



**MORMUGAO PORT TRUST**  
(ISO 9001-2008 CERTIFIED)

TENDER NO. CE/49/2016  
TENDER NOTICE NO. CE/N-50/2016

**MAINTENANCE DREDGING AT MORMUGAO PORT  
FOR THE YEAR 2016**

**TECHNICAL & COMMERCIAL BID**

Chief Engineer  
Engineering (Civil) Department  
Mormugao Port Trust  
Headland sada  
Goa-403 804

## NOTICE INVITING TENDER

### **MORMUGAO PORT TRUST**

### **TENDER NO.CE/49 /2016**

Tenders in the prescribed form in sealed covers superscribing the tender number and due date and time are invited by the Chief Engineer for the above work as per the details given in the table below.

<b>Work Description</b>	<b>Cost of tender document</b>	<b>Estimated cost</b>	<b>EMD</b>	<b>Tender sale</b>		<b>Pre bid date</b>	<b>Last date and time of submission</b>	<b>Date and time of opening</b>
				<b>from</b>	<b>to</b>			
<b><i>A) Maintenance Dredging at Mormugao Port for the year 2016</i></b>	<b>Rs. 10000/-</b>	<b>Rs. 12.60 Crores</b>	<b>Rs.13 Lakhs</b>	<b>01.06. 2016</b>	<b>22.06. 2016 Upto 15.00hrs</b>	<b>08.06. 2016 at 10.30 Hrs</b>	<b>22.06.2016 upto15.00hr</b>	<b>22.06.2016 at 15.30hr</b>

Detailed tender notice along with complete tender documents can be downloaded from our website [www.mptgoa.com](http://www.mptgoa.com) on or before the last date of sale of tender document. For further details and general enquiries, prospective bidders may contact the Chief Engineer Phone 0832 2521160, during working hours before the last date and time of sale of tender document.

**CHIEF ENGINEER**

## NOTICE INVITING TENDER

### MORMUGAO PORT TRUST

#### *TENDER NO.CE/49 /2016*

#### **MAINTENANCE DREDGING AT MORMUGAO PORT FOR THE YEAR 2016**

**1.1** Sealed tenders are invited by Mormugao Port Trust from reputed contractors for executing the work of '**Maintenance Dredging at Mormugao Port for the year 2016**' under two cover system. Offers in the prescribed form are to be submitted in duplicate. The total estimated cost put to tender is (Rs.12.60 crores)

**1.1.1** Tender documents may be obtained from the Civil Department, Mormugao Port Trust, Headland, Sada, Goa 403804, during office hours on payment of Rs.10000/- in cash/ D.D. which is non-refundable. Tender Documents can also be downloaded from our website [www.mptgoa.com](http://www.mptgoa.com). In case tenders are downloaded, the cost of tender of Rs.10000/- is to be paid in the form of Demand Draft drawn in favour of FA & CAO, Mormugao Port, payable at Vasco Da Gama. The DD should be enclosed along with **Cover No. - I** of the tender.

**1.2** The sale of tender document at the address specified above is open from 01.06.2016 to 22.06.2016, during working days of the port from 9.00 hrs to 13.00 hrs and 14.00 hrs to 15.00 hrs.

**1.2.1** The tender document consists of two volumes (Volume-I & II). Volume-I comprises all Technical & commercial offer documents and Volume -II comprises all Price offer documents.

**1.3** No tender will be considered which is not made in the prescribed form and which is not accompanied by a deposit of Rs.13 Lakhs (Rupees Thirteen lakhs only) as Earnest Money. The tender offer (in duplicate) shall have to be submitted by the Tenderer marked Original and Duplicate, in sealed covers as explained in the Tender Document.

**1.4** The offer (both Techno-Commercial & Price) must be valid for a minimum of 180 days from the last date of submission of offer; otherwise the offer shall be rejected as non-responsive.

**1.5** Minimum Eligibility Criteria for submitting bids will be as follows

i) Average annual financial turn over during the last three years ending 31<sup>st</sup> March of the previous financial year shall be at least 30% (**Rs.3.78 Crore**) of the estimated cost put to tender for the year.

ii) Tenderers should have successfully completed dredging works during the last 7 years ending on 31<sup>st</sup> March 2016 as below:

(a) At least one dredging work of not less than 80% (**Rs. 10.08 crore**) of the estimated cost put to tender for the year.

OR

(b) At least two dredging works each of not less than 50% (**Rs. 6.30 Crore**) of the estimated cost put to tender for the year.

OR

(c) At least three dredging works each of not less than 40% (**Rs. 5.04 Crore**) of the estimated cost put to tender for the year.

(NB: For ongoing works, completed portions of the work till the end of 31<sup>st</sup> January 2016 shall be accepted provided payments therefore have been made and there is a certificate of satisfactory performance from the contracting agency and provided further that the firm (individual/JV) has successfully completed at least one work of prescribed estimated cost.)

#### **1.6 Price Preference**

In compliance to Government guidelines Indian Dredging Company shall have the first right of refusal if their rate is within 10 % of the lowest technically qualified offer. The Indian company selected on the above basis shall match the price with the lowest offer.

**1.7** The Employer/ Board do not bind themselves to accept the lowest or any tender and reserve the right to accept any tender in part or to reject any tender without assigning any reason thereof.

**1.8** Pre-bid meeting will be held with the representative of the firms who have purchased the tender documents or communicated regarding the down loading of tender documents. The prospective Tenderer shall submit their queries in writing to the Chief Engineer, Civil Department, Mormugao Port Trust, Headland, Sada, Goa 403804, Phone: 0832 2521160, Fax: 0832 2521165, Email: [mgptce@gmail.com](mailto:mgptce@gmail.com) , [ce@mptgoa.com](mailto:ce@mptgoa.com) and to the Executive Engineer (P), Shri Sudin Prabhudessai at email address, [sudin.pd@gmail.com](mailto:sudin.pd@gmail.com) in connection with this tender well in advance, so that the queries can be attended to. The pre-bid meeting will be held on 08.06.2016 @10.30 hrs.

**1.9** The due date of submission of offers will be **22.06.2016 at 15.00 hrs**, unless otherwise notified. In the event of changes in the schedules, the Mormugao Port will notify the same through its web site and also in writing only to those prospective bidders who have paid their cost of tender document as on the date of issue of notification.

**1.10** If the offers are not received according to the instructions detailed here above, they shall be liable for rejection. The corrections and remarks shall be either type-written or must be in ink and duly authenticated.

**1.11 Integrity Pact (IP)** shall cover this tender throughout its various phases, and IP would be deemed as a part of the contract through an appropriate provision. The bidders should sign and submit an “**Integrity Pact**” to be executed between the bidder and Mormugao Port Trust along with the bid in a separate envelope (**cover ‘A1’**) superscribed “**Integrity Pact**” in **cover No. 1**. Bids not accompanied by a duly signed “**Integrity Pact**” shall be liable for rejection. IP would be implemented through the following Independent External Monitor (IEM) for this tender :-

**Dr. Ajit Raizada, IAS (Retd.)  
D-2, 74 Bungalows, TT Nagar,  
BHOPAL - MP**

Chief Engineer  
Mormugao Port Trust  
Headland, Sada  
Goa 403804  
Phone: 0832 2521160  
Fax:0832 2521165  
Email:ce@mptgoa.com

## INDEX

SL.NO	DESCRIPTION	PAGE NO.
1	TENDER CALL NOTICE	6-9
2	INSTRUCTIONS TO BIDDERS	10-16
3	GENERAL CONDITIONS OF CONTRACT	17-88
4	TECHNICAL SPECIFICATIONS	89-97
5	SPECIAL CONDITIONS OF CONTRACT	98-105

## ANNEXURES

1	PROPOSAL FORM `A" (EXCEPTIONS AND DEVIATIONS)	106
2	PROFORMA FOR LETTER OF AUTHORITY	107
3	PROFORMA OF FORM OF AGREEMENT	108-109
4	PROFORMA OF BANK GUARANTEE FOR CONTRACT PERFORMANCE	110-113
5	TABLE 1(1): DETAILS OF PAST EXPERIENCE	114
6	TABLE 1(2): CONCURRENT COMMITMENTS OF THE BIDDER	115
7	TABLE 1(3): LIST OF DREDGERS AND EQUIPMENT	116
8	PROFORMA " INTEGRITY PACT "	117-128
9	APPENDIX TO TENDER	129-130
10	FORM OF BID	131-132
11	PREQUALIFICATION OF BIDDER	133-136
12	FORMS (LOA,PWW, DECLARATION)	137-139
13	APPENDIX I Regarding Estate Rental.	140
14	DESIGN DEPTH TO BE ACHIEVED (APPENDIX II)	141
15	KEY PLAN	142

**MORMUGAO PORT TRUST  
CIVIL DEPARTMENT  
TENDER NO.CE/49 /2016**

**TENDER CALL NOTICE**

Sealed tenders in the prescribed proforma are invited on behalf of Board of Trustees of Mormugao Port Trust in single stage two bid cover system from the experienced, resourceful and bonafide dredging firms with proven technical and financial capabilities of executing Maintenance dredging works for the work mentioned below.

Name of the work	Cost of tender paper (non-refundable)	Estimated value of work put to tender	Period of contract including mobilisation	EMD	Period of issue of tender documents	Last date and time of submission of tender.	Pre bid meeting
Maintenance Dredging at Mormugao Port for the year 2016	Rs.10000/-	Rs.12.60 crores	45 weather working days	Rs.13 Lakhs	From 01.06.2016 to 22.06.2016	22.06.2016 Upto15.00Hrs	08.06.2016 at 10.30 hrs

**2. BRIEF DESCRIPTION OF WORK:**

Work involves maintenance dredging, required to be carried out in the Navigational Channel, approach to and alongside of berth nos. 4, 8, 9, 10, 11, Mole and breakwater berths, inner turning circle, Mooring Dolphins MD1 to MD6 areas so as to achieve the Designed Depths varying from (-)8.00 mtrs. to (-)14.4 mtrs. with reference to Chart Datum.

**2. The Designed Depths at all berths has to be achieved right upto the berth face and edges of the channel.** The estimated aggregate quantity of material to be dredged in respect of maintenance dredging in above areas is approximately **1.4 million cubic metres** consisting of silt, sand, clayey silt, sandy silt, hardened sand and spilled cargo. However, this estimate has no bearing on the actual quantity to be dredged to achieve the designed depths. Contractor shall take note of the following and take into account all the risks and contingencies while quoting, Such contingencies may include delay / damages due to encountering;

- i) Underwater obstructions such as tyres / fenders, concrete members, wires, chains, boulders, anchors, debris etc, which are to be disposed off out of port premises
- ii) Delay/Damages due to encountering any unforeseen obstructions
- iii) Adverse weather or physical conditions
- iv) Delays due to non availability of unloading berths and other berths free of ships
- v) Any other unforeseen reasons

It is reiterated that the costs quoted by the contractor shall include all risks and contingencies whether known or unknown and no claims on this account will be considered.

**3.** The contractor will have to deploy suitable drag heads with water jets, etc., or an alternative dredger or equipment to carry out the maintenance dredging. No double handling charges will be payable. Payment will be made on the basis of the actual quantity dredged,

however, it will be the responsibility of the contractor to achieve the required depths at all places. Contractor may also encounter some small patches of compacted iron ore alongside unloading berths. Contractor may deploy suitable equipment / methodology in these areas. For the year 2016, the dredging work by deploying TSHD of 7000 to 12000 cu. m capacity has to be commenced by 25<sup>th</sup> August 2016 and will have to be completed within 45 weather working days. And the TSHD of more than 12000 cu.m capacity shall commence the dredging work from 15<sup>th</sup> of September 2016. But the completion time will remain the same i.e. 45 weather working days from 25<sup>th</sup> of August 2016.

4. The tenderer / tenderers should mobilise suitable dredgers capable of executing the dredging work within the time schedule. The documentary evidence about the capability, experience in the relevant field and financial status to be furnished along with the offer are:-

- i) Details of dredging work executed in last 7 years, with names and address of clients, type of dredging work executed, details of dredgers deployed, quantity, scheduled period of execution, date of commencement and date of completion and certificate/testimonials from the concerned clients regarding successful completion of the job.
- ii) Details of dredger(s) and other supporting crafts and facilities etc. available and proposed dredgers and their mobilisation time to this site.
- iii) Name and curriculum vitae of dredging team and surveyors proposed to be deployed.
- iv) Registration details of the firm, bankers, company profile, solvency certificate and financial position of the firm during the last five years.

5. Intending tenderer can collect tender papers from office of the Chief Engineer on payment of fee through Demand Draft/ Banker's cheque drawn in favour of FA & CAO, Mormugao Port Trust, payable at Vasco Da Gama. The port has the right to ask for production of original experience certificates from the bidders.

6. Tender document is also available at the Port Trust website [www.mptgoa.com](http://www.mptgoa.com) from 01.06.2016 to 22.06.2016. Interested contractors/firms may download the tender documents from the website and submit their offer. Contractors submitting the tender after downloading from the website shall have to furnish the fees for the tender documents in form of Banker's cheque/ Demand Draft for the amount indicated in the TCN, and enclose the same in a separate sealed cover along with Cover No.1, superscribing "**Fees of the tender documents**" failing which his/ their bids shall be returned unopened. The printed version of the Port Tender document will be treated as the authentic tender and if any discrepancy is noticed at any stage between the Port's Tender document and the one submitted by the tenderer, the conditions mentioned in the Port's printed document shall prevail. Besides the tenderer shall be liable for legal action for the lapses.

7 Tender documents will not be sent by Post or Courier Service.

8. The tenders complete in all respects should be placed in the Tender Box kept inside the cabin of Assistant Engineer (Accts), Chief Engineer's Office at Main A.O. Building, 2nd floor, Mormugao Port Trust upto 3.00 pm on due date. Cover No. 1 shall be opened at 3.30pm on due date in the presence of such Tenderer's who may wish to be present.

9. The Tenderer's should specifically note that their offers, whether sent by post or by hand delivery, must reach the office on or before the due date and time. Offers received late will not be considered even though posted in the post office before due date.

10. Tenderers should submit their offer in two Covers clearly superscribing the name of work and the 1<sup>st</sup> Cover should contain the cover A'1'(INTEGRITY PACT), Bid document ( Technical and Commercial Bid i.e. Part-I) duly completed and filled in except Prices, Blank Proforma of Schedule of Prices ( Prices not to be filled), experience certificate of similar work executed, works in hand, annual turnover, equipments available and all details sought at Sl. i to iv above along with any additional information to be furnished by the bidder. The EMD in shape of Demand draft / Banker's cheque drawn in favour of FA & CAO, Mormugao Port Trust payable at Vasco Da Gama in a separate envelope should be attached with the 1<sup>st</sup> Cover (Technical & Commercial Bid). In case tenders are downloaded, the cost of the tender should also be enclosed in Cover No.I in the form of Demand Draft/Banker's cheque. Tender not accompanied by required EMD shall be liable for rejection. Previous dues / deposits with Port Trust shall not be count/ adjusted towards earnest money deposit.

The 2<sup>nd</sup> cover should contain the schedule of prices i.e. Part-II ( Financial bid) duly filled in. It may please be noted that the 2<sup>nd</sup> envelope shall not contain any terms and conditions.

The Tender must be sent in one main cover superscribing, Tender for '**Maintenance Dredging at Mormugao Port for the year 2016**' containing two covers and these two covers shall be superscribed as "cover –(I) Techno commercial Bid and cover (II) Price bid" respectively. All the covers shall be addressed to "The Chief Engineer, Mormugao Port Trust, Headland Sada-403804 and sealed properly with sealing wax/tape. Name and address of the Tenderer and shall also be written on all the covers.

**11. Eligibility criteria for evaluation of Technical Bids.**

The following will be the minimum eligibility criteria for the **pre-qualification** for the work and the details of the same should be indicated separately in the technical bid. The tenderer shall submit a supporting document from the concerned parties for satisfactorily executing the work.

i) Average annual financial turn over during the last three years ending 31<sup>st</sup> March of the previous financial year shall be at least 30% (Rs.3.78 Crore) of the estimated cost put to tender for the year.

ii) Tenderers should have successfully completed dredging works during the last 7 years ending on 31<sup>st</sup> March 2016 as below

a) At least one dredging work of not less than 80 % (Rs. 10.08 crore) of the estimated cost put to tender for the year.

OR

b) At least two dredging works each of not less than 50%(Rs. 6.30 Crore) of the estimated cost put to tender(for one year

OR

c) At least three dredging works each of not less than 40 % (Rs. 5.04 Crore) of the estimated cost put to tender for the year.

**Note:** The Tenderer shall possess by absolute ownership/disponent ownership/ Charter/ lease, Trailing Suction Hopper Dredger(s) with hopper capacity of not less than 7000 cu.m. Tenderer may note that not more than two dredgers will be considered for computing the minimum Hopper capacity of 7000 cu. m.

iii) For ongoing works, completed portions of the work till the end of 31<sup>st</sup> January 2016 shall be accepted provided payments therefore have been made and there is a certificate of satisfactory performance from the contracting agency and provided further that the firm (individual/JV) has successfully completed at least one work of prescribed estimated cost.



iv) The Tenderers who wish to charter the dredgers, shall note that the confirmed Chartered/Leased Agreement covering the entire contract period will have to be submitted along with bid. They shall also submit an "Irrevocable letter of Authority" from the owner of the dredger to the effect that the dredger so chartered/leased shall not be withdrawn till the completion of work. The Tenderers shall submit the details of the dredgers to be deployed along with the capacity/output in the schedule. The Tenderers in his methodology shall demonstrate as to how they will be able to complete the dredging work within the stipulated time as given in the Tender document.

v) Bidders shall produce performance certificates from the clients regarding satisfactory completion of the work.

vi) In case of Joint venture/consortium, the cumulative turnover of the parties having more than 26% share in the JV only shall be considered.

**12.** The contractor must follow the area-wise sequence of dredging as directed by the Chief Engineer and complete the work within the stipulated date and time for each area to enable declaration of drafts. The type of dredger required to be used for maintenance dredging is Trailer Suction Hopper Dredger with provision to dump the materials by opening hopper doors. The tenderer should indicate the hopper capacity, number of drag heads, type of drag heads, speed in light condition, speed in loaded conditions, propulsion system, bow thrusters and other salient features in detail of the dredger. All equipment shall be kept in good working condition throughout the contract period. No extra time will be made available for dredging alongside the berths and mooring dolphin area etc. due to non-functioning of dredging equipment or bow thruster etc

**13.** Contractor may use any mechanical dredger like grab/back hoe for maintenance dredging of alongside berths and hardened edges. Contractor shall ensure that the berths and fenders are not damaged while dredging and also ensure that the berth deck shall be kept clean by removing all muck/debris resulted on account of dredging.

**14.** The interested firms shall submit their offer addressed to the Chief Engineer **on or before 22.06.2016 upto 15.00 Hrs.**

Bidders are advised to submit their financial bids strictly based upon the technical specifications, terms and conditions contained in the tender document after going through the prevailing conditions at site.

In compliance to Government guidelines Indian Dredging Company shall have the first right of refusal if their rate is within 10 % of the lowest technically qualified offer. The Indian company selected on the above basis shall match the price with the lowest offer.

Late bids, delayed bids received after the stipulated last date and time for receipt of bids, due to any reasons will not be considered. Mormugao Port Trust reserves the right to reject any or all the tenders without assigning any reason thereof.

Sd/-  
Chief Engineer

## INSTRUCTIONS TO BIDDERS

### 1.0 INTRODUCTION

Mormugao Port is a Major Port on the West Coast of India. Bulk of the cargo handled consist of iron ore and coal. The Port also handles, liquid bulk, bauxite, limestone, wood chips. Granite, fertilisers, containers etc. The port has constructed 6 Mooring Dolphins for handling bulk cargo mainly iron ore.

### 1.1 Broad Scope of Work

The work consist of maintenance dredging of the Port to the designed depths. The areas to be dredged include approach channel, basin, Mooring Dolphin area and alongside berths. However, these information are only meant as guidance and the bidders are expected to satisfy themselves on the correctness of the information. The Maintenance dredging is required to be carried out for the Year 2016.

### 2.0 PROPOSAL REQUIREMENTS

#### 2.1 General

- 2.1.1 The Bid Document issued to the Bidder is non-transferable.
- 2.1.2 Bid Documents shall remain the property of the EMPLOYER.
- 2.1.3 EMPLOYER will not be responsible for any costs or expenses incurred by the bidder in connection with the preparation and delivery of his bid or for any other expenses incurred in connection with such bidding.
- 2.1.4 The work to be done is described in the Bid document (and in particular in the technical specifications, Bill of Quantity and drawings) and in general includes, but is not limited to supplying all dredgers, crafts, all materials including consumables, and equipment necessary to conduct surveys, dredging and disposal of spoil at specific places as described in the Bid Document.

Quantities, drawings and specifications given in the Bid Document are for the sole purpose of indicating to bidders the order of magnitude of work and are not in any way guaranteed to remain unchanged. Time is the essence of contract. The maintenance dredging work shall be completed in all respects within a period of **45 weather working days** from the scheduled date of commencement.

- 2.1.5 Bidders are advised to visit the site of the work, review the drawings, and acquaint themselves of all site conditions prior to submission of their bid. Failure to visit the site will in no way relieve the successful bidder of any of the obligations in performing the work in accordance with this Bid Document within the quoted price.

It is proposed to hold a pre-bid discussion with all the bidders in the Office of the Chief Engineer on **08.06.2016 at 10.30 Hrs.**

The bidders who need clarifications on any specific issue shall inform the EMPLOYER in writing latest by **06.06.2016** at the address given in TCN.

