rates for all the items or lumpsum items shall be firm and fixed on "turnkey basis" and binding on the contractor irrespective of any variation of quantities stated in the contract as a whole.

56.1 Works to be Measured

The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value of the works in accordance with the Contract and the Contractor shall be paid that value in accordance with clause 60.1 to 60.14. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice to the Contractor's agent, who shall :

- (a) forthwith attend or send a qualified representative to assist the Engineer in making such measurement, and
- (b) supply all particulars required by the Engineer

Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Engineer shall prepare records and drawings as the work proceeds and the Contractor, as and when called upon to do so in writing, shall, within 14 days, attend to examine and agree such records and drawings with the Engineer and shall sign the same when so agreed. If the Contractor does not attend to examine such records and drawings and the Contractor does not agree such records and drawings, they shall be taken to be Correct. If, after examination of such records and drawings, the Contractor does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor, within 14 days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm or vary them.

57.1 Method of Measurement

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

57.2 Breakdown of Lumpsum Items

For the purposes of statements submitted in accordance with Sub-Clause 60.1, the Contractor shall submit to the Engineer, a breakdown for each of the lump sum items contained in the Tender. Such breakdowns shall subject to the approval of the Engineer.

PROVISIONAL SUMS

58.1 Definition of "Provisional Sum"

"Provisional Sums" means a sum included in the Contract and so designated in the Bill of Quantities for the execution of any part of the Works or for the supply of goods, materials, Plant or services, or for contingencies, which sum may be used, in whole or in part, or not at all, on the instruction of the Engineer. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Engineer shall determine in accordance with the Clause. The Engineer shall notify the Contractor of any determination made under this Sub-clause.

58.2 Use of Provisional Sums

In respect of every Provisional Sum the Engineer shall have authority to issue instructions for the execution of works or for the supply of goods, materials, Plant or services by :

- (a) the Contractor, in which case the Contractor shall be entitled to an amount equal to the value thereof determined in accordance with Clause 52.1 to 52.4.
- (b) a nominated Subcontractor, as hereinafter defined, in which case the sum to be paid to the Contractor therefore shall be determined and paid in accordance with Sub-Clause 59.4

58.3 Production of Vouchers

The Contractor shall produce to the Engineer all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums, except where work is valued in accordance with rates or prices set out in the Tender.

NOMINATED SUBCONTRACTORS

59.1 Definition of "Nominated Subcontractors"

All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials, Plant or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the Engineer, and all persons to whom by virtue of the provisions of the Contract the Contractor is required to subcontract shall, in the execution of such work or the supply of such goods, materials, Plant or services, be deemed to be subcontractors to the Contractor and are referred to in the Contract as "nominated Subcontractors".

59.2 Nominated Subcontractors; Objection to Nomination

The Contractor shall not be required by the Employer or the Engineer, or be deemed to be under any obligation, to employ any nominated Subcontractor against whom the Contractor may raise reasonable objection, or who declines to enter into a subcontract with the Contractor containing provision:

- (a) that in respect of work, goods, materials, Plant or services the subject of the subcontract, the nominated Subcontractor will undertake towards the Contractor such obligations and liabilities as will enable the Contractor to discharge his own obligations and liabilities towards the Employer under the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith, or arising out of or in connection with any failure to perform such obligations or to fulfil

such liabilities; and

- (b) that the nominated Subcontractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Subcontractor, his agents, workmen and servants and from and against any misuse by him or them of any Temporary Works provided by the Contractor for the Purpose of the Contract and from all claims as aforesaid; and
- (c) approved by the Engineer.

59.3 Design Requirements to be Expressly Stated

If in connection with any Provisional Sums the services to be provided include any matter of design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Subcontract. The nominated Subcontract shall specify that the nominated Subcontractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.

