

4.0 THE CONTRACT & GENERAL OBLIGATIONS OF CONTRACTOR

English language to be used.

4.1 (a) The contract documents shall be drawn-up in English language.
{b) The contract shall be governed by all relevant Indian Acts as applicable only within the jurisdiction of the High Court at Calcutta, India, including the following Act

Applicability of laws on the contract.

1. The Indian Contract Act, 1872.
2. The Major Port Trust Act, 1963.
3. The Workmen's Compensation Act, 1923.
4. The Minimum Wages Act, 1948.
5. The Contract Labour (Regulation & Abolition) Act, 1970.
6. The Dock Workers' Act, 1948.
7. The Indian Arbitration Act (1940) (in the case of a definite Arbitration Agreement only).

Contractor to Execute Contract Agreement.

4.2 After acceptance of his Tender/Offer and when called upon to do so by the Engineer or his representative, the Contractor shall, at his own expense, enter into and execute a Contract Agreement to be prepared by him in the form annexed hereto. Until such Contract Agreement is executed, the other documents referred to in the definition of the term "Contract" here-in-before, shall collectively be the Contract.

Interpretation of Contract documents - Engineers' Power

4.3 Several documents forming the contract are to be taken as mutually explanatory of one another. Should there be any discrepancy, ambiguity, omission or error in the various contract documents, the Engineer shall have the power to correct the same and his decision shall be final and binding on the parties to the Contract.

All Drawings are Trustees property

4.4 Two copies of the Drawings referred to in the General and Special Conditions of Contract and in the Bill of Quantities, shall be furnished by the Engineer to the Contractors free of cost for his use on the work, but these shall remain the property of the Trustees and hence, the Contractor shall return them to the Engineer or his Representative on completion of the work, if not torn or mutilated on being regularly used at site.

Contractor to prepare working/ progress drawings.

4.5 The Contractor shall provide and make at his own expense any working or progress drawings required by him or necessary for the proper execution of the works and shall,

when required, furnish copies of the same free of cost to the Engineer for his information and/or approval, without meaning thereby the shifting of Contractor's responsibility on the Engineer in any way whatsoever.

Contractor cannot sub-let the work.

4.6 The Contractor shall not directly or indirectly transfer, assign or sublet the Contract or any part thereof without the written permission of the Engineer. Even if such permission be granted, the Contractor shall remain responsible (a) for the acts, defaults and neglect of any sub-contractor, his agents, servants or workmen as fully as if these were the acts, defaults or neglects of the Contractor himself or his agents, servants or workmen, and (b) for his full and entire responsibility of the contract and for active superintendence of the works by him despite being sublet. provided always that the provision of labourers on a "piece rate" basis shall not be deemed to be sub letting under this clause.

Contractors' price is inclusive of all costs.

4.7 Unless otherwise specified, the Contractor shall be deemed to have included in his Tender/Offer all his cost for supplying and providing all constructional plant, temporary work, materials both for temporary and permanent works, labour including supervision thereof, transporting to and from the site and in and about the work, including loading, unloading, fencing, watching, lighting, payment of fees, taxes and duties to the appropriate authorities and other things of every kind required for the construction, erection, completion and maintenance of the work.

Contractor is responsible for all construction process, except for correctness of design and specification formulated by the Engineer.

4.8 The Contractor shall be solely responsible for the adequacy, stability and safety of all site operations and methods of construction, even if any prior approval thereto has been taken from the Engineer or his Representative. The Contractor shall not be responsible for the correctness of the design or specification of the Temporary and Permanent works formulated by the Engineer; but the contractor shall be fully responsible for the correct implementation thereof, as also for any design and specification prepared/proposed/used by the Contractor.

Contractor to submit his programme of work.

