

# **SECTION – 5**

## **CONDITIONS OF CONTRACT(CC)**

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## CONDITIONS OF CONTRACT

### A. GENERAL

#### 1. DEFINITIONS

- 1.1 Terms which are defined in the Contract Data are not also defined in the Conditions of Contract but keep their defined meanings. Bold letters are used to identify defined terms.

**Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Tender.

**Compensation Events** are those defined in Clause 38 hereunder.

The **Completion Date** is the date of completion of the Works as certified by the Employer in accordance with Sub Clause 46.1.

The **Contract** is the contract between the Employer and the Contractor to execute, complete and maintain the Works. It consists of the documents listed in Clause 2.2 below.

The **Contract Data** defines the documents and other information which comprise the Contract.

The **Contractor** is a person or corporate body or Joint Venture whose Tender to carry out the Works has been accepted by the Employer.

The **Contractor's Tender** is the completed Tender document submitted by the Contractor to the Employer.

The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

**Days** are calendar days; **months** are calendar months.

A **Defect** is any part of the Works not completed in accordance with the Contract.

The **Defects liability period** is the period named in the Contract Data and calculated from the Completion Date.

The **Employer** is the party who will employ the Contractor to carry out the Works.

**Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The **Initial Contract price** is the Contract Price listed in the Employer's Letter of Acceptance.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Employer by issuing an extension of time.

**'Joint Venture'** means an ad hoc association of firms that pool their resources and skills to undertake a large or complex contract in the role of "Contractor," with all firms (partners in the JV) being legally liable, jointly and severally, for the execution of the Contract in the event of a partner's withdrawal.

**Materials** are all supplies, including consumables, used by the contractor for incorporation in the Works.

**Plant** is any integral part of the Works which is to have a mechanical, electrical, electronic or chemical or biological function.

The **Site** is the area defined as such in the Contract Data.

**Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Employer.

The **Start Date** is given in the Contract Data. It is the date when the Contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.

**A Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract which includes work on the Site.

A **Variation** is an instruction given by the Employer which varies the Works.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Contract Data.

## **2. INTERPRETATION**

2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Employer will provide instructions clarifying queries about the Conditions of Contract.

2.2 The documents forming the Contract shall be interpreted in the following order of priority:

- i.
- ii. This Contract Agreement and the Appendices hereto.
- iii. Letter of Acceptance
- iv. Letter of Bid and the Price Schedule submitted by the Contractor.
- v. Addendums, Corrigendum and Pre-bid clarifications to the Tender
- vi. Contract Data, Special provisions (if any)
- vii. Particular Conditions of Contract (PCC)
- viii. General Conditions of Contract (GCC) / Conditions of Contract (CC)
- ix. Employers Requirements including scope of works, the Schedules.
- x. Technical specification, Safety, Health & Environment Manual
- xi. Design and Drawings
- xii. Any other documents pertaining to tender, issued by the Employer
- xiii. Contractor's Technical Proposal
- xiv. Any other documents pertaining to tender, submitted by the contractor

If an ambiguity or discrepancy is found in the documents, the Engineer will bring the same to the notice of the Employer and the Employer will issue necessary clarification or instruction, as per the need.

## **3. LAW GOVERNING CONTRACT**

3.1 The law governing the Contract is the Laws of India supplanted by the Karnataka Local Acts.

## **4. EMPLOYER'S DECISIONS**

- 4.1 Except where otherwise specifically stated, the Employer will decide contractual matters between the Employer and the Contractor.

**5. DELEGATION**

- 5.1 The Employer may delegate any of his duties and responsibilities to other people after notifying the Contractor and may cancel any delegation after notifying the Contractor.

**6. COMMUNICATIONS**

- 6.1 Communications between parties which are referred to in the conditions are effective only when in writing. A notice shall be effective only when it is delivered (in terms of Indian Contract Act).

**7. SUBCONTRACTING: Not applicable**

- 7.1 The Contractor may subcontract with the approval of the Employer but may not assign the Contract without the approval of the Employer in writing. Subcontracting does not alter the Contractor's obligations.

**8. OTHER CONTRACTORS**

- 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer.