59.4 Payments to Nominated Subcontractors

For all work executed or goods, material, Plant or services supplied by any nominated Subcontractor, the contractor shall be entitled to :

- (a) the actual price paid or due to be paid by the Contractor, on the instructions of the Engineer, and in accordance with the Subcontract;
- (b) in respect of labour supplied by the Contractor, the sum if any, entered in the Bill of Quantities or, if instructed by the Engineer pursuant to paragraph (a) of Sub-clause 58.2, as may be determined in accordance with Clause 52.1 to 52.4;
- (c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provisions has been made in the Bill of Qualities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

59.5 Certificates of Payments to Nominated Subcontractors

Before issuing, under Clause 60.1 to 60.14, any certificate, which includes any payment in respect of work done or goods, materials, Plants or services supplied by any nominated Subcontractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments, less retentions, included in previous certificates in respect of the work or goods, materials, Plant or services of such nominated Subcontractor have been paid or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor :

- (a) satisfies the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments and
- (b) produces to the Engineer reasonable proof that he has so informed such nominated Subcontractor in writing,

the Employer shall be entitled to pay to such nominated Subcontractor direct, upon the certificate of the Engineer, all payments, less retentions, provided for in the nominated Subcontractor and to deduct by way of set-off the amount so paid by the Employer from any sums due or to become due from the Employer to the Contractor.

Provided that, where the Engineer has certified and the Employer has paid direct as aforesaid, the Engineer shall, in issuing any further certificate in favour of the Contractor, deduct from the amount so paid, direct as aforesaid, but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.

CERTIFICATES AND PAYMENTS

60.1 Monthly Statements

The Contractor shall submit a statement in 3 copies to the Engineer by 7th day of each month for the work executed up to the end of previous month in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

- (a) The estimated contract value of the Temporary and Permanent Works executed up to the end of the month in question, at base unit rates and prices.
- (b) The actual value certified for payment for the Temporary and Permanent Works executed up to the end of the previous month, at base unit rates and prices.
- (c) The estimated contract value at base unit rates and prices of the Temporary and Permanent Works for the month in question, obtained by deducting (b) from (a);
- (d) The value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate, pursuant to Clause 52.1 to 52.4;
- (e) Amounts approved in respect of Daywork executed up to the end of the month in question, less the amount for Daywork certified in the previous Interim Payment Certificate determined from the Day work Schedule of the Bill of Quantities.
- (f) Amounts reflecting changes in cost and legislation, pursuant to Clause 70.1 to 70.3.
- (g) Any credit or debit for the month in question in respect of materials and Plant for the Permanent Works, under the conditions set forth in Sub-Clause 60.3;
- (h) Any amount to be withheld under the retention provisions of Sub-Clause 60.5, determined by applying the percentage set forth in Sub-Clause 60.5 to the amounts due under paragraphs 60.1(c), (e), (f) and (g);
- (i) Any amounts to be deducted as repayment of the Advance under the provisions of sub-Clause 60.7; and
- (j) Any other sum, to which the Contractor may be entitled under the contract.
- (k) 75% of the value of materials delivered to the site for permanent works on signing of the Indenture for secured advance format of which is enclosed at Annexure - A.
- (l) The amount to be deducted towards the advance income tax and the advance works contract tax as per the statutory requirements in this regard.

60.2 Monthly Payments

The said statement shall be approved / amended by the Engineer in such a way that, in his opinion, it reflects the amounts due to the Contractor in accordance

with the Contract, after deduction, other than pursuant to Clause 47.1 to 47.2, of any sums which may have become due and payable by the Contractor to the Employer. In cases where there is a difference of opinion as to the value of any item, the Engineer's view shall prevail. Within the 7th day of the month following the receipt of the monthly statement referred to in Sub-Clause 60.1, the Engineer shall determine the amounts due to the Contractor and shall issue to the Contractor a certificate herein called "Interim Payment Certificate", certifying the amounts due to the contractor.

Notwithstanding the terms of this Clause or any other Clause of the Contract, no amount will be certified by the Engineer for payment until the performance security has been provided by the Contractor and approved by the consultant.

60.3 Materials and Plant for the Permanent Works

With respect to materials and Plant brought by the Contractor to the Site for incorporation in the Permanent Works, the Contractor shall (i) receive a credit in the month in which these materials and Plant are brought to the site and (ii) be charged a debit in the month in which they are incorporated in the Permanent Works, both such credit and debit to be determined by the engineer in accordance with the following provisions:

- (a) no credit shall be given unless the following conditions shall have been met to the Engineer's satisfaction:
 - i) the materials and Plant are in accordance with specifications for the Works;
 - ii) the materials and Plant have been delivered to the Site and are properly stored and protected against loss, damage or deterioration;
 - iii) the Contractor's records of the requirements, order, receipts and use of materials and Plant are kept in a form approved by the engineer, and such records are available for inspection by the Engineer.
 - iv) the Contractor has submitted a statement of his cost of acquiring and delivering the materials and Plant to the site, together with such documents as may be required for the purpose of evidencing such cost; and
- (b) the amount to be credited to the Contractor shall be equivalent of 75 percent of the Contractor's reasonable cost of the materials and Plant delivered to the Site, as determined by the Engineer after review of the documents listed in paragraph (a) (iv) above, as determined by the Engineer;
- (c) the amount to be debited to the Contractor for any materials and Plant incorporated into the Permanent Works shall be equivalent to the credit previously granted to the contractor for such materials and Plant pursuant to Sub-Clause(b) above, as determined by the Engineer.

