

37. (1) **Removal of improper work and materials** – The Engineer shall during the progress of the works have power to order in writing from time to time.
- The removal from the Site, within such time or time as may be specified in the order, of any materials, which in the opinion of the Engineer, are not in accordance with the Contract.
 - The substitution of improper, substandard and unsuitable materials, and
 - The removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefore, of any work which in respect of materials or workmanship is not, in the opinion of the Engineer, in accordance with the Contract.
- (2) **Default of Contractor in Compliance** – In case of default on the part of the Contractor in carrying out such order, the Employer shall be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any sum due or which may become due to the Contractor.
38. (1) **Suspension of work** – The Contractor shall, on the written order of the Engineer, suspend the progress of the works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work, so far as is necessary in the opinion of the Engineer. The extra cost incurred by the Contractor in giving effect to the Engineer's instruction under this Clause shall be borne and paid by the Employer unless such suspension is
- Otherwise provided for in the Contract, or
 - Necessary by reason of some default on the part of the Contractor, or
 - Necessary by reason of climatic conditions on the Site, or
 - Necessary for the proper execution of the work or for the safety of workmen or Works of any part thereof in so far as such necessity does not arise from any act or default by the Engineer or the Employer or from any of the excepted risks defined in Clause 18 hereof.

Provided that the Contractor shall not be entitled to recover any such extra cost unless he gives written notice of his intention to claim to the Employer within twenty eight days of the Engineer's order. The Engineer shall settle and determine such extra payment and/or extension of time under Clause 42 hereof to be made to the Contractor in respect of such claim as shall in the opinion of the Employer, be fair and reasonable.

- (2) **Suspension lasting more than 90 days** – If the progress of the Works or any part thereof is suspended on the written order of the Engineer and if permission to resume Work is not given by the Engineer within a period of ninety days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) of sub-clause (1) of this Clause, the Contractor may serve a written notice on the Employer requiring permission within twenty eight days from the receipt thereof to proceed with the Works, or that part thereof in regard in which progress is suspended and, if such permission is not granted within that time, the Contractor by a further written notice so served may, but is not bound to, elect or treat the suspension where it affects part only of the Works as an omission of such part, or where it affects the whole Works, as an abandonment of the Contract by the Employer.

39. TIME SCHEDULE AND DELAYS

- 39.1 **Commencement Time:** The time allowed for execution for the Works as specified in the contract documents shall be the essence of the contract. The execution of the Works shall commence from the date specified by the Engineer in writing. If the Contractor fails or neglects to commence the execution of the Works as aforesaid, the Development Authority shall without prejudice to any other right or remedy, be at liberty to forfeit the security deposit absolutely.

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39.2 **Extension of Time for Completion due to Monsoon:** The time limit for this contract is 30 months including monsoon. Hence neither time extension nor compensation will be allowed on account of stoppage of work due to monsoon.

39.3 **Extension of Time due to unforeseen events:** If the work be delayed by

- (a) Force majeure such as acts of God, act of public enemy, act of Government, floods, epidemics etc. or
- (b) Abnormally bad weather, or
- (c) Serious loss or damage by fire or
- (d) Civil commotion, local combination of workmen, strike or lockout affecting any of the trades employed on the work, or
- (e) Any other cause, in the absolute discretion of the Engineer.

Then upon the happening of any such event causing delay, the Contractor shall immediately give notice thereof in writing to the Engineer but shall nevertheless use constantly his best endeavours to prevent or make good the delay and shall do all that may be reasonable required to the satisfaction of the Engineer to proceed with the work.

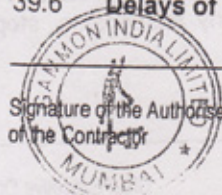
Request for extension of time, to be eligible for consideration shall be made by the Contractor in writing within 14 (fourteen) days of the happening of the event causing delay. The Contractor may also, if practicable indicate in such a request the period for which extension is desired. In any such case, the engineer may give a fair reasonable extension of time for completion of individual items or groups of items of work for which separate periods of completion are specified in the contract or the contract as whole. The decision of the Engineer in regard to the extension will be communicated to the Contractor in writing within a reasonable time.

39.4 **Network Schedule & Monthly Progress Reports:**

- (a) On award of the contract, the Contractor shall submit the time schedule for the Works in the form of PERT Net Works or Bar chart.
- (b) The schedules shall be prepared in direct relations to the time stated in the contract documents for completion of items or groups of items of Work and or the contract as a whole. It shall indicate the dates of commencement and completion of various activities of the Work and should contain no activities with duration greater than 28 days. Milestones would be so determined that at least 10 percent of the events are milestones and no two milestones are more than 3 months apart. The Engineer may approve the Schedule as submitted or suggest modifications as he thinks necessary. The Contractor shall modify the chart accordingly and obtain Engineer's approval.
- (c) The finalized Network may be amended from time to time, if felt necessary by the Contractor, with the approval of the Engineer.
- (d) A sum shall be held in abeyance 'as per 'Special Conditions of the Contract' for Non-attainment in each milestone in the network and shall be released only on completion of the work after deducting the compensation for delay.