- 2.1.6 If the bidders find discrepancies in or omission from the drawings, specifications, or other documents, or have any doubts as to the meaning or intent of any part thereof, they shall at once inform the EMPLOYER who may send a written instruction or explanation to all bidders. No oral interpretations shall be made by any bidder as to the meaning of any of the provisions of the bid documents. Every request for an interpretation shall be in writing addressed and forwarded to the Chief Engineer.
- 2.1.7 In formulating their bid, bidders shall have full regard to the contents of the Bid Documents since all bids will be deemed to have been made after taking into account all the provisions thereof. The agreement as finally executed will include the Employer's Bid Documents and the Bidder's offer as finally accepted by the EMPLOYER together with Addenda, bid clarification and all correspondences exchanged between Mormugao Port Trust and the bidder, if any.
- 2.1.8 The bidders may please note that the EMPLOYER will not entertain any correspondence or queries on the status of the offers received against this Bid. Bidders are also requested not to depute any of their personnel or Agents to visit the Employer's offices for making such enquiries till finalisation of the bid. Should the EMPLOYER find it necessary to seek any clarifications, technical or otherwise the concerned bidder will be duly contacted by the EMPLOYER.
- 2.1.9 Canvassing in any form by the bidder or by any other agency acting on behalf of the bidder after submission of the bid may disqualify the said bidder. The Employer's decision in this regard shall be final and binding on the bidder.
- 2.1.10 The EMPLOYER may reject, accept or prefer any bid without assigning any reason whatsoever. The EMPLOYER also reserves to himself the right to accept any bid in part or parts only with such conditions as he may prescribe.
- 2.1.11 The successful bidder shall furnish the required Performance Security in the form of Bank Guarantee from a Nationalized / Scheduled Bank ( except Co-operative Banks) from any branch in India, preferably from a local branch where the port is situated , acceptable to the EMPLOYER on the Performa enclosed at **Annexure-4** to the bid for the amount indicated in the Appendix to tender.
- 2.1.12 EMPLOYER will not be liable for any financial obligation in connection with the work until such time the EMPLOYER has communicated to the successful bidder in writing his decision to entrust the Work (covered by the bid document issued to him).
- 2.1.13 Telex/Telegraphic offers will not be considered. Bidders should prepare their bid themselves. Bids submitted by agents will not be recognized.
- 2.1.14 Bids received after the due date and time and any change in quotation after the specified date will be rejected. EMPLOYER will not be responsible for the loss of the bid document or for the delay in postal transit.
- 2.1.15 In case of an unscheduled holiday on the prescribed closing/opening day of the bid, the next working day will be treated as the scheduled prescribed day of closing/opening of the bid.
- 2.1.16 Bidders to note that the bids shall first be evaluated for minimum eligibility criteria given in the tender call notice. Bidders not meeting the eligibility criteria do not qualify.

## **2.2 Instructions for Filling Bids.**

- 2.2.1 The bids can only be submitted in the name of the bidder in whose name the bid documents were issued by the EMPLOYER or who have purchased the bids.
- 2.2.2 The bid and any annotations or accompanying documentation shall be in English language only and in metric system.
- 2.2.3 Bidders shall sign their proposal with the exact name of the firm to whom the bid document has been issued. The bid shall be duly signed and sealed by an authorized executive officer of the bidder's organization in all the pages.
- 2.2.4 Each bid shall be signed by a duly authorized officer and in the case of a Corporation shall be sealed with the Corporate Seal or otherwise appropriately executed under Seal.
- 2.2.5 Bidders shall clearly indicate their legal constitution and the person signing the tender shall state his capacity and also the source of his ability to bind the bidder. The power of attorney or authorisation or any other document constituting adequate proof of the ability of the signatory to bind the bidder shall be annexed to the bid. The EMPLOYER may reject outright any bid unsupported by adequate proof of the signatory's authority.
- 2.2.6 The bid documents shall be completed in all respects and shall be submitted together with requisite information and appendices **IN DUPLICATE (ONE ORIGINAL AND ONE COPY)**. They shall be complete and free from ambiguity, change or interlineation.
- 2.2.7 If the space in the bid form or in the Appendices thereto is insufficient, additional pages shall be separately added. These pages shall be consecutively page numbered and shall also be signed by the Bidder.
- 2.2.8 The bid documents shall be signed by the bidder on each page.
- 2.2.9 Bidders should indicate at the time of quoting against this bid, their full postal and telegraphic/telex addresses along with contact telephone/mobile nos.
- 2.2.10 Bidder shall set their quotations in firm figures and without qualification. Each figure stated shall also be repeated in words and in the event of a discrepancy between the amount stated in figures and words, the amount quoted in words shall be deemed to be the correct amount. Bids containing qualifying expressions such as "subject to minimum acceptance "or" subject to availability of dredgers" etc. are liable to be rejected.
- 2.2.11 Bidders shall submit along with their offer EMD of the amount mentioned in the TCN. The bid bond which shall be in the form of demand draft for the said amount shall specifically bind the Bidder to keep his offer valid for acceptance and to abide by all the conditions of the Employer's Bid Document in the event of the EMPLOYER desiring to award the Work against the said bid to the said Bidder. The EMPLOYER shall have a unqualified option under the said bid bond/EMD to claim the amount there under in the event of the Bidder failing to keep the bid valid up to the date specified or refusing to accept work and carry it out in accordance with the bid if the employer decides to award the work to the Bidder.

EMD may be payable in the form of Bank guarantee also for the entire amount from any Nationalised / Scheduled Bank ( Except Co-operative Banks) from any branch in India, preferably from a local branch where the port is situated. The EMD shall be valid for 28 days beyond the validity of the bid. The EMD of the unsuccessful bidder other than L1 and L2 shall be refunded immediately after ranking of price bids. EMD of L2 shall be refunded immediately after entering into agreement with L1 and acceptance of performance guarantee or expiry of bid whichever is earlier.

- 2.2.12 In case of tender document being downloaded from the website, at the time of submission of ( the hard copy of) the tender document, the tenderer shall give an

undertaking that no changes have been made in the document; The printed version of the Port Tender document will be treated as authentic tender and if any discrepancy is noticed at any stage between the Port's tender document and the one submitted by the tenderer, the conditions mentioned in the port's printed document shall prevail. Besides the tenderer shall be liable for legal action for the lapses.

- 2.2.13 The Bank Guarantees shall be verified independently by the Port with the bank before finalisation of technical offers . In the event of lack of confirmation of issue of the BG by the bank, the bid shall stand disqualified.
- 2.2.14 In compliance to Government guide lines Indian Dredging Company shall have the first right of refusal if their rate is within 10% of the lowest technically qualified offer. The Indian company selected on the above basis shall match the price with the lowest offer.
- 2.2.15 The EMD of second lowest evaluated bidder shall be kept in reserve and may be invited to negotiate to match the lowest evaluated bid, in case the lowest evaluated bidder withdraws his bid or not selected for any other reason.

## **2.3 Pricing of Bid**

### **2.3.1 General**

The Bid shall be on Item-Rate basis. The offer shall include planning, mobilisation and demobilisation of Dredgers, other suitable machinery and other required crafts including all items/materials, labour, tools, fabrication, transportation, insurance, taxes, duties, consumables, overhead, profit etc. necessary for execution of dredging as described in the Bid Document.

The Price quoted by the bidder will be valid for the year 2016.

### **2.3.2 Currencies of Quotation**

The Bidder shall indicate the prices in Indian Rupees. The Bidder shall not quote in any currency other than Indian Rupees.

### **2.3.3 Validity**

The bid shall be valid for acceptance for a minimum period of 180 days from the date of opening of Part-I (Technical & Commercial aspects of Bid).

### **2.3.4 Duties and Taxes**

Indian Custom Duties, if any, levied upon the work, dredger, equipments etc. are to be borne by the bidders and to be incorporated in the Item-Rates and this will not be separately paid for. The Contractor shall bear all Taxes both corporate and personnel, including but not limited to taxes on income levied on the Contractor or on their affiliated companies on account of payments received by them from the EMPLOYER for the works done under the Contract.

It shall be the responsibility of the Contractor to submit to the concerned Indian Statutory Authorities the returns and all connected documents required for this purpose. The Contractor shall also provide the EMPLOYER such information as they may require in regard to the Contractor's income and expenditure for this purpose.

Sales Tax, Income Tax etc. as applicable from time to time shall be deducted from the amount payable to the Contractor at source. Under no circumstances taxes so deducted shall be reimbursed to the contractor.

Service tax shall be paid extra as applicable. Service Tax registration for the bidder is mandatory. Bidder has to enclose attested copy of the Service Tax Registration along with the tender. Service Tax has to be claimed extra as applicable while submitting the bill / bills.

### **3.0 INFORMATION REQUIRED**

#### **3.1 Part-I (Technical & Commercial bid) shall contain the following:**

- a) (i) A description of the facilities in sufficient detail and clarify to enable the EMPLOYER to make an evaluation and comparison of the Bid.  
  
(ii) List of major marine equipments proposed to be deployed for this work. The Bidder shall provide complete details such as dimensions, capacity of Dredgers, other floating crafts and equipments if any etc. trade name, year built, Registration particulars, etc.
- b) Description of Bidder's work experience in the past on projects of similar nature with the details given in Table1 (1) enclosed as **Annexure 5** to the bid. This will include:  
  
Design, planning, dredging works in the last seven years. Concurrent commitments of the bidder shall be separately given with the details indicated at Table1 (2) enclosed as **Annexure 6** to the bid.
- c) Bidder shall furnish a list of the supervisory personnel he intends to deploy with their Bio-data and proposed methodology for execution of the work i.e. design, planning, dredging with disposal of spoil, quantity surveying instruments and its accuracy and progress of the work etc. so as to ensure maintenance of dredged levels till defect liability period or taking over of the work as applicable at respective locations as stipulated in the Specification attached to this Bid Document.
- d) If necessary the Contractor should mobilise additional resources like dredgers, equipments etc. at his own cost for proper completion of work. Keeping the above in view and since time is the essence of contract, the Bidder shall indicate how he would execute the work within the time specified by submitting a description of equipment and work method to be employed and the limiting weather condition for the proposed equipments. The Bidder shall also include a description of all procedures or any special technique to be employed in setting up the Works.
- e) An overall project schedule, including, deployment, using critical path method shall be furnished along with the bid. The Bidder shall indicate the project key-dates for all activities.
- f) Unpriced copies of Schedule of Prices with details of quantities only as specified in the Bid Document shall be enclosed with technical bids.

- g) Letter of Authority as per Performa enclosed as **Annexure- 2** to the bid.
- h) Detailed dredger deployment schedule indicating total dredger days planned item-wise.
- i) Bidder may request for any clarification / information on the tender conditions which shall be replied during the pre-bid meeting and subsequently in writing. After the pre-bid clarifications are issued, no exceptions/ deviations from Bid Document specifications and conditions are permissible. **Conditional bids are liable to be rejected.** Bidder shall enter 'Nil' in the "Proposal Form, Exceptions and Deviations, Annexure-I" while submitting the bid.
- j) EMD as stipulated in the TCN.
- k) Any other information required in terms of this Bid Documents.
- l) List of instruments for survey and monitoring the work and list of other equipments for actual measurement of the dredged spoil with the details indicated in Table-3 enclosed at **Annexure-7** to the bid.
- m) Balance sheets along with turn over, Income Tax clearance certificates, profit and loss account for the last 3years ending 31<sup>st</sup> March 2015. Memorandum of Articles and Articles of Association. In case of foreign firms the statement be given to the fact that they have no claims pending against them from any State Authority in India with respect to Income tax, Customs duty, Sales tax, Service tax or any other dues. Any import duty in respect of equipments, dredgers etc. shall be borne by the firm. Income tax, Sales tax, Service tax etc. leviable for foreign contractor and the foreign employees shall be borne by the firm.

### **3.2 Part II - The priced part of the offer**

The price bid shall contain only prices in the format given and no condition whatsoever. Any condition given in the price bid shall be sufficient cause for rejection of bid.

## **4.0 EVALUATIONS AND COMPARISON OF BIDS**

### **4.1 General**

- 4.1.1 After the receipt of bids, if required, the EMPLOYER may inspect the facilities available with the bidder to ensure suitability and satisfactory working conditions of the dredgers and of the equipment listed to be used by the bidder for the work. The bidder shall ensure that aforesaid team shall at all the times have access to visit and inspect dredgers, equipment etc.

EMPLOYER reserves the right to accept price part of the offer (Part II) of only such bidders whose technical and commercial aspects of the proposals (Part I) are acceptable and complete.

The Employer's decision in this regard shall be final and binding on the bidder. The EMPLOYER may not open price part of the offer (Part II) of the bidders whose technical and commercial aspect of the proposal is not acceptable or incomplete.

- 4.1.2 EMPLOYER also reserves the right to obtain revised Commercial bid to the extent and in areas required from the technically acceptable bidders.

#### **4.2 Evaluation Criteria**

The Bids received and accepted will be evaluated by EMPLOYER to ascertain the relative position of the best Bid in the interest of EMPLOYER, for the complex WORK covered up by Bid Documents.

#### **5.0 BID OPENING**

The Bid shall be opened at **1530 Hrs. on 22.06.2016** in the Office of the Chief Engineer.

**5.1** At the time of Bid opening the EMPLOYER will permit one authorised representative of each Bidder to be present provided such representative presents to the EMPLOYER at that time, a letter duly signed by the Bidder authorising him to be present on behalf of the Bidder.

#### **5.2 Part II (Price part of the Offer)**

Price Bids of only those Bidders whose Technical and Commercial proposals are complete and acceptable shall be opened in the presence of Bidders or their authorised representatives on a suitable day to be intimated separately later.

#### **6.0 SIGNING OF THE CONTRACT**

The successful Bidder shall be required to execute a Formal contract in accordance with the requirement of the EMPLOYER within 14 days from the date of issue of the acceptance of the Bid by the EMPLOYER, or within such extended time as may be permitted by the EMPLOYER in this behalf. This agreement shall be in the Proforma indicated at **Annexure-3** of the bid.

**7.0** Permission for working beyond the normal working hours of the Port or on Sundays and Public Holidays will be given to the contractor subject to his agreeing to bear the cost of Overtime during Hydrographic Surveys if any, which may have to be paid to the Port's Supervisory staff/s Sounding Team.

**8.0** In case the launches are required during the work, the same shall be hired from the Mormugao Launch Owners Association (MLOA) and the cost towards hiring the launches has to be fully borne by the contractor.

**9.0** The contractor shall submit the following details along with the tender submission.

1. PAN NO
2. EPF NO
- 3 ESIC NO
- 4 SERVICE TAX REGISTRATION NO
5. BANK ACCOUNT NO. (NAME OF BANK, BRANCH, MICR NO.,IFSC CODE, ALONG WITH TYPE OF ACCOUNT)

**10.0** The Contractor shall have EPF /ESI Registration No. And shall contribute towards it and submit the copy of the challan in the prescribed format while submitting the bill.

**11.0** The successful tenderer will also be required to sign the "**Integrity Pact**" as enclosed in **Annexure 8**.

**Integrity Pact** shall cover this tender throughout its various phases and would be deemed as part of the tender. The **Integrity Pact** would be implemented through an Independent External Monitor (IEM).



# **GENERAL CONDITIONS OF CONTRACT**

**Clauses mentioned under General Conditions are according to the standard tender document. These clauses will be applicable to the extent they related to dredging.**

## Clause

### **1. GENERAL PROVISIONS**

- 1.1 Definitions
- 1.2 Interpretation
- 1.3 Communications
- 1.4 Law and Language
- 1.5 Priority of Documents
- 1.6 Contract Agreement
- 1.7 Assignment
- 1.8 Care and Supply of Documents
- 1.9 Delayed Drawings or Instructions
- 1.10 Employer's Use of Contractor's Documents
- 1.11 Contractor's use of Employer's Documents
- 1.12 Confidential Details
- 1.13 Compliance with Laws
- 1.14 Joint and Several Liability
- 1.15 Details to be confidential

### **2. THE EMPLOYER**

- 2.1 Right of Access to the Site
- 2.2 Permits, Licences or Approvals
- 2.3 Employer's Personnel
- 2.4 Employer's Claims

### **3. THE ENGINEER**

- 3.1 Engineer's Duties and Authority
- 3.2 Delegation by the Engineer
- 3.3 Instructions of the Engineer
- 3.4 Determinations
- 3.5 Management Meetings

### **4. THE CONTRACTOR**

- 4.1 Contractor's General Obligations
- 4.2 Performance Security
- 4.3 Contractor's Representative
- 4.4 Subcontractors
- 4.5 Assignment of Benefit of Subcontract
- 4.6 Co-operation
- 4.7 Setting Out
- 4.8 Safety Procedures
- 4.9 Quality Assurance
- 4.10 Site Data
- 4.11 Sufficiency of the Accepted Contract Amount
- 4.12 Unforeseeable Physical Conditions
- 4.13 Rights of Way and Facilities

## Clause

- 4.14 Avoidance of Interference
- 4.15 Access Route
- 4.16 Transport of Goods
- 4.17 Contractor's equipment
- 4.18 Protection of the Environment
- 4.19 Site Facilities
- 4.20 Progress Reports
- 4.21 Security of the Site
- 4.22 Contractor's Operations on Site
- 4.23 Fossils

## **5. STAFF AND LABOUR**

- 5.1 Engagement of Staff and Labour
- 5.2 Rates of Wages and Conditions of Labour
- 5.3 Persons in the Service of Employer
- 5.4 Labour Laws
- 5.5 Working Hours
- 5.6 Facilities for Staff and Labour
- 5.7 Health and Safety
- 5.8 Contractor's Superintendence
- 5.9 Contractor's Personnel
- 5.10 Records of Contractor's Personnel and Equipment
- 5.11 Disorderly Conduct

## **6. PLANT, MATERIALS AND WORKMANSHIP**

- 6.1 Manner of Execution
- 6.2 Remedial Work
- 6.3 Ownership of Plant and Materials
- 6.4 Testing
- 6.5 Royalties

## **7. COMMENCEMENT, DELAYS AND SUSPENSION**

- 7.1 Commencement of Work
- 7.2 Time of Completion, Compensation for Delay to Contractor's Negligence
- 7.3 Programme
- 7.4 Extension of Time for Completion
- 7.5 Delays Caused by Authorities
- 7.6 Rate of Progress
- 7.7 Contractors' Responsibility
- 7.8 Suspension of Work
- 7.9 Consequences of Suspension

Clause	Description
7.10	Payment for Plant and Materials in Event of Suspension
7.11	Prolonged Suspension
7.12	Resumption of Work
<b>8.</b>	<b>TESTS ON COMPLETION</b>
8.1	Contractor's Obligations
8.2	Delayed Tests
8.3	Retesting
8.4	Failure to Pass Tests on Completion
<b>9.</b>	<b>EMPLOYER'S TAKING OVER</b>
9.1	Taking over of the Works and Sections
9.2	Taking Over of Parts of the Works
9.3	Interference with Tests on Completion
9.4	Surfaces Requiring Reinstatement
<b>10.</b>	<b>DEFECTS LIABILITY</b>
10.1	Completion of Outstanding Work and Remedying Defects
10.2	Cost of Remedying Defects
10.3	Extension of Defects Notification Period
10.4	Failure to Remedy Defects
10.5	Removal of Defective Work
10.6	Further Tests
10.7	Right of Access
10.8	Contractor to Search
10.9	Performance Certificate
10.10	Unfulfilled Obligations
10.11	Clearance of Site
<b>11.</b>	<b>MEASUREMENT AND EVALUATION</b>
11.1	Works to be Measured
11.2	Method of Measurement
11.3	Evaluation
11.4	Omissions
<b>12.</b>	<b>VARIATIONS AND ADJUSTMENTS</b>
12.1	Right to Vary
12.2	Variation Procedure
12.3	Price adjustment
12.4	Payment in Applicable Currencies
12.5	Provisional Sums
12.6	Adjustments for Changes in Legislation

Clause	Description
--------	-------------

**13. CONTRACT PRICE AND PAYMENT**

- 13.1 The Contract Price
- 13.2 Advance Payment
- 13.3 Application for Interim Payment Certificates
- 13.4 Schedule of Payments
- 13.5 Issue of Interim Payment Certificates
- 13.6 Payment
- 13.7 Delayed Payment
- 13.8 Payment of Retention Money
- 13.9 Statement at Completion
- 13.10 Application for Final Payment Certificate
- 13.11 Discharge
- 13.12 Issue of Final Payment Certificate
- 13.13 Cessation of Employer's Liability
- 13.14 Currencies of Payment

**14. TERMINATION BY EMPLOYER**

- 14.1 Notice to Correct
- 14.2 Termination by Employer
- 14.3 Valuation at Date of Termination
- 14.4 Payment after Termination
- 14.5 Employer's Entitlement to Termination

**15. SUSPENSION AND TERMINATION BY CONTRACTOR**

- 15.1 Contractor's Entitlement to Suspend Work
- 15.2 Termination by Contractor
- 15.3 Cessation of Work and Removal of Contractor's Equipment
- 15.4 Payment on Termination

**16. RISK AND RESPONSIBILITY**

- 16.1 Indemnities
- 16.2 Contractor's Care of the Works
- 16.3 Employer's Risks
- 16.4 Consequences of Employer's Risks
- 16.5 Intellectual and Industrial Property Rights
- 16.6 Limitation of Liability

**17. INSURANCE**

- 17.1 General Requirements for Insurances
- 17.2 Insurance for works and Contractor's equipment
- 17.3 Insurance against Injury to Persons and Damage to Property
- 17.4 Insurance for Contractor's Personnel

<b>Clause</b>	<b>Description</b>
<b>18.</b>	<b>FORCE MAJEURE</b>
18.1	Definition of Force Majeure
18.2	Notice of Force Majeure
18.3	Duty to Minimise Delay
18.4	Consequences of Force Majeure
18.5	Force Majeure Affecting Subcontractor
18.6	Optional Termination, Payment and Release
18.7	Release from Performance under the Law
<b>19.</b>	<b>EXPLOSIVES</b>
<b>20.</b>	<b>PROPERTY IN EXCAVATED MATERIALS</b>
<b>21.</b>	<b>DRAWINGS &amp; DESIGNS</b>
<b>22.</b>	<b>FILLING IN HOLES AND TRENCHES</b>
<b>23.</b>	<b>CONTRACT SUPERSEDES PREVIOUS DOCUMENTS</b>
<b>24.</b>	<b>BRIBES AND COMMISSION</b>
<b>25</b>	<b>MOBLISATION &amp; DEMOBLISATION FEES</b>
<b>26</b>	<b>IDLE TIME</b>
<b>27</b>	<b>SERVICE TAX</b>
<b>28</b>	<b>REJECTION OF BIDS</b>
<b>29</b>	<b>CONTRACTOR'S CLAIM</b>
29.1	<b>AMICABLE SETTLEMENT</b>
29.2	<b>ARBITRATION</b>

## GENERAL CONDITIONS

### General Provisions

#### 1.1 Definitions

In the Conditions of Contract ("these Conditions"), which include Particular Conditions and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

#### 1.1.1 The Contract

1.1.1.1 "**Contract**" means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 "**Contract Agreement**" means the contract agreement (if any) referred to in Sub-Clause 1.6 [*Contract Agreement*].