60.4 Place of Payments

Payments to the Contractor shall be made by the consultant in Indian Rupees into a bank account or accounts nominated by the Contractor or by Account Payee Cheque/Demand Draft.

60.5 Retention Money

A retention amounting to 10 (Ten) percent of the amounts, determined in accordance with the procedure set out in Sub-Clause 60.1 (h) shall be made by the Engineer in the first and following Interim Payment Certificates, until the amount so retained reaches a limit of retention money (5% of Contract Price) as stated in the Appendix to Tender (Annexure - B).

60.6 Payment of Retention Money

Upon complete deduction of retention money (5% of contract value) from the running bills, 3% of the retention money amount shall be released to the contractor on submission of Bank Guarantee issued from Nationalised/Scheduled Bank and in the format acceptable to the Engineer and valid till the completion of defect liability period. The balance amount of retention money i.e. 2%, along with the above Bank Guarantee shall be released to the contractor upon successful completion of Defect Liability Period by the contractor.

60.7 Advance Payment

- a) The Consultant on behalf of the employer will make an advance payment at a simple interest @ 10% (ten percent) per annum on reducing balance basis to the Contractor exclusively for the cost of mobilization in respect of the works in a amount equivalent to **5%** (Five percent) of the contract price named in letter of award. Payment of such advance amount will be due under separate certification by the Engineer after (i) execution of the Form of Agreement by the parties hereto; ii) provision by the Contractor of the performance security in accordance with the Sub-Clause 10.1; and iii) provision by the Contractor of an unconditional bank guarantee in a form and by a nationalized/scheduled bank acceptable to the consultant in amounts equal to the sum of the advance payment and estimated interest there of. Such bank guarantee shall be valid for an initial period of 12 (Twelve) months and shall remain valid and effective until the advance payment has been repaid pursuant paragraph (b) below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in the Interim Payment Certificates issued in accordance with this clause.
- b) The mobilization advance payment along with Interest shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with this clause. Deduction for Interest accrued during the period shall commence from first interim payment certificate. However deductions for Principal amount of mobilization advance and balance interest shall commence in the next Interim Payment Certificate following that in which total of all interim payments certified to the Contractor has reached **20 (Twenty)** percent of the Contract price less provisional sums and shall be made at the rate of 18 (Eighteen) percent of the amount of all interim payment certificates in proportionate amounts of advance payment until such time as the advance payment has been fully repaid ,always provided that the advance payment shall be completely repaid prior to the time when 80 percent of the contract price has been certified for the payment.

60.8 Time of Payment

The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47.1 to 47.2, be paid by the Employer to the Contractor within 15 days after the Contractor's monthly statement has been submitted to the Engineer for certification or, in the case of the Final Certificate pursuant to Sub-Clause 60.13, within 30 days after the agreed Final Statement and written discharge have been submitted to the Engineer for certification.

60.9 Correction of Certificates

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim payment Certificate which has been issued by him, and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

60.10 Statement of Completion

Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer a Statement of Completion with supporting documents showing in detail, in the form approved by the Engineer.

- (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.

Estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2 as if the statement of completion were a statement submitted by the contractor under clause 60.1.

60.11 Final Statement

Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration a draft final statement with supporting documents showing in detail, in the form approved by the Engineer.

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

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

If, following discussions between the Engineer 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 engineer shall issue an Interim Payment Certificate for those parts of the draft final statement which are not in dispute. The dispute shall then be settled in accordance with Clause 67.1 to 67.4. The Final Statement shall be agreed upon settlement of the dispute.

60.12 Discharge

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the contract. Provided that such discharge shall become effective only after payment due under the Final Certificate issued pursuant to Sub-Clause 60.13 has been made and the performance security referred to in Sub- Clause 10.1 has been returned to the Contractor.

