

# **General Conditions of Contract Forms And Agreements**

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**Sanctioned by the Trustees under Resolution No. 92  
of the 6th Meeting held on 27th May, 1993.**

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**KOLKATA PORT TRUST  
KOLKATA DOCK SYSTEM  
& HALDIA DOCK COMPLEX  
MAY, 1993**

**AMENDMENT  
TO  
GENERAL CONDITIONS OF CONTRACT**

❖ **C1-3.4 THE TENDER /OFFER & ITS PRE-REQUISITES**

Table under sub-clause (d)

<b>PREVIOUS</b>			<b>AS AMENDED</b>		
Class of Registration	Amount Of Fixed Security	Financial Limit Of Each Tender	Class of Registration	Amount Of Fixed Security	Financial Limit Of Each Tender
<b>A</b>	Rs 10,000/-	Any tender priced upto Rs 2,00,000/-	<b>A</b>	Rs 25,000/-	Any tender priced upto Rs 5,00,000/-
<b>B</b>	Rs 5,000/-	Any tender priced upto Rs 1,00,000/-	<b>B</b>	Rs 10,000/-	Any tender priced upto Rs 2,00,000/-
<b>C</b>	Rs 2,500/-	Any tender priced upto Rs 50,000/-	<b>C</b>	Rs 5,000/-	Any tender priced upto Rs 1,00,000/-

**[AMENDMENT SANCTIONED BY THE BOARD OF TRUSTEES VIDE RESOLUTION NO 139 OF THE TRUSTEES' 10<sup>TH</sup> METING HELD ON 19.11.1999]**

# DEFINITIONS

## CHAPTER-1

### 1. DEFINITIONS

- 1.0 In the contract, as here in after defined, the following words and expressions shall have the meaning herein assigned to them, except where the context otherwise required.
- 1.1 “Employer” or “Board” or “Trustees” means of the Board of Trustees for the Port of Calcutta, a body corporate under Section 3 of the Major Port Trusts Act, 1963, including their successors, representatives and assigns. Employer
- 1.2 “Chairman” means the Chairman of the Board and includes the person appointed to act in his place under Sections 14 and 14A of the Major Port Trusts Act, 1963 Chairman
- 1.3 “Contractor” means the person or persons, Firm or Company whose tender/offer has been accepted by the Trustees and includes the Contractor’s representatives, heirs, successor and assigns, if any, permitted by the Board/Chairman. Contractor
- 1.4 “Engineer” means the Board’s official who has invited the tender on its behalf and includes the Manager (Infrastructure & Civic Facilities) or other official as may be appointed from time to time by the Employer, with written notification to the Contractor, to act as Engineer for the purpose of the Contract, in place of the “Engineer” so designated. Engineer
- 1.5 “Engineer’s Representative” means any subordinate Engineers or Assistant to the Engineer or any other official appointed from time to time by the Engineer to perform the duties set forth in Clauses 2.4 to 2.6 hereof. Engineer’s Representative
- 1.6 “Work” means the work to be executed in accordance with the Contract and includes authorised “Extra Works” and ‘Excess Works” and “Temporary Works”. Works
- 1.7 “Temporary Works” means all temporary works of every kind required in or about the execution, completion or maintenance of the works and includes (without thereby limiting the foregoing definitions) all temporary erections, scaffolding, ladders, timbering, soaking vats, site offices, cement and other godowns, platforms and bins for stacking building materials, gantries, temporary tracks and roads, temporary culverts and mixing platforms. Temporary works
- 1.8 “Extra Works” means those works required by the Engineer for completion of the Contract which were not specifically and separately included in the schedule of items of the works i.e. (Bill of Quantities) of the tender. “Excess Works” means the required quantities of work in excess of the provision made against any item of the bill of Quantities. Extra works and Excess works

Specification	1.9	“Specifications” means the relevant and appropriate Bureau of Indian Standard’s specifications / International Standard’s Specifications (latest revisions) for materials and workmanship unless stated otherwise in the Tender. Specification
Drawings	1.10	“Drawings” means the drawings referred to in the Tender and specification and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished or approved in writing by the Engineer.
Contract	1.11	“Contract” means and includes the General and Special Conditions of Contract, Specifications, Drawings, priced Bill of Quantities, the Tender / Offer, the letter of acceptance of the Tender/Offer, the Contract Agreement, if separately entered into and the Schedule of Rates and Price, if any, adopted by the Trustees at their discretion.
Constructional Plant	1.12	“Constructional Plant” means all appliances or things of whatsoever nature required in or about the execution, completion or maintenance of the works or temporary works and includes (without thereby limiting the foregoing definition) all machinery and tools but does not include materials or other things intended to form or forming part of the permanent works.
Site	1.13	“Site” means the land, and other places, on, under, in or through which the works are to be executed or carried out and any other lands or places provided by the Trustees for the purpose of the Contract.
Contract Price	1.14	“Contract Price” means the sum named in the letter of acceptance of the Tender/Offer of the Contractor, subject to such additions there to and deductions therefrom as may be made by the Engineer under the provisions here-in-after contained.
Month	1.15	“Month” means English Calendar Month.
Excepted Risks	1.16	“Excepted Risks” are riot in so far as it is uninsurable, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), Civil War, rebellion, revolution, insurrection or military or usurped power or use or occupation by the Trustees of any portion of the works in respect of which a certificate of completion has been issued (all of which are herein collectively referred to as the excepted risks).
Singular/Plural	1.17	Word importing the singular only, also includes the plural and vice-versa where the context so requires.
Headings/ MarginalNotes.	1.18	The heading and marginal notes in these General Conditions of Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the contract.

1.19	Unless otherwise stipulated the work “Cost” shall be deemed to include overhead costs of the Contractor, whether on or off the site.	Cost
2.0	<b>DUTIES &amp; POWERS OF ENGINEER &amp; ENGINEER’S REPRESENTATIVE.</b>	
2.1	The Contractor shall execute, compete and maintain the works in terms of the contract to the entire satisfaction of the Engineer and Shall comply with the Engineer’s direction on any matter whatsoever.	Engineer’s Authority
2.2	The Contractor shall take instructions from the Engineer and subject to limitation of Clause 2.5 hereof, from the Engineer’s Representative.	Authority of Engineer’s Representative.
2.3	<b><i>The Engineer shall have full power and authority :</i></b>	
	(a) to supply to the contractor from time to time during the progress of the works such further drawings and instructions as shall be necessary for the purpose of proper and adequate execution and maintenance of the works and the contractor shall carry out and be bound by the same.	Engineers’ Power
	(b) to alter or modify the specification of any material and workmanship and to inspect the work at any time.	
	(c) to order for any variation, alteration and modification of the work and for extra works.	
	(d) to issue certificates as per contract.	
	(e) to settle the claims & disputes of the Contractor and Trustees, as the first referee.	
	(f) to grant extension of completion time.	
2.4	<b><i>The Engineer’s Representative shall :</i></b>	
	(i) watch and supervise the works.	
	(ii) test and examine any material to be used or workmanship employed in connection with the work.	Power of Engineer’s Representative.
	(iii) have power to disapprove any material and workmanship not in accordance with the contract and the contractor shall comply with his direction in this regard.	
	(iv) take measurements of work done by the contractor for the purpose of payment or otherwise.	
	(v) order demolition of defectively done work for its reconstruction all by the Contractor at his own expense.	
	(vi) have powers to issue alteration order not implying modification of design and extension of completion time of the work and	
	(vii) have such other powers and authorities vested in the Engineer, which have been delegated to him in writing by the Engineer under intimation to the Contractor.	
2.5	<b><i>Provided always that the Engineer’s Representative shall have no power :</i></b>	
	(a) to order any work involving delay or any extra payment by the Trustees,	Limitation of Engineer’s Representative’s Power.
	(b) to make variation of or in the works and	
	(c) to relieve the Contractor of any of his duties or obligations under the Contract.	