**9. PERSONNEL**

- 9.1 The Contractor shall employ the technical personnel (of number and qualifications) as may be stipulated by K-RIDE from time to time during the execution of the work. The technical staff so employed shall be available at site as may be stipulated by the Employer.
- 9.2 If the Employer asks the Contractor to remove a person who is a member of the Contractor's staff or his work force stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

**10. EMPLOYER'S AND CONTRACTOR'S RISKS**

- 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

**11. EMPLOYER'S RISKS**

- 11.1 The Employer is responsible for the excepted risks which are:
- (a) Rebellion, riot commotion or disorder unless solely restricted to employees of the Contractor or his Sub Contractors arising from the conduct of the Works; or
  - (b) a cause due solely to the design of the Works, other than the Contractor's design; or
    - (i) could not have reasonably foreseen; or
    - (ii) could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures;

- (A) prevent loss or damage to physical property from occurring by taking appropriate measures or
- (B) insure against such loss or damage

**12. CONTRACTOR'S RISKS**

- 12.1 All risks of loss of or damage to physical property and of personal injury and death which arise during and in consequence of the performance of the Contract other than the excepted risks are the responsibility of the Contractor.

**13. INSURANCE:**

- 13.1 The Contractor shall prior to commencing the works, effect and thereafter maintain insurances, in the joint names of the Employer and the Contractor, (cover from the first working day after the Start Date to the end of Defects Liability Period), in the amounts stated in the Contract Data:

- (a) for loss of or damage to the Works, Plants and Materials and the Contractor's equipment;
- (b) for liability of both Parties for loss, damage, death and injury to third parties or their property arising out of the Contractor's performance of the Contract including the Contractor's liability for damage to the Employer's property other than the Works and
- (c) for liability of both Parties and of any Employer's representative for death and injury to the Contractor's personnel except to the extent that liability arises from the negligence of the Employer, any Employer's representative or their Employees.

- 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Employer for his approval before the Start Date. All such insurance shall provide for compensation to be payable to rectify the loss or damage incurred. All payments received from insurers relating to loss or damage shall be held jointly by the Parties and used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.

- 13.3 If the Contractor fails to effect or keep in force any of the insurances referred to in the previous sub-clauses or fails to provide satisfactory evidence, policies or receipts, the Employer may without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the Contractor. If no payments is due, the payment of the premiums shall be a debt due.

- 13.4 Alterations to the terms of an insurance shall not be made without the approval of the Employer.

- 13.5 Both Parties shall comply with any conditions of the insurance policies.

**14. SITE INVESTIGATION REPORTS:**

- 14.1 The Contractor, in preparing the tender, shall rely on any site investigation reports referred to in the Contract data, supplemented by any information available to the Tenderer.

**15. QUERIES ABOUT THE CONTRACT DATA**

15.1 The Employer will clarify queries on the Contract Data.

**16. CONTRACTOR TO CONSTRUCT THE WORKS**

16.1 The Contractor shall construct the Works in accordance with the Specification and Drawings.

**17. THE WORKS TO BE COMPLETED BY THE INTENDED COMPLETION DATE**

17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the program submitted by the Contractor, as updated with the approval of the Employer, and complete them by the Intended Completion Date.

**18. APPROVAL BY THE EMPLOYER:**

18.1 The Contractor shall submit Specification and drawings showing the proposed Temporary Works to the Employer, who is to approve them if they comply with the Specifications and Drawings.

18.2 The Contractor shall be responsible for the design of Temporary Works and Permanent works

18.3 The Employer's approval shall not alter the Contractor's responsibility for design of the Temporary Works and Permanent works

18.4 The Contractor shall obtain approval of third parties to design of the temporary Works and Permanent where required.

18.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Employer before their use.

**19. SAFETY**

19.1 The Contractor shall be responsible for the safety of all activities on the Site.

**20. DISCOVERIES**

20.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site is the property of the Employer. The Contractor is to notify the Employer of such discoveries and carry out the Employer's instructions for dealing with them.

**21. POSSESSION OF THE SITE**

21.1 The Employer shall give possession of all parts of the Site to the Contractor progressively, If possession of a part is not given by the date stated in the Contract Data the Employer is deemed to have delayed the start of the relevant activities and this will be delay event.

**22. ACCESS TO THE SITE**

22.1 The Contractor shall allow the Employer and any person authorized by the Employer access to the Site, to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where materials or plant are being manufactured / fabricated / assembled for the works.



**23 INSTRUCTIONS**

- 23.1 The Contractor shall carry out all instructions of the Employer which comply with the applicable laws where the Site is located.