60.13 Final Certificate

Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the employer (with a copy to the Contractor) a Final Certificate stating:

- (a) the amount which, in the opinion of the Engineer, is finally due under the Contract, 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 under the Contract, other than Clause 47.1 to 47.2, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

60.14 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 in respect thereof in his Final Statement and (except in respect of matters of things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub- Clause 60.10.

61.1 Defects Liability Certificate

The Contract shall not be considered as completed until a Defects Liability Certificate shall have been signed by the Engineer and delivered to the Employer, with a copy to the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete Works and remedy any defects therein to the Engineer's satisfaction. The Defects Liability Certificate shall be given by the Engineer within 28 days after the expiration of the Defects Liability Period, or, if different defects liability periods shall become applicable to different sections or part of the Permanent Works, the expiration of the latest such period, or as soon thereafter as any works instructed, pursuant to Clause 49.1 to 49.4 and 50.1, have been completed to the satisfaction of the Engineer. Provided that the issue of the Defects Liability Certificate shall not be condition precedent to payment to the Contractor of the second portion of the Retention Money in accordance with the conditions set out in Sub-Clause 60.3.

62.1 Unfulfilled Obligations

Notwithstanding the issue of the Defects Liability Certificate the Contractor and the Employer shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Defects Liability Certificate which remains unperformed at the time such Defects Liability Certificate is issued and, for the purpose of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties to the Contract.

REMEDIES

63.1 Default of Contractor

If the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors or agrees to carry out the Contract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation relating to reorganisation, arrangement or readjustment of debts proceedings are, commenced against the Contractor or resolution passed in connection with dissolution or liquidation or, if any, step are taken to enforce any security interest over a substantial part of the assets of the Contractor, or if, any act is done or event occurs with respect to the Contractor or his assets which under any applicable law has a substantially similar effect to any of the foregoing acts or events, or if the Contractor has contravened Sub-Clause 3.1, or has an execution levied on his goods, or if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion the contractor

- (a) has repudiated the Contract, or
- (b) without reasonable excuse has failed
 - (i) to commence the work in accordance with Sub-Clause 41.1, or
 - (ii) to proceed with the Works, or any section thereof, within 28 days after receiving notice to pursuant to Sub-Clause 46.1, or
- (c) has failed to comply with a notice issued pursuant to Sub-Clause 37.4, or an instruction issued pursuant to Sub-Clause 39.1 within 28 days after receiving it, or
- (d) despite previous warning from the Engineer, in writing, is otherwise persistently or flagrantly neglecting to comply with any of the obligation under the Contract, or
- (e) has contravened Sub-clause 4.1 :

then for the avoidance of doubt the contractor shall be in default of its obligations under this contract and furthermore the Employer may, after giving fourteen days' notice to the Contractor, enter upon the Site and expel the Contractor there from without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The Engineer shall certify such completion so as to give effect to clauses 49.1(a) and 63.3. The Employer or such other contractor may use for such completion so much of the Contractor's Equipment, Plant, Temporary Works and materials which have been deemed to be reserved exclusively for the execution of the Works, under provisions of the Contract, as he or they may think proper, and the Employer may, at any time, sell any of the said Contractor's Equipment, Temporary Works and unused Plant and materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

63.2 Valuation at Date of Expulsion

The Engineer, as soon as may be practicable after any such entry and expulsion by the Employer, shall fix and determine ex parte, or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute, and shall certify :

- (a) what amount (if any) had, at the time of such entry and expulsion, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and
- (b) the value of any of the said unused or partially used materials, any Contractor's Equipment and any Temporary Works.

63.3 Payments after Expulsion

If the Employer shall enter upon the site and expel the Contractor therefrom under Clause 63.1, he shall not be liable to pay to the Contractor any further amount (including damages) in respect of the Contract until the expiration of the Defects Liability Period and thereafter until the costs of execution completion and remedying of any defects, damages for delay in completion (if any) and all other expenses incurred by the Engineer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum (if any) as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount exceeds the sum which would have been payable to

the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

63.4 Assignment of Benefit of Agreement

Unless prohibited by law, the Contractor shall, if so instructed by the Engineer within 14 days of such entry and expulsion referred to in Sub-Clause 63.1, assign to the Employer the benefit of any agreement for the supply of any goods or materials or services and/or for the execution of any work for the purpose of the Contract, which the Contractor may have entered into.