Engineer's Over-riding Power

2.6 ***Provided also as follows :***

- (a) Failure of Engineer's Representative to disapprove any work or materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the pulling down, removal, breaking-up thereof and re-constructing at the contractor's cost and the contractor shall have no claim to compensation for the loss sustained by him.
- (b) If the contractor shall be dissatisfied by reason of any decision of the Engineer's Representative, he shall be entitled to refer the matter to the Engineer who shall thereupon confirm, reverse or vary such decision.
- (c) Any written instructions or written approval given by the Engineer's Representative to the contractor, within the terms of delegation of power and authority vested in the Engineer to his Representative in writing, shall bind the contractor and the Trustees as though it had been given by the Engineer, who may from time to time make such delegation.

3.0 **THE TENDER/OFFER AND ITS PRE-REQUISITES**

The tender must encompass all relevant aspects/ issues

3.1 The Contractor shall, before making out and submitting his tender / offer, be deemed to have inspected and examined the site, fully considered all factors, risks and contingencies, which will have direct and indirect impact on his expenses and profit from the work and shall be specifically deemed to have taken the following aspects into consideration :

Site & Local condition.

(a) The form and nature of the site and its surroundings including their sub-surface, hydrological, tidal and climatic conditions, the means of access to the site and all other local conditions including the likely charges and costs for temporary way-leave, if any, required for the work.

Drawing/ Specification/ Nature & extent of work to be done.

(b) The drawings, specifications, the nature and extent of work to be executed and the quality, quantity and availability of the required materials and labour for the work and the need to execute the work to the entire satisfaction of the Engineer, and also by complying with the General and Special Conditions of Contract.

Accommodation for Contractor's men/ materials.

(c) The accommodation required for the workmen and site office, mobilisation/demobilisation and storage of all plant, equipment and Construction materials.

Water for drinking etc. /Electrical power.

(d) The sources and means of procurement of water for drinking, washing and execution of work, and source and availability of electrical power, all at Contractor's cost.

Payment of Taxes/duties and observance of all statutes.

(e) Payment of taxes and duties and compliance of all applicable statutes, ordinances and law together with the rules made thereunder, the rules, regulations and bye-laws of public bodies or any local or other authority by the Contractor, keeping the Trustees indemnified against penalties and liabilities of every kind arising from the Contractor's failure in such compliance.

- (f) Payment of all kinds of stamp-duty for executing the agreement or for any legal instrument including Bank Guarantees and Indemnity Bonds. Payment of Stamp Duty by the Contractor.

3.2 The Contractor's tender shall be in ink on the Tender Forms supplied by the Trustees, unless stipulated otherwise in the Notice Inviting the Tender and shall be faultless in figures and free from erasing. Corrections, if any, shall only be made by scoring out and initialling of the revised figure.

3.3 If required by the Engineer or the Trustees, the Contractors in their tender or subsequently, shall disclose the names of their owners/ partners/share holders at the required points of time. The failure in this regard shall be treated as a breach and a contract, if entered into, shall be liable to be cancelled. Disclosure of Owner's name.

3.4 (a) Unless otherwise stipulated in the Notice Inviting Tender / Offer, every tender must be submitted with Earnest Money of the amount calculated as per the following scale. Earnest Money and Security Deposit.

Estimated Value of Work	Amount of Earnest Money	
	For Works Contract	For Contract of Supplying Materials or Equipment only.
Up to Rs. 1,00,000=00	5% of the estimated value of work	1% of the estimated value of work
Over Rs. 1,00,000=00	2% of the estimated value of work subject to a maximum of Rs. 20,000/- and minimum of Rs. 5,000/-.	½% of the estimated value of work subject to a maximum of Rs. 10,000/-and minimum of Rs. 1,000/-.

(b) Earnest Money shall be deposited with the Trustees' treasurer in cash or by Banker's Cheque of any Kolkata Branch of a Nationalised Bank of India drawn in favour of Kolkata Port Trust or in the form of an "Account Payee" Draft of any Nationalised Bank of India drawn in favour of "Kolkata Port Trust" and payable at Kolkata/Haldia, as the case may be, and the receipt granted therefor be kept attached to the Tender/Offer in the Sealed Cover. Method of Paying E.M.

(c) Earnest Money of un-accepted tender shall be refunded without any interest through A/c. Payee Cheque drawn on a Nationalised Bank of Kolkata / Haldia. Refund of E.M.

(d) The enlisted (registered ) Contractors of the Trustees who have deposited fixed Security with the Trustees' FA & CAO / Manager (Finance) according to his Class of Registration, shall be exempt from depositing the Earnest Money, as per the following scale : Exemption from E.M. to Regd. Firms.

Class of Registration	Amount of Fixed Security	Financial Limit of Each Tender
A	Rs. 10,000/-	Any tender priced up to Rs. 2,00,000/-
B	Rs. 5,000/-	Any tender priced up to Rs. 1,00,000/-
C	Rs. 25,000/-	Any tender priced up to Rs. 50,000/-

Tender without EM liable to rejection.

(e) (i) Tender submitted without requisite Earnest Money may be liable to rejection.

Forfeiture of E.M. before Acceptance of offer.

(ii) If before expiry of the validity period of his Tender/Offer, the tenderer amends his quoted rates or tender/offer making them unacceptable to the Trustees and/or withdraws his tender/offer, the Earnest Money deposited shall be liable to forfeiture at the option of the Trustees.

E.M. to be converted to part S.D.

(f) The Earnest Money of accepted tender/offer shall be retained by the Trustees as part of the Security Deposit, for which a separate Treasury Receipt shall be issued to the Contractor after cancellation of the previous Earnest Money.

Mode of recovery of balance S.D.

(g) Balance security for works contract shall be recovered by deduction from all progressive Bill (including final Bill, if necessary) @ 10% of the gross value of work in each such bill, so that the total recovery may not exceed the quantum computed as per the under noted percentages of the total value of work actually done up to the stage of completion.

Scale of S.D. recovery.

Value of Work	% of Security Deposit for works contract.	% of Security Deposit For contract of supplying materials & equipment only.
For works up to Rs.10,00,000/-.	10% (Ten percent)	1% (One percent)
For works costing more than Rs.10,00,000/- and up to Rs.20,00,000/-	10% on first Rs.10,00,000/- + 7½% on the balance.	1% on first Rs.10,00,000/- + ½% on the balance.
For works costing more than Rs.20,00,000/-	10% on first Rs.10,00,000/- + 7 ½% on the next Rs.10,00,000/- + 5% on the balance.	1% on first Rs.10,00,000/- + ½% on the next Rs.10,00,000/- + ¼% on the balance.

S.D. for supply contracts to be deposited in advance.

(h) Balance Security for Contract of supplying materials and equipment computed in terms of the percentages given above, shall have to be deposited with the Trustees' Treasurer in advance and within 30 days from the date of placement of supply order, either in cash or by A/c. Payee Draft of a Nationalised Bank of India drawn in favour of Kolkata Port Trust and payable at Kolkata/Haldia, as the case may be.