1.1.1.3 "**Letter of Acceptance**" means the letter of formal acceptance, signed by the Employer, of the Tender submitted by the tenderer, including any annexed documents.

1.1.1.4 "**Letter of Tender**" means the document entitled letter of tender, which was completed by the contractor and includes the signed offer to the Employer for the Works.

1.1.1.5 "**Specification**" means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the works.

1.1.1.6 "**Drawings**" means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

1.1.1.7 "**Schedules**" means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 "**Tender**" means the Letter of Tender and all other documents, which the Contractor submitted with the Letter of Tender, as included in the Contract.

1.1.1.9 "**Appendix to Tender**" means the completed pages entitled appendix to tender, which are appended, to form part of the Letter of Tender.

1.1.1.10 "**Bill of Quantities**" means the documents so named (if any) which are comprised in the Schedules.

#### 1.1.2 Parties and Persons

1.1.2.1 "**Party**" means the employer or the Contractor, as the context requires.

1.1.2.2 "**Employer**" means the person name as employer in the Appendix to Tender and the legal successors in title to this person.

1.1.2.3 "**Contractor**" means the person(s) named as contractor in the Letter Tender accepted by the Employer and the legal successors in title to this person(s).

1.1.2.4 "**Engineer**" means the person appointed by the employer to act as the Engineer for the purpose of the contract and named in the Appendix to tender.

1.1.2.5 “**Contractor’s Representative**” means the person named by the Contractor in the Contract or appointed from time to time by the contractor under sub-clause 4.3(Contractor’s Representative), who acts on behalf of the contractor.

1.1.2.6 “**Employer’s Personnel**” means the Engineer, the assistants referred to in sub-clause 3.2(Delegation by the Engineer) and all other staff, labour and other employees of the Engineer and of the Employer and any other personnel notified to the contractor, by the Employer or the Engineer, as Employer’s Personnel.

1.1.2.7 “**Contractor’s Personnel**” means the contractor’s representative and all personnel whom the contractor utilises on site, who may includes the staff labour and other employee of the contractor and of each sub contractor and any other personnel assisting the contractor in the execution of the work.

1.1.2.8 “**Sub-contractor**” means any person named in the contract as a sub-contractor or any person appointed as sub-contractor, for a part of the work; and the legal successor in title to each of these persons.

### 1.1.3 Dates, Tests, Periods and Completion

1.1.3.1 “**Base Date**” means the date 21 days prior to the latest date for submission of the Tender.

1.1.3.2 “**Commencement Date**” means the date notified under Sub-Clause 7.1 [*Commencement of Works*].

1.1.3.3 “**Time for Completion**” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 7.2 [Time for Completion], as stated in the Appendix to Tender (with any extension under Sub-Clause 7.4 [*Extension of Time for Completion*]), calculated from the Commencement Date.

1.1.3.4 “**Tests on Completion**” means the tests which are specified in the contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 8 [*Tests on Completion*] before the Works or a Section (as the case may be) are taken over by the Employer.

1.1.3.5 “**Taking-Over Certificate**” means a certificate issued under Clause 9 [*Employer’s Taking Over*].

1.1.3.6 “**Tests after Completion**” means the tests (if any), which are specified in the Contract, and which are carried out in accordance with the provisions of the Particular Conditions after the Works or a Section (as the case may be) are taken over by the employer.

1.1.3.7 “**Defects Notification Period**” means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 10.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in the Appendix to Tender (with any extension under Sub-Clause 10.3 [*Extension of Defects Notification Period*]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 9.1 [*Taking Over of the Works and Sections*].

1.1.3.8 “**Performance Certificate**” means the certificate issued under Sub-Clause 10.9 [*Performance Certificate*].

1.1.3.9 “**Day**” means a calendar day and “**Year**” means 365 days.



#### 1.1.4 Money and Payments

1.1.4.1 "**Accepted contract Amount**" means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.

1.1.4.2 "**Contract Price**" means the price defined in Sub-Clause 13.1 [*The Contract Price*], and includes adjustments in accordance with the Contract.

1.1.4.3 "**Cost**" means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.

1.1.4.4 "**Final Payment Certificate**" means the payment certificate issued under Sub-Clause 13.12 [*Issue of Final Payment Certificate*].

1.1.4.5 "**Final Statement**" means the statement defined in Sub-Clause 13.10 [*Application for Final Payment Certificate*].

1.1.4.6 "**Currency**" means Rupees in which part (or all) of the Contract Price is payable.

1.1.4.7 "**Interim Payment Certificate**" means a payment certificate issued under Clause 13 [*Contract Price and Payment*], other than the Final Payment Certificate.

1.1.4.8 "**Payment Certificate**" means a payment certificate issued under Clause 13 [*Contract Price and Payment*].

1.1.4.9 "**Provisional Sum**" means a sum (if any), which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 12.5 [*Provisional Sums*].

1.1.4.10 "**Security Deposit**" means the accumulated retention moneys along with the initial security deposit of 5%, which the employer retains under Sub-Clause 13.3 [*Application for Interim Payment Certificates*] and pays under Sub-Clause 13.8 [*Payment of Retention Money*].

1.1.4.11 "**Statement**" means a statement submitted by the Contractor as part of an application, under Clause 13 [*Contract Price and Payment*] for a payment certificate.

#### 1.1.5 Works and Goods

1.1.5.1 "**Contractor's Equipment**" means all apparatus, machinery, vehicles and other things required for the execution and completion of the works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works, Employer's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

1.1.5.2 "**Goods**" means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

1.1.5.3 "**Materials**" means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

1.1.5.4 "**Permanent Works**" means the permanent works to be executed by the Contractor under the Contract.

1.1.5.5 "**Plant**" means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.

1.1.5.6 "**Section**" means a part of the Works specified in the Appendix to Tender as a Section (if any).

1.1.5.7 "**Temporary Works**" means all temporary works of every kind

(other than contractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 **"Works"** mean the Permanent Works and the Temporary Works, or either of them as appropriate.

## 1.1.6 Other Definitions

**1.1.6.1 "Contractor's Documents"** means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

**1.1.6.2 "Country"** means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

**1.1.6.3 "Employer's Equipment"** means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the contractor in the execution of the Works, as stated in the specification; but does not include Plant which has not been taken over by the Employer.

**1.1.6.4 "Force Majeure"** is defined in Clause 18 [*Force Majeure*].

**1.1.6.5 "Laws"** means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

**1.1.6.6 "Performance Security"** means the security (or securities, if any) under Sub-Clause 4.2 [*Performance Security*].

**1.1.6.7 "Site"** means the places where the Permanent Works are to be executed and to which Plant and materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

**1.1.6.8 "Unforeseeable"** means not reasonably foreseeable by an experienced contractor by the date for submission of the Tender.

**1.1.6.9 "Variation"** means any change to the Works, which is instructed or approved as a variation under Clause 12 [*Variations and Adjustments*].

## 1.2 Interpretation

In the Contract, except where the context requires otherwise:

(a) words indicating one gender include all genders;

(b) words indicating the singular also include the plural and words indicating the plural also include the singular;

(c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and

(d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

## 1.3 Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests,

these communications shall be:

in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Appendix to Tender; and delivered, sent or transmitted to the address for the recipient's communications as stated in the Appendix to Tender. However:

if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and

if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party' the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.

**1.4  
Law and Language**

The Contract shall be governed by the law of the country (or other Jurisdiction) stated in the Appendix to Tender.

If there are versions of any part of the Contract, which are written in more than one language, the version, which is in the ruling language stated in the Appendix to Tender, shall prevail.

The language for communications shall be that stated in the Appendix to Tender. If no language is stated there, the language for communications shall be the language in which the Contract (or most of it) is written.

**1.5  
Priority of  
Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

The contract Agreement (if completed),

The Letter of Acceptance / Firm work order

The priced Bill of Quantities,

Bid Clarification,

The Technical Specification, Special conditions of contract and Information in Appendix to Tender.

The General conditions of contract.

The Drawings and Annexure.

All Post bid correspondence and any other document forming part of contract

If any ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

**1.6  
Contract  
Agreement**

The Parties shall enter into a Contract Agreement within **14 days**, after the Contractor receives the **Letter of Acceptance**, unless they agree otherwise. The Contract Agreement shall be in the format annexed to the bid. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the contractor.

**1.7  
Assignment**

The contractor shall not assign the contract or any part thereof or any benefit or interest therein or there under ( otherwise than by a change in favour of the contractor's Banker of any money due to or to become due under this contract without the prior written consent of the Employer.

**1.8  
Care and Supply of  
Documents**

The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document, which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

**1.9  
Delayed Drawings  
or Instructions**

The Contractor shall give notice to the Engineer whenever the works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if it is late.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 [*Contractor's Claims*] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and

(b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine these matters.

However, if and to the extent that the Engineer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

**1.10  
Employer's Use  
of Contractor's  
Documents**

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free Licence to copy, use and Communicate the Contractor's Documents, including making and using modifications of them. This Licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Contractor's Documents, which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause.

**1.11  
Contractor's use of  
Employer's  
Documents**

As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

**1.12  
Confidential Details**

The Contractor shall disclose all such confidential and other information as the Engineer may reasonably require in order to verify the Contractor's compliance With the Contract.

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise:

**1.13  
Compliance with  
Laws**

- (a) the Employer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent works, and any other permissions described in the Specification as having been

(or being) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and

(b) the Contractor at his cost shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

**1.14  
Joint and Several  
Liability**

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or **other** unincorporated grouping of two or more persons/ companies

(a) these persons/ companies shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;

(b) these persons/ companies shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons/ companies shall provide a parent company guarantee in format at Annexure 3;

(c) the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

(d) JVs/ Consortia shall be allowed in all contracts of estimated cost of more than Rs.5 Crores. However, there shall be no limit on the number of partners.

(e) The technical and financial criteria ( MEC) may be met jointly by the partners. At the same time, it has to be ensured that firms are capable. Thus, firms with at least 26% equity holding each shall be allowed to jointly meet the eligibility criteria.

**2. The Employer**

**2.1  
Right of Access to  
the Site**

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Appendix to Tender. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Specification. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Appendix to Tender, the Employer shall give the Contractor right of access to, and possession of, the Site within such times as may be required to enable the Contractor to proceed in accordance with the programme submitted under Sub-Clause 7.3 [*Programme*].

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time,

the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

(a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and

(b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time Cost or profit.

**2.2 Permits, Licences or Approvals** The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

(a) by obtaining copies of the Laws of the Country which are relevant to the Contract but are not readily available, and

(b) for the Contractor's applications for any permits, Licences or approvals required by the Laws of the Country:

i) which the Contractor is required to obtain under Sub-Clause 1.13 [*Compliance with Laws*],

ii) for the delivery of Goods, including clearance through customs, and

iii) for the export of Contractors Equipment when it is removed from the Site.

**2.3 Employer's Personnel** The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:

(a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [*Co-operation*], and

(b) take actions similar to those, which the Contractor is required to take under sub paragraphs (a), (b) and (c) of Sub-Clause 4.8 [*Safety Procedures*] and under Sub-Clause 4.18 [*Protection of the Environment*].

**2.4 Employer's Claims** If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer or the Engineer shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [*Electricity, water and Gas*].

The notice shall be given as soon as practicable after the Employer

became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub Clause 10.3 [*Extension of Defects Notification Period*].

This amount may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

### **3. Engineer**

#### **3.1 Engineer's Duties and Authority**

The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. The Engineer shall obtain prior approval of the Employer for giving any instructions to the Contractor or taking any action on aspects, which are beyond the scope of the contract. The Employer undertakes not to impose further constraints on the Engineer's authority, except as agreed with the Contract.

However, whenever the Engineer exercises a specified authority for which the Employer's approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

(a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;

(b) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract; and

(c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the Engineer (including absence of disapproval) shall not relieve the



Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.

**3.2  
Delegation by the  
Engineer**

The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or Independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.4 [*Determinations*].

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority; and who are fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer However:

(a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;

(b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

**3.3  
Instructions of the  
Engineer**

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings, which may be necessary for the execution of the works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 12 [*Variations and Adjustments*] shall apply.

The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Engineer or a delegated assistant:

(a) gives an oral instruction,

(b) receives a written confirmation of the instruction, from (or on behalf

of) the Contractor, within two working days after giving the instruction, and does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation, then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

### **3.4 Determinations**

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.4 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 29 [*Claims, Disputes and Arbitration*]

### **3.5 Management Meetings**

The Engineer or the Contractor's Representative may require the other to attend a management meeting in order to review the arrangements for future work. The Engineer shall record the business of management meetings and supply copies of the record to those attending the meeting.

## **4. The Contractor**

### **4.1 Contractor's General Obligations**

The Contractor shall design (to the extent specified in the contract), execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.

The Contractor shall provide the Plant and Contractor's Documents specified in the contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.

The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods, which the Contractor proposes to adopt for the execution of the works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

If the Contract specifies that the Contractor shall design any part of

the Permanent Works, then

- (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;
- (c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 9.1 [*Taking Over of the Works and Sections*] until these documents and manuals have been submitted to the Engineer.

#### **4.2 Performance Security**

The Contractor shall obtain (at his cost) and submit a **Performance Security** for proper performance, in the amount, currencies and mode stated in the Appendix to Tender i.e. **10% of the accepted contract amount**.

The Contractor shall deliver the Performance Security to the Employer within **21 days** after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued by an entity and from within a country (or other, jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:

- (a) failure by the Contractor to extend the validity of the

Performance Security as described in the preceding paragraph, in which event the Employer may claim the full amount of the Performance Security,

- (b) failure by the Contractor to pay the Employer any amount due, within 42 days after this agreement or determination,
- (c) failure by the Contractor to remedy a default within 42 days after receiving the Employer's notice requiring the default to be remedied, or
- (d) circumstances, which entitle the Employer to termination under Sub-Clause 14.2 [*Termination by Employer*], irrespective of whether notice of termination has been given.

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor not later than 14 days from completion of Defect Liability period.

#### **4.3 Contractor's Representative**

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the performance of the Contract. If the Contractor's Representative is to be temporary absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Engineer's prior consent, and the Engineer shall be notified accordingly.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [*Instructions of the Engineer*].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation Any delegation or revocation shall not take effect until the Engineer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The Contractor's Representative and all their persons shall also be fluent in English and Hindi, if Contractor's Representative, or these persons, is not fluent in the above languages, the Contractor shall make a competent interpreter available during all working hours.

#### **4.4 Subcontractors**

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. However, unless otherwise stated,

- (a) the Contractor shall not be required to obtain consent for the purchase of materials which are in accordance with the standards specified in the contract.
- (b) the prior consent of the Engineer shall be obtained to engage other proposed Subcontractors. In case subcontract is approved by Employer then;
  - (i) the Contractor shall give the Engineer not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
  - (ii) each subcontract shall include provisions, which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 4.5 [*Assignment of Benefit of Subcontract*] (if or when applicable) or in the event of termination under Sub-Clause 14.2 [*Termination by Employer*].

#### **4.5 Assignment of Benefit of Subcontract**

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

#### **4.6 Co-operation**

The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:

- (a) the Employer's Personnel,

(b) any other contractors employed by the Employer, and  
(c) the personnel of any legally constituted public authorities,  
who may be employed in the execution on or near the Site of any work not included in the Contract.

Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements, which are the responsibility of the Contractor.

If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Engineer in the time and manner stated in the Specification.

#### **4.7 Setting Out**

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

#### **4.8 Safety Procedures**

The Contractor shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,

(d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 9 [*Employer's Taking Over*], and  
(e) provide any Temporary Works (including roadways, footways, guards and fences), which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

#### **4.9 Quality Assurance**

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

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

#### **4.10 Site Data**

The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data, which come into the Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

- a) the form and nature of the Site, including sub-surface conditions,
- b) the hydrological and climatic conditions,
- c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
- d) the Laws, procedures and labour practices of the Country, and
- e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

**4.11  
Sufficiency of the  
Accepted Contract  
Amount**

The Contractor shall be deemed to:

- a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and
- b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [*Site Data*].

Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums; If any) and all things necessary for the proper execution and completion of the works and the remedying of any defects.

**4.12  
Unforeseeable  
Physical Conditions**

In this Sub-Clauses, "**physical conditions**" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the works, including sub-surface and hydrological conditions but excluding climatic conditions.

If the Contractor encounters adverse physical conditions, which he considers to have been Unforeseeable, the Contractor shall give notice to the Engineer within 24 Hrs.

This notice shall describe the physical conditions, so that they can be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions, which the Engineer may give. If an instruction constitutes a Variation, Clause 12 [*Variations and Adjustments*] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost, which shall be included in the Contract Price.

After receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in subparagraphs (a) and (b) above related to this extent.



However, before additional Cost is finally agreed or determined under subparagraph (b), the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Engineer may proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under subparagraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Engineer may take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which may be made available by the Contractor, but shall not be bound by any such evidence.

**Note:** The contractor may encounter tyre fenders while carrying out the dredging. These will not be considered as unforeseeable and no extra payments will be made for removal of tyres.

**4.13  
Rights of Way and  
Facilities**

The Contractor shall bear all costs and charges for special and/or temporary rights of-way which he may require, including those for access to the Site. The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site, which he may require for the purposes of the Works.

**4.14  
Avoidance of  
Interference**

The Contractor shall not interfere unnecessarily or improperly with:

- a) the convenience of the public, or
- b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

**4.15  
Access Route**

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;

- b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- c) the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route,
- d) the Employer does not guarantee the suitability or availability of particular access routes, and
- e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

**4.16  
Transport of Goods**

Unless otherwise stated in the Particular Conditions:

- a) the contractor shall give the Engineer not less than 07 day's notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- c) the Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of goods, and shall negotiate and pay all claims arising from their transport.

**4.17  
Contractor's  
equipment**

The Contractor shall be responsible for all Contractor's equipment. When brought on to the Site, Contractor's equipment shall be deemed to be exclusively intended for the execution of the Works and shall be retained at the site till the completion of the work. The Contractor shall not remove from the Site any major items of Contractor's equipment without the consent of the Engineer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

**4.18  
Protection of the  
Environment**

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Specification, and shall not exceed the values prescribed by applicable Laws.

**4.19  
Site Facilities**

**Facilities Supplied by the Contractor**

The Contractor shall supply all services, amenities, temporary structures including security fencing and storage compounds, machinery, buildings and construction equipment necessary for the proper execution of the Works at Site at his cost except for the items specified below, which will be provided by the Employer.

### **Facilities Supplied by the Employer**

The Employer will make available to the Contractor the following services which will be charged at the rates given below;

- a) Supply of land for Contractor's site establishment and lay down areas.

The above shall be made available at rates as given in the rate enclosed in the **Appendix. 1**.

- b) Construction Water

The Employer will provide a reasonable quantity of construction water, subject to availability at one point adjacent to the Contractor's work area. Any further reticulation to the Contractor's individual facilities shall be the Contractor's responsibility and cost.

The Contractor shall be required to pay for water usage at Rs.37.50 per cu.m, subject to revision from time to time.

- (c) **Electric Power**

The Employer will provide electric power at one point adjacent to the Contractor's work area. Any further reticulation to the Contractors' individual facilities shall be the Contractor's responsibility and cost.

The Contractor shall be required to pay for electricity usage as per the prevailing rates as relevant and applicable subject to revision from time to time.

The Employer does not guarantee the continuity of power supply in the event of power failure the contractor shall be required to make its own arrangements for the provision of electric power.

- (d) Accommodation - No other accommodation besides mentioned above in(a) will be provided.

- e) Harbour facilities will be provided to the contractor as per the rates given in the Port scale of Rates. However No Pilotage and Port dues will be charged to the Contractors' craft associated with the work till the valid completion of Dredging work, unless Pilotage with Tug assistance is provided by the Port.

### **4.20 Progress Reports**

Unless otherwise stated, monthly progress reports shall, be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work, which is known to be outstanding at the completion date, stated in the Taking-Over Certificate for the Works.

Each report shall include:

- a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each Subcontractor,
- b) photographs showing the status of manufacture and of progress on the Site;
- c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
  - i) commencement of manufacture,
  - ii) Contractor's inspections,
  - iii) tests, and
  - iv) shipment and arrival at the Site;
- d) the detail's described in Sub-Clause 5.10 [*Records of Contractor's Personnel and Equipment*];
- e) copies of quality assurance documents, test results and certificates of Materials;
- f) list of notices given under Sub-Clause 2.4 [*Employer's Claims*] and notices given under Sub-Clause 29 [*Contractor's Claims*];
- g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- h) Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion In accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

#### **4.21 Security of the Site**

Unless otherwise stated:

- a) the Contractor shall be responsible for keeping unauthorised persons off the Site, and
- b) authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by the Employer or the Engineer, as authorised personnel of the Employer's other contractors on the Site.

#### **4.22 Contractor's Operations on Site**

The Contractor shall confine his operations to the Site, and to any additional areas, which may be obtained by the Contractor and agreed by the Engineer as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and

Temporary Works, which are no longer, required.

Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

#### **4.23 Fossils**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

### **5. Staff and Labour**

#### **5.1 Engagement of Staff and Labour**

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport. Valid harbour entry permits on payment of necessary charges.

#### **5.2 Rates of Wages and Conditions of Labour**

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no Established rates or conditions are applicable, the Contractor shall pay rates of wages and Observe conditions, which are not lower than the general level of wages, and conditions Observed locally by employers whose trade or industry is similar to that of the Contractor.

**5.3  
Persons in the  
Service of Employer**

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

**5.4  
Labour Laws**

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

**5.5  
Working Hours**

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the Appendix to Tender, unless:

- a) otherwise stated in the Contract,
- b) the Engineer gives consent, or
- c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.

**5.6  
Facilities for Staff  
and Labour**

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

**5.7  
Health and Safety**

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make Reports concerning health, safety and welfare of

persons, and damage to property, as, the Engineer may reasonably require.

**5.8  
Contractor's  
Superintendence**

- (i) Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all Necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [*Law and Language*]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

A reasonable proportion of the Contractor's Superintending staff shall have a working knowledge of English or the Contractor shall have a sufficient number of competent interpreters available during all working hours.

- ii) *Foreign Staff and Labour:*

The Contractor may import any personnel who are necessary for the execution of the works. The Contractor must ensure that these personnel are provided with the required residence visas and work permits. The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of imported Contractor's personnel. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

- iii) *Measures against Insect and Pest Nuisances:*

The Contractor shall at all times take necessary precautions to protect all staff and all labour employed on the site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall provide suitable prophylactics for the Contractor's personnel and shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

- iv) *Alcoholic Liquor or Drugs:*

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs or permit or allow importation, sale, gift, barter, or disposal by Contractor's Personnel.

- v) *Arms and Ammunition:*

The Contractor shall not give, barter or otherwise dispose of to

any person any arms or ammunition of any kind, or allows Contractor's Personnel to do so.

- vi) *Festivals and Religious Customs:*  
The Contractor shall respect the Country's recognised festivals, days of rest and religious or other customs.

**5.9  
Contractor's  
Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- a) persists in any misconduct or lack of care,
- b) carries out duties incompetently or negligently,
- c) fails to conform with any provisions of the Contract, or
- d) persists in any conduct, which is prejudicial to safety, health, or the protection of the environment.

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

**5.10  
Records of  
Contractor's  
Personnel and  
Equipment**

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work, which is known to be outstanding at the completion date, stated In the Taking-Over Certificate for the Works.

**5.11  
Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

**6. Plant, Materials and Workmanship**

**6.1  
Manner of Execution**

The Contractor shall carry out the maintenance of Plant and all other execution of the Works:

- a) in the manner (if any) specified in the Contract,
- b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

**6.2  
Remedial Work**

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:



- a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- b) remove and re-execute any other work which is not in accordance with the Contract, and
- c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under subparagraph (c). If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall pay to the Employer all costs arising from this failure.

**6.3  
Ownership of Plant  
and Materials**

Each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

- a) when it is delivered to the Site;
- b) when the Contractor is entitled to payment of the value of the Plant and Materials under Sub-Clause 7.10 [*Payment for Plant and Materials in Event of Suspension*].

**6.4  
Testing**

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the works.

The Engineer may, under Clause 12 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Engineer's presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

**6.5  
Royalties**

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

- a) natural Materials obtained from outside the Site, and
- b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made) except to the extent that disposal area within the Site is specified in the Contract.

**7. Commencement, Delays and Suspension**

**7.1  
Commencement of  
Work**

The contractor shall commence the dredging work as per the schedule given in the Tender call notice.

The Contractor shall commence the execution of the works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

**7.2  
Time of Completion,  
Compensation for  
Delay to  
Contractor's  
Negligence**

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

- a) achieving the passing of the Tests on Completion, and
- b) completing all work, which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking over under Sub-Clause 9.1 [*Taking Over of the Works and Sections*].
- c) time period for completion of Maintenance dredging work shall be **45 weather working days** from the scheduled date of

commencement for the year.

In the event of the contractor failing to complete the work in all respects within the time specified or within the extended time that may be allowed by the Engineer as per the terms of the contract, hereof the contractor shall pay or allow the Board to recover a sum equal to **2.0%** per week or part thereof the total value of contract subject to maximum of 10% of the contract value as liquidated damages.

The payment of liquidated damages shall not relieve the contractor from his obligation and liabilities under the contract. If the contractor fails to complete the work within the stipulated time, the Board shall get the work completed at the risk and cost of the contractor.

- d) In case part / portions of the work can be commissioned and part operates the portion for commercial purposes, the rate of LD will be restricted to the uncompleted/ undelivered value of work, the maximum LD being on the entire contract value.

### **7.3 Programme**

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 7.1 [*Commencement of Works*]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- a) the order in which the (Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- b) the sequence and timing of inspections and tests specified in the Contract, and
- c) a supporting report which includes:
  - i) a general description of the methods which the Contractor intends to adopt; and of the major stages, in the execution of the Works, and
  - ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment required on the Site for each major stage.

Unless the Engineer, within 10 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under- the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances, which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 12.2 [*Variation Procedure*].

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

**7.4  
Extension of Time  
for Completion**

The Contractor shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 9.1 [*Taking Over of the Works and Sections*] is or will be delayed by any of the following causes:

- a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 12.3 [*Variation Procedure*]) or other substantial change in the quantity of an item of work included in the Contract,
- b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- c) exceptionally adverse climatic conditions,
- d) unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 29 [*Contractor's Claims*]. When determining each extension of time under Sub-Clause 29, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time. Further, extension of contract period shall be decided by the engineer as per tender condition including periods where idle charge is paid.

**7.5  
Delays caused by  
Authorities**

If the following conditions apply, namely:

- a) The Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the

Country,

- b) these authorities delay or disrupt the Contractor's work, and.
- c) the delay or disruption was Unforeseeable, then this delay or disruption will be considered as a cause of delay under subparagraph (b) of Sub-Clause 7.4 [*Extension of Time for Completion*].

**7.6  
Rate of Progress**

If, at any time:  
actual progress is too slow to complete within the Time for Completion, other than as a result of a cause listed in Sub-Clause 7.4 [*Extension of Time for Completion*], then the Engineer may instruct the Contractor to submit, under Sub-Clause 7.2 [*Programme*], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the time for completion.

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increase in the working hours and/or in the number of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall pay these costs to the Employer based on the determination of the engineer.

**7.7  
Contractor's  
responsibility**

Notwithstanding the payment of liquidated damages if any under clause-7.2, this shall not relieve the contractor from his obligation to complete the work or from any other obligations / liabilities under this contract.

**7.8  
Suspension of Work**

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub Clauses 7.9, 7.10 and 7.11 shall not apply.

**7.9  
Consequences of  
Suspension**

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 7.8 [*Suspension of Work*] and./or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for*

*Completion*], and

- b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 7.8 [*Suspension of Work*].

**7.10  
Payment for Plant  
and Materials in  
Event of Suspension**

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and
- b) The Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

**7.11  
Prolonged  
Suspension**

If the suspension under Sub-Clause 7.8 [*Suspension of Work*] has continued for more than 30 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 10 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 12 [*Variations and Adjustments*] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 15.2 [*Termination by Contractor*].

**7.12  
Resumption of Work**

After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

**8. Tests on Completion**

**8.1 Contractor's  
Obligations**

The Contractor shall carry out all tests as per MOE & F guidelines during course of execution or on Completion in accordance with this Clause and Sub Clause 6.4 [*Testing*], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [*Contractor's General Obligations*], on the dredged material, testing/ analysing the quality of water for adopting environmental safeguards, minimising detrimental inputs enhancing the beneficial aspects of the project and for effective management of the environmental resources affected by the project at his cost. No additional charges on any such account

shall be payable by the Employer.

The Contractor shall give to the Engineer not less than 10 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on completion. Unless otherwise agreed, Tests on completion shall be carried out within 7 days after this date, on such day or days as the Engineer shall instruct.

In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

## **8.2 Delayed Tests**

If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 6.4 [*Testing*] (fifth paragraph) and/or Sub-Clause 9.3 [*Interference with Tests on Completion*] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 2 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 2 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

## **8.3 Retesting**

If the Works, or a Section, fail to pass the Tests on Completion, it will be rejected and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

## **8.4 Failure to Pass Tests on Completion**

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub Clause 8.3 [*Retesting*], the Engineer shall be entitled to:

- a) order further repetition of Tests on Completion under Sub-Clause 8.3;
- b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 10.4 [*Failure to Remedy Defects*]; or
- c) issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be

appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 3.4 [*Determinations*].

## 9. Employer's Taking Over

**9.1 Taking over of the Works and Sections** Except as stated in Sub-Clause 8.4 [*Failure to Pass Tests on Completion*], the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 7.2 [*Time for Completion*] and except as allowed in sub-paragraph (a), below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 7 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Engineer shall, within 7 days after receiving the Contractor's application:

- a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking Over Certificate shall be deemed to have been issued on the last day of that period.

**9.2 Taking Over of Parts of the Works** The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Employer shall not use any part of the Works (other than as a



temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part. However, if the Employer does use any part of the Works before the Taking-Over Certificate is issued:

- a) the part which is used shall be deemed to have been taken over as from the date on which it is used,
- b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and
- c) if requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry' date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the 'Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to payment of any such Cost plus reasonable profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine this Cost and profit.

In case part / portions of work can be commissioned and port operates the portion for commercial purposes, the rates of LD will be restricted to uncompleted/ undelivered value of work beyond the stipulated date of completion. The defects liability period for the portions taken over in sections shall be as indicated in the appendix to tender.

### **9.3 Interference with Tests on Completion**

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 days notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give

notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine these matters.

**9.4  
Surfaces Requiring  
Reinstatement**

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

**10. Defects Liability**

**10.1  
Completion of  
Outstanding Work  
and Remedying  
Defects**

In order that the works in Contract documents and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period given in the appendix to tender or as soon as practicable thereafter, the Contractor shall:

- a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

**10.2  
Cost of Remedying  
Defects**

All work referred to in sub-paragraph (b) of Sub-Clause 10.1 [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- a) any design for which the Contractor is responsible,
- b) Plant, Materials or workmanship not being in accordance with the Contract, or
- c) Failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other

cause, the Contractor shall be notified promptly by (or on behalf of) the Employer, and Sub-Clause 12.3 [*Variation Procedure*] shall apply.

**10.3  
Extension of Defects  
Notification Period**

The Employer shall be entitled an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Notification Period shall not be extended by more than three months.

If delivery and/or erection of Plant and/or Materials was suspended under Sub Clause 7.8 [*Suspension of Work*] or Sub-Clause 15.1 [*Contractor's Entitlement to Suspend Work*], the Contractors obligations under this Clause shall not apply to any Defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

**10.4  
Failure to Remedy  
Defects**

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this Remedial work was to be executed at the cost of the Contractor under Sub Clause 10.2 [*Cost of Remedying Defects*], the Employer may (at his option):

- a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.4 [*Determinations*]; or
- c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part, which cannot be put to the intended use. Without prejudice to any other rights; under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

**10.5  
Removal of  
Defective Work**

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of

these items, or to provide other appropriate security.

**10.6  
Further Tests**

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied. These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 10.2 [*Cost of Remedying Defects*], for the cost of the remedial work.

**10.7  
Right of Access**

Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employers reasonable security restrictions.

**10.8  
Contractor to Search**

The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 10.2 [*Cost of Remedying Defects*], the Cost of the search plus reasonable profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.4 [*Determinations*] and shall be included in the Contract Price.

**10.9  
Performance Certificate**

Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods after completion of dredging in every section, length of which shall be determined by the Engineer, unless otherwise stated in Special Conditions of Contract (Part-II) or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

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

**10.10  
Unfulfilled Obligations**

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

**10.11  
Clearance of Site**

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after the Employer receives a copy of the Performance Certificate, the Employer

may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

## **11. Measurement and Evaluation (Also refer to Technical Specifications, Clause-8)**

### **11.1 Works to be Measured**

The Works shall be measured, and valued for payment, in accordance with this Clause.

Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

- a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and
- b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them. If the Contractor does not so give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

### **11.2 Method of Measurement**

Except as otherwise stated in the Contract and notwithstanding local practice:

- a) measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

### **11.3**

Except as otherwise stated in the Contract, the Engineer shall proceed

## Evaluation

in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 11.1 and 11.2 and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work. However, a new rate or price shall be appropriate for an item of work only if all the following conditions are fulfilled:

- a) (i) the measured quantity of the item is changed by more than 15% from the quantity of this item in the Bill of Quantities or other Schedule,
- ii) this change in quantity multiplied by such specified rate for this item exceeds 0.015% of the Accepted Contract Amount,
- iii) this change in quantity directly changes the Cost per unit quantity of this item by more than 1.5%, and
- iv) this item is not specified in the Contract as a "fixed rate item";  
or
- (c) (i) the work is instructed under Clause 12 [*Variations and Adjustments*], no rate or price is specified in the Contract for this item, and
- (ii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable cost of executing the work, together with reasonable profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates.

## 11.4 Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- a) the Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;
- b) the omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and

- c) this cost is not deemed to be included in the evaluation of any substituted work; then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall Proceed In accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine this cost, which shall be included in the Contract Price.

## **12. Variations and Adjustments**

### **12.1 Right to Vary**

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

- a) Increase or decrease the quantity of any work included in the contract.
- b) Omit any such work ( partially or fully.
- c) Change the character or quality or kind of any such work.
- d) Change the levels, lines, position and dimension of any part of the work.
- e) Execute additional work of any kind necessary for the completion of the work.
- f) Change any specified sequence or timing of dredging of any part of the works.

No such variation shall in any way vitiate or invalidate the contract, but the effect, if any, of all such variations shall be valued in accordance with clause-12.2, provided that where the issue of an instruction to vary the works is necessitated by some default of or breach of contract by the contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the contractor.

The contractor shall not make any variation without an instruction of the Engineer. Provided that no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this clause but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.

### **12.2 Valuation procedure** All variations referred to in clause 12.1 shall be valued in the following manner:-

- a) at the rates and prices set out in the contract if, in the opinion of the Engineer, the same shall be applicable.
- b) If the contract does not contain any rates or prices applicable to the varied work, the rates and prices in the contract shall be used as the basis for valuation so far as may be reasonable failing which after due consultation by the Engineer with the contractor, suitable rates or prices shall be agreed upon between the Engineer and the contractor.
- c) In the event of disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the contractor accordingly.

Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with clause-13.

**12.3  
Price adjustment**

The contract price will be subjected to adjustment on account of variation of price of fuel according to the formula below:-

$$V = \frac{0.85 \times Q \times R \times (P - P_o)}{P_o}$$

V = Variation in price on account of fuel during the month under consideration.

P<sub>o</sub> = Average price of fuel by the IOCL in the concerned area / Port, on the date of opening of bids.

P = Average price of fuel fixed by the IOCL in the concerned area / Port, for the month under consideration.

Q = Fuel element factor to be considered as 0.25

R = Value of the work during the month under consideration as per relevant item of Bill of Quantities excluding mobilization and demobilisation fees.

NB:

No escalation on any other account will be payable by the Employer and the rate should be quoted accordingly. Beyond the contract period and during extended completion period, the price adjustment payment shall be made at the frozen price index prevailing on the original scheduled date of completion of work.

**12.4  
Payment in  
Applicable  
Currencies**

All the payments under this contract shall be made in Indian Rupees (INR).

**12.5  
Provisional Sums**

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor



shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer may instruct:

a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 12.3 [*Variation Procedure*]; and/or

b) Plant, Materials or services to be purchased by the Contractor, and for which there shall be included in the Contract Price:

(i) the actual amounts paid (or due to be paid) by the Contractor, and

(ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Appendix to Tender shall be applied.

The Contractor shall; when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

## **12.6 Adjustments for Changes in Legislation**

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and

b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

## **13. Contract Price and Payment**

### **13.1 The Contract Price**

a) the Contact Price shall not be subject to any adjustments.

b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not

be adjusted for any of these costs except as stated in Sub-Clause 12.6 [*Adjustments for Changes in Legislation*];

- c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
  - (i) of the Works which the Contractor is required to execute, or
  - (ii) for the purposes of Clause 11 [*Measurement and Evaluation*];

**13.2  
Advance Payment**

The Employer shall not make any advance payment for mobilisation of equipment or for any reason whatsoever.

**13.3  
Application for  
Interim Payment  
Certificates**

The Contractor shall submit a Statement in four copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.20 [*Progress Reports*].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- a) the contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including variations but excluding items described in sub-paragraphs (b) to (f) below);
- b) any amounts to be added and deducted only in case there is a change in rates of taxes.
- c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Appendix to Tender to the total of the above amounts;
- d) any amounts to be deducted towards repayments of advances in accordance with Sub-Clause 13.2 [*Advance Payment*];
- e) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 29 [*Claims, Disputes and Arbitration*]; and
- f) the deduction of amounts certified in all previous Payment Certificates.

**13.4  
Schedule of  
Payments**

- a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 13.3 [*Application for Interim Payment Certificates*];

- b) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less than that on which this schedule of payments was based, then the Engineer may proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine revised instalments, which shall take account of the extent to which progress is less than that on which the instalments were previously based.

**13.5  
Issue of Interim  
Payment Certificates**

No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 15 days after receiving a Statement and supporting documents, issue to the Employer an Interim Payment Certificate, which shall state the amount, which the Engineer fairly determines to be due, with supporting particulars.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of interim Payment Certificates (if any) stated in the Appendix to Tender. In this event, the Engineer shall give notice to the Contractor accordingly.

An Interim Payment Certificate shall not be withheld for any other reason, although:

- a) if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Engineer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

**13.6  
Payment**

The Employer shall pay to the Contractor:

- a) the amount certified in each Interim Payment Certificate within 21 days after the Engineer receives the Statement and supporting documents after full verification.
- b) the amount certified in the Final Payment Certificate within 45 days after the Employer receives this Payment Certificate.

**13.7  
Delayed Payment**

If the Contractor does not submit the bill in the proper format or if the bill is not based on joint measurements, the bills submitted by the contractor may be rejected. Under such circumstances, the port will not be responsible for delayed payments.

**13.8  
Retention Money**

Retention money shall be deducted from each running bill @ 5% subject to a maximum accumulation of 5% of contract price.

Retention Money shall be refunded within 30 days from the date of payment of final bill.

If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money corresponding to value of the work taken over shall be certified and paid.

However, if any work remains to be executed under Clause 10 [*Defects Liability*], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 12.6 [*Adjustments for Changes in Legislation*].

**13.9  
Statement at  
Completion**

Within 28 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer four copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 13.3 [*Application for Interim Payment Certificates*], showing:

- a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- b) any further sums which the Contractor considers to be due, and
- c) an estimate of any other amounts, which the Contractor considers, will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with Sub-Clause 13.5 [*Issue of Interim Payment Certificates*].

**13.10  
Application for Final  
Payment Certificate**

Within 56 days after receiving the Performance Certificate, the Contractor shall Submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

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

under the Contract or otherwise.

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

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 29.1 [*Amicable Settlement*], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

**13.11  
Discharge**

When submitting the Final Statement, the Contractor shall submit a written discharge, which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

**13.12  
Issue of Final  
Payment Certificate**

Within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 13.10 [*Application for Final Payment Certificate*] and Sub-Clause 13.11 [*Discharge*], the Engineer shall issue, to the Employer, the Final payment Certificate which shall state:

- a) the amount which is finally due, and
- b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 13.10 [*Application for Final Payment Certificate*] and Sub-Clause 13.11 [*Discharge*], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

**13.13  
Cessation of**

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the

**employer's Liability** Works, except to the extent that the Contractor shall have included an amount expressly for it:

- a) in the Final Statement and also
- b) (Except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 13.9 [*Statement at Completion*].

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

**13.14 Currencies of Payment** The Contract Price shall be paid in Indian Rupees.

#### **14. Termination by Employer**

**14.1 Notice to Correct** If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

**14.2 Termination by Employer** The Employer shall be entitled to terminate the Contract if the Contractor:

- a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 14.1 [*Notice to Correct*],
- b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- c) without reasonable excuse fails:
  - (i) to proceed with the Works in accordance with Clause 7 [*Commencement, Delays and Suspension*], or
  - (ii) to comply with a notice Issued for *Remedial Work*, within 28 days after receiving it,
- d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order- made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an

inducement or reward:

- (i) for doing or forbearing to do any action in relation to the Contract, or
- (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these events or circumstances, the Employer may, upon giving 14 days notice to the Contractor terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver all Contractors' Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use Contractor's Documents and other design documents made on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

**14.3  
Valuation at Date of  
Termination**

As soon as practicable after a notice of termination under Sub-Clause 14.2 [*Termination by Employer*] has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.4 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's

Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

**14.4  
Payment after  
Termination**

After a notice of termination under Sub-Clause 14.2 [*Termination by Employer*] has taken effect, the Employer may:

- a) proceed in accordance with Sub-Clause 2.4 [*Employer's Claims*],
- b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or
- c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 14.3 [*Valuation at Date of Termination*]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

**14.5  
Employer's  
Entitlement to  
Termination**

The Employer shall be entitled to terminate the Contract, at any time for the Employer's Convenience, by giving notice of such termination to the Contractor. The termination shall take effect 14 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

After this termination, the Contractor shall proceed in accordance with Sub Clause 15.3 [*Cessation of Work and Removal of Contractor's Equipment*] and shall be paid in accordance with Sub-Clause 18.6 [*Optional Termination, Payment and Release*].