4.9 Whenever required by the Engineer or his Representative, the Contractor shall submit to him the details of his (a) programme for execution of the work, (b) proposed procedure and methods of work, (c) proposed deployment of plant, equipment, labour, materials and temporary works. The submission to and/or any approval by the Engineer or his Representative to any such programme or particulars, shall not relieve the Contractor of any of his obligations under the contract. If for any reason the contractor be unable to adhere to his earlier programme, he shall submit his revised programme for completion of work within the stipulated time whenever asked to do so.

Contractor to supervise the works.

4.10 Necessary and adequate supervision shall be provided by the Contractor during execution of the works and as long thereafter as the Engineer or his Representative shall consider necessary during the maintenance period. The Contractor or his competent and authorised agent or representative shall be constantly at site and instructions given to him by the Engineer or his Representative in writing shall be binding upon the Contractor subject to limitation in clause 2.5 hereof. The Contractor shall inform the Engineer or his Representative in writing about such representative/agent of him at site.

Contractor to deploy qualified men and Engineer's power to remove, Contractor's men.

4.11 The Contractor shall employ in execution of the Contract only qualified, careful and experienced persons and the Engineer shall be at liberty to direct the Contractor to stop deployment of any of his staff, workmen or official at site and the Contractor shall within 48 hours comply with such instruction without any demur, whenever the Engineer shall feel that the deployment of the person concerned will not be conducive to the proper and timely completion of the work.

Contractor is responsible for line, level and setting out etc.

4.12 The Contractor shall be responsible for the true and proper setting-out of the works in relation to reference points/lines/levels given by the Engineer in writing. The checking of any setting-out or of any alignment or level by the Engineer or his Representative shall not in any way relieve the contractor of his responsibility for the correctness thereof and he shall fully provide, protect and preserve all stakes, templates, bench marks, sight rails, pegs, level marks, profile marks and other things used in setting-out the works.

Contractor is responsible to protect the work.

4.13 From the commencement of the works till issue of the completion certificate in Form G.C. 1, vide Clause 5.12 hereof, the contractor shall take full responsibility for the care thereof. Save for the excepted risks, any damage, loss or injury to the work or any part thereof shall be made good by the Contractor at his own cost as per instruction and to the satisfaction of the Engineer, failing which the Engineer or his Representative may cause the same to be made good by any other agency and the expenses incurred and certified by the Engineer, shall be recoverable from the Contractor in whatever manner the Engineer shall deem proper. This Clause will not apply to that part of the work, which might have been taken over by the Trustees on partial completion of the work and in such case the Contractor's obligation will be limited to repairs and replacement for manufacturing or construction defects during the Maintenance period (Guarantee Period) as per the directions of the Engineer as also for defects/damages if any caused to the work by the Contractor during such repairs and re-placement in the maintenance period.

Contractor is responsible for all damages to other structures/persons caused by him in executing the work.

4.14 The Contractor shall at his own cost protect, support and take all precautions in regard to the personnel or structure or services or properties belonging to the Trustees or not, which may be interfered with or affected or disturbed or endangered and shall indemnify and keep indemnified the Trustees against claim for injury, loss or damage caused by the Contractor in connection with the execution and maintenance of the work to the aforesaid properties, structures and services and/or to any person including the Contractor's workmen. Cost of Insurance Cover, if any, taken by the Contractor shall not be reimbursed by the Trustees, unless otherwise stipulated in the Contract.

Fossils, Treasure troves, etc. are Trustees' property.

4.15 The Contractor shall immediately inform the Engineer's Representatives if any fossil coins, articles of value or antiquity and structures and other remains or things of geological or archaeological importance be discovered at site which shall remain the property of the Trustees and protect them from being damaged by his workmen and arrange for disposal of them at the Trustees' expense as per the instruction of the Engineer's Representative.

Contractor to indemnify the Trustees against all claims for loss, damage etc.