**24 PROCEDURE FOR RESOLUTION OF DISPUTES:**

- 24.1 If the Contractor is not satisfied with the decision taken by the Employer, the dispute shall be referred by either party to Arbitration within 30 days of the notification of the Employer's decision.
- 24.2 If neither party refers the dispute to Arbitration within the above 30 days, the Employer's decision will be final and binding.
- 24.3 The Arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract.

**B. TIME CONTROL**

**25. PROGRAM**

- 25.1 Within the time stated in the Contract Data the Contractor shall submit to the Employer for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.
- 25.2 The Employer's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Employer again at any time. A revised Program is to show the effect of Variations and delay Events.

**26. EXTENSION OF THE INTENDED COMPLETION DATE**

- 26.1 The Employer shall extend the Intended Completion Date if a delay Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date.
- 26.2 The Employer shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Employer for a decision upon the effect of a delay Event or Variation and submitting full supporting information.

**27. DELAYS ORDERED BY THE EMPLOYER**

- 27.1 The Employer may instruct the Contractor to delay the start or progress of any activity within the Works.

**28. MANAGEMENT MEETINGS**

- 28.1 The Employer may require the Contractor to attend a management meeting. The business of a management meeting shall be to review the progress achieved and the plans for remaining work.

- 28.2 The responsibility of the parties for actions to be taken is to be decided by the Employer either at the management meeting or after the management meeting and stated in writing to be distributed to all who attended the meeting.

### **C. QUALITY CONTROL**

#### **29. IDENTIFYING DEFECTS**

- 29.1 The Employer shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Employer may instruct the Contractor to search for a Defect and to uncover and test any work that the Employer considers may have a Defect.

#### **30. TESTS**

- 30.1 If the Employer instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect the test shall be a delay Event.

#### **31. CORRECTION OF DEFECTS**

- 31.1 The Employer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 31.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Employer's notice.

#### **32. UNCORRECTED DEFECTS**

- 32.1 If the Contractor has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

### **D. COST CONTROL**

#### **33. Price Schedule**

- 33.1 The **Price Schedule** shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
- 33.2 The **Price Schedule** is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the **Price Schedule**.

#### **34. VARIATIONS**

- 34.1 The Employer shall have power to order the Contractor to do any or all of the following as considered necessary or advisable during the progress of the work by him
- (a) Increase or decrease of any item of work included in the BOQ;

- (b) Omit any item of work;
  - (c) Change the character or quality or kind of any item of work;
  - (d) Change the levels, lines, positions and dimensions of any part of the work;
  - (e) Execute additional items of work of any kind necessary for the completion of the works; and
  - (f) Change in any specified sequence, methods or timing of construction of any part of the work.
- 34.2 The Contractor shall be bound to carry out the work in accordance with any instructions in this connection, which may be given to him in writing by the Employer and such alteration shall not vitiate or invalidate the contract.
- 34.3 Variations shall not be made by the Contractor without an order in writing by the Employer, provided that no order in writing shall be required for increase or decrease in the quantity of an item appearing in the BOQ so long as the work executed conforms to the approved drawings.
- 34.4 The Contractor shall promptly request in writing to the Employer to confirm verbal orders and the officer issuing oral instructions shall confirm it in writing within 30 days of request, failing which the work shall be carried out as though there is no variation. In case variation is approved it shall be accompanied with BOQ, failing which the contractor shall be responsible for deviation if any.
- 35. PAYMENTS FOR VARIATIONS**
- 35.1 Payment for increase in the quantities of an item in the BOQ up to 25% of that provided in the Bill of Quantities shall be made at the rates quoted by the Contractor.
- 35.2 For quantities in excess of 125% of the tendered quantity of an item as given in the BOQ, the Contractor shall be paid at the rate entered in or derived from in the Schedule of Rates (applicable for the area of the work and current at the time of award of contract) plus or minus the overall percentage of the original tendered rates over the current Schedule of Rates prevalent at the time of award of contract.
- 35.3 If there is no rate for the additional, substituted or altered item of the work in the BOQ, efforts would be made to derive the rates from those given in the BOQ or the Schedule of Rates (applicable for the area of the work and current at the time of award of contract) and if found feasible the payment would be made at the derived rate for the item plus or minus the overall percentage of the original tendered rates over the current Schedule of Rates prevalent at the time of award of contract.
- 35.4 If the rates for additional, substituted or altered item of work cannot be determined either as at 35.1 or 35.2 or 35.3 above, the Contractor shall be requested to submit his quotation for the items supported by analysis of the rate or rates claimed, within 7 days.
- 35.5 If the Contractor's quotation is determined unreasonable, the Employer may order the Variation and make a change to the Contract Price which shall be based on Employer's own forecast of the effects of the Variation on the Contractor's costs.
- 35.6 If the Employer decides that the urgency of varying the work would prevent a quotation being given and

considered without delaying the work, no quotation shall be given and the Variation shall be treated as a delay Event.