**15. Suspension and Termination by Contractor**

**15.1  
Contractor's  
Entitlement to  
Suspend Work**

If the Engineer fails to certify in accordance with Sub-Clause 13.5 [*Issue of Interim Payment Certificates*] or Sub-Clause 13.6 [*Payment*], the Contractor may, after giving not less than 15 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 13.7 [*Delayed Payment*] and to termination under Sub-Clause 15.2 [*Termination by Contractor*].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice.) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of



suspension of work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of time for Completion*], and
- b) Payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

## **15.2 Termination by Contractor**

The Contractor shall be entitled to terminate the Contract if:

- a) The Engineer fails, within 45 days after receiving a Statement and supporting documents; to issue the relevant Payment Certificate,
- b) The Contractor does not receive the amount due under an Interim Payment Certificate within 30 days after the expiry of the time stated in Sub-Clause 13.6 [*Payment*] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.4 [*Employer's Claims*]),
- c) The Employer substantially fails to perform his obligations under the Contract,
- d) The Employer fails to comply with Sub-Clause 1.6 [*Contract Agreement*]
- e) A prolonged suspension affects the whole of the Works as described in Sub Clause 7.11 [*Prolonged Suspension*], or  
In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

## **15.3 Cessation of Work and Removal of Contractor's Equipment**

After a notice of termination under Sub-Clause 14.5 [*Employer's Entitlement to Termination*], Sub-Clause 15.2 [*Termination by Contractor*] or Sub-Clause 18.6 [*Optional Termination, Payment and Release*] has taken effect, the Contractor shall promptly:

- a) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works,

- b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

**15.4  
Payment on  
Termination**

After a notice of termination under Sub-Clause 15.2 [*Termination by Contractor*] has taken effect, the Employer shall promptly:

- a) return the Performance Security to the Contractor,
- b) pay the Contractor in accordance with Sub-Clause 18.6 [*Optional Termination, Payment and Release*], and
- c) pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination.

**16. Risk and Responsibility**

**16.1  
Indemnities**

The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or In the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and
- b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
  - (i) arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, and
  - (ii) is attributable to any negligence, wilful act or breach of the Contract by the Contractor, the Contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims; damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness' disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from Insurance cover, as

described in sub-paragraphs (c)(i), (ii) and (iii) of Sub-Clause 17.3 [*Insurance Against Injury to Persons and Damage to Property*].

**16.2  
Contractor's Care of  
the Works**

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 9.1 [*Taking Over of the Works and Sections*]) for the works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work, which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 16.3 [*Employer's Risks*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage, which occurs after a Taking Over Certificate, has been issued and which arose from a previous event for which the Contractor was liable.

**16.3  
Employer's Risks**

The risks referred to in Sub-Clause 16.4 below are:

- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
- c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- f) design of any part of the Works by the Employer's Personnel or

by others for whom the Employer is responsible, and

- g) any operation of the forces of nature which is Unforeseeable or against, which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions.

**16.4  
Consequences of  
Employer's Risks**

If and to the extent that any of the risks listed in Sub-Clause 16.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) payment of any such Cost, which shall be, included in the Contract Price in the case of sub-paragraphs (f) and (g) of Sub-Clause 16.3 [*Employer's Risks*], reasonable profit on the Cost shall also be included.

After receiving this further notice, the Engineer shall proceed in accordance with Sub- Clause 3.4 [*Determinations*] to agree or determine these matters.

**16.5  
Intellectual and  
Industrial Property  
Rights**

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer shall Indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- a) an unavoidable result of the Contractor's compliance with the Contract, or
- b) a result of any Works being used by the Employer:
  - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
  - (ii) in conjunction with any thing not supplied-by the Contractor,

unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration, which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission, which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, Litigation or arbitration upon being requested to do so by such other Party.

**16.6  
Limitation of  
Liability**

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under Sub-Clause 15.4 [*Payment on Termination*] and Sub-Clause 16.1 [*Indemnities*].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [*Electricity, Water and Gas*], Sub-Clause 16.1 [*Indemnities*] and Sub-Clause 16.5 [*Intellectual and Industrial Property Rights*], shall not exceed Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

**17. Insurance**

**17.1  
General  
Requirements for  
Insurances**

The Contractor shall be responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Each insurance shall be effected with insurers and In terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The Contractor shall, within the respective periods stated In the Appendix to Tender (calculated from the Commencement Date),

submit to the Employer:

- a) evidence that the insurances described in this Clause have been effected, and
- b) copies of the policies for the insurances described in Sub-Clause 17.2 [*Insurance for Works and Contractor's Equipment*] and Sub-Clause 17.3 [*Insurance against Injury Persons and Damage to Property*].

When each premium is paid, the Contractor shall submit evidence of payment to the Employer.

The Contractor shall comply with the conditions stipulated in each of the insurance policies. The Contractor shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

The Contractor shall not make any material alteration to the terms of any insurance without the prior approval of the other Employer. If the Contractor makes (or attempts to make) any alteration, the same shall be informed to the Employer in advance.

If the Contractor fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the Employer may (at its option and without prejudice to any other right or remedy) effect insurance for the) relevant coverage and pay the premiums due. The Contractor shall pay the amount of these premiums to the Employer, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurer shall be borne by the Contractor. In accordance with these obligations; liabilities or responsibilities. However, if the Contractor fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the Employer neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the Contractor. Payments shall be subject to Sub-Clause 2.4 [*Employer's Claims*] or Sub-Clause 29 [*Contractor's Claims*], as applicable.

**17.2  
Insurance for works  
and Contractor's  
equipment**

The Contractor shall insure the Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence

is to be submitted under sub-paragraph (a) of Sub-Clause 17.1 [*General Requirements for Insurances*], until the date of issue of the Taking-Over Certificate for the Works.

The Contractor shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 10 [*Defects Liability*]).

The Contractor shall insure the Contractor's Equipment for not less than the full replacement value, Including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment. The assurance

- a) shall cover all loss and damage from any cause not listed in Sub-Clause 16.3 [*Employer's Risks*],
- b) shall also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub Clause 16.3 [*Employer's Risks*], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Appendix to Tender (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- c) may however exclude loss of, damage to, and reinstatement of:
  - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
  - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
  - (iii) a part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage, and
  - (iv) goods while they are not in the Country,  
If, more than one year after the Base Date; the cover described in sub-paragraph (b) above ceases to be available at commercially reasonable terms, the Contractor shall give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.4

[*Employer's Claims*] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 17.1 [*General Requirements for Insurances*]

**17.3  
Insurance against  
Injury to Persons  
and Damage to  
Property**

The Contractor shall insure against each Party liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 17.2 [*Insurance for Works and Contractor's Equipment*] or to any person (except persons insured under Sub-Clause 17.4 [*Insurance for Contractor's Personnel*]), which may arise out of the Contractor's performance of the Contract and Occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Appendix to Tender, with no limit on the number of occurrences. If an amount is not stated in the Appendix to Tender, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

- a) shall be effected and maintained by the Contractor as insuring Party,
- b) shall be extended to cover liability for all loss and damage to the Employers property (except things Insured under Sub-Clause 17.2) arising out of the contractors performance of the Contract, and
- c) may however exclude liability to the extent that it arises from:
  - (i) the Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
  - (ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and
  - (iii) a cause listed in Sub-Clause 16.3 [*Employer's Risks*], except to the extent that cover is available at commercially reasonable terms.

**17.4  
Insurance for  
Contractor's  
Personnel**

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel. The Employer and the Engineer shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the



Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor Shall be responsible for compliance with this Clause.

Notwithstanding what is stated in the above clauses, all the floating crafts including dredgers deployed in the operation should be insured under Marine Hull Policy and covered for various Port risks including pollution and wreck removal by a P & I club which is a member of an International Group of P & I Club.

## **18. Force Majeure**

### **18.1 Definition of Force Majeure**

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- a) which is beyond a Party's control,
- b) which such Party could not reasonably have provided against before entering into the Contract,
- c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- d) which is not substantially attributable to the other Party.

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

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Sub-contractors,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, tsunami, hurricane, typhoon or volcanic activity.

### **18.2 Notice of Force Majeure**

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force

Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, (or should have become aware), of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either- Party to make payments to the other Party under the Contract.

**18.3  
Duty to Minimise  
Delay**

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

**18.4  
Consequences of  
Force Majeure**

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 18.2 [*Notice of Force Majeure*], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 29 [*Contractor's Claims*] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 7.4 [*Extension of Time for Completion*], and
- b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (v) of Sub-Clause 18.1 [*Definition of Force Majeure*] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 3.4 [*Determinations*] to agree or determine these matters.

**18.5  
Force Majeure  
Affecting  
Subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

**18.6  
Optional  
Termination,  
Payment and  
Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 45 days by reason of Force Majeure of which notice has been given under Sub-Clause 18.2 [*Notice of Force Majeure*], or for multiple periods which total more than 70 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the

Contractor shall proceed in accordance with Sub-Clause 15.3 [*Cessation of Work and Removal of Contractor's Equipment*].

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

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

**18.7  
Release from  
Performance under  
the Law**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 18.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 18.6.

**19. Explosives**

Except as may be provided in the specification or approved by the Engineer, the Contractor shall not use explosives. The Contractor shall only permit handling and use of explosives by men fully qualified and experienced in the storage, handling and use of the types of explosives to be used. He shall comply with the provisions of Indian Explosives Act. Prior permission of Mormugao Port Trust shall be obtained by the contractor before use of explosives. For such permission, contractor

shall apply to Mormugao Port Trust furnishing details of charges, locations, etc.

## **20. Property in Excavated Materials**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found during excavation / dredging shall be placed under the care and authority of the Employer.

## **21. Drawings & Designs**

a) General details of the works are shown on the drawings accompanying this tender document. The Engineer will supply to the contractor from time to time during the progress of the works such further working drawings as will be necessary in his opinion for the proper and adequate execution and maintenance of the works in accordance with the Engineer's designs and/or any modification thereof as decided by the Engineer and the Contractor shall carry out the work in accordance with the said working drawings. Two sets of such working drawings will be issued. If more sets are required by the Contractor he will have to make his own arrangement at his cost.

b) In the event of the Contractor proposing any alteration/modification to the Engineer's design, detail, method of construction, he shall at his own expenses prepare and submit for approval of the Engineer copies in duplicate (in the first instance) of detailed working drawings which may be required for such alteration/modification and at the same time call the attention of the Engineer to any alternative detail or modification of the Contract drawings which the Contractor may wish to make at least 30 days prior to the commencement of the work or part of the work to which such drawings relate. The contractor shall at the same time, if so required by the Engineer, furnish calculation sheets in duplicate relating to the strength and anticipated deflections in respect of such altered/ modified works. The Engineer will, after any such alteration which he may approve, record on the copies as amended his approval and will return one copy of the drawings and calculation sheets to the contractor, who shall carry out the work in accordance therewith. The Contractor shall forward to the Engineer three additional copies of the working drawings and calculation sheets as approved, in addition to these working drawings and calculation sheets as approved. In addition to these working drawings are also to be submitted (the same procedure as in the case of the Contractor) in respect of any work proposed to be executed by sub-contractors. The approval of the Engineer of all or any of the calculation sheets, drawings shall not relieve the Contractor- of responsibility in connection with the execution of the altered/modified or sub-contractors works.

c) The complete sets of tracing on linen or tracing film of all drawings showing every and all works 'As Made' under the contract shall be made by the Contractor at his own expense and delivered to the Engineer within one month of the completion of the various sections of the work or at such times as directed by the Engineer. All departure alteration,/ modifications from the Contract Drawings and supplementary working drawings issued by the Engineer also shall be incorporated in the "As Made" drawings. The drawings shall be fully dimensioned, of an approved size and with the standard litho black or as approved by the Engineer.

## **22. Filling in Holes and Trenches**

### **Filling in Holes and**

The Contractor immediately upon completion of any work under the

**Trenches**

contract shall at his own expenses fill up all holes or trenches which have been made or dug, level or remove mounds of earth that may have been made and clear away all rubbish occasioned in the execution of the works or temporary works. The contractor shall bear and pay all costs, charges, damages and expenses which may be incurred or sustained on account or in consequence of any accident which may happen by reason of holes and trenches connected with the work being left unfenced or materials being left or placed in improper situations.

**23. Contract Supersedes Previous Documents**

The Contractor shall have no right to any increase in the rates in the Bill of Quantities nor any other right whatsoever by reason of any representative explanation or statement or alleged representative explanation or statement made or by reason of any information promise or guarantee given or alleged to have been given to him by any person (whether in the employment of the Employer or not) before the date of the contract embodies the whole arrangements between the parties with reference to the contract hereby constituted and all previous, correspondence/ negotiation/ representations/ explanations/ statements/ promises or guarantee whether oral or written shall be excluded.

**24. Bribes and Commission****Bribes and Commission**

Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his or their behalf to any officer, servant, representative or agent of the Engineer or to any person on his behalf in relation to the obtaining or to be execution of this or any other contract with the Employer shall in addition to any criminal liability which he may incur subject the contractor to the cancellation of this and all other contracts with the Employer and also to the payment of any loss or damage resulting from any such cancellation, and the Employer shall be entitled to deduct the amounts so payable from any money otherwise due to the contractor under this or any other contract. Any question or disputes as to the commission of any offence under the present clause shall be settled by the Engineer in such a manner and on such evidence or information as he shall think fit and consider sufficient and his decision shall be final and conclusive.

**25. Mobilisation and Demobilisation fees**

Mobilization and Demobilization fees shall not be considered.

**26. Idle time**

Idle time charges are payable to cover idling on port account only. If the contractor suffers delay and/or incurs cost from complying with the Engineers instruction, he shall give notice and shall submit his application for (a) extension of time for any such delay and (b) payment of any such cost with supporting documents, which

shall be examined by the Engineer and his decision is final and binding. The contractor shall furnish a schedule of idle time charges for the dredgers proposed to be deployed along with the price bid. This idle time charges shall not be taken in to account for evaluation of the tender. The idle time rates quoted by the L1 tenderer shall be negotiated and finalized taking into consideration the rates quoted by other tenderers and matching the lowest. **The lowest evaluated tenderer shall match the lowest idle time charges quoted by the bidders whose bids are considered responsive.** No idle time charges are payable if dredger /equipments are to be shifted on account of shipping movement. The berths cannot be kept free of ships for dredging. The contractor shall take the advantage/ opportunity of the berths falling vacant.

**27. Service Tax**

Service tax shall be paid extra along with running account bill at the rate prescribed by the Govt. from time to time on production of the tax invoice.

**28. Rejection of Bid**

The Port Trust reserves the right to reject any of Bid which have not substantially complied with the Tender Condition.

**29. Contractor's Claim**

If the contractor considers himself to be entitled to any extension of the time for the completion and/or any additional payment ,under the clause of these conditions or otherwise in connection with the contract ,the contractor shall give notice to the Engineer, describing the event or circumstance ,giving rise to the claim. The notice shall be given as soon as practicable and not later than 28 days after the contractor became aware; or should have become aware of the event or circumstance. If the contractor fails to give the notice of a claim within such period of 28 days, the time of completion shall not be extended, the contractor shall not be entitled to additional payment and the employer shall be discharged from all liabilities in connection with the claim. Otherwise, the following provisions of the sub-clause shall apply. The contractor shall also submit any other notices which are required by the contract, and supporting particulars for the claim, all as relevant to such event or circumstance. The contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the side or at other location acceptable to the engineer. Without admitting the employers liability, the engineer may after receiving any notice under this sub-clause, monitor to record-keeping and/ or instruct the contractor to keep further contemporary records. The contractor shall permit the engineer to inspect all these records, and shall (if instructed) submit copies to the engineer. Within 42 days after the contractor became aware ( or should have become aware) of the event or circumstance giving rise to claim, or within such other period as may be proposed by the contractor and approved by the engineer, the contractor shall send to the engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed, if the event or circumstance giving rise to the claim has continuing effect:

- (a) This fully detailed claim shall be considered as interim ;
- (b) The Contractor shall send further interim claims at monthly intervals , giving the accumulated delay and / or amount claimed, and such further particulars as the engineer may reasonably require; and
- (c) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer. Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim, as he has been able to substantiate. The Engineer shall proceed in accordance with Sub-Clause 3.4 [Determinations] to agree or determine (i) the extension (if any) of the Time for completion (before or after its expiry) in accordance with Sub-Clause 7.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract. The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

**29.1 Amicable Settlement**

In case of any disputes, both parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both parties agree otherwise, arbitration may be commenced on or after the fifty sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

**29.2 Arbitration**

Unless settled amicably, disputes shall be settled by arbitration under the provisions of Indian Arbitration and Conciliation Act 1996. As per this, Dispute Resolution Board shall be set up with representatives of both parties on award of work to continuously facilitate resolution of issues. The place of arbitration shall be Mormugao Port, Goa.



(FOR USE IN PART-I TECHNICAL AND COMMERCIAL BID)

**(Prices not to be filled)**

**BILL OF QUANTITIES – ONLY INDICATIVE**

**FINANCIAL BID**

**MAINTENANCE DREDGING AT MORMUGAO PORT FOR THE YEAR 2016**

Sl. No	ITEM DESCRIPTION	QTY ( in M <sup>3</sup> )	Unit
1.	Maintenance dredging of inner turning basin, approaches to and alongside of berths nos.4, 8,9,10,11, breakwater and Mole berths, and mooring dolphins MD1 to MD6 areas for the years 2016 as per the scope of work given in the tender conditions. The depths varies from (-) 8.0m to (-)14.1m below Chart Datum in all types of soil as existing including loose or compacted sand, silt mixed with/without clay or soft clay or any other material including boulders, spilled cargo, broken concrete pieces/ debris metal pieces/scrap, rubber tyres, but excluding hard rock by suitable machinery/ equipment without disturbing/damaging the berthing structures and other structures including removal and covering the dredged material and dumping the same in the designated offshore dumping areas (at an approximate distance of 6 to 7 km) as shown in the drawing all as per the conditions of contract and as directed by the Engineer including all lead, lifts, cost of surveying plants, equipments, tools, labour, consumable, fuels, including mobilisation and demobilisation of suitable size of TSHD, etc. complete.	14,00,000	Per cum
2.	Idle time charges for the dredgers along with all accessories, Refer clause No.26.0 of General Conditions of contract  i) TSHD ii) Grab dredger	Provisional	Per Hour
	Total amount in INR(excluding service tax — refer clause 27 of GCC)		

Note: The approximate quantity to be dredged will be 1.4 Mn cu m

**Initials of Signatory of Tender**

**Date:**

## TECHNICAL SPECIFICATIONS

### 1.0 PROJECT AND SITE INFORMATION

#### 1.1 Location

The site for the dredging is located at Mormugao Port. The Designed Depth to be achieved and the Key Plan showing the location of the Maintenance dredging location of the designated offshore spoil ground is indicated in “**Appendix II**”.

### 2.0 PROJECT BACKGROUND

Mormugao Port is a Major Port on the West Coast of India. During the year 2012-13, the Port handled 20.7 million tons of cargo. Bulk of the cargo handled consist of iron ore and coal. The Port also handles, liquid bulk, bauxite, limestone, wood chips, granites, containers etc. The work involves maintenance dredging of the channel, basin and alongside berths by deploying suitable dredgers. The existing depths varies from about (-)6.00 m to(-)14.40 m w.r.t Chart Datum.

### 3.0 SITE INFORMATION

#### 3.0.1 Temperature and relative Humidity

The location of Mormugao Port is such that there is little variation in temperature and it has constantly high humidity. The maximum temperature vary from about 28<sup>0</sup> C in January to 32<sup>0</sup> C in May and the minimum temperature vary from 21<sup>0</sup> C in October to 28<sup>0</sup> C in January , The mean percentage relative humidity is about 83% for the year. It is about 92% during August and September and 75% in December.

#### 3.0.2 Visibility

Except to some extent in the monsoon months the visibility conditions are excellent at Mormugao Harbour. There may be 3 to 4 days in a year with visibility less than 4 kilometres.

#### 3.0.3 Cyclone

Mormugao is not situated in the pronounced cyclonic Zone and the number of occasions it was visited by cyclones during the past 75 years is less than a dozen

#### 3.1.1 *Analysis Report on Side Scan Sonar and soil investigation Studies*

Not relevant for this contract

### 3.2 Bathymetry

The depths to be achieved in various areas is furnished in **Appendix II**.

### 3.3. Meteorological Data

#### 3.3.1 Wind

The mean wind speed varies from 2 on the Beaufort scale In November to 4 in July. The annual mean wind speed being 13.6 km/hr in an average year, there are 316 days with winds varying from 0 to 3 on the Beaufort scale and 48 days with wind scaling 4 to 7 on the Beaufort scale and one calm day.

### **3.3.2 Cyclonic Storms and Depressions**

Mormugao is not situated in the pronounced cyclonic Zone and the number of occasions it was visited by cyclones during the past 75 years is less than a dozen

### **3.3.3 Sea Level Atmospheric Pressure**

Based on the Indian Naval Hydrographic Chart No 2020, following tidal information is given as a reference.

Lower low water springs near solstices	0.00 m
Mean lower low water ( MLLW)	+0.37 m
Mean Higher low water ( MHLW)	+1.05 m
Mean sea level ( MSL)	+1.30 m
Mean lower High water ( MLHW)	+1.78 m
Mean Higher High water ( MHHW)	+1.90 m
Higher High water springs near solstices	+2.30 m

### **3.3.4 Rainfall**

The south west monsoon season is the main rainy season. 80% of the rain falls during the month of June , July and August. The average rain fall is about 2500 mm per year.

## **3.4 Oceanographic Information**

### **3.4.1 In open sea**

In the fair season in the open sea wave height are almost always under 2m .Very rarely they are in the range of 2 to 3 m with direction of wave being from West. North – West and North. In the monsoon season the waves are mainly from the west and south west. About 25 % of the observations indicate waves of between 2 to 3 m. The maximum current velocity is about 1 knot.

### **3.4.2 Within Sheltered Harbour**

Mormugao Port is sheltered from waves by Mormugao Headland and the existing breakwater. Model tests indicate that in the site of work waves are almost always under 0.3m and vary rarely around 0.40m. The maximum current velocity observed is 0.30 to 0.40cm/sec

## **4.0 EXTENT OF WORK AND SCHEDULING**

The work covered under the contract consists Maintenance Dredging of the Port which is to be completed within a period of **45 weather working days**.