4.16 The Contractor shall be deemed to have indemnified the Trustees against all claims, demands, actions and proceedings and all costs arising there from on account of

- (a) Infringement of any patent right, design, trade-mark, or name or other protected right, in connection with the works or temporary work,
- (b) Payment of all royalties, rent, toll charges, local taxes, other payments or compensation, if any, for getting all materials and equipment required for the work.
- (c) Unauthorised obstruction or nuisance caused by the Contractor in respect of Public or Private road, railway tracks, footpaths, crane tracks, waterways, quays and other properties belonging to the Trustees or any other person.
- (d) Damage/injury caused to any highway and bridge on account of the movement of Contractor's plants and materials in connection with the work.
- (e) Pollution of waterway and damage caused to river, lock, sea-wall or other structure related to waterway, in transporting contractor's plants and materials.
- (f) The Contractor's default in affording all reasonable facilities and accommodation as per the direction of the Engineer or his Representative to the workmen of the Trustees

and other agencies employed by or with the permission and/or knowledge of the Trustees on or near the site of work.

Dismantled materials Trustees' property.

4.17 Debris and materials, if obtained by demolishing any property, building or structure in terms of the Contract shall remain the property of the Trustees.

Contractor's quoted rates/price must be all inclusive

4.18 The Contractor's quoted rates shall be deemed to have been inclusive of the following:

(a) Keeping the site free of unnecessary obstruction and removal from site of , constructional plant wreckage, rubbish, surplus earth or temporary works no longer required.

(b) Cleaning and removal from site all the surplus materials of every kind to leave the site clean and tidy after completion of the work, without which payment against final bill may be liable to be withheld.

(c) Precautionary measures to secure efficient protection of Docks, the River Hooghly and other waterways against pollution of whatever nature during execution and maintenance of the works and to prevent rubbish, refuse and other materials from being thrown into the water by the Contractor's men or those of his agency.

(d) Making arrangements for deployment of all labourers and workers, local or otherwise including payment for their wages, transport, accommodation, medical and all other statutory benefits and entry permits, wherever necessary.

(e) Making arrangements in or around the site, as per the requirements of Calcutta Municipal Corporation or other local authority or the Engineer or his Representative, for preventing (i) spread of any infectious disease like small pox, cholera, plague or malaria by taking effective actions for destruction of rats, mice, vermin, mosquitoes etc. and by maintaining healthy and sanitary condition, (ii) illegal storage and distribution of Drugs, Narcotics, Alcoholic liquor, Arms and Ammunitions, (iii) unlawful, riotous or disorderly conduct of the Contractor's or his Sub-Contractor's workmen, (iv) deployment of workmen of age less than 16 years.

Notice to Contractor.

4.19 Every direction or notice to be given to the Contractor shall be deemed to have been duly served on or received by the Contractor, if the same is posted or sent by hand to the address given in the tender or to the Contractor's Site Office or in case of Trustee's enlisted Contractor to the address as appearing in the Trustees' Register or to the Registered Office of the Contractor. The time mentioned in these conditions for doing

any act after direction or notice shall be reckoned from the time of such posting or dispatch.

Contractor not to publish photograph or particulars of work

4.20 The Contractor and his subcontractor or their agents and men and any firm supplying , plant materials, and equipment shall not publish or caused to be published any photographs or description of the works without the prior authority of the Engineer in writing.

Contractor to provide facilities to outsiders.

4.21 The Contractor shall, at the Trustees' cost to be decided by the Engineer, render all reasonable facilities and Co-operation as per direction of the Engineer or his representative to any other Contractor engaged by the Trustees and their workmen, to the Trustees' own staff and to the men of other Public Body, on or near the site of work and in default, the contractor shall be liable to the Trustees for any delay or expense incurred by reason of such default.

Work to cause minimum possible hindrance to traffic movement.

4.22 The work has to be carried out by the Contractor causing the minimum of hindrance for any maritime traffic or surface traffic.

Trustees' lien on Contractor's Plant & equipment.

4.23 All constructional plants, temporary works and materials when brought to the site by the contractor, shall be deemed to be the property of the Trustees who will have a lien on the same until the satisfactory completion of the work and shall only be removed from the site in part or in full with the written permission of the Engineer or his Representative.