No interest payable on E.M. /S.D.

(i) No interest shall be paid by the Trustees to the Tenderer/Contractor on the amount of Earnest Money/Security Deposit held by the Trustees, at any stage.

Mode of refund of S.D.

3.5 (i) The Security Deposit shall refunded to the Contractor in terms of Clause 9.3 hereinafter and subject to deduction, if any, under the provision of Sub-clause 3.5 (ii) herein below. If, however, the



Contract provides for any maintenance period. 50% of the Security Deposit may be refunded against any of the Treasury Receipt for that amount on expiry of half of the maintenance period and the balance deposit on the expiry of the said maintenance period and after the Engineer has certified the final completion of work in Form G.C.2 and the Contractor has submitted his “No Claim” Certificate in Form G.C.3.

- (ii) The Security Deposit/Earnest Money may be liable to forfeiture at the option of the Trustees, if the Contractor fails to carry out the work or to perform/observe any of the conditions of the Contract. The Trustees shall also be at liberty to deduct any of their dues from the Security Deposit, fixed Security, Earnest Money or from any sum due or to become due to the Contractor under any other contract. Forfeiture of S.D.
  
- 3.6 If stipulated in the contract as a Special Condition, the contractor shall have to submit to the Engineer a performance Bond in the form of an irrevocable guarantee from Kolkata / Haldia Branch, as the case may be, of any Nationalised Bank of India in the proforma annexed hereto and for the sum and period as mentioned in the letter of acceptance of the Tender/Offer, within 15 days from the date of such letter, failing which the Contract shall be liable to be terminated and the earnest money shall be liable to forfeiture; all at the discretion of the Engineer. The cost of obtaining this or any other Bank Guarantee and/or the revalidation thereof, wherever required, has to be borne by the Contractor and it shall be his sole responsibility to arrange for timely revalidation of such Bank Guarantee, failing which and for non-fulfilment of any contractual obligation by the Contractor, the Engineer and/or the Trustees shall be at liberty to raise claim against the Guarantee and/or enforce the same unilaterally. Bank Guarantee in lieu of Cash S.D. in certain cases.
  
- 4.0 THE CONTRACT & GENERAL OBLIGATIONS OF CONTRACTOR**
  
- 4.1 (a) The contract documents shall be drawn-up in English language. English language to be used.
- (b) The contract shall be governed by all relevant Indian Acts. As applicable only within the jurisdiction of the High Court at Kolkata, India, including the following Acts :
  - 1. The Contract Act (India), 1872.
  - 2. The Major Port Trusts 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 and Conciliation Act (1940) (in the case of a definite Arbitration Agreement only).Applicability of laws on the contract.
  
- 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. Contractor to Execute Contract Agreement.

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 prove 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.

- 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 submit his programme of work.
- 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 supervise the works.
- 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 to deploy qualified men and Engineer's power to remove Contractor's men.
- 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 for line, level, setting out etc.
- 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 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 replacement in the maintenance period.
- Contractor is responsible to protect the work.

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	<p>The Contractor shall be deemed to have indemnified and shall indemnify the Trustees against all claims, demands, actions and proceedings and all costs arising therefrom on account of :</p> <ul style="list-style-type: none"> <li>(a) Infringement of any patent right, design, trademark or name or other protected right in connection with the works or temporary work.</li> <li>(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.</li> <li>(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.</li> <li>(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.</li> <li>(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.</li> <li>(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.</li> </ul>
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	<p>The Contractor's quoted rates shall be deemed to have been inclusive of the following :</p> <ul style="list-style-type: none"> <li>(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.</li> </ul>

- (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 labourer 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 local authority or the Engineer or his Representative for preventing (i) spread of any infectious disease like smallpox, 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.
- 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 Trustees' 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 despatch. Notice to Contractor.
- 4.20 The Contractor and his Sub-contractor 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 not to publish photograph or particulars of work.
- 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. Contractor to provide facilities to outsiders.
- 4.22 The work has to be carried out by the Contractor causing the minimum of hindrance for any maritime traffic or surface traffic. Work to cause minimum possible hindrance to traffic movement.

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 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.
<b>5.0 COMMENCEMENT, EXECUTION AND COMPLETION OF WORK.</b>		
Preliminary time to commence work an maintenance of steady rate of progress.	5.1	The Contractor shall commence the work within 7 days of the receipt of Engineer's letter informing acceptance of the Contractor's tender/offer by the Trustees or within such preliminary time as mentioned by the Contractor in the Form of Tender or the time accepted by the Trustees. The Contractor shall then proceed with the work with due expedition and without delay, except as may be expressly sanctioned or ordered by the Engineer or his Representatives, time being deemed the essence of the contract on the part of the contractor.
Contractor's site office.	5.2	The Contractor shall provide and maintain a suitable office at or near the site to which the Engineer's Representative may send communications and instructions for use of the Contractor.
Contractor to observe Trustees' working hours.	5.3	Unless specified otherwise in the contract or prior permission of the Engineer has been taken, the contractor shall not execute the work beyond the working hours observed by the Engineer's Representative and on Sundays and Holidays observed in the Trustees' system, except in so far as it becomes essential on account of tidal work or for safety of the work. If the progress of the work lags behind schedule or the work has been endangered by any act or neglect on the part of the contractor, then the Engineer or his Representative shall order and the contractor at his own expense shall work by day and by night and on Sundays and Public Holidays. Any failure of the Engineer or his Representative to pass such an order shall not relieve the contractor from any of his obligations. The Engineer's decision in this regard shall be final, binding and conclusive.
Contractor to supply all materials as per requirement of the Engineer or his representative	5.4	Unless stipulated otherwise in the contract all materials required for the work shall be procured and supplied by the contractor with the approval of the Engineer or his Representative and subject to subsequent testing as may be required by the Engineer or his Representative. The Engineer shall exercise his sole discretion to accept any such materials.
Materials & Works	5.5	Unless stipulated otherwise in the contract, all materials, workmanship and method of measurement shall be in accordance with the relevant Codes (Latest Revision) of the Bureau of Indian Standards and the written instructions of the Engineer or his Representative. Where no specific reference is available in the contract, the material and workmanship shall be of the best of their respective kinds to the satisfaction of the Engineer.