### **4.1 Level Datum**

The above tide levels mentioned in 3.3.3 refer to Chart Datum which is 4.84 meters below the principal bench mark behind old CME office at Mormugao Port ,sunk about one meter below the ground and inscribed thus B.H.E.I./1960 on a copper plate. This benchmark is 3.60m. above I.M.S.L..

## **4.2 Tolerance**

The contractor shall all times take responsible precautions to prevent excessive over dredging at any point. Dredging beyond the specified dredged line and levels will only be allowed within the following tolerance, which shall be measured horizontally/vertically beyond the required line & levels.

- 1) Horizontal Tolerance Nil
- 2) Vertical Tolerance +300mm

The contractor will be paid for dredging as per the pre and post dredging survey subject to the tolerance limits specified above.

No minus dredging tolerance is allowed on the specified dredging levels. Where dredging occurs beyond the tolerance level the contractor shall be paid for upto the tolerance limit only.

There are few known hard patches specially on the toe lines which had not yielding to Maintenance Dredging earlier. Accordingly, it will be sufficient if dredged those patches to at least match the levels of earlier post dredging charts.

### **4.2.1.1 Slope Tolerance**

The sides slopes arising out of the dredging will be measured upto a maximum distance of **10 m** from the toe lines and paid for.

### **4.2.1.2 Method of Measurement**

Port in presence of the contractor shall carry out hydrographic surveys first on award of work and prior to commencement of any dredging operations. Upon completion of the work may be phases, alongside the berth basin and approach channel. Depending upon the location, interim surveys shall also be carried out for the purpose of measurements and to check then depths achieved and the quantum of dredging through soundings. This may be used for interim payment / Bill of Quantities. The frequency of such surveys depends upon the requirements of the Engineer In Charge of the work and as informed to the contractor prior hand. The final survey on completion of the work shall again be taken and the final payment will be based on the required level of soundings.

Necessary tolerance as specified above in Clause 4.2 and Slopes vide Clause 4.2.1.1 shall also be permitted while taking the measurements and working out the quantity calculation for payment based on Simpson's Rule. Dredging done beyond the tolerance both horizontally and vertically shall not be paid for.

Pre-dredging survey and post dredging survey shall be conducted jointly by the Contractor and the Engineer's Representative. The interim survey also shall be done jointly by Engineer's representative and the Contractor only.

The Contractor shall allow the Engineer's representative to be present during any surveys, elaboration or any connected activity. He shall give sufficient prior warning of plans to work in this respect and provide the Engineer's representative with necessary assistance to fulfil his duties. The survey shall be carried out in accordance with schedules to be approved by the Engineer's representative.

#### **4.2.1.3 Survey Methods**

Hydrographic survey shall be performed by using Echo sounding equipment (Atlas Deso or equivalent) with Differential Global Positioning System (DGPS) both with an accuracy which ensures that the requirements of the contracts are achieved. These surveys shall be carried out if weather and sea conditions, condition of equipment and methods of execution and interpretation are in the opinion of the Engineer satisfactory for the purpose. Port is not responsible for the delay in carrying out pre & post dredge survey due to weather conditions or failure in survey equipments.

The Engineer's representative may resolve to check sounding by means of other methods to measure water depths such as sounding poles or lead lines. The Engineer's representative may also order calibration checks of the equipment as and when considered necessary. The Contractor shall cooperate in this respect and supply and man power, boats and equipment that may be reasonably required for this verification.

The position, whether determination by electronic or optical methods should be regularly checked by reference to onshore transit marks at some point along the survey line.

Echo sounding shall be checked and calibrated at least daily before and after use, by means of bar or plate suspended at known distance below the water surface. Checking shall be performed at actual location of the surface and the Engineer's representative may require additional checks during surveying. Adjustments to the recordings / readings taken shall be made accordingly. The Echo Sounder shall maintain a repeatable accuracy of better than 0.01m.

All field books, calculations, maps, original records, survey tracks and as run plots etc. of all survey activities shall be kept on site available for the Engineer's representative study or checking for the duration of the contract.

Sounding grid for alongside the berth basin and channel will be 20 mtrs. x 10 mtrs. All survey lines shall be extended a minimum distance of 30 mtrs. beyond the toe line wherever possible.

#### **5.0 SEDIMENTATION IN DREDGED AREA**

The Contractor shall be responsible for removal of any sedimentation during the dredging operation.

#### **6.0 OVER DREDGING**

Over dredging is dredging deeper than the design dredge level plus the lower vertical dredging tolerance. This means that over dredging is deeper than the designed dredging. Over dredging shall not be permitted near the piles forming the part of the Mooring Dolphins.

Should the Contractor wish to perform over dredging in the remaining dredge areas to allow for extra sedimentation arising either from his own operations or from natural phenomena, he shall request the approval of the Engineer's representative for such over dredging. Approval will not be given unless the Contractor can prove, to the full satisfaction of the Engineer, that the over dredging in question will not endanger the

channel slope stability. The Contractor will not be entitled to payment for the extra material dredged.

## **7.0 DISPOSAL TOLERANCES**

All dredged material shall be dumped evenly within the specified limits of the sea disposal area as indicated in the tender.

Should dredged material be dumped outside of the specified limits, the Contractor shall follow the instructions of the Engineer's Representative to rectify the matter at no extra cost to the Employer.

## **8.0 SURVEYING**

### **8.1 Work Set Out and Hydro graphic Survey**

Information to enable the Contractor to accurately define the boundaries of the excavation, dredging and deposition areas is supplied on the Drawings. It shall be the Contractor's responsibility to erect and maintain any visual or other marks at site required to accurately control the excavation, dredging and disposal / dumping operations.

The Contractor shall provide all labour, materials, plant and equipment to set out the Works, to monitor, progress, to survey the area being dredged, excavated or dumped, or that the Engineer or his representative may require at any time to check the setting out of the work or to check the work completed.

Prior to the Contractor commencing work on the Site, the Contractor shall carry out a survey of the areas to be dredged, excavated and dumped with the Engineer or his representative in attendance.

This survey shall establish the basis for payment to the Contractor. Survey of the area to be dredged shall be by hydro graphic techniques.

Each hydrographic survey shall be carried out using a high frequency single beam echo sounder, which shall be capable of sounding with accuracy to within one percent (1%) of the depth in conjunction with position fixing using Real Time Differential GPS. The interfacing of the GPS and Echo sounder will be done by 'PDS 2000' or equivalent standard software acceptable to Engineer. The plan of the survey area and the cross sections to be surveyed shall be continuously displayed on the computer monitor installed in the survey vessel.

The survey vessel guided by the 'PDS 2000' or equivalent standard software acceptable to Engineer will be taken along the cross section lines and continuous depths shall be recorded by the help of Echo sounder. The depths recorded and their position will be continuously interfaced and stored in the memory of computer software for post processing and computation of volumes / dredging quantities.

Each survey shall be undertaken by a surveyor suitably experienced in hydro graphic Survey work, whose "curriculum vitae" is acceptable to the Engineer. A copy of the survey shall be forwarded to the Engineer within 7 days of the survey being completed.

It shall be the responsibility of the Contractor to obtain all licenses, permits and permissions for the use of marine radios, walkie-talkies, radio positioning systems, satellite phones for the placing of onshore, offshore and underwater beacons and marker buoys, and for giving the proper statutory notices for all maritime operators. The costs of such licenses, permits and notices are to be borne by the Contractor, and shall be deemed to be covered by the rates and prices quoted in the Tender.

## **8.2 Sounding Survey Requirements**

The chart (paper) speed and the associated speed of the survey vessel during a sounding traverse shall be calibrated to ensure that 100m of bottom traverse are represented by at least 75mm of echo trace. Sensitivity (gain) controls shall be adjusted to the maximum level that still produces a clear bottom echo trace.

Prior to and after each sounding session, the echo sounder shall be calibrated by bar checking and the records of the bar check shall be kept with the session sounder traces.

Each sounder trace shall be reduced for tide height and settlement of the survey vessel, if applicable and the design profile shall be clearly marked on the echo sounding trace as well as on the hydro graphic surveying software. The design profile shall be the design bed level of the relevant section of works under survey.

The automated hydro graphic surveying software system shall store the recorded depths in digitised format for subsequent automatic computer plotting. In this event fully annotated analogue (hard copy) records shall be maintained.

The method of data acquisition and associated processing techniques and computations proposed by the Contractor shall be the subject of prior approval by the Engineer.

## **8.3 Sounding Lines**

Sounding lines shall be not more than 20m apart. A sounding line shall be established along the design toe of each side slope and an echo trace shall be obtained along each of these sounding lines.

The horizontal position of soundings shall be obtained at a maximum interval of 50m along a sounding line, and these locations shall be marked on the echo trace chart as fix marks. Fix marks shall be obtained where a sounding line crosses the toe and the top of an excavated/dredged side slope, where practical. Intermediate soundings representing the shallowest depth in a length of no more than 10m shall be obtained by interpolation between fix marks.

The horizontal accuracy of each position fix shall be:

- + 1.0 m along the sounding line
- + 1.0 m perpendicular to the sounding line

Surveying along any sounding line, which deviates by more than the specified tolerances above shall be repeated to the extent necessary to ensure that all fixes along the sounding line remain within, specified tolerances. The repeated section of the sounding line shall overlap that section of the previous sounding line, which complies with the specified tolerances, by a minimum of 50m.

Where sounding areas abut a previously surveyed section, of the works, the sounding lines shall overlap the previously surveyed area by a minimum of 25m.

#### **8.4 Verification Lines**

The Engineer's Representative may resort to check echo sounding by means of other methods to measure water depths, such as sounding poles or lead lines. The Engineers Representative may also order calibration checks of the equipment as and when considered necessary. The contractor shall cooperate in this respect and supply any manpower, boats and equipment that may be reasonably required for this verification.

#### **8.5 Drawings**

Hydro graphic survey drawings produced by the Contractor during the course of the work and for work-executed purposes shall be to a scale of 1:2000 contours drawn at 0.5m intervals, and depths taken at approximately 10m intervals along cross-sections.

Verification of the RL of the deposited material shall be the responsibility of the Contractor. This data shall be submitted to the Engineer on a weekly basis.

#### **9.0 PLANT AND EQUIPMENT**

**The Port will provide the equipments including the launch for carrying out the joint pre dredge and post dredge surveys. The hire charges of the launch shall be borne by the contractor which will be payable as per the Port's Scale of Rates.** In case of breakdown of the port's survey launch and survey equipments, the contractor will arrange for the same. However for intermediate surveys, the contractor shall arrange surveying equipment including boats, sounding devices etc. No additional cost will be paid to the contractor for the same. No separate mobilisation and demobilisation charges will be paid to the Contractor for the equipment to be deployed by the Contractor for the work. The rate of dredging quoted/ cu. m will squarely and totally include all the charges to be paid to the Contractor by the Employer. The Contractor shall not change the type, number, size and make of dredgers indicated in the contract without written approval of Engineer. If the dredger goes out of order, the Contractor should arrange for replacement of the same with an equivalent capacity suitable dredger with the prior approval of Engineer. This shall not relieve Contactor from obligations under other clauses of contract. No additional cost and time will be allowed.



The Contractor shall be responsible for obtaining specific approvals and for the payment of any fees relating to the execution of the works and to the process adopted by the Contractor, e.g. right of way for discharge pipes, temporary works for pump out points, discharge licences and local authority approvals.

## **9.1 Navigation**

### **9.1.1 General**

The Contractor shall make all necessary arrangements for temporary removal and replacement of any authorised buoys or piles that may obstruct the operations. The removal and reinstatement of all authorised or licensed buoys or piles will be carried out at full cost to the Contractor.

The dredger and other plant, including all stakes, buoys and pipeline used by the Contractor, shall display the correct navigation signals and shall be clearly marked and lit at night to the satisfaction of the Harbour Master.

### **9.1.2 Temporary Lights**

The Contractor shall provide such temporary navigation lights and floating buoys on all plant, anchor ropes and works as may be required by the Harbour Master.

### **9.1.3 Minimum Interference with Navigation**

In cases of works that involve disruption to any shipping that will be using the harbour/channel/wharf, all works shall be carried out with minimum interference to navigation and in accordance with the directions of the Harbour Master.

### **9.1.4 Navigation Requirement**

Dredging shall be organised so that dredging plant is so positioned as to allow the normal passage of vessels to the satisfaction of the Harbour Master.

Navigation signals, lights and warning markers shall be provided and maintained on floating plant, submerged pipelines, anchors and any other equipment placed by the Contractor to the satisfaction of the Harbour Master. Any floating pipeline shall be controlled to ensure the least obstruction to the movement of vessels.

The Contractor shall prior to the establishment of plant on site notify the Harbour Master and the Engineer of his proposed programme and methods. The Contractor shall be responsible for providing the Harbour Master and Engineer with details of any changes to the programme and methods, after approval by the Engineer.

### **9.1.5 Oil Spillage**

Oil spill response equipment shall be provided on the Site in sufficient quantity to cope with the maximum fuel load of the dredging equipment and associated plant.

## **10.0 DIVING**

Should any diving work be carried out during the Contract, this shall be in accordance with the requirements of Mormugao Port Trust and Statutory Authorities. The cost of this diving works will be borne by the contractor.

## **11.0 CLEARING AND TOP SOIL REMOVAL**

The Contractor shall complete the clearing of the excavation and deposition areas within the limits of the contract shown on the Drawings or as directed by the Engineer such that all trees and shrubs stumps logs and all obstructions and rubbish of every description are removed. Some areas may have been cleared by others prior to the contract commencing. No payment shall be made for areas cleared by others.

The vegetation within the deposition area shall be cut off level with the natural ground taking care that the surface root system is not disturbed.

The Contractor shall be responsible for additional clearing necessary for his own storage, access and work areas in locations only as approved by the Engineer.

Initially all felled and cleared items shall be windowed to a site as directed by the Engineer. All timber, rubbish and other combustible waste material shall be burnt in areas approved by the Engineer or otherwise removed from the area of the 'Works in a manner approved in writing by the Engineer. After burning, all remaining material shall be removed from the site and the ashes levelled to the satisfaction of the Engineer. The Contractor shall obtain all necessary permits applicable and pay all associated fees.

Any vegetation allowed to fall outside the works area shall be removed by the Contractor at his own expense.

## **12.0 EXCAVATION AND DREDGING WORKS**

Dredging is to be undertaken in accordance with the Drawings and as directed.

The Contractor shall supply to the Engineer, at the end of each week following the commencement of dredging, all of the daily or shift log sheets. The log sheets shall cover all works carried out during that week and include, but not necessarily be limited to, no and main technical specifications of dredgers, periods of working of dredgers, details of dredging progress, times for setting anchors, details of breakdowns, and other interruptions which might affect the time for completion. The daily or shift log shall also record an estimate of the quantity of material excavated or dredged.

The daily or shift log sheets shall be signed at the end of each week by both the Contractor's Dredge Master for all dredging works, the Contractors site representative for all other works, and a representative of the Engineer. The signature of the Engineer's representative on these log sheets is for the purpose of indicating that the sheets have only been seen and is not for .the purpose of confirming the accuracy or otherwise of any information contained therein.

## **SPECIAL CONDITIONS OF CONTRACT**

### **TABLE OF CONTENTS**

<b>CLAUSE</b>	<b>TITLE</b>
1.	General
2.	The work
3.	The Site
4.	Survey and Levels to be Agreed
5.	Setting Out the works
6.	Order of works
7.	Co-ordination and Inspection of Works
8.	General Conditions of Construction and Erection Work
9.	Work in Monsoon
10.	Contractor's Working Area
11.	Temporary Works, Office, Jetty, etc.
12.	Operations of the Employer and others
13.	Port Trust Rules
14.	Existing Services
15.	Entry on private or other property
16.	Notice of Operations
17.	Security and Safety
18.	Return and Drawings
19.	Possession Prior to Completion
20.	Completion Documents
21.	Dispute in Mode of Measurement
22.	Income Tax

## **SPECIAL CONDITIONS OF CONTRACT**

### **1. GENERAL**

- 1.1** Special Conditions shall be read in conjunction with the General Conditions of Contract, specification, Drawings and any other documents forming part of this contract wherever the context so requires.
- 1.2** Notwithstanding the Sub-division of the documents in to these separate section and volume every part of each shall be deemed to be supplementary to and complementary of every other part and shall be read with and into the Contract so far as it may be practicable to do so.
- 1.3** Where any portion of the general Conditions of Contract is repugnant to or at variance with any provisions of the Special Conditions, the provisions of the Special Conditions shall be deemed to over-ride the provisions of the General Conditions of Contract and shall to be extent of such repugnancy of variations, prevail.
- 1.4** Where it is mentioned in the Specification that the contractor shall perform certain work or provide certain facilities, it is understood that the contractor shall do so at his own cost.
- 1.5** The materials, design and workmanship shall satisfy the relevant Indian standard, the specification conditioned herein and codes referred to. Where the specifications stipulate requirement in addition to those contained in the Standard codes and specifications these additional requirements shall also be satisfied.

### **2. THE WORK**

#### **2.1 Scope of Work**

The scope of work is defined in the Technical Specifications. The contractor shall provide all necessary materials, equipment and labour etc. for the execution and maintenance of the work till completion. All materials that go with the work shall be approved by the Engineer prior to use.

#### **2.2 Nature of Work**

The works under the contract comprise the dredging of sand, silt, clay gravel and other materials and dispose of the dredged material into the designated locations.

#### **2.3 Duties of the Engineer's Representative**

The Engineer's Representative is a person appointed by the Engineer or the Chief Engineer of the Port. The Engineer's Representative is responsible to the Engineer/Chief Engineer and shall carryout such duties and exercise such authority as may be delegated to the Engineer's Representative by the Engineer/Deputy Conservator.

#### **2.4 Engineer's Authority to Delegate**

The Engineer may from time to time delegate to the Engineer's Representative any of the duties and authorities vested in the Engineer and he may at any time

revoke such delegation. Any such delegation or revocation shall be in writing. Any communication given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect provided that:

- a) any failure of the Engineer's Representative to disapprove any work, materials or Plant shall not prejudice the authority of the Engineer to disapprove such work, materials or Plant and to give instructions for the rectification thereof;
- b) if the Contractor questions any communication of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary the contents of such communication.

## **2.5 Deployment of Staff by the Engineer**

The Engineer shall deploy any number of persons from his firm or appoint any number of persons in the carrying out duties. Such persons have the authority to carry out their duties, acceptance of materials, verifications of drawings, checking the surveys, quantities of dredging, checking the locations of disposals of dredged material, plant or workmanship as being in accordance with the Contract, and any instructions given by any of them to the Contractor for those purposes shall be deemed to have been given by the Engineer's Representative on behalf of the Engineer of Mormugao Port Trust.

## **3. THE SITE**

The site for the dredging is located at Mormugao Port. The key plan showing the location for dredging and location of the designated off shore spoil ground is indicated in Appendix II.

- 3.1** The following are the particulars of certain tide levels referred to the above 'DATUM'

<b>TIDE</b>	<b>CHART DATUM</b>
Highest High Water	(+) 2.30 mtrs.
Lowest Low Water	(+) 0.00 mtrs.

- 3.2** The intending tenderers are expected to visit the site and satisfy themselves on the actual site conditions, meteorological and oceanographic data, soil/subsoil strata to be dredged and the areas identified for disposal of dredged material, before tendering. Whatever information regarding surface and subsurface strata, climatological, oceanographic data given in the tender documents are only intended as a general guidance for the contractor and no warranty is given for the correctness of the same.

### **3.3 Access to site:**

Mormugao Port, one of the major ports on the western coast of India at latitude 15° 25' N, longitude 73° 47' E, situated at the State of Goa about 600 kms. South of Mumbai and is located at Vasco-da-Gama. The port is well connected to State and National Highways. An International airport is available nearby with a distance of 5 kms. from the port. The port is connected by Southern railway and Konkan railway connecting various parts of the country.

#### **4. SURVEYS AND LEVELS TO BE AGREED**

- 4.1** Before the works of any part thereof begun, the Contractor's agent and the Engineer's Representative shall together survey and take levels of the site of the works both above and below water level / Chart Datum level, and agree all particulars on which the measurements of the works are to be based. Such particulars shall be plotted by the Contractor and after agreement, the drawings shall be signed by the Engineer or his authorised representative.
- 4.2** Failing such surveys and agreements being prepared and/or signed by the contractor, the survey of the Engineer shall be final and binding on the Contractor.
- 4.3** The contractor shall be entirely responsible for the horizontal and vertical alignment, the levels and correctness of every part of the work and shall rectify any errors or imperfection therein. Such rectification shall be carried out by the contractor, at his own cost.

#### **5. SETTING OUT THE WORKS**

- 5.1** The Engineer shall furnish the relevant existing grid points with bench Mark with reference to Chart Datum. It shall be Contractor's responsibility to set out the necessary central points on land and to set out alignment. The contractor shall have in his employ efficient survey team for this purpose and the accuracy of such setting out works shall be contractor's sole responsibility.
- 5.2** Before beginning the work the Contractor shall work out the control points on ground, which are pre requisite for carrying out hydrographic surveys, accurately, with suitable markers as approved by the Engineer. All these points and markings shall be checked and approved by the Engineer or Engineer's Representative before starting the work.
- 5.3** The contractor shall also provide necessary equipment, labour and other facilities for proper checking of triangulation / bench mark stations and inspection of the points during the survey and dredging operations at no cost to the Employer.
- 5.4** The contractor shall give the Engineer not less than 24 hours notice in writing of his intention the set out or give levels for any part of the works so that arrangements may be made for checking the work.
- 5.5** Work shall be suspended for such times as necessary for checking lines and levels on any part of the works.
- 5.6** The Contractor shall at his own expense provide all assistance which the Engineer may require for checking the setting out.

#### **6. ORDER OF WORKS**

The order in which the works are to be carried out shall be to the approval of the Engineer and shall be such as to suit the detailed programme of dredging adopted by the contractor as well as the CPM schedule. The works shall be carried out in such a manner so as to enable the other contractors to work concurrently so that the entire project may be brought into use immediately after the completion of works.