- 35.7 Under no circumstances the Contractor shall suspend the work on the plea of non-settlement of rates for items falling under this Clause.

**36. SUBMISSION OF BILLS FOR PAYMENT**

- 36.1 The Contractor shall submit to the Employer monthly bills of the value of the work completed less the cumulative amount paid previously.
- 36.2 The Employer shall check the Contractor's bill and determine the value of the work executed which shall comprise of (i) value of the quantities of the items in the BOQ completed and (ii) valuation of Variations and Delay Events.
- 36.3 The Employer may exclude any item paid in a previous bill or reduce the proportion of any item previously paid in the light of later information.

**37. PAYMENTS**

- 37.1 Payments shall be adjusted for deductions for advance payments other than recoveries in terms of contract and taxes, at source as applicable under law. The Employer shall pay the Contractor within 60 days of submission of bill. The Contractor shall be liable to pay liquidated damages for shortfall in progress.
- 37.2 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

**38. DELETED**

**39. TAX**

- 39.1 The rates quoted by the Contractor shall be deemed to be inclusive of the sales, GST and other taxes that the Contractor will have to pay for the performance of this Contract. The Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law.

**40. PRICE ADJUSTMENT:**

**CHANGE IN COSTS - PRICE ADJUSTMENT  
PRICE ADJUSTMENT CLAUSE FOR WORKS CONTRACTS**

Contract price shall be adjusted for increase or decrease in rates and prices of labour, materials, fuels and lubricants in accordance with the following principles and procedures and as per formula given at Section-7 particular conditions of contract.

(a) The price Adjustment shall apply for the work done from the date of commencement up to the end of original period of completion and shall not apply to work carried out beyond the stipulated period of completion for reasons attributable to the Contractor.

(b) The Price adjustment shall be determined during each quarter from the formula given in contract data/ Particular Conditions of Contract.

(c) Following expression and meanings are assigned to the work done during the quarter:

R - Total value of work done during the quarter. It would include the amount of secured advance for materials paid for (if any) during the quarter, less the amount of the secured advance recovered during the quarter. It will exclude value for works executed under variations for which price adjustment (if any) will be worked out separately based on the terms mutually agreed.

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

#### **41. LIQUIDATED DAMAGES**

41.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date (for the whole of the works or the milestone as stated in the Contract Data). The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages does not affect the Contractor's liabilities.

41.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Employer shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment of bill.

#### **42. ADVANCE PAYMENTS:**

42.1 The Employer shall make payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, against provision by the Contractor of an unconditional bank guarantee in a form acceptable to the Employer issued by a Nationalized/Scheduled Bank in amounts equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor. The advance payments shall be repaid with prevailing bank interest.

42.2 The Contractor is to use the advance payment only to pay for Mobilization expenses required specifically for execution of the Works. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Employer

42.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuation of the work done, variations, price adjustments, delay events or liquidated damages

#### **43. SECURITIES:**

The Performance Security (including additional security for unbalanced tenders) shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall

be issued in an amount and form and type of instrument acceptable to the Employer. The Performance Security as indicated in the contract data shall be valid until a date 30 days from the date of expiry of Defects Liability Period and the additional security for unbalanced tenders shall be valid until a date 30 days from the date of issue of the certificate of completion. The security deposit will be released against BG

**44. COST OF REPAIRS:**

- 44.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

**E. FINISHING THE CONTRACT**

**45. COMPLETION**

- 45.1 The Contractor shall request the Employer to issue a Certificate of Completion of the Works and the Employer will do so upon deciding that the Work is completed.

**46. TAKING OVER**

- 46.1 The Employer shall take over the Site and the Works within seven days of issuing a certificate of Completion.

**47. FINAL ACCOUNT**

- 47.1 The Contractor shall supply to the Employer a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Employer shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 90 days of receiving the Contractor's account if it is correct and complete. If it is not, the Employer shall issue within 90 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Employer shall decide on the amount payable to the Contractor and make payment within 60 days of receiving the Contractor's revised account.