- 5.6 Samples shall be prepared and submitted for approval of the Engineer or his Representative, whenever required to do so, all at the Contractor's cost. Contractor to submit samples for approval.
- 5.7 Unless stipulated otherwise in the contract, the cost of any test required by the Engineer or his representative in respect of materials and workmanship deployed on the work, shall be borne by the Contractor. Contractor to arrange all testing at his own cost.
- 5.8 Regarding the supply of any materials by the Trustees to the contractor in accordance with the contract, the following conditions shall apply :
- (a) The Contractor shall, at his own expense, arrange for transporting the materials from the Trustees' Stores, watching, storing and keeping them in his safe custody, furnishing of statement of consumption thereof in the manner required by the Engineer or his representative, return of surplus and empty container to the Trustees' Stores as per the direction of the Engineer or his Representative. The Contractor shall account for and look after the Trustees' materials.
- (b) Being the custodian of the Trustees' materials, the contractor shall remain solely responsible for any such materials issued to him and for any loss or damage thereof for any reason other than "Excepted Risks", the Contractor shall compensate the Trustees' in the manner decided by the Engineer and shall at no stage remove or cause to be removed any such material from the site without his permission in writing. Contractor to compensate for loss and damage to Trustees' materials.
- (c) The Trustees' materials will generally be supplied in stages and in accordance with the rate of progress of work, but, except for grant of suitable extension of completion time of work as decided by the Engineer. The Contractor shall not be entitled to any other compensation, monetary or otherwise, for any delay in the supply of Trustees' materials to him. The Contractor shall, however, communicate his requirement of such materials to the Engineer from time to time. Delay in supply of Trustees' materials will only entitle the Contractor for extension of completion time of work.
- (d) Unless stipulated otherwise in the contract, the value of the Trustees' materials issued to the contractor shall be recovered from the contractor's bills and/or any of his other dues, progressively according to the consumption thereof on the work and/or in the manner decided by the Engineer or his representative and at the rate/s stipulated in the contract. These rates shall only be considered by the contractor in the preparation of his tender/offer and these will form the basis of escalation/variation, if in future the contractor is required to procure and provide any such material on the written order of the Engineer consequent on the Trustees' failure to effect timely supply thereof. Recovery from Contractor for Trustees' materials under normal circumstances.
- (e) If the Engineer decides that due to the contractor's negligence, any of the Trustees' materials issued to the contractor has been – (i) lost or damaged, (ii) consumed in excess of requirement and (iii) wasted by the contractor in excess of normal wastage, then the value thereof shall be recovered from the contractor's bills or from any of his other dues, after adding 19 ¼% extra over the higher one of the followings - Recovery from Contractor for Trustees' materials under other circumstances.
- (1) The issue rate of the materials at the Trustees' Stores and
- (2) The market price of the material on the date of issue as would be determined by the Engineer.

Contractor to replace materials/ work not acceptable to the Engineer or his Representative.

5.9 The Engineer or his Representative shall have the power to inspect any material and work at any time and to order at any time – (I) for removal from the site of any material which in his opinion is not in accordance with the contract or the instruction of the engineer or his representative, (ii) for the substitution of the proper and suitable materials, or (iii) the removal and proper re-execution of any work which in respect of material and workmanship is not in accordance with the contract or the instructions of the Engineer. The Contractor shall comply with such order at his own expense and within the time specified in the order. If the contractor fails to comply, the Engineer shall be at liberty to dispose any such materials and re-do any work in the manner convenient to the Trustees by engaging any outside agency at the risk and expense of the contractor and after giving him a written prior notice of 7 days.

Contractor to seek approval of Engineer or his Representative before covering up any portion of work

5.10 No work shall be covered up and put out of view by the contractor without approval of the Engineer or his Representative and whenever required by him, the contractor shall uncover any part or parts of the work or make openings in or through the same as may be directed by the Engineer or his representative from time to time and shall reinstate or make good those part of works thus affected to the satisfaction of the Engineer, all at the cost of the contractor.

The Trustees shall reimburse such cost as determined by the Engineer, if the initial covering up was with prior written order of the Engineer or his Representative.

Contractor to suspend work on Order from Engineer or his Representative.

5.11 On a written order of the Engineer or his Representative, the contractor shall delay or suspend the progress of the work till such time the written order to resume the execution is received by him. During such suspension the contractor shall protect and secure the work to the satisfaction of the Engineer or his Representative. All extra expenses in giving effect to such order shall be considered by the Trustees, unless such suspension is –

- (a) otherwise provided for in the contract, or
- (b) necessary by reason of some default on the part of the contractor, or
- (c) necessary by reason of climatic conditions on the site, or
- (d) necessary for proper execution of the works or for the safety of the works or any part thereof.

The Engineer shall settle and determine such extra payment and/or Extension of completion time to be allowed to the contractor, as shall, in the opinion of the Engineer be fair and reasonable, and the same shall be final and binding on the Contractor.

5.11.1 If at any time before or after commencement of the work the Trustees do not require the whole of the work tendered for the Engineer shall notify the same to the contractor in writing and the contractor shall stop further works in compliance of the same. The Contractor shall not be entitled to any claim for compensation for underived profit or for such premature stoppage of work or on account of curtailment of the originally intended work by reason of alteration made by the Engineer in the original specifications, drawings, designs and instructions.



- 5.12 When the whole of the work has been completed to the satisfaction of the Engineer and has passed any final test prescribed in the contract, the contractor shall, within 21 days of submission of his application to the Engineer, be entitled to receive from him a certificate for completion of work in Form G.C.1, annexed hereto. If any part of the total work having been completed to the satisfaction of the Engineer, be taken over and/or used by the Trustees, the Contractor shall on application be entitled to partial completion certificate in the Form G.C.1 indicating the portion of the work covered by it, so that the Contractor's liability during maintenance period of the contract, if any, shall commence from the date mentioned in such certificate so far as the completed portion of the work is concerned. Completion Certificate G.C.1.
- 6.0 TERMS OF PAYMENT :**
- 6.1 No sum shall be considered as earned by or due to the Contractor in respect of the work till final and satisfactory completion thereof and until a certificate of final completion in Form G.C.2 has been given by the Engineer. All interim payments are advances till issue of Certificate in Form G.C.2
- On account payments, if any, made prior to issue of the certificate in Form G.C.2, shall all be treated as mere advance, which shall stand recoverable in full or in part, if the Engineer so decides in the context of Contractor's unfulfilled contract condition, if any.
- 6.2 All payments shall be made to the Contractor only on the basis of measurements of actual work done, as recorded in the Trustees' measurement books and at accepted tendered or at agreed rates, as the case may be, except as otherwise provided in the contract and when the Engineer decides any other rate for change in the scope of work or omission, if any, on the part of the Contractor. Payment on the basis of measurements at agreed rates.
- 6.3 For work of sanctioned tender value more than Rs.50,000/- or having an initially stipulated completion period of 4 months or more, on account payments may be made at the discretion of the Engineer or his Representative at intervals deemed suitable and justified by him. Provided always that subject to execution of work of substantial value in the context of the contract price, the interval of such on account payments shall be decided by the Engineer or his Representative, which shall ordinarily not be less than 1 month in between two payments for on account bill and/or advance. Limitation for on account payment.
- 6.4 Measurement for works done shall be progressively taken by the Engineer's Representative and entered in the Trustees' Measurement Book, at intervals deemed suitable and proper by him and/or the Engineer. The Contractor or his duly accredited Representative or Agent shall remain present at the time of such measurement and assist the Engineer's Representative in every manner required by him. After the measurements taken have been entered in the Measurement Book, the Contractor or his Agent shall sign the Measurement Book at the end of such Measurements over the Contractor's Rubber Stamp as a token of acceptance of all such measurements, recorded above and prior to such signature. If the Contractor or his Agent fails to participate even after 3 days written notice from the Engineer's Representative, the measurement Recording of measurements.

shall be taken ex-parte by the Engineer's Representative and those shall be accepted by the Contractor.

Contractor to prepare and submit his bills.

6.5 Based on the quantum of work and the value thereof computed in the Measurement Book, the Contractor shall type out his bill in the proforma approved by the Engineer and submit the same to the Engineer's Representative in quadruplicate, duly signed by him or his accredited Agent over his Rubber Stamp. The Engineer or his Representative may in his absolute discretion, allow advance payment against such bill to the extent of an amount not exceeding 75% of the "net payable" sum of the said bill, subject to adjustment thereof against the bill at the time of checking and auditing the bill at the Trustees' end. The measurement Book will not be handed over to the Contractor; but he will obtain the abstracts of quantities, amounts and recoveries to type out the bill.