64.1 Urgent Remedial Works

If, by reason of any accident, or failure, or other event occurring to or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work is, in the opinion of the Engineer, urgently necessary for the safety or progress of the Works and the Contractor is unable or unwilling at once to do such work, the Employer shall be entitled to employ and pay other person to carry out such work as the Engineer may consider necessary. If the work or repair so done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the contract, then all costs consequent thereon or incidental thereto shall after due consultation with the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Engineer, and may be deducted by the employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof.

SPECIAL RISKS

65.1 No Liability for Special Risks

The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Sub-Clause 65.2 whether by way of indemnity or otherwise, for or in respect of :

- (a) destruction of or damage to the "Works", save to work condemned under the provisions of Clause 39.1 to 39.2 prior to the occurrence of any of the said special risks, or
- (b) destruction of or damage to property, whether of the employer or third parties, or
- (c) injury or loss of life.

65.2 Special Risks

The special risks are :

- (a) the risks defined under paragraphs (a) sub-para (i), (ii), (iii) and (iv) of Sub-Clause 20.4.

65.3 Damage to Works by Special Risks

If the Works or any materials or Plant on or near or in transit to the Site, or any of the Contractor's Equipment, sustain destruction or damage by reason of any of the said special risks, the Contractor shall be entitled to payment in accordance with the Contract for any Permanent Works duly executed and for any materials or Plant so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the Works, to payment for;

- (a) rectifying any such destruction or damage to the Works, and

- (b) replacing or rectifying such materials or contractor's Equipment and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52.1 to 52.4 (which shall be the case of the cost of replacement of Contractor's Equipment include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the Employer.

65.4 Projectile, Missile

Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, or any mine, bomb, shell, grenade, or other projectile, missile, munition, or explosive of war, shall be deemed to be a consequence of the said special risks.

65.5 Increased Costs arising from Special Risks

Save to the extent that the Contractor is entitled to payment under any other provision of the Contract, the Employer shall repay to the Contractor any costs of the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39.1 to 39.2 prior to the occurrence of any special risk) which are howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Contractor, determine the amount of the contractor's costs in respect thereof which shall be added to the Contract Price and shall notify the Contractor accordingly.

65.6 Outbreak of War

If, during the currency of the Contract, there is an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavours to complete the execution of the Works. Provided that the employer shall be entitled, at any time after such outbreak of war, to terminate the Contract by giving notice to the Contractor and, upon such notice being given, the Contract shall, except as to the rights of the parties under this Clause and to the operation of Clause 67.1 to 67.4, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof

65.7 Removal of Contractor's Equipment on Termination

If the Contract is terminated under the provision of Sub-Clause 65.6, the Contractor shall with all reasonable dispatch, remove from the Site all Contractor's Equipment and shall give similar facilities to his Subcontractors to do so.

65.8 Payment if Contract Terminated

If the Contract is terminated as aforesaid, the Contractor shall be paid by the Employer insofar as such amounts or items have not already been covered by payments account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the contract and in addition:

- a) The amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the Work or service comprised therein has been partially carried out or performed.
- b) The cost of materials, plant or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor

is legally liable to accept delivery, such materials, Plant or goods becoming the property of the Employer upon such payments being made by him.

- c) A sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been covered by any other payments referred to in this Sub-Clause.
- d) Any additional sum payable under the provisions of Sub-Clauses 65.3 and 65.5.
- e) Such proportion of the cost as may be reasonable, taking into account payments made or to be made, for work executed, or removal of contractor's equipment under Sub- Clause 65.7 and, if required by the Contractor, return thereof to the Contract's main plant yard in his country of registration or to other destination, at no greater cost.
- f) The reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.

Provided that against any payment due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of Contractor's Equipment, materials and Plant and any other sums which, at the date of termination, were recoverable by the employer from the Contractor under the terms of the Contract. Any sums payable under this Sub- Clause shall, after due consultation with the Employer and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly.

RELEASE FROM PERFORMANCE

66.1 Payment in Event of Release from Performance

If any circumstance outside the control of both parties arises after the issue of the Letter of Acceptance which renders it impossible or unlawful for either party to fulfil his contractual obligations, or under the law governing the Contract the parties are released from further performance, then the sum payable by the employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65.8 if the Contract had been terminated under the provisions of Clause 65.6.

SETTLEMENT OF DISPUTES

67.1 Engineer's Decision

If a dispute of any kind whatsoever arise between the Employer and the Contractor in connection with , or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. Not later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Work with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as

hereinafter provided in an amicable settlement or an arbitral award.