**48. AS BUILT DRAWINGS AND /OR OPERATING AND MAINTENANCE MANUALS**

- 48.1 If "As Built Drawings" (Completion Drawing) and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.
- 48.2 If the Contractor does not supply the Drawings by the dates stated in the Contract Data, or they do not receive the Employer's approval, the Employer shall withhold the amount stated in the Contract Data from payments due to the Contractor.

**49. TERMINATION**

- 49.1 The Employer may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 49.2 Fundamental breaches of Contract include, but shall not be limited to the following:

- (a) the Contractor stops work for 45 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Employer;
- (b) - “DELETED”-
- (c) The Contractor becomes bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) - “DELETED”-
- (e) the Employer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Employer;
- (f) the Contractor does not maintain a security which is required;
- (g) the Contractor has delayed the completion of works by the number of days for which the maximum amount of liquidated damages can be paid as defined in the Contract data; and
- (h) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in the executing the Contract.

For the purpose of this paragraph: “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution. “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.”

- 49.3 When either party to the Contract gives notice of a breach of contract to the Employer for a cause other than those listed under Sub Clause 49.2 above, the Employer shall decide whether the breach is fundamental or not.
- 49.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 49.5 If the Contract is terminated the Contractor shall stop work immediately, make the Site safe and secure and leave the Site as soon as reasonably possible.

## **50. PAYMENT UPON TERMINATION**

- 50.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Employer shall prepare bill for the value of the work done less advance payments received up to the date of the bill, less other recoveries due in terms of the contract, less taxes due to be deducted at source as per applicable law and less the percentage to apply to the work not completed as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer. Also all Bank Guarantee including Performance BG and Security Deposit shall be forfeited.

50.2 If the Contract is terminated at the Employer's convenience, the Employer shall prepare bill for the value of the work done, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works and less advance payments received up to the date of the certificate, less other recoveries due in terms of the contract, and less taxes due to be deducted at source as per applicable law and make payment accordingly.

**50.3 Part-Termination / De-scoping of Work** - In case the Contractor fails to adhere to the agreed programme of work by margin of 10% of the stipulated period or 21 days, whichever is earlier, or fails to complete the Works or parts of the Works within the stipulated or extended period of completion, or is unlikely to complete the whole Work or part thereof within time because of poor record of progress, the Employer at its sole discretion may terminate only part / limit the scope / de-scope part of the work of the contract also by taking out some part of the total scope of work and may complete or arrange for any other entity through the process of Open/ Limited/ Single Tender/ by calling quotations or any other manner as deemed fit at the risk and cost of the contractor. In such case, the additional financial implications (if any), shall be debited/ recovered from the any monies due to Contractor and/or performance security. The Contractor shall not be entitled for any claim in this regard whatsoever.

## **51. PROPERTY**

51.1 All materials on the Site, Plant, Equipment, Temporary Works and Works are deemed to be the property of the Employer, if the Contract is terminated because of a contractor's default.

## **52. RELEASE FROM PERFORMANCE**

52.1 If the Contract is frustrated by any event entirely outside the control of either the Employer or the Contractor the Employer shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which commitment was made.



**F. SPECIAL CONDITIONS OF CONTRACT**

**1. LABOUR :**

The Contractor shall, unless otherwise provided in the Contract, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport.

The Contractor shall, if required by the Employer, deliver to the Employer a return in detail, in such form and at such intervals as the Employer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such other information as the Employer may require.

**2. COMPLIANCE WITH LABOUR REGULATIONS:**

During continuance of the Contract, the Contractor and his sub-contractors shall abide at all times by all existing labour enactments and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made there under, regulations or notifications including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/Acts/Rules/regulations including amendments, if any, on the part of the Contractor, Employer shall have the right to deduct any money due to the Contractor including his amount of security deposit. The Employer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.

The employees of the Contractor and the Sub-Contractor in no case shall be treated as the employees of the Employer at any point of time.

**3. PROTECTION OF ENVIRONMENT:**

The Contractor shall take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation. During continuance of the contract, the Contractor and his sub-contractors shall abide at all times by all existing enactments on environmental protection and rules made there under, regulations, notifications and bye-laws of the State or Central Government, or local authorities and any other law, bye-law, regulations that may be passed or notification that may be issued in this respect in future by the State or Central Government or the local authority.