6.6 At the discretion of the Engineer or his Representative and only in respect of accepted offers/where estimated amount put to tender would be Rs.2,00,000/- or more, advance payment may be made to the extent of 75% of the value of any material purchased and brought to the site by the Contractor. Provided always that –

Advance payment against Non-perishable materials.

- (i) the materials shall, in the opinion of the Engineer or his Representative be of imperishable nature.
- (ii) the value of such materials shall be assessed by the engineer or his Representative at their own discretions.
- (iii) a formal agreement has been drawn up with the contractor, under which the Trustees secure a lien on the contractor's materials.
- (iv) the materials are safe-guarded by the contractor against losses, shortage and misuse due to the contractor postponing the execution of the work or otherwise.
- (v) in the event of storage of such materials within the Trustees' protected areas in the Docks, the contractor shall submit an Indemnity Bond in the proforma and manner acceptable to Trustees' whereby the contractor shall indemnify the Trustees against all financial loss/damage, on account of loss/damage to such materials for whatever reasons.
- (vi) in the event of storage of such materials outside the Trustees' protected areas the Contractor shall submit to the Engineer an irrevocable Bank Guarantee favouring the Trustees and for the same sum as is being advance, in the proforma and manner acceptable to the Trustees. The Guarantee shall be of a Kolkata / Haldia Branch of any Nationalised Bank or a Schedule Commercial Bank, as the case may be, acceptable to the Trustees and shall remain valid till the anticipated period of consumption of such materials in the work. The Bank Guarantee must bear an undertaking by the issuing Bank guaranteeing automatic payment of the guaranteed sum to the Trustees by the Bank on the date of expiry of the validity of the Guarantee, unless with the prior written approval of the Engineer on behalf of the Trustees, the Bank has extended the validity of the Guarantee.

- (vii) The amount of advance shall be recoverable from the contractor's bills or any other dues, progressively with the consumption of the materials on the basis of quantity consumed. Consequent on full recovery of the advance the Indemnity Bond/Bank Guarantee, vide sub-clause (v) & (vi) above, shall be returned to the Contractor duly discharged by the Engineer on behalf of the Trustees.
- 6.7 No certificate of the Engineer or his representative shall protect the Contractor against or prevent the Trustees from obtaining repayment from the Contractor, in case the Engineer or his representative should overcertify for payment or the Trustees should over-pay the Contractor on any account. Recovery for wrong and over payment.
- 6.8 No claim for interest shall be admissible or payable to the Contractor at any stage and in respect of any money or balance or Bank Guarantee, which may be due to the Contractor from the Trustees, owing to dispute or otherwise or for any delay on the part of the Trustees in making interim or final payment or otherwise. Interest not admissible to Contractor.
- 7.0 VARIATION AND ITS VALUATION :**
- 7.1 The Quantities set out in the Bill of Quantities of the tender shall be treated as estimated quantities of the work and shall never be deemed as actual or correct quantities of the works to be executed by the contractor in fulfilment of his obligation under the contract. Quantities in Bill of Quantities of Tender.
- 7.2 The Engineer shall have the power to order the Contractor in writing to make any variation of the quantity, quality or form of the works or any part thereof that may, in his opinion, be necessary and the Contractor upon receipt of such an order shall act as follows : Engineer's power to vary the works.
- (a) Increase or decrease the quantity of any work included in the contract.
  - (b) Omit any work included in the contract.
  - (c) Change the Character or quality or kind of any work included in the contract.
  - (d) Change the levels, lines, position and dimensions of any part of the work, and
  - (e) Execute extra and additional work of any kind necessary for completion of the works
- 7.3 No such variation shall in any way vitiate or invalidate the contract or be treated as revocation of the contract, but the value (if any) of all such variations evaluated in accordance with the Engineer's sole decision shall be taken into account and the contract price shall be varied accordingly. Variation by engineer do not vitiate the contract.
- 7.4 Provided always that written order of the Engineer shall not be required for increase or decrease in the quantity of any work upto 15%, where such increase or decrease is not the result of any variation order given under this clause but is the result of the quantities exceeding or being less than those stated in the bill of quantities. Provided also that verbal order of variation from the Engineer shall be complied with by the Contractor and the Engineer's subsequent written confirmation of such verbal order shall be deemed to be an order in writing within the meaning of this clause. Where written order for variation is not needed.

- 7.5 (a) The Contractor shall not be entitled to any claim of extra or additional work unless they have been carried out under the written orders of the Engineer.
- Payment for extra or additional, or omitted work or substituted work, Engineer's powers.
- (b) The Engineer shall solely determine the amount (if any) to be added to or deducted from the sum named in the tender in respect of any extra work done or work omitted by his order.
- (c) All extra, additional or substituted work done or work omitted by order of the Engineer shall be valued on the basis of 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 directly applicable to the extra, additional or substituted work, then the Engineer may decide the suitable rates on the basis of Schedule of Rates (including surcharge in force at the time of acceptance of tender), if any, adopted by the Trustees with due regard to the accepted contractual percentage, if any thereon. In all other cases the Engineer shall solely determine suitable rates in the manner deemed by him as fair and reasonable, and his decision shall be final, binding and conclusive.
- (d) If the nature or amount of any omission or addition relative to the nature or amount of the whole of the contract work or to any part thereof shall be such that, in the opinion of the Engineer, the rate of prices contained in the contract for any item of the works or the rate as evaluated under sub-clauses (b) and (c) of this clause, is by reason of such omission or addition rendered unreasonable or in-applicable, the Engineer shall fix such other rate or price as he deems proper and the Engineer's decision shall be final, binding and conclusive.

## **8.0 DELAY / EXTENSION OF COMPLETION TIME / LIQUIDATED DAMAGE / TERMINATION OF CONTRACT**

- Extension of completion time.
- 8.1 Should the quantum of extra or additional work of any kind or delayed availability of the Trustees' materials to be supplied as per contract or exceptionally adverse climatic conditions and natural phenomenon or strikes, lock-outs, civil commotion or other special circumstances of any kind beyond the control of the Contractor, cause delay in completing the work, the contractor shall apply to the Engineer in writing for suitable extension of completion time within 7 days from the date of occurrence of the reason and the Engineer shall thereupon consider the stated reasons in the manner deemed necessary and shall either reject the application or determine and allow in writing the extension period as he would deem proper for completion of the work with or without the imposition of "Liquidated Damage" Clause (No.8.3 hereof) on the Contractor and his decision shall be final and binding on the Contractor. If an extension of completion time is granted by the Engineer without imposition of liquidated damage, from the Clause No.8.3 of the Liquidated damage shall apply from its date of expiry, if the work be not completed within the extended time, unless stated otherwise in the decision communicated by the Engineer, as aforesaid.