If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be given notice to the other party, with a copy for information to the Engineer of his intention to commence arbitration as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

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

67.2 Conciliation

Where notice of intention to commence arbitration as to dispute has been given in accordance with Sub Clause 67.1, arbitration of such dispute shall not be commenced unless, the parties have explored the possibility of conciliation as per the provisions of Part-III of the Arbitration and Conciliation Act, 1996. When such conciliation has failed, the parties shall adopt the following procedure for arbitration :-

67.3 Arbitration

67.3.1 Any dispute and differences relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used in the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof in respect of which :-

- a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub Clause 67.1 and
- b) Conciliation has not been reached as per the provisions of Clause 67.2

Shall be referred to the Sole Arbitration of a person appointed by the Chairman and Managing Director (CMD) of HSCC (I) Ltd. approved by **Indian Council Of Agricultural Research (ICAR), New Delhi**. Such Arbitrator shall be appointed within 30 days of the receipt of letter of invocation of Arbitration duly satisfying the requirements of this clause.

67.3.2 If the Arbitrator so appointed resigns his appointment, is unable or unwilling to act due to any reason whatsoever, or dies, the Chairman and Managing Director aforesaid or in his absence the person discharging the duties of CMD of HSCC (I) Ltd approved by **Indian Council Of Agricultural Research (ICAR), New Delhi.**, may appoint a new Arbitrator in accordance with these terms and conditions of the contract, to act in his place and the new Arbitrator so appointed may proceed from the stage at which it was left by his predecessor.

67.3.3 It is a term of the contract that the party invoking the Arbitration shall specify the dispute/differences or questions to be referred to the arbitrator under this clause together with the amounts claimed in respect of each dispute.

- 67.3.4 The Arbitrator may proceed with the Arbitration ex-parte, if either party, in spite of a notice from the Arbitrator, fails to take part in the proceedings.
- 67.3.5 The work under the contract shall continue, if required, during the Arbitration proceedings.
- 67.3.6 The Arbitrator shall make speaking Award and give reasons for his decision in respect of each dispute/claim alongwith the sums awarded separately on each individual item of dispute or difference or claims. The Arbitrator shall make separate award on each reference made to him.
- 67.3.7 The award of the Arbitrator shall be final, conclusive and binding on both the parties.
- 67.3.8 Subject to the aforesaid, the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modifications or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the Arbitration proceedings and Arbitrator shall publish his Award accordingly.

67.4 **Failure to Comply With Engineer's Decision**

Where neither the Employer nor the contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 67.1 and the related decision has become final and binding either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to arbitration in accordance with sub-Clause 67.3 as if the conditions specified in clauses 67.3.1 (a) and (b) had been satisfied with respect to such dispute. The provisions of Sub-Clause 67.1 shall not apply to any such reference.

NOTICES

68.1 **Notice to Contractor**

All certificates, notices or instructions to be given to the Contractor by the Employer or the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for the purpose.

68.2 **Notice to Employer and Engineer**

Any notice to be given to the Employer or to the Engineer under the terms of the Contract shall be sent by post, cable telex or facsimile transmission to or left at the respective addresses nominated for the purpose in part II of these Conditions.

68.3 **Change of Address**

Either party may change a nominated address to another address in the Country where the Works are being executed by prior notice to the other party, with a copy to the Engineer, and the Engineer may do so by prior notice to both parties.

DEFAULT OF EMPLOYER

69.1 **Default of Employer**

In the event of the Employer:

- a) becoming bankrupt or being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or

- b) giving notice to the Contractor that for unforeseen reasons, due to economic dislocation, it is impossible for him to continue to meet his contractual obligations, or
- c) if the contractor becomes entitled under Sub-Clause 40.3 to terminate his employment under the contract in accordance with the provisions of this Sub-Clause,

the Contractor shall be entitled to terminate his employment under the contract by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 14 days after the giving of the notice.

69.2 Removal of Contractor's Equipment

Upon the expiry of the 14 days notice referred to in Sub-Clause 69.1 the Contractor shall notwithstanding the provisions of Sub- Clause 54.1, with all reasonable despatch, remove from the site all contractor's equipment brought by him thereon.

69.3 Payment on Termination

In the event of such termination the employer shall be under the same obligations to the contractor in regard to payment as if the contract has been terminated under the provisions of clause 65.6, but, in addition to the payments specified in Sub- Clause 65.8 the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

69.4 Contractor's Entitlement to suspend Works

Without prejudice to the Contractor's entitlement to interest under Sub-Clause 60.8 and to terminate under Sub-Clause 69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub- Clause 60.8 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving 28 days' prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.