## **7. CO-ORDINATION AND INSPECTION OF WORKS**

The Co-ordination and inspection of the day-to-day work under the contract shall be the responsibility of the Engineer. The written instructions regarding any particular work will be normally passed by the Engineer. A work order book will be maintained by the Contractor for each sector which aforesaid written instructions will be entered. These will be signed by the Contractor or his authorised representative by way of acknowledgment within 12 hours.

## **8. GENERAL CONDITIONS OF CONSTRUCTION AND ERECTION WORK**

- 8.1** The working time at present is 48 hours per week. Over time work is permitted in case of need and the Employer will not compensate the same. Shift working at 2 or 3 shift per day may become necessary and the Contractor should take this aspect into consideration for formulating the rates for quotation. No extra claims will be entertained by the Employer on this account.
- 8.2** The charges for departmental supervision during such overtime work ( 2 or 3 shift work) including on Sunday and holidays will be borne by the Contractor.
- 8.3** The contractor must arrange for the placement of workers in such a way that the delayed completion of the works of any part thereof for any reason whatsoever will not affect their proper employment. The Employer will not entertain any claim for idle time payment whatsoever.
- 8.4** The Contractor shall submit to the Engineer reports at regular intervals regarding the state and progress of work. The details and proforma of the report will mutually be agreed after the award of Contract.

## **9. WORK IN MONSOON**

The execution of the work may entail working in the monsoon also. The Contractor must maintain sufficient labour force as may be required for the work and plant and execute the construction and erection according to the prescribed schedule. No special rate will be considered for such work in monsoon.

## **10. CONTRACTOR'S WORKING AREA**

The Contractor shall be allowed working area as reasonably required.

## **11. TEMPORARY WORKS, OFFICE, JETTY, ETC.**

- 11.1** The Contractor shall submit to the Engineer for his approval, drawings and proposals for any temporary works such as, office, store, false work and temporary platforms, , workshop, etc. which he intend to construct for the execution of the contract and no such work shall be constructed before obtaining the written approval of the Engineer.
- 11.2** The Contractor shall obtain permission for any temporary work and would ensure that during execution of works the statutory requirements of the concerned authorities such as Mormugao Port Trust, Police, etc. would be complied with.

- 11.3** Materials for permanent works shall not be used for temporary works unless otherwise approved in writing by the Engineer.
- 11.4** Not less than one month before the date when the Contractor intends to start erecting any part of the temporary works and staging required for carrying out the works he shall furnish to the Engineer complete drawings of that part of the temporary works and staging. The Contractor shall at the same time, if so required by the Engineer furnish calculations in respect of such temporary works. The Contractor shall also furnish to the Engineer drawings showing the method proposed for the erection of the various parts of the work.
- 11.5** The furnishing to the Engineer any design for any temporary works and staging shall not relieve the Contractor of any liability or obligation under the contract in respect of such temporary works and staging. All temporary works shall remain the property of the Contractor.

## **12. OPERATIONS OF THE EMPLOYER AND OTHERS**

- 12.1** The ordinary business and works of the Employer and others as carried out on and in the vicinity of the site will be continued during the construction, completion and maintenance of the works and the execution of the Contract shall be conducted in such a way as to avoid interference with traffic of every kind by land and by water and with any other works in progress in vicinity.
- 12.2** The Contractor's attention is drawn to the fact that other contractors employed by the Employer may be working in the vicinity.
- 12.3** The Contractor shall where so directed by the Engineer be required to work to other contractor's drawings where-so-ever drawings for work not included in this Contract are related to particular details of the works.
- 12.4** The Contractor shall from time to time as the Engineer may direct, provide attendance on the other contractors and carry out minor works in connection with such contracts. The cost of provision of such attendance and work as may be so required will be charged to the appropriate provisional sum in the Bill of Quantities.

## **13. PORT TRUST RULES**

- 13.1** The Contractor shall observe the conservancy rules relating to the Harbour and shall always take such necessary additional steps to keep the harbour waters free of noxious or unhygienic matters coming from his works as are required by the Employer. Under no circumstances shall inflammable material be allowed to spill to the Harbour area.
- 13.2** The Contractor shall always observe and comply with the working rules and regulations of the Port Trust in force or as issued from time to time.
- 13.3** The Contractor shall obtain necessary Harbour Entry Permits for his workers and material on required payment.

## **14. EXISTING SERVICES.**

- 14.1** Drains, pipes, cables, overhead-wires and similar services encountered in the course of the work shall be guarded from injury by the Contractor at his own cost so that may continue in full and uninterrupted use to the satisfaction of the owners thereof or otherwise occupy any part of the site in a manner likely to hinder the operation of such services.



- 14.2** Should any damage be done by the Contractor to any mains pipes, cables or lines (whether above or below ground). Whether or not & shown on the drawings the Contractor must make good or bear the cost of making good the same without delay to the satisfaction of the Engineer and of the owners.

**15. ENTRY ON PRIVATE OR OTHER PROPERTY**

The Contractor shall not enter upon or commence any work in or upon, across or through any land, building or place being private property until authorised in writing by the Engineer or other competent authority to do so.

**16. NOTICE OF OPERATIONS**

No important operations shall be commenced nor shall work outside the usual working hours be carried out without the consent of the Engineer in writing or without full and complete notice also in writing being given to him.

**17. SECURITY AND SAFETY**

- 17.1** The Contractor shall comply with all regulations imposed by the Customs and Mormugao port Security Authorities (CISF) in respect of the passage of Plant, Vehicles, materials and personnel through Customs and Port barriers.

- 17.2** The Contractor shall take all possible precaution to prevent out breaks of fire on the site and in all offices, stores, camps and other places and things connected therewith and especially with respect to the safe storage of petroleum products, explosives and all other dangerous or hazardous goods. He shall comply with all rules, regulations and orders of any Statutory Authority and of the Engineer at no extra cost to the Employer.

- 17.3** The Contractor shall obtain from the Employer details of any restricted areas in or around the site and shall have prominently and clearly displayed for the information of his staff and work people notices defining any such restricted areas. Such notices shall be provided at his own expenses.

- 17.4** The Contractor will be required to take entry passes to the restricted area of Port for all personnel labourers and vehicle. No claim whatsoever on this account will be entertained.

**18. RETURNS AND DRAWINGS**

All reports, statement, returns, diagrams, photographs or drawings, etc. which the contractor is required to submit to the Engineer are unless otherwise directed, to be furnished in the triplicate.

**19. POSSESSION PRIOR TO COMPLETION**

The Engineer shall have the right to take possession of or use any completed or partially completed work or part of the work. Such possession or use shall not deem to be acceptance of any work completion in accordance with the contract agreement. If such, prior possession or use by the Engineer delays the progress of work, on equitable adjustment in the time of completion will be made and the contract agreement shall be deemed to be modified accordingly.

**20. COMPLETION DOCUMENTS**

For the purpose of provision of Clause 13 of the General Conditions of contract, to treat that the work has been completed and issue a final payment certificate, the following documents will be deemed to form the completion documents:

- (i) The Technical documents according to which the work was carried out.
- (ii) The set of construction drawings showing therein the modifications and corrections made during the course of execution signed by the Engineer.
- (iii) Certificates of final levels as set out for various works.
- (iv) Certificates of tests performed for various works.
- (v) List of surplus materials returned to stores, if any.

**21. DISPUTE IN MODE OF MEASUREMENT**

In case of any dispute as to the mode of measurement not covered by the contract to be adopted for any item of work, mode of measurement as per relevant Indian Standard Specification (Latest revision) shall be followed.

**22. INCOME TAX**

Income tax on the gross amount bill shall be deducted from the Contractor's bill as per Section 194 C of the Income Tax Act or as applicable from time to time.

**Annexure-1**

**EXCEPTIONS AND DEVIATIONS**

As pointed out in the Tender Call Notice, Bidder may stipulate here exceptions and deviations to the bid conditions, if considered unavoidable.

Sr. No	Page No. of Bid Document	Clause No. of Bid Document	Subject Deviation

Note: However, the Bidders to note that un acceptable deviations, if any, the bid shall be liable for rejection. Bidder is discouraged to deviate from Bid conditions, specifications, delivery schedules, commercial terms as per the tender document.

Duly authorized to sign this Authorization on behalf of: *[insert complete name of Tenderer]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

**Annexure-2**

<p><b>SPECIMEN LETTER OF AUTHORITY FOR SUBMISSION OF BID</b> (To be executed on Rs.100/- non-judicial Stamp Paper)</p>
--

To

The Chief Engineer,  
Mormugao Port Trust,  
Headland Sada,  
Goa 403 804.

Dear Sir,

We----- do hereby confirm that  
Shri ----- (Name, designation and Address) is/ are authorised to represent  
us to bid, negotiate and conclude the agreement on our behalf with you against tender  
no. ----- and his specimen signature is appended here to..

We confirm that we shall be bound by all and whatsoever our said signatory shall  
commit.

We understand that the communication made with him by the Employer/ Board shall be  
deemed to have been done with us in respect of this Tender.

***[specimen signature]***

Yours faithfully,

Signature:

Name & Designation:

For & on behalf of:

**Annexure-3**

**SPECIMEN CONTRACT AGREEMENT**

(To be executed on Rs.1000/- non-judicial Stamp Paper)

*[The successful Tenderer shall fill in this form in accordance with the instructions indicated]*

THIS CONTRACT AGREEMENT is made

the *[ insert: **number** ]* day of *[ insert: **month** ]*, *[ insert: **year** ]*.

BETWEEN

- (1) *The Trustees of Port of [insert name of the Port], an Autonomous Body of the Ministry of SHIIPING of the Government of INDIA, incorporated under the Major Port Trust Act,1963 as Amended thereafter, under the Laws of India and having its principal place of business at [ insert address of Port ] (hereinafter called “the Port”), and*
- (2) *[ insert name of Contractor ], [incorporated under] the laws of [ insert: country of Contractor ] and having its principal place of business at [ insert: address of Contractor ] (hereinafter called “the Contractor ”).*

WHEREAS the Employer/ Board invited Tenders against tender no.**[Number]** for execution of **[TENDER TITLE AND BRIEF DESCRIPTION]** viz., and has accepted a Tender by the Contractor in accordance with the supply/ delivery schedules, in the sum of *[insert Contract Price in words and figures, expressed in the Contract currency(ies) ]* (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the Employer/ Board and the Contractor , and each shall be read and construed as an integral part of the Contract:
  - (a) This Contract Agreement;
  - (b) Special Conditions of Contract;
  - (c) General Conditions of Contract;
  - (d) Technical Requirements (including Schedule of Requirements and Technical Specifications, drawings);
  - (e) Notice Inviting Tender;
  - (f) Replies issued to the Pre-bid queries, addenda is any issued**[numbers and dates];**
  - (g) The Contractor 's Bid and original Price and Delivery Schedules;
  - (h) The Employer/ Board's Notification of Award;
  - (i) **[Correspondence the Employer/ Board had exchanged with the bidder till and after award of contract [specific letters and dates];and**

(j) **[ Add here any other document(s)]**

AND WHEREAS

EMPLOYER/ BOARD accepted the Bid of CONTRACTOR for the provision and the execution of WORK at the CONTRACT PRICE as indicated in CONTRACT upon the terms and subject to the conditions of Contract. Now this CONTRACT AGREEMENT witnesseth and it is hereby agreed and declared as follows:

2. In consideration of the payment to be made to CONTRACTOR for WORK to be executed by him. CONTRACTOR hereby Covenants with EMPLOYER/ BOARD that CONTRACTOR shall and will duly provide, execute and complete Work and things in CONTRACT, mentioned or described or which are to be implied there from or may be reasonably necessary for completion of Work and at the times and in the manner and subject to the terms and conditions or stipulations mentioned in CONTRACT.
3. In consideration of the due provision, execution and completion of WORK by the CONTRACTOR in accordance with the terms of the CONTRACT, the EMPLOYER/ BOARD does hereby agree with CONTRACTOR that EMPLOYER/ BOARD will pay to Contractor the respective amounts for the work actually done by him and approved by EMPLOYER/ BOARD as per Payment Terms accepted in CONTRACT and payable to CONTRACTOR under provision of Contract at such time and at such manner as provided for in the CONTRACT.

AND

4. In consideration of the due provision, execution and completion of WORK, CONTRACTOR does hereby agree to pay such sums as may be due to EMPLOYER/ BOARD for the services rendered by EMPLOYER/ BOARD to Contractor as set forth in CONTRACT and such other sums as may become payable to EMPLOYER/ BOARD towards loss, damage to the EMPLOYER/ BOARD's equipment, materials etc. and such payments to be made at such time and in such manner as is provided in the CONTRACT.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *[insert the name of the Contract governing law country]* on the day, month and year indicated above.

For and on behalf of the Employer/ Board

Signed: *[insert signature]*

in the capacity of *[ insert title or other appropriate designation ]*

in the presence of *[insert identification of official witness]*

For and on behalf of the Contractor

Signed: *[insert signature of authorized representative(s) of the Contractor ]*

in the capacity of *[ insert title or other appropriate designation ]*

in the presence of *[ insert identification of official witness]*

**Annexure-4**

**SPECIMEN BANK GUARANTEE PERFORMANCE GUARANTEE/ SECURITY DEPOSIT  
(To be executed on Rs.1000/- non-judicial Stamp Paper)**

*[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated]*

In consideration of the Board of Trustees, Mormugao Port Trust, Goa (hereinafter called the "Board") having offered to accept the terms and conditions of the proposed agreement between ..... and .....(hereinafter called the said contractor(s)' for the work of ..... at Mormugao Port Trust for a period of one year. having agreed to production of an irrevocable Bank Guarantee for Rs. .... (Rupees ..... only) as a security/guarantee from the contractor(s) for compliance of his obligations in accordance with the terms and conditions in the said agreement.

1. We .....(hereinafter referred to as the "Bank") hereby undertake to (indicate the name of the Bank) pay the Board an amount not exceeding Rs. .... (Rupees .....only) on demand by the "Board"
2. We .....do hereby undertake to pay the amounts due and payable (indicate the name of the Bank) under this Guarantee without any demur, merely on a demand from the "Board" stating that the amount claimed is required to meet the recoveries due from the said contractor(s). Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. . .... (Rupees .....only).
3. We, the said Bank, further undertake to pay the "Board" any money so demanded notwithstanding any dispute or disputes raised by the contractor(s) in any suit or proceeding pending before any Court or Tribunal relating thereto, our liability under the present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment there under, and the contractor shall have no claim against us for making such payment.
4. We..... further agree that the Guarantee herein contained shall (indicate the name of the Bank) remain in full force and effect during the period that would be taken for the performance of the said agreement, and it shall continue to be enforceable till all the dues of the Board under or by virtue of the said Agreement have been fully paid, and its claims satisfied or discharged, or till the Engineer-in-charge, on behalf of the "Board", certifies that the terms and conditions of the agreement have been fully and properly carried out by the said contractor(s) and accordingly discharges this guarantee.

5. We.....further agree with the “Board” that the “Board” (indicate the name of the Bank) shall have the fullest liberty without our consent and without effecting in any manner our obligations hereunder, to vary any of the terms and conditions of the agreement or to extend time of performance by the said contractor(s) from time or to postpone for any time or from time to time any of the powers exercisable by the “Board” against the said contractor(s) and to forbear or enforce any of the terms and conditions relating to the said agreement, and we shall not be relieved from our liability by reason of any such variation or extension being granted to the said contractors or for any forbearance, act of omission on the part of the “Board” or any indulgence by the “Board” to the said contractor or by any such matter or thing whatsoever which under the laws relating to sureties would, but for this provision, have effect of so relieving us.
6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the contractor(s).
7. We ..... lastly undertake not to revoke this Guarantee except with (indicate the name of the Bank) the previous consent of the “Board” in writing.
8. This Guarantee shall be valid up to ..... unless extended on demand by the “Board”. Notwithstanding anything mentioned above, our liability against this Guarantee is restricted to Rs. .... (Rupees .....only), and unless a claim in writing is lodged with us within six months of the date of expiry or extended date of expiry of this Guarantee all our liabilities under this Guarantee shall stand discharged.

Dated the ..... day of .....For.....

(Indicate the name of the Bank)

Signature

Name

Designation

Seal

(Name)

Signature



**SPECIMEN EMD (Bank Guarantee Format)**

*[The Bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated. To be executed on Rs. 100/- non-judicial Stamp Paper]*

\_\_\_\_\_  
*[Bank's Name, and Address of Issuing Branch or Office]*

**Beneficiary:** \_\_\_\_\_ *[Name and Address of Employer/ Board]*

**Date:** \_\_\_\_\_

**TENDER GUARANTEE No.:** \_\_\_\_\_

We have been informed that *[name of the Tenderer]* (hereinafter called "the Tenderer") has submitted to you its Tender dated (hereinafter called "the Tender") for the execution of *[name of contract]* under Invitation for Tenders No. *[number]*. Furthermore, we understand that, according to your conditions, Tenders must be supported by an EMD.

At the request of the Tenderer, we *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (*[amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer:

- (a) has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender; or
- (b) having been notified of the acceptance of its Tender by the Employer/ Board during the period of Tender validity, (i) fails or refuses to execute the Form of Agreement, if required, or (ii) fails or refuses to furnish the performance guarantee, in accordance with the Instructions to Tenderers.

This guarantee will expire unless other wise extended or informed by the Employer/ Board:

- (a) if the Tenderer is the successful Tenderer, upon our receipt of copies of the contract signed by the Tenderer and the performance guarantee issued to you upon the instruction of the Tenderer; or
- (b) if the Tenderer is not the successful Tenderer, upon the earlier of
  - (i) our receipt of a copy of your notification to the Tenderer of the name of the successful Tenderer; or
  - (ii) twenty-eight days after the expiration of the Tenderer's Tender or any extended period thereof.;

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

\_\_\_\_\_  
*[signature(s)]*

*[Authorisation letter from the issuing bank that the signatory of this BG is authorised to do so- should also be enclosed]*

**SPECIMEN LETTER OF AUTHORITY FROM BANK FOR ALL BGs**  
(To be executed on Bank's Letter Head)

Date :

To,  
The Board of Trustees of Port of **[insert port]**,

Dear Sir,

Sub: Our Bank Guarantee No. \_\_\_\_\_ dated  
\_\_\_\_\_ for Rs. \_\_\_\_\_ favouring yourselves issued on  
a/c of M/s. \_\_\_\_\_.  
(Name of contractor)

.....

We confirm having issued the above mentioned guarantee favouring yourselves,  
issued on account of M/s. \_\_\_\_\_ validity for expiry upto date  
\_\_\_\_\_ and claim expiry date upto \_\_\_\_\_.

We also confirm 1) \_\_\_\_\_ 2) \_\_\_\_\_ is/are  
empowered to sign such Bank Guarantee on behalf of the Bank and his/their signatures  
is/are binding on the Bank.

Name of Signature of Bank Officer

**Annexure-5**

**TABLE- 1(1)**

**DETAILS OF PAST EXPERIENCE OF CONTRACTOR FOR SIMILAR DREDGING WORK**

Sr. No.	Name of Project	Location	EMPLOYER's Address	Commencement Date	Completion Date		Value	Duration of Contract
					Scheduled	Actual		

**Annexure-6**

**TABLE - 1(2)**

**CONCURENT COMMITMENTS OF THE BIDDER**

Sl. No	Name of the Project	Employer's Address	Value of Work	Scheduled Date of		Expected Completion
				Commencement	Completion	

**SIGNATURE OF BIDDER**

**Annexure-7**

**TABLE- 1 (3)**

**LIST OF DREDGERS AND OTHER MAJOR EQUIPMENTS PROPOSED  
FOR THE WORK**

<b>Sl. No</b>	<b>Dredger/Craft Equipment Proposed (with registration)</b>	<b>Capacity/size/ loaded/ draft Speed of vessel dredge pump RPM/ position fixing system/load recording instrument/speed of the vessel/diameter &amp; length of shore pipe etc</b>	<b>Year of built</b>	<b>Remarks</b>

**Note: (1) The bidder is requested to give all relevant and complete information as required and if required he can use separate sheets.**

## Annexure-8

### PROFORMA OF PRE CONTRACT INTEGRITY PACT

#### **General**

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on \_\_\_\_\_ day of the month of \_\_\_\_\_ 20\_\_\_\_, between, on one hand, the Board of Trustees of Mormugao Port Trust acting through Shri. \_\_\_\_\_,(Designation of the Officer), Mormugao Port Trust (hereinafter called the 'BUYER/ EMPLOYER', which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s. \_\_\_\_\_ represented by Shri. \_\_\_\_\_, Chief Executive Officer (hereinafter called the "BIDDER/SELLER" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part.

WHEREAS the 'BUYER/ EMPLOYER' has invited bids for \_\_\_\_\_ and the BIDDER/SELLER is submitting his bid for the same and

WHEREAS the BIDDER is a Private Limited company/Public Limited company/Government undertaking/Registered partnership firm constituted in accordance with the relevant law in the matter and the 'BUYER/EMPLOYER' is Mormugao Port Trust.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:-

- (i) Enabling the BUYER/EMPLOYER to obtain the desired said stores/equipment/services/works at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

- (ii) Enabling BIDDERS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the 'BUYER/ EMPLOYER' will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

**1. Commitments of the 'BUYER/ EMPLOYER'**

1.1 The 'BUYER/ EMPLOYER' undertakes that no official of the 'BUYER/EMPLOYER', connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the BIDDER, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.

1.2 The 'BUYER/ EMPLOYER' will, during the pre-contract stage, treat all BIDDERS alike and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.

1.3 All the officials of the 'BUYER/ EMPLOYER' will report to the appropriate Government office any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.

2. In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the 'BUYER/ EMPLOYER' with full and verifiable

facts and the same is prima facie found to be correct by the 'BUYER/EMPLOYER' necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the 'BUYER/EMPLOYER' and such a person shall be debarred from further dealings related-to the contract process. In such a case while an enquiry is being conducted by the 'BUYER/ EMPLOYER' the proceedings under the contract would not be stalled.