- 8.2 (a) If the Contractor fails to complete the work within the stipulated dates or such extension thereof as communicated by the Engineer in writing, the Contractor shall pay as compensation (Liquidated Damage) to the Trustees and not as a penalty, ½% (half percent) of the total value of work (contract piece) as mentioned in the letter of acceptance of the tender/offer, for every week or part thereof the work remains unfinished. Provided always that the amount of such compensation shall not exceed 10% of the said value of work.
- (b) Without prejudice to any of their legal rights, the Trustees shall have the power to recover the said amount of compensation/damage in Sub-clause (a) of this clause, from any money due or likely to become due to the Contractor. The payment or deduction of such compensation/damage shall not relieve the Contractor from his obligation to complete the work or from any of his other obligations/liabilities under the contract and in case of the Contractor's failure and at the absolute discretion of the Engineer, the work may be ordered to be completed by some other agency at the risk and expense of the Contractor, after a minimum three days notice in writing has been given to the Contractor by the Engineer or his Representative.
- 8.3 Without being liable for any compensation to the Contractor, the Trustees may, in their absolute discretion, terminate the contract and enter upon the site and works and expel the Contractor there from after giving him a minimum 3 days' notice in writing, due to occurrence of any of the following reasons and decision of the Trustees in this respect, as communicated by the Engineer shall be final and conclusive :
- (i) The Contractor has abandoned the contract.
- (ii) In the opinion of the Engineer, either the progress of work is not satisfactory or the work is not likely to be completed within the agreed period on account of Contractor's lapses.
- (iii) The Contractor has failed to commence the works or has without any lawful excuse under these conditions has kept the work suspended for at least 15 days despite receiving the Engineer's or his Representative's written notice to proceed with the work.
- (iv) The Contractor has failed to remove materials from site or to dismantle or demolish and replace work for 7 days after receiving from the Engineer or his representative the written notice stating that the said materials or work were condemned and rejected by him under these conditions.
- (v) The Contractor is not executing the works in accordance with the contract or is persistently or flagrantly neglecting to carry out his obligations under the contract.
- (vi) Any bribe, commission, gift or advantage is given, promised or offered by or on behalf of the contractor to any officer, servant or representative of the Trustees or to any person on his or their behalf in relation to the obtaining or to the execution of the contract.
- (vii) The Contractor is adjudged insolvent or enters into composition with his creditors or being a company goes into liquidation either compulsory or voluntary.

'Liquidated  
Damage' and other  
compensation due  
to Trustees .

Default of the  
Contractor remedies  
& powers/  
Termination of  
Contract.

- 8.3.1 Upon receipt of the letter of termination of work, which may be issued by the Engineer on behalf of the Trustees, the Contractor shall hand over all the Trustees' tools, plant and materials issued to him at the place to be ascertained from the Engineer, within 7 days of receipt of such letter.
- 8.3.2 In all such cases of Termination of work, the Trustees shall have the power to complete the work through any other agency at the Contractor's risk and expense and the Contractor shall be debited any sum or sums that may be expended in completing the work beyond the amount that would have been due to the Contractor, had he duly completed the work of the work in accordance with the contract.
- 8.3.3 Upon termination of contract, the Contractor shall be entitled to receipt payment of only 90% of the value of work actually done or materials actually supplied by him and subject to recoveries as per contract, provided the work done and materials conform to specifications at the time of taking over by the Trustees. The payment for work shall be based on measurements of actual work done and priced at approved contract rates or other rates, as decided by the Engineer. The payment for materials supplied shall be at the rates as decided by the Engineer, which shall in no case be more than market rates prevailing at the time of taking over by the Trustees. The Engineer's decision in all such case shall be final, binding and conclusive.
- 8.3.4 The Trustees shall have the power to retain all moneys due to the Contractor until the work is completed by other agency and the Contractor's liabilities to the Trustees are known in all respect.

**9.0 MAINTENANCE AND REFUND OF SECURITY DEPOSIT**

Contractor's obligation for maintenance of work.

- 9.1 On completion of execution of the work the Contractor shall maintain the same for a period, as may be specified in the form of a Special Condition of the Contract, from the date mentioned in the Initial Completion Certificate in Form G.C.1. Any defect/fault, which may appear in the work during aforesaid maintenance period, arising, in the sole opinion of the Engineer or his representative, from materials or workmanship not in accordance with the contract or the instruction of the Engineer or his representative, shall, upon the written notice of the Engineer or his representative, be amended and made good by the Contractor at his own cost within seven days of the date of such notice, to the satisfaction of the Engineer or his representative, failing which the Engineer or his representative shall have the defects amended and made good through other agency at the Contractor's risk and cost and all expenses, consequent thereon or incidental thereto, shall be recoverable from the Contractor in any manner deemed suitable by the Engineer.

Certificate of final completion.

- 9.2 The Contract shall not be considered completed and the work shall not be treated as finally accepted by the Trustees, until a Final Completion Certificate in Form G.C.2 annexed hereto shall have been signed and issued by the Engineer to the contractor after all obligations under the Contract including that in the maintenance period, if any, have been fulfilled by the Contractor. Previous entry on the works or taking possession, working or using

thereof by the Trustees shall not relieve the Contractor of his obligations under the contract for full and final completion of the work.

- 9.3 On completion of the contract in the manner aforesaid, the Contractor may apply for the refund of his Security Deposit by submitting to the Engineer (i) The Treasury Receipts granted for the amount of Security held by the Trustees, and (ii) his “No further claim” Certificate in Form G.C.3 annexed hereto (in original), where upon the Engineer shall issue Certificate in Form G.C.2 and within two months of the Engineer’s recommendation, the Trustees shall refund the balance due against the Security Deposit to the Contractor, after making deduction therefrom in respect of any sum due to the Trustees from the Contractor. Refund of Security Deposit.

## **10.0 INTERPRETATION OF CONTRACT DOCUMENTS, DISPUTES AND ARBITRATION.**

- 10.1 In all disputes, matters, claims, demands or questions arising out of or connected with the interpretation of the Contract including the meaning of Specifications, drawings, designs and instructions or as to the quality of workmanship or as to the materials used in the work or the execution of the work whether during the progress of the works or after the completion and whether before or after the determination, abandonment or breach of the contract the decision of the Engineer shall be final and binding on all parties to the contract and shall forthwith be given effect to by the Contractor. Engineer’s decision.
- 10.2 If the Contractor be dissatisfied with any such decision of the Engineer, he shall within 15 days after receiving notice of such decision require that the matter shall be referred to Chairman, who shall thereupon consider and give a decision. Chairman’s award.
- 10.3 If, however, the Contractor be still dissatisfied with the decision of the Chairman, he shall within 15 days after receiving notice of such decision require that within 60 days from his written notice, the Chairman shall refer the matter to an Arbitrator of the panel of Arbitrators to be maintained by the Trustees for the purpose and any such reference shall be deemed to be a submission to arbitration within the meaning of Indian Arbitration Act, 1940 or any statutory modification thereof. Arbitration.
- 10.3.1. If the Arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another person from panel shall be appointed as Sole Arbitrator and he shall proceed from the stage at which it was left by his predecessor.
- 10.3.2 The Arbitrator shall be deemed to have entered on reference on the date he issues notice to both the parties fixing the date of first hearing.

- 10.3.3 The time limit within which the Arbitrator shall submit his award shall normally be 4 months as provided in Indian Arbitration Act, 1940 or any amendment thereof. The Arbitrator may, if found necessary, enlarge the time for making and publishing the award, with the consent of the parties.
- 10.3.4 The venue of the arbitration shall be either Kolkata or Haldia as may be fixed by the Arbitrator in his sole discretion. Upon every or any such reference the cost of any incidental to the reference and award respectively shall be in the discretion of the Arbitrator who may determine, the amount thereof or by whom and to whom and in what manner the same shall be borne and paid.
- 10.3.5 The Award of the Arbitrator shall be final and binding on all parties subject to the provisions of the Indian Arbitration Act 1940 or any amendment thereof. The Arbitrator shall give a separate award in respect of each item of disputes and respective claim referred to him by each party and give reasons for the award.
- 10.3.6 The Arbitrator shall consider the claims of all the parties to the contract – within only the parameters of scope and conditions of the contract in question.
- 10.3.7 Save as otherwise provided in the contract the provisions of the Arbitration Act, 1940 and rules made thereunder, for the time being in force, shall apply to the arbitration proceedings under this Clause.
- 10.4 The Contractor shall not suspend or delay the work and proceed with the work with due diligence in accordance with Engineer's decision. The Engineer also shall not withhold any payment, which, according to him, is due or payable to the Contractor, on the ground that certain disputes have cropped up and are likely to be referred to arbitration.