**4. CLAIMS, DISPUTES AND ARBITRATION**

**4.1 Contractor's Claims**

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any 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 notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this 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 Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep and provide further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 45 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the 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 a 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 45 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 fixed period of 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: [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: [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.

## 4.2 Amicable Settlement

In case any dispute between the Engineer and the Contractor for which claim has already been made by the contractor, remains unresolved, the Contractor shall, then, give notice of dissatisfaction and intention to commence arbitration to the Employer duly specifying the subject of the dispute or difference as also the amount of claim item wise. The Parties shall make attempts to settle the dispute amicably before the commencement of arbitration as per procedure set by K-RIDE. However, unless both Parties agree otherwise, demand for arbitration may be made by the Contractor after ninety days from the day on which a notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.

### Procedure for Amicable Settlement in contracts

1. Amicable Settlement Committee at senior management level shall make an attempt to resolve the issues/disputes within 90 days of request by the Contractor.
2. The Amicable Settlement Committee comprises of the officers nominated by MD /K-RIDE in case the issue involves Civil Engineering discipline and other discipline(s) of the engineering (other than Civil engineering):
3. Deleted
4. Deleted

## 4.3 Arbitration

Any dispute, in respect of which amicable settlement has not been reached, arising between the Employer and the Domestic or Foreign Contractor related to any matter arising out of or connected with this contract, then the contractor shall be entitled to demand in writing that the dispute or difference be referred to arbitration.

Only such dispute(s) or difference(s) in respect of which the demand had been made for amicable settlement under GCC 4.2 but could not be settled, shall be referred to arbitration.

The Arbitration proceedings shall commence from the day, a written and duly quantified demand for arbitration is received by Managing Director, Rail Infrastructure Development Company (Karnataka) Limited, Bangalore /K-RIDE).

The disputes so referred to arbitration shall be settled in accordance with the Indian Arbitration & Conciliation Act, 1996 and any statutory modification or re-enactment thereof.

Any dispute or difference or claim arising out of, or in connection with, or relating to the present contract or the breach, termination or invalidity thereof shall be referred and settled under the Arbitration Centre – Karnataka (Domestic and International) Rules 2012, by one or more arbitrators appointed in accordance with its rules.

### 4.3.1 Procedure for Appointment of Arbitrators: The arbitrators shall be appointed as per following procedure:

Any dispute or difference or claim arising out of, or in connection with, or relating to the present contract or the breach, termination or invalidity thereof shall be referred and settled under the

Arbitration Centre – Karnataka (Domestic and International) Rules 2012, by one or more arbitrators appointed in accordance with its rules.

- 4.3.2** Arbitration proceedings shall be held at Bangalore, India or at a place where K-RIDE's (dealing the contract) office is located, and the language of the arbitration proceedings and that of all documents and communications between the Parties shall be in English.
- 4.3.3** Where the Arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.
- 4.3.4** The fees and other charges of the conciliator/arbitrators shall be as per the fee structure fixed by the employer with reference to the Rules of Arbitration Centre – Karnataka (Domestic and International) Rules 2012. The cost of arbitration shall be borne equally by the respective parties.
- 4.3.5** Performance under the contract shall continue during the arbitration proceedings and payments due the Contractor by the Employer shall not be withheld, unless they are the subject matter of the arbitration proceeding.
- 4.3.6 Excepted matters:**

The following are the list of excepted matters in arbitration.

- a. Assistance by Employer for the Stores to be obtained by the Contractor.
- b. Illegal Gratification.
- c. Meaning and intent of specifications and Drawings.
- d. Rates for Non-tendered items of works.
- e. Signing of "No claim Certificate"
- f. Measurement of works.
- g. Provisions of Payment of Wages Act 1936.
- h. Provisions of Contract Labour (Regulation and Abolition) Act, 1970.
- i. Provisions of Employees Compensation Act 1923.
- j. Provisions of Mines Act 1952.
- k. Right of Employer to determine the Contract
- l. Payment on determination of Contract by Employer.

## **5. JURISDICTION OF COURTS**

The Contract Agreement shall be subject to exclusive jurisdiction of Courts as indicated in the Contract Data. . The **Jurisdiction of Courts is Bengaluru, Karnataka**

## **6. SETTLEMENTS THROUGH COURT**

It is a term of this contract that the Contractor shall not approach any Court of Law for settlement of such disputes or differences unless an attempt has first been made by the parties to settle such disputes or differences through Dispute resolution as above