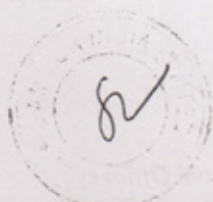
39.5 **Disruption of Progress for Lack of Drawings:** Since it is the responsibility of the contractor to provide drawings for execution, no compensation and time limit extension will be allowed on account of lack of drawings.

39.6 **Delays of Drawings:** Same as Clause 39.5 above.



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39.7 **Monthly Report:** The Contractors will be required to submit the monthly progress reports by the 7th day of the following month to the Engineer. Failure on the part of the Contractor to submit monthly report in time will attract action as per Clause No. 39.4

39.8 **Rate of Progress:** If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any Section is at any time, in the opinion of the Engineer, too slow to comply with the Time for Completion, the Engineer shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any Work at night or on locally recognized days of rest, he shall be entitled to seek the consent of the Engineer so to do. Provided that if any steps, taken by the Contractor in meeting his obligations under this Clause, involve the Development Authority in additional supervision costs, such costs shall be determined by the Engineer and shall be recoverable from the Contractor, and may be deducted by the Development Authority from any monies due or to become due to the Contractor and the Engineer shall notify the Contractors accordingly.

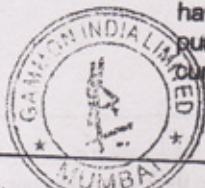
39.9 **Suspension of Work:**

- (a) The Contractor shall, on receipt of the order in writing of the Engineer, suspend the progress of the Works or any part thereof for such time and in such manner as the Engineer may consider necessary for any of the following reasons: -
 - (i) On account of continued non-compliance of the instructions of the Engineer or any other default on the part of the Contractor, or
 - (ii) For proper execution of the Works or part thereof for reasons other than the default of the Contractor, or
 - (iii) For safety of the Works or part thereof.
- The Contractor shall, during such suspension, properly protect and secure the Works to the extent necessary and carry out the instructions given in that behalf by the Engineer.
- (b) If the suspension is ordered for reasons (ii) and (iii) in sub-paragraph (a) above, the Contractor shall be entitled to an extension of time equal to the period of every such suspension plus a reasonable time as decided by the Engineer.

If the suspension is ordered for reasons of (i) in sub-paragraph (a) above, the Engineer shall have powers to suspend the payment under the contract. Such suspension of payment may be continued until default shall have been rectified.

39.10 **Stoppage / Alteration / Restriction of Work:**

- 1) If at any time after the execution the contract documents the Engineer shall for any reason whatsoever (other than default on the part of Contractor for which the Development Authority is entitled to rescind the contract) desires that the whole or any part of the Work specified in the tender should be suspended for any period or that the whole or part of the Work should not be carried out, at all he shall give to the Contractor a notice in writing of such desire and upon the receipt of such notice the Contractor shall forthwith suspend or stop the Work wholly or in part as required, after having due regard to the appropriate stage at which the Work should be stopped or suspended so as not to cause any damage or injury to the Work already done or endanger the safety thereof provided that the decision of the Engineer as to the stage at which the Work or any part of it could be or could have been safely stopped or suspended shall be final and conclusive against the Contractor. The Contractor shall have no claim to any payment or compensation whatsoever by reason of or in pursuance of any notice as aforesaid, on account of any suspension, stoppage or curtailment except to the extent specified hereinafter.



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2) Where the total suspension of Work ordered as aforesaid continued for a continuous period exceeding 90 days the Contractor shall be at liberty to withdraw from the contractual obligations under the contract so far as it pertains to unexecuted part of the Work by giving a 10 days prior notice in writing to the Engineer, within 30 days of the expiry of the said period of 90 days, of such intention and requiring the Engineer to record the final measurement of the Work already done and to pay final bill. Upon giving such notice the Contractor shall be deemed to have been charged from his obligations to complete the remaining unexecuted Work under his contract. On receipt of such notice the Engineer shall proceed to complete the measurements and make such payments as may be finally due to the Contractor within a period of 90 days from the receipt of such notice in respect of the Work already done by the Contractor. Such payment shall not in any manner prejudice the right of the Contractor to any further compensation under the remaining provisions of this clause.

3) Where the Engineer required the Contractor to suspend the Work for a period in excess of 30 days at any time or 60 days in the aggregate, the Contractor shall be entitled to apply to the Engineer within 30 days of the resumption of Work after such suspension for payment to the extent of pecuniary loss suffered by him in respect of Working machinery remain ideal on the site of on the account of his having and to pay the salary or wages of, labour engaged by him during the said period of suspension provided always that the Contractor shall not be entitled to any claim in respect of any such Working machinery, salary or wages for the first 30 days whether consecutive or in the aggregate or such suspension or in respect of any suspension whatsoever occasioned by unsatisfactory Work or any other default on his part. The decision of the Engineer in this regard shall be final and conclusive against the Contractor.