**10.5 *Provided always as follows :***

- [a] Nothing of the provisions in paragraphs 10.3 to 10.3.7 hereinabove would apply in the cases of contracts, where tendered amount appearing in the letter of acceptance of the tender / offer is less than Rs.40,00,000/-.
- [b] The Contractor shall have to raise disputes or differences of any kind whatsoever in relation to the execution of the work to the Engineer within 30 days from the date of occurrence of the cause of dispute and before the preparation of the final bill, giving detailed justifications, in the context of contract conditions.
- [c] Contractor's dispute if any arising only during the maintenance period, if any, stipulated in the contract, must be submitted to the Engineer, with detailed justification in the context of contract conditions, before the issuance of final completion certificate in Form G.C.-2 *ibid.*



No dispute or difference on any matter whatsoever, pertaining to the Contract can be raised after submission of certificate in form G.C.3 by him.

- [d] Contractor's claim / dispute raised beyond the time limits prescribed in sub-clauses 10.5[b] and 10.5 [c] hereinabove, shall not be entertained by the Engineer and / or by any Arbitrator subsequently.
- [e] The Chairman / Trustees shall have the right to alter the panel of Arbitrators, vide Clause 10.3 hereinabove, on their sole discretion, by adding the names of new Arbitrators and / or by deleting the names of existing Arbitrators, without making any reference to the Contractor.

# THE BOARD OF TRUSTEES FOR THE PORT OF KOLKATA

## FORM OF TENDER

TENDER NO:- \_\_\_\_\_

To,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I/we \_\_\_\_\_ of \_\_\_\_\_ having examined the site of works , inspected the Drawings and read the Specifications, General & Special Conditions of Contract and Conditions of Tender, hereby tender and undertake to execute and complete all the works required to be performed in accordance with the Specification, Bill of Quantities , General & Special Conditions of Contract and Drawings prepared by or on behalf of the Trustees and at the rates & prices set out in the annexed Bill of Quantities within \_\_\_\_\_ month / week from the date of order to commence the work and in the event of our tender being accepted in full or in part, I/ we also undertake to enter into a Contract Agreement in the Form hereto annexed with such alterations or additions there to which may be necessary to give effect to the acceptance of the Tender and incorporating such specification, Bill of Quantities, Drawings and Special & General Conditions of Contract and I/We hereby agree that until such Contract Agreement is executed the said Specifications, Bill of Quantities , Conditions of Contract and the Tender, together with the acceptance thereof in writing by or on behalf of the Trustees shall be the Contract.

THE TOTAL AMOUNT OF TENDER Rs \_\_\_\_\_

(Repeat in words) \_\_\_\_\_

\*I/We require \_\_\_\_\_ days/months preliminary time to arrange and procure the materials required by the work from the date of acceptance of tender before I/We could commence the work.

(\* This should be scored out in the case of Labour Contracts)

I/We have deposited with the Trustees' Financial Adviser & Chief Accounts Officer/Manager (Finance), Haldia Dock Complex vide Receipt No. \_\_\_\_\_ of \_\_\_\_\_ as Earnest Money.

I/We agree that the period for which the tender shall remain open for acceptance shall not be less than four months.

Signature of Tenderer  
(Seal of the Tenderer)

Witness :

Signature \_\_\_\_\_.

Name \_\_\_\_\_.  
(In block letters)

Address \_\_\_\_\_.

\_\_\_\_\_.

\_\_\_\_\_;

Occupation \_\_\_\_\_.

Name of the  
Tenderer : \_\_\_\_\_.

Date : \_\_\_\_\_.

Address : \_\_\_\_\_.

\_\_\_\_\_.

## KOLKATA PORT TRUST

### PROFORMA OF FORM OF AGREEMENT

THIS AGREEMENT made \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between the "Board Of Trustees for the Port Of Kolkata , a statutory body constituted under Major Port Trust Act ,1963 under the rules there under and statutory modification thereto having Registered Office at 15, Strand Road , Calcutta -700001 (hereinafter called "EMPLOYER" which expression unless excluded by or repugnant to the context be deemed to include his successor/s in office) on the one part and \_\_\_\_\_ (hereinafter called the "CONTRACTOR" which expression shall unless excluded by or repugnant to the context he deemed to include his heirs, executors, administrators, representative, successor in officer and permitted assigns) of the other part. WHEREAS The TRUSTEES are desirous that certain works should be executed viz \_\_\_\_\_ and have accepted a Tender/Offer by the contractor for the execution, completion and maintenance of such works . NOW THIS CONTRACT AGREEMENT WITNESSETH as follows :-

1. In this agreement words expressions shall have the same meanings as are respectively assigned to them in General Conditions Of Contract, hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement , viz :-
  - (i) The said Tender/Offer & the acceptance of Tender/ Offer.
  - (ii) The Drawings.
  - (iii) The General Conditions Of Contract.
  - (iv) Special Conditions Of Contract (If any).
  - (v) The Conditions Of Tender.
  - (vi) The Specifications.
  - (vii) The Bill Of Quantities.
  - (viii) The Trustees' Schedule of Rates and Prices (if any).
  - (ix) All correspondences by which the contract is added, amended, varied or modified in any way by mutual consent.
3. In consideration of the payments to be made by the Trustees to the Contractor as hereinafter mentioned the contractor hereby covenant with the Trustees to execute ,complete and maintain the work in conformity in all respects with the provisions of Contract.
4. The Trustees hereby covenants to pay to the contractor in consideration of such execution, completion and maintenance of the works the Contract Prices at the times and in the manner prescribed by the contract .

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be hereunto affixed (or have hereunto set their respective hands and seals) the day and year first above written.  
have executed these presents on the day and year first above written.

The Seal of \_\_\_\_\_

Was hereunto affixed in the presence of :

Name :- \_\_\_\_\_

Address :- \_\_\_\_\_

**OR**

**SIGNED SEALED AND DELIVERED**

By the said \_\_\_\_\_

*In the presence of :*

Name :- \_\_\_\_\_

Address :- \_\_\_\_\_

*The Common Seal of the Trustees was hereunto affixed in the presence of :*

Name :- \_\_\_\_\_

Address :- \_\_\_\_\_

\_\_\_\_\_

**KOLKATA PORT TRUST  
HALDIA DOCK COMPLEX**

**FORM G.C. 1**

Contractor \_\_\_\_\_

Address \_\_\_\_\_

Date of completion : \_\_\_\_\_

Dear sir(s),

This is to certify that the following work viz :-

Name of work : .....

.....

Estimate No. E.E.O.....Dt.....

C.E.O.....Dt.....

Work Order No.....

Allocation.....

Contract No. ....

which was carried out by you is in the opinion of the undersigned complete in every respect on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ in accordance with terms of the Contract and you are required to maintain the work as per Clause 9.0 of the General Conditions of Contract and under provisions of the Contract for a period of \_\_\_\_\_ weeks / months / years

from the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_\_

to the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_\_

Yours faithfully,

Signature.....  
(ENGINEER/ENGINEER'S REPRESENTATIVE)

Name.....