If the contractor suspends work or reduces the rate of work in accordance with the provisions of this Sub- Clause and thereby suffers delay or incurs cost the Engineer shall after due consultation with the Contractor, determine

- a) any extension of time to which the contractor is entitled under clause 44.1 to 44.3, and
- b) the amount of such costs, which shall be added to the contract price.

And shall notify the Contractor accordingly.

CHANGES IN COST AND LEGISLATION

70.1 Increase or Decrease of Cost

It shall be added to or deducted from the Contract price such sums in respect of rise or fall in the cost of labour and/ or materials or any other matters affecting the cost of the execution of the works as may be determined in accordance with part II of these conditions.

70.2 Subsequent Legislation

If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the works are being or are to

be executed changes to any National or State Statute Ordinance Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law which causes additional or reduced cost to the contractor other than under sub-clause 70.1 in the execution of the Contract, such additional or reduced cost shall after due consultation with the employer and the Contractor be determined by the Engineer and shall be added to or deducted from the contract price and the engineer shall notify the Contractor accordingly.

70.3 Other Changes in Cost

To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other Clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

71.1 Engineer's Authority to Correct Errors

The Engineer shall at the request of either or both parties, or at his own initiative, subject to the provisions of this subclause and with retrospective effect from the date of this Contract have authority to make a determination correcting any manifest error (including for the avoidance of doubt and without prejudice to the generality of the Engineer's authority in this regard any error of spelling, grammar or punctuation and any omission, inclusion or misplacement of text) in any provision of this Contract Provided always that:

- (a) The Engineer before making such determination shall by notice to the Employer and the Contractor provide them with a draft thereof and give them a reasonable time in which to comment on the draft.
- (b) The Engineer shall in making such determination take into consideration the presumed intentions of the parties, the wording of any provision of the Conditions of Contract for use in connection with Works of Civil Engineering Construction Fifth Edition (June 1973) (Revised January 1979) ("the ICE Conditions of Contract") or of any other standard form of contract upon which the provision to be corrected has been based, and any comments received by the Employer and/or the Contractor on the draft determination provided to them under subclause (a) of this clause.
- (c) The Engineer shall provide the Employer and the Contractor with a copy of the determination made by him and
- (d) Clause 67.1 to 67.4 shall for the avoidance of doubt apply to any dispute between the Employer and the Contractor in connection with or arising out of the Engineer's determination.

PROFORMA OF INDENTURE FOR SECURED ADVANCE OR CREDIT

THIS INDENTURE made this day of ----- between M/s. ----- (hereinafter called the Contractor) which expression shall where the Context as admits or implies be deemed to include his executors/ administrators and assigns of the one part and Hospital Services Consultancy Corporation (India) Ltd. for and on behalf of National Research Centre on Equines, ICAR (hereinafter called the Engineer) which expression shall where the context so admits or implies be deemed to include its successors and assigns of the other part.

Whereas by an agreement dated------(hereinafter called the said agreement) the Contractor has agreed to construct----- (the works or the said works).

And whereas the Contractor has applied to the Engineer that he may be or be given credit for materials brought by him to the site of the works subject to the said agreement for use in construction of the works.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Rs.----- paid to the Contractor by The Engineer. The receipt where the Contractor hereby acknowledges and of such advance or credited (if any) as may be made to him as aforesaid the Contractor hereby covenants and agrees with The Engineer and declares as follows :-

1. That all sums given as advance or credit by The Engineer to the Contractor as aforesaid shall be employed by the Contractor in or towards the execution of the said works and for no other purpose whatsoever.
2. That the materials for which the advance or credit is given are offered to and accepted by The Engineer as security and are absolutely the Contractor's own property and free from encumbrances of any kind and the Contractor will not make any application for or receive further advance or credit on the security of materials which are not absolutely his own property and free from encumbrances of any kind and the Contractor shall indemnify The Engineer against any claims to any materials in respect of which advance or credit has been made to him as aforesaid.
3. That the said materials and all other materials on the security of which any further advance or advances or credit may be given as aforesaid (hereinafter called the said materials) shall be used by the Contractor solely in the execution of the said works in accordance with the directions of The Engineer and in terms of said agreement.