### **3. Commitments of BIDDERS**

The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:-

- 3.1 The BIDDER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the 'BUYER/EMPLOYER' connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2 The BIDDER further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the 'BUYER/ EMPLOYER' or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Government.



- 3.3\* BIDDERS shall disclose the name and address of agents and representatives and Indian BIDDERS shall disclose their foreign principals or associates.
- 3.4\* BIDDERS shall disclose the payments to be made by them to agents/brokers or any other intermediary, in connection with this bid/contract.
- 3.5\* The BIDDER further confirms and declares to the 'BUYER/EMPLOYER' that the BIDDER has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the BUYER or any of its functionaries, whether officially or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.
- 3.6 The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the 'BUYER/EMPLOYER' or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.7 The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.
- 3.8 The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.9 The BIDDER shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the 'BUYER/ EMPLOYER' as part of the business relationship, regarding

plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.

- 3.10 The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.11 The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12 If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the 'BUYER/ EMPLOYER' or alternatively, if any relative of an officer of the 'BUYER/EMPLOYER' has financial interest/stake in the BIDDER's firm, the same shall be disclosed by the BIDDER at the time of filing of tender.

The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.

- 3.13 The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the 'BUYER/ EMPLOYER'.

#### **4. Previous Transgression**

- 4.1 The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify bidder's exclusion from the tender process.

- 4.2 The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

**5. Earnest Money (Security Deposit)**

- 5.1 While submitting commercial bid, the BIDDER shall deposit an amount \_\_\_\_\_ (to be specified in Bid Document) as Earnest Money/Security Deposit, with the 'BUYER/ EMPLOYER' through any of the following instruments:

- (i) Bank Draft or a Pay Order in favour of \_\_\_\_\_
- (ii) A confirmed guarantee by an Indian Nationalised Bank, promising payment of the guaranteed sum to the 'BUYER/ EMPLOYER' on demand within 3 working days without any demur whatsoever and without seeking any reasons whatsoever. The demand for payment by the 'BUYER/ EMPLOYER' shall be treated as conclusive proof of payment.
- (iii) Any other mode or through any other instrument (to be specified in the Bid Document).

- 5.2 The Earnest Money/Security Deposit shall be valid upto a period of \_\_\_\_\_ months or the complete conclusion of the contractual obligations to the complete satisfaction of both the BIDDER and the BUYER, including warranty period, whichever is later.

- 5.3 In case of the successful BIDDER, a clause would also be incorporated in the Article pertaining to Performance Security in the Project Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Security in case of a decision by the BUYER/ EMPLOYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

- 5.4 In case of the successful BIDDER a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that

the provisions of Sanctions for violation shall be applicable for forfeiture of Performance Bond in case of a decision by the BUYER to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

- 5.5 No interest shall be payable by the 'BUYER/ EMPLOYER' to the BIDDER on Earnest Money/Security Deposit for the period of its currency.

**6. Sanctions for Violations**

- 6.1 Any breach of the aforesaid provisions by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the 'BUYER/ EMPLOYER' to take all or any one of the following actions, wherever required:-

(i) To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.

(ii) The Earnest Money Deposit (in pre-contract stage) and/or Security Deposit/Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by the 'BUYER/ EMPLOYER' and the 'BUYER/ EMPLOYER' shall not be required to assign any reason therefore.

(iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.

(iv) To recover all sums already paid by the BUYER, and in case of an Indian BIDDER with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a BIDDER from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER from the BUYER in connection with any other contract for any other stores, such

outstanding payment could also be utilized to recover the aforesaid sum and interest.

(v) To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the BIDDER, in order to recover the payments, already made by the BUYER, alongwith interest.

(vi) To cancel all or any other Contracts with the BIDDER. The BIDDER shall, be liable to pay compensation for any loss or damage to the 'BUYER/ EMPLOYER' resulting from such cancellation/rescission and the 'BUYER/ EMPLOYER' shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.

(vii) To debar the BIDDER from participating in future bidding processes of the Government of India for a minimum period of five years, which may be further extended at the discretion of the 'BUYER/ EMPLOYER'.

(viii) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the BUYER with the BIDDER, the same shall not be opened.

(ix) To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.

(x) Forfeiture of Performance Guarantee in case of a decision by the 'BUYER/ EMPLOYER' to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

6.2 The 'BUYER/ EMPLOYER' will be entitled to take all or any of the actions mentioned at para 6.1(i) to (x) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.

6.3 The decision of the 'BUYER/ EMPLOYER' to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the Independent Monitor(s) appointed for the purposes of this Pact.

## **7. Fall Clause**

7.1 The BIDDER undertakes that it has not performed/is not performing similar project at a price lower than that offered in the present bid in respect of any other Ministry/Department of the Government of India or PSU and if it is found at any stage that similar project was performed by the BIDDER to any other Ministry/Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the 'BUYER/EMPLOYER', if the contract has already been concluded.

## **8. Independent Monitors**

8.1 The 'BUYER/ EMPLOYER' has appointed the following Independent Monitors (hereinafter referred to as Monitors) for this Pact in consultation with the Central Vigilance Commission.

Dr. Ajit Raizada, IAS (Retd)  
D-2, 74Bunglows,  
TT Nagar,  
Bhopal (MP)

8.2 The task of the Monitors shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.

- 8.3 The Monitors shall not be subject to instructions by the representatives of the parties and perform his functions neutrally and independently.
- 8.4 Both the parties accept that the Monitors have the right to access all the documents relating to the project/bidding, including minutes of meetings.
- 8.5 As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the BUYER/EMPLOYER,
- 8.6 The BIDDER(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the BUYER/EMPLOYER, including that provided by the BIDDER. The BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER/Subcontractor(s) with confidentiality.
- 8.7 The BUYER/ EMPLOYER, will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.
- 8.8 The Monitor will submit a written report to the designated Authority of BUYER/ EMPLOYER within 8 to 10 weeks from the date of reference or intimation to him by the BUYER/ EMPLOYER/ BIDDER and, should the occasion arise, submit proposals for correcting problematic situations.

## **9. Facilitation of Investigation**

In case of any allegation of violation of any provisions of this pact or payment of commission, the BUYER/ EMPLOYER or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

## **10. Law and Place of Jurisdiction**

This Pact is subject to Indian Law.' The place of performance and jurisdiction is the seat of the BUYER/ EMPLOYER

## **11. Other Legal Actions**

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

## **12. Validity**

12.1 The validity of this Integrity Pact shall be from date of its signing and extend upto 5 years or the complete execution of the contract to the satisfaction of both the BUYER/ EMPLOYER and the BIDDER/SELLER, including warranty period, whichever is later. In case BIDDER is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract.

12.2 Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

12.3 If the BIDDER is a partnership or a consortium, this agreement must be signed by all partners or consortium members.



**13.** The parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_

**BUYER/ EMPLOYER**

**BIDDER.**

Name of the Officer.  
and Designation

**CHIEF EXECUTIVE OFFICER**

Witness

1. \_\_\_\_\_
2. \_\_\_\_\_

Witness

1. \_\_\_\_\_
2. \_\_\_\_\_,

\* Provisions of these clauses would need to be amended/ deleted in line with the policy of the BUYER/ EMPLOYER in regard to involvement of Indian agents of foreign bidders.



APPENDIX TO TENDER (1 of 2)

Item	Sub-Clause	Data
Employer's Name and Address	1.1.2.2	Mormugao Port Trust, Headland Sada, Goa – 403 804.
Contractor's Name and Address	1.1.2.3	(To be indicated after award of work)
Engineer's Name and Address	1.1.2.4	Mormugao Port Trust, Headland Sada, Goa – 403 804.
Time for Completion of the Work	7.2	45 weather working days from the scheduled date of commencement.
Defects Notification Period	10.1	Nil. Except in case of works taken over in sections where it may be 60 days for intermediate section excluding the final section.
Electronic Transmission Systems	1.3	E-mail
Governing Law	1.4	Constitution of India
Ruling Language	1.4	English
Language for Communication	1.4	English
Time for Access to the Site	2.1	Within 15 days of LOA
Amount of Performance Security	4.2	10% of the Accepted Contract amount in Rupees in the form of Bank Guarantee / D.D. on any Nationalised / Scheduled Bank ( except Co-operative Bank) from any branch in India, preferably from a local branch where the port is situated.
Normal Working Hours	5.5	24 Hrs. per day / seven days/ week
Liquidated damages	7.2	2 % per week or part thereof subject to maximum of 10% of contract value for the year of Maintenance Dredging

**Initials of Signatory of Tender**

**APPENDIX TO TENDER (2 of 2)**

<b>Item</b>	<b>Sub-Clause</b>	<b>Data</b>
Number and Timing of the Instalments	13.3	Three successive instalments and commencing from 1 <sup>st</sup> R/A Bill
Percentage of retention money	13.8	5% of value of each payment certificate.
Limit of retention money	13.8	5% of the Accepted Contract Amount
Minimum amount of Interim Payment Certificate	13.5	5% of the Accepted Contract Amount
Currency of payment	12.4, 13.14	In Rupees
Periods for submission of Insurance:		
Evidence of insurance	17.1	45 days
Relevant policies	17.1	45 days

**Initials of Signatory of Tender**

**SPECIMEN FOR FORM OF BID**  
*(To be executed on bidder's letter head)*

*[The Tenderer shall fill in this Form in accordance with the instructions indicated No alterations to its format shall be permitted and no substitutions shall be accepted The Form shall be submitted in both the Techno- Commercial and Price Covers separately.]*

Date: *[insert date (as day, month and year) of Tender Submission]* Tender No.: *[insert Tender number and Title ]*

To: *[insert complete name of Port]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tendering Documents, including Addenda No.: *[insert the number and issuing date of each Addenda, Clarifications issued after Pre-bid meeting along with Minutes];*
- (b) We offer to execute the work in conformity with the Tendering Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements *in accordance with the tender document bearing no. {insert Tender no.};*
- (c) The total price of our Tender, excluding any discounts offered in item (d) below, is: *[insert the total Tender price in words and figures, indicating the various amounts and the respective currencies]; [in case of Techno- Commercial offer it shall be mentioned that “ as filled in the Price Bid”]*
- (d) The discounts offered and the methodology for their application are:

**Discounts.** If our Tender is accepted, the following discounts shall apply. *[Specify in detail each discount offered and the specific item of the Schedule of Requirements to which it applies.] [in case of Techno- Commercial offer it shall be mentioned that “ as filled in the Price Bid”]*

**Methodology of Application of the Discounts.** The discounts shall be applied using the following method: *[Specify in detail the method that shall be used to apply the discounts]; [in case of Techno- Commercial offer it shall be mentioned that “ as filled in the Price Bid”]*

- (e) Our tender shall be valid for the period of time specified in **ITB Sub-Clause 2.3.3)** from the date fixed for the Tender submission deadline in accordance with **ITB Sub-Clause 5, ITT Sub-Clause 24.1)**, and it shall remain binding upon us and may be accepted at any time before the expiration of that period or any extended period in accordance with **ITB Sub-Clause 2.3.**
- (f) If our tender is accepted, we commit to obtain a performance guarantee in accordance with **ITB Sub-Clause 4.2** for the due performance of the Contract, as specified in specimen form for the purpose;
- (g) We, including any subcontractors or Contractors for any part of the contract, *[insert the nationality of the Tenderer, including that of all parties that comprise the Tenderer, if the Tenderer is a JV, and the nationality each subcontractor and Contractor ];*
- (h) We have no conflict of interest in accordance with **ITB Sub-Clause.**

- (i) Our firm, its affiliates or subsidiaries—including any subcontractors or Contractor s for any part of the contract—has not been declared ineligible by the Port, under laws of India or official regulations, in accordance with **ITB Sub-Clause**.
- (j) We understand that this Tender, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract Agreement is prepared and executed in accordance with **ITB Clause 6.0** and as per specimen form the purpose;
- (k) We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive.
- (l) We also make a specific note clauses of [**insert relevant nomenclature (in case of eqpt GCC, SCC and ITT)**] under which the Contract is governed.
- (m) In case of Out Station Firms, having a branch in India for liaison purposes, please mention the Name of the Contact person and Tel. No., Fax No., and mail- Id and also the Complete Postal Address of the Firm.
- (n) We understand that the Communication made with the Firm at (m), by the Port shall be deemed to have been done with us.

Signed: [*insert signature of person whose name and capacity are shown*]  
In the capacity of [*insert legal capacity of person signing the Form of Tender*]

Name: [*insert complete name of person signing the Form of Tender*]

Duly authorized to sign the Tender for and on behalf of: [*insert complete name of Tenderer*]

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [*insert date of signing*]

**PRE-QUALIFICATION OF BIDDERS**

The information to be filled in by the Bidder in the following pages will be used for purposes of Pre-Qualification as provided for in the Instructions to Tenderers.

**1. Only for Individual Bidders**

1.1. Constitution or legal status of Bidder (*Attach copy*)

Δ Place of registration:

Δ Principal place of business

Δ (Power of attorney of signatory of Bid (Attach)

**2. Turnover of the Firm/ JV**

Year	Turn over
<b>2013-14</b>	
<b>2014-15</b>	
<b>2015-16</b>	
<b><i>i.e. LAST THREE FINANCIAL YEARS ENDING 31<sup>ST</sup> MARCH OF THE PRVIOUS YEAR]</i></b>	

Attachments : Financial reports for the last **three** years: balance sheets, profit and loss statements, auditors' reports ( in case of companies/ corporation) etc. List them below and attach copies.

### 3. Similar Works

Particulars	Year	No. of works	Value
Total value of completed similar work as defined in the tender document during last 7 years  <b>[ 5 yrs. in case of Eqpt.]</b>	2009-10		
	2010-11		
	2011-12		
	2012-13		
	2013-14		
	2014-15		
	2015-16		

Attachments: Supporting documents, viz., Successful completion certificates from clients, other documentations to substantiate the similarity of work as per definition of "Similar Work". Employers reserves the right to verify the information;

#### 4. Information on Bid Capacity (works for which bids have been submitted and works which are yet to be completed) as on the date of this bid. **[ Only for Civil Works ]**

(A) Existing commitments and on-going works:

Description of work	Place & state	Contract No. & Date	Name and Address of Port	Value of Contract (Rs. Million)	Stipulated period of completion	Value of remaining to be completed (Rs. Million)	Anticipated date of completion
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

(B) Works for which bids already submitted.

Description of work	Place & State	Name and Address of Port	Stipulated period of completion	Date when decision is expected	Remarks if any
(1)	(2)	(3)	(5)	(6)	(8)

\* Attach certificate(s) from the Nodal Officer or his nominee(s)-in-Charge.



5. The following Contractor's Equipment are essential for carrying out the works. The Bidder should list all the information requested below. **[ only for Civil and Dredging Works ]**

Item of equipment	Requirement No. Capacity	Owned/leased/to be procured	Nos./ Capacity	Age / Condition	Remarks (From whom to be purchased)

6. Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. **[ Only for Civil]** Refer also to Sub Clause 4.3 (e) of instructions to Bidders and Sub Clause 9.1 of the Conditions of Contract.

Position	Name	Qualification	Years of experience (general)	Years of experience in the proposed position
Project Manager				
Discipline Specialist etc.,				

7. Proposed sub-contracts and firms involved

Sections of the works	Value of sub-contract	Sub-contractor (name and address)	Experience in similar work

8. Information on litigation history in which the Bidder is involved.

Other party(ies)	Port	Cause of dispute	Amount	Remarks involved showing present status.

9. Additional Information Bidder may like to submit

Duly authorized to sign this Authorization on behalf of: *[insert complete name of Tenderer]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

**JOINT VENTURE PARTNER INFORMATION FORM**

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below].*

Date: *[insert date (as day, month and year) of Tender Submission]*

Tender No.: *[insert number of Tendering process]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Tenderer's Legal Name: *[insert Tenderer's legal name]*

2. JV's Party legal name: *[insert JV's Party legal name]*

3. JV's Party Country of Registration: *[insert JV's Party country of registration and details of registration]*

4. JV's Party Year of Registration: *[insert JV's Part year of registration]*

5. JV's Party Legal Address in Country of Registration: *[insert JV's Party legal address in country of registration]*

6. JV's Party Authorized Representative Information

Name: *[insert name of JV's Party authorized representative]*

Address: *[insert address of JV's Party authorized representative]*

Telephone/Fax numbers: *[insert telephone/fax numbers of JV's Party authorized representative]*

Email Address: *[insert email address of JV's Party authorized representative]*

7. Attached are copies of original documents of: *[check the box(es) of the attached original documents]*

Δ Articles of Incorporation or Registration of firm named in 2, above, in accordance with Tender Document.

Δ In case of government owned entity from India, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with Tender Document

Δ PAN Number

Δ Sales Tax / VAT registration number

Δ Service Tax Registration Number

Δ Any other documents required for statutory compliance

Duly authorized to sign this Authorization on behalf of: *[insert complete name of Tenderer]* Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

<b>LETTER OF ACCEPTANCE</b> (On letterhead paper of the Port)
--

\_\_\_\_\_ (date)

To: \_\_\_\_\_  
(name and address of the Contractor)

Dear Sirs,

Sub: Tender No. CE/49/2016  
Title of the Tender: Maintenance Dredging at Mormugao Port for the  
years 2016.

Ref : Your bid dated  
And **[list of correspondence with the bidder]**

This is to notify you that your Bid dated \_\_\_\_\_ for execution  
of the \_\_\_\_\_ (name  
of the contract and identification number, as given in the Instructions to bidders) for the  
Contract Price of Rupees \_\_\_\_\_ (amount in words and figures as  
corrected and modified in accordance with the Tender document is hereby accepted by  
the Employer/ Board.

You are hereby requested to furnish Performance Security, in the form detailed in  
Tender Document for an amount of Rs. \_\_\_\_\_ within {14/21} days of the receipt of  
this letter of acceptance valid upto 28 days from the date of expiry of taking over  
certificate subject to removal of Defects Period i.e. upto \_\_\_\_\_ and also sign the  
contract agreement within {14/21} days of the receipt of this letter of acceptance, failing  
which action as stated in the tender document will be taken.

Detailed Letter of Acceptance will follow.

Please acknowledge receipt.

Yours faithfully,

Authorised Signature  
Name and Title of Signatory  
Name of Port

**ISSUE OF NOTICE TO PROCEED WITH THE WORKS**

(letter head of the Port)

\_\_\_\_\_ dated

***[ Only for those tenders requiring separate commencement letter especially when site handing over is required as per tender conditions ]***

To  
(name and address of the Contractors)

Dear Sirs,

Sub: Tender No. CE/49/2016  
Title of the Tender: Maintenance Dredging at Mormugao Port for the  
years 2016

Ref : Letter of Acceptance No. \_\_\_\_\_ dated \_\_\_\_\_

Pursuant to your furnishing the requisite security as stipulated in ***[ Insert relevant Clause ]*** and signing of the contract for execution of the of \_\_\_\_\_, you are hereby instructed to proceed with the execution of the said works in accordance with the contract documents. It is here by notified that the ***[site]*** is being handed over to you w.e.f. ***[date]*** for execution of work in accordance with the contact documents.

Yours faithfully

(Signature, name and title of  
signatory authorised to sign  
on behalf of Employer/ Board)

**SPECIMEN FORMAT FOR DECLARATION**  
(To be executed on bidder's letter head)

To

\_\_\_\_\_  
(Project Title)

Ref: \_\_\_\_\_

The undersigned, having studied the pre-qualification submission for the abovementioned project, hereby states:

- (a) The information furnished in our bid is true and accurate to the best of my knowledge.
- (b) That in case of being pre-qualified, we acknowledge that the Employer may invite us to participate in due time for the submission of a tender on the basis of provisions made in the tender documents to follow.
- (c) When the call for tenders is issued, if the legal, technical or financial conditions, or the contractual capacity of the firm or joint venture changes, we commit ourselves to inform you and acknowledge your sole right to review the pre-qualification made.
- (d) We enclose all the required pre-qualification data format and all other documents and supplementary information required for the pre-qualification evaluation.
- (e) We also state that no changes have been made by us in the downloaded tender documents and also understand that in the event of any discrepancies observed, the printed tender document No. \_\_\_\_\_ is full and final for all legal/contractual obligations (delete if not required).

Date:

Place:

Name of the Applicant : \_\_\_\_\_  
\_\_\_\_\_

Represented by (Name & capacity)

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

**APPENDIX I**

**MORMUGAO PORT TRUST**  
**ENGINEERING (CIVIL ) DEPARTMENT**

**TENDER No. CE/49/2016**

**ESTATE RENTAL CHARGES**

Sr. No.	Description	Rate		Remarks
		Rs.	Ps.	
1.	Licence fees on Port land for maintenance office buildings and other structures.	Rate will be charged as per Scale of Rates (SOR) prevailing during period of contract.		Payment shall be made to CDC Section, Finance Dept based on the recovery advice.

NOTE : Location of suitable area subject to the availability shall be decided by the Chief Engineer.

\_\_\_\_\_  
SIGNATURE OF THE CONTRACTOR

\_\_\_\_\_  
CHIEF ENGINEER

**APPENDIX II**

**DESIGNED DEPTH TO BE ACHIEVED FOR THE  
YEAR 2016.**

<b>AREA</b>	<b>DESIGNED DEPTH</b>
<b>B5 (Part)</b>	<b>(-) 14.1</b>
<b>B6</b>	<b>(-) 14.1</b>
<b>MD</b>	<b>(-) 14.1</b>
<b>C1 (Part)</b>	<b>(-) 14.1</b>
<b>C2</b>	<b>(-) 13.1</b>
<b>C3</b>	<b>(-) 13.1</b>
<b>D1</b>	<b>(-) 12.0</b>
<b>D2</b>	<b>(-) 12.0</b>
<b>Breakwater and Mole Berths</b>	<b>(-) 9.5</b>
<b>Berth No.4</b>	<b>(-) 8.0</b>