Designation.....

C.C. to : The Deputy Chief Engineer ( )  
The Deputy Manager ( )  
Financial Advisor & Chief Accounts Officer/  
Manager (Finance), Haldia Dock Complex.

OFFICE SEAL

**KOLKATA PORT TRUST  
HALDIA DOCK COMPLEX**

**FORM G.C. 2.**

The Financial Adviser & Chief Accounts Officer.  
The Manager (Finance), Haldia Dock Complex.

**CERTIFICATE OF FINAL COMPLETION.**

This is to certify that the following work viz:-

Name of work : .....

Estimate No. E.E.O.....dt.....

C.E.O.....dt.....

Work Order No.....

Contract No. ....

Resolution & Meeting No. ....

Allocation : .....

which was carried out by Shri/Messrs..... is now complete in every respect in accordance with the terms of the Contract and that all obligations under the Contract have been fulfilled by the Contractor.

Signature.....  
(ENGINEER/ENGINEER'S REPRESENTATIVE)

NAME.....

DESIGNATION.....

OFFICE SEAL

**KOLKATA PORT TRUST  
HALDIA DOCK COMPLEX**

**FORM G.C. 3**

('NO CLAIM ' CERTIFICATE FROM CONTRACTOR)

**The Manager (I&CF)  
Haldia Dock Complex  
Kolkata Port Trust  
Haldia.**

(Attn:.....)

(Address, the Trustees' Official, mentioned  
in the Work Order and under whom the  
Contract was executed)

Dear Sir,

I / We do hereby declare that I / we have received full and final payment from Kolkata Port Trust for the execution of the following work viz:-

Name of work : \_\_\_\_\_  
\_\_\_\_\_

Work Order No :- \_\_\_\_\_ dt. \_\_\_\_\_

Contract No. \_\_\_\_\_ dt. \_\_\_\_\_

Agreement No.....Dt.....

and I / we have no further claim against the Kolkata Port Trust in respect of the above mentioned job.

Yours faithfully,

(Signature of the Contractor)

Dated \_\_\_\_\_

Name of Contractor.....

Address:.....

.....

(OFFICIAL SEAL OF THE CONTRACTOR)



**Draft Proforma of Bank Guarantee (Performance Bond) in lieu of cash Security Deposit, to be issued by the Kolkata / Haldia Branch, as the case may be , of any nationalised Bank of India on Non-judicial Stamp Paper worth Rs 50/- or as decided by the Engineer / Legal Adviser of the Trustees.**

**To  
The Board of Trustees  
for the Port of Kolkata**

Bank Guarantee No. \_\_\_\_\_

Date \_\_\_\_\_

Name of Issuing Bank.....

Name of Branch .....

Address .....

In consideration of the Board of Trustees of the Port of Kolkata, a body corporate and duly constituted under the Major Port Trusts Act, 1963 (Act 38 of 1963), having agreed to exempt Shri / Messrs.....a Proprietary/ Partnership/ Limited / Registered Company, having its Registered Office at ..... (hereinafter referred to as "the Contractor") from cash payment of Security Deposit / payment of Security Deposit through deduction from the Contractors' bills under the terms and conditions of a contract made between the Trustees and the Contractor for ..... (write the name of the work as per Work Order) in terms of the Work Order No.....dated.....(hereinafter referred to as "the said contract") for the due fulfilment by the contractor of all the terms and conditions contained in the said contract, on submission of a Bank Guarantee for Rs..... (Rupees.....), we, .....Branch, Kolkata...../Haldia, do on the advise of the contractor, hereby undertake to indemnify and keep indemnified the Trustees to the extent of the said sum of Rs.....(Rupees.....) We, .....Branch, Kolkata...../Haldia, further agree that if a written demand is made by the Trustees through any of its officials for honouring the Bank Guarantee constituted by these presents, we,.....Branch , Kolkata...../Haldia, shall have no right to decline to cash the same for any reason whatsoever and shall cash the same

and pay the sum so demanded to the Trustees within a week from the date of such demand by an A/c Payee Banker's Cheque drawn in favour of "Kolkata Port Trust", without any demur. Even if there be any dispute between the contractor and the Trustees, there would be no ground for us, .....(Name of Bank), .....Branch, Kolkata...../Haldia, to decline to honour the Bank Guarantee in the manner aforesaid. The very fact that We,.....Branch, Kolkata...../Haldia, decline or fail or neglect to honour the Bank Guarantee in the manner aforesaid shall constitute sufficient reason for the Trustees to enforce the Bank Guarantee unconditionally without any reference, whatsoever, to the contractor.

2. We,.....Branch, Kolkata ...../Haldia, further agree that a mere demand by the Trustees at anytime and in the manner aforesaid, is sufficient for us,.....Branch, Kolkata...../Haldia, to pay the amount covered by this Bank Guarantee in full and in the manner aforesaid and within the time aforesaid without reference to the contractor and no protest by the contractor, made either directly or indirectly or through Court, can be valid ground for us.....Branch, Kolkata...../Haldia, to decline or fail or neglect to make payment to the Trustees in the manner and within the time aforesaid.

3. We, .....Branch, Kolkata...../Haldia, further agree that the Bank Guarantee herein contained shall remain in full force and effect, during the period that is taken for the due performance of the said contract by the contractor and that it shall continue to be enforceable till all the dues of the Trustees under and/or by virtue of the terms and conditions of the said contract have been fully paid and its claim satisfied and / or discharged in full and / or till the Trustees certify that the terms and conditions of the said contract have been fully and properly observed/ fulfilled by the contractor and accordingly, the Trustees have discharged the Bank Guarantee, subject however, that this guarantee shall remain valid upto and inclusive of .....day of .....20.....and subject also to the provision that the Trustees shall have no right to demand payment against this guarantee after the expiry of 6 (six) calendar months from the expiry of the aforesaid validity period upto .....or any extension thereof made by us.....Branch, Kolkata...../Haldia, in further extending the said validity period of this Bank Guarantee on Non-Judicial Stamp paper of appropriate value, as required / determined by the Trustees, only on a request by the Trustees to the contractor for such extension of validity of this Bank Guarantee.

4. We, .....Branch, Kolkata...../Haldia, further agree that, without our consent and without affecting in any manner our obligations hereunder, the Trustees shall have the fullest liberty to vary from time to time any of the terms and conditions of the said contract to extend the time for full performance of the said contract including fulfilling all obligations under the said contract or to extend the time for full performance of the said contract including fulfilling all obligations under the said contract by the contractor or to postpone for any time or from time to time any of the powers exercisable by the Trustees against the contractor and to forebear or enforce any of terms and conditions relating to the said contract and We,.....Branch, Kolkata...../Haldia, shall not be relieved from our liability by reason of any such variation or extension being granted to the contractor or for any fore-bearance, act or commission on the part of the Trustees or any indulgence by the Trustees to the contractor or by any such matter or thing of whatsoever nature, which under the law relating to sureties would , but for this provision, have effect of so relieving us,.....Branch, Kolkata...../Haldia.

5. We, .....Branch, Kolkata...../Haldia, lastly undertake not to revoke this Bank Guarantee during its currency except with the previous consent of the Trustees in writing.

SIGNATURE .....

NAME .....

DESIGNATION.....

[Duly constituted attorney for and on behalf of]

BANK .....

BRANCH.....

KOLKATA...../HALDIA.

(Official seal of the bank)

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## **GENERAL CONDITIONS OF CONTRACT**

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