4. That the Contractor shall make at his own cost all necessary and adequate arrangements for the proper safe custody and protection against all risks of the said materials and that until used in the construction as aforesaid the materials shall remain at the site of the said works in Contractor's custody and on his own responsibility and shall at all times be open to inspection by The Engineer. In the event of the materials or any part thereof being stolen, destroyed or damaged or becoming deteriorated in greater degree than in due to reasonable use and wear thereof the Contractor will replace the same with other materials of like quality or repair and make good the same as required by The Engineer.
5. That the said materials shall not on any account be removed from the site of the work except with the written permission of The Engineer.
6. That the advance shall be repayable in full when or before Contractor receives payments from The Engineer of the price payable to him for the said works under the terms and provisions of the said agreements. Provided that if any intermediate payments are made to the Contractor on account of work done then on the occasion of each payment The Engineer will be at liberty to make a recovery from the Contractor's bill for such payments by deducting there from the value of the said materials than actually used in the contraction and in respect of which recovery has not been made previously. The value for this purpose being determined in respect of each description of materials at the rates at which the amounts of the advance as made under these presents were calculated.
7. That if the Contractor shall at any time make any default in the performance of observance in respect of any of the terms and provisions of the said agreement or of those provisions the total amount of the advance or advances that may still be owing to The Engineer, shall immediately on the happening of such default be repayable by the Contractor to The Engineer together with interest thereon at 18% per annum from the date or respective dates of such advance or advances to the date of payment and with all costs. Damages and expenses incurred by The Engineer in or for the recovery hereof or the enforcement of the security or otherwise by reasons of default of the Contractor and the Contractor hereby covenants and agrees with The Engineer repay and pay the same respective to him accordingly.
8. That the Contractor hereby charges all the said materials with the repayment to The Engineer of all sums advances or credit as aforesaid and all costs. Charges, damages and expenses payable under these presents PROVIDED ALWAYS it is hereby agreed and declared that notwithstanding anything in the said agreement and without prejudice to the powers contained therein if and whenever the covenant for payment and repayment herein before contained shall become enforceable and the money owing shall not be paid in accordance therewith. The Engineer may at any time thereafter adopt all or any of the following courses as he may deem best :
 - a. Seize and utilise the said materials or any part thereof in the completion of the said works in accordance with the provisions in that behalf contained in the said agreement debiting the Contractor with the actual cost of effecting such completion

and the amount due in respect of advance or credit under these presents and crediting the Contractor with the value of work done as if he has carried it out in accordance with the said agreement and the rates thereby provided if the balance is against the Contractor is to pay the same to The Engineer on demand.

- b. Remove and sell by public auction the seized materials or any part thereof and out of the money arising from the sale repay The Engineer under these presents and pay over the surplus (if any) to the Contractor.
 - c. Deduct all or any part of the moneys owing from any sums due to the Contractor under said agreement.
9. Except in the event of such default on the part of Contractor as aforesaid, interest or the said advance shall not be payable.
10. That in the event of conflict between the provisions of these presents and the said agreements, the provisions of these presents shall prevail and in the event of any dispute or difference arising over the construction or effect of these presents, the settlement of which has not been hereinbefore expressly provided for the same shall so far as is lawful be referred to Chairman-cum-Managing Director, Hospital Services Consultancy Corporation (India) Ltd. or to such person as he may appoint whose decision shall be final and the provisions of the Indian Arbitration Act for the time being in force shall apply to such reference.

IN WITNESS whereof the said The Engineer and the Contractor hereunto set their respective hands and seals the day and year first above written.

Signed sealed and delivered by

Contractor

The Engineer

ANNEXURE - B**APPENDIX TO TENDER**

Important Clause	Clause No.	SECTION	Remarks
Amount of performance security	10.1	IV	5% of the contract Price
Minimum amount of third party Insurance	23.2	IV	Rs. 5,00,000/- for any one incident, number of incidents Unlimited.
Mobilisation advance	60.7(a)	IV	5% of Contract Price
Amount of Liquidated damages	47.1	IV	1/2 % (half%) of contract price per week of delay.
Limit of liquidated damages	47.1	IV	5% of contract price
Defect Liability Period	49.1	IV	12 months
Percentage of retention	5.0 (f)	V	5%
Programme of work and progress reports	11.7	V	Programme updated quarterly, progress reported weekly.
Time of Completion	43.1 1.3	IV V	16 (Sixteen) Calender months from Engineers order to commence the works