4) In the event of -

- i) Any total stoppage of Work on notice from Engineer under sub clause (1) in that behalf.
- ii) Withdrawal by the Contractor from the contractual obligations complete the remaining unexecuted Work under sub clause (2) on account of continued suspension of Work for a period exceeding 90 days.

It shall be open to the Contractor, within 90 days from the service of (i) the notice of stoppage of Work or (ii) the notice of withdrawal from the contractual obligations under the contract on account of the continued suspension of Work (iii) notice under clause 39.10(1) resulting in such curtailment to produce to the Engineer satisfactory documentary evidence that he had purchased or agreed to purchase material for use in the contracted Work, before receipt by him of the notice of stoppage, suspension or curtailment and require Government to take over on payment such material at the rates determined by the Engineer provided, however, such rates shall in no case exceed the rates at which the same was acquired by the Contractor. The Development Authority shall thereafter take over the materials so offered, provided the quantities offered, are not in excess of the requirements of the unexecuted Work as specified in the accepted tender and are of quality and specifications approved by the Engineer.

39.11 **Liquidated Damages for Delay:** If the Contractor fails to complete the Works and clear the Site on or before the Contract or extended Date(s)/period(s) of completion, he shall, without prejudice to any other right or remedy of Development Authority on account of such breach, pay as agreed compensation, amount calculated as stipulated below (or such smaller amount as may be fixed by the Engineer) on the Contract Value of the whole Work or on the Contract Value of the item or group of items of Work for which separate period of completion are given in the contract and of which completion is delayed for every week that the whole of the Work or item or group of items of Work concerned remains uncompleted, even though the contract as a whole be completed by the contract or the extended date of completion. For this purpose the term "Contract Value" shall be the value of the Work at Contract Rates as ordered including the value of all deviations ordered:

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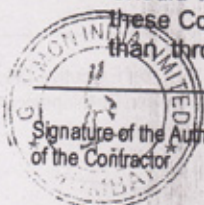
- (a) For completion period not exceeding 6 months (originally stipulated or as extended): @ 1% of the balance of Contract Value on the date per week subject to a maximum of 10%
- (b) For completion period exceeding 6 months and not exceeding 2 years (as originally stipulated as extended): @ 0.5% of the balance of Contract Value on the date per week subject to a maximum of 7.5%
- (c) For completion period exceeding 2 years (as originally stipulated or as extended): @ 0.25% of the balance of Contract Value on the date per week subject to a maximum of 5%

The amount of liquidated damages may be adjusted set off against any sum payable to the Contractor under this or any other contract with the Development Authority or from the security deposit of the Contractor entirely at the discretion of the Development Authority.

40. (1) **Possession of site** – Save in so far as the contract may prescribe, the extent of portions of the Site of which the Contractor is to be given possession from time to time and the order in which such portions shall be made available to him and subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer will, with the Engineer's written order to commence the Works, give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 13 hereof, if any, and otherwise in accordance with such reasonable proposals, of the Contractor as he shall, by written notice to the Engineer, make and will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with the said programme or proposals, as the case may be. If the Contractor suffers delays or incurs cost for failure on the part of the Employer to give possession in accordance with the terms of this Clause, the Employer shall grant an extension of time for the completion of the Works and certify such sum as, in his opinion, shall be fair to cover the cost incurred, which sum shall be paid by the Employer.
- (2) **Way leaves etc.** – The Contractor shall bear all costs and charges for special or temporary way leaves required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional accommodation outside the site required by him for the purpose of the Works.
41. (1) **Time of Completion and progress of Works** – The progress of the work shall conform to the approved Work Programme and subject to any requirement in the contract as the completion of any section of the Works before completion of the whole, the whole of the Works shall be completed, in accordance with the provisions of this contract hereof, within the time stated in the Contract calculated from last days of the period named in the Tender as that within which the Works are to be commenced, or such extended time as may be allowed.
- (2) **Failure in keeping to stages of work programme** – if the Contractor does not keep to the approved programmed and continues at any stage to fall behind his schedule by as much as twenty percent (20%) of the said approved work programme, within thirty (30) days from receipt by him of a written notice from the Engineer, or if in the opinion of the Engineer the delay will substantially affect operation activities or execution of a major work item and it is ascertained by the Engineer that the Contractor cannot remedy the occasion within the stipulated time, the Engineer shall have full authority to undertake measures to recover from such adverse condition in terms of the provisions of this contract.

42. EXTENSION OF TIME FOR COMPLETION

Should the amount of extra or additional work of any kind or any cause of delay referred to in these Conditions, or other special circumstances of any kind whatsoever which may occur, other than through a default of the Contractor, be such as fairly to entitle the Contractor to an



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- 2) Where the total suspension of Work ordered as aforesaid continued for a continuous period exceeding 90 days the Contractor shall be at liberty to withdraw from the contractual obligations under the contract so far as it pertains to unexecuted part of the Work by giving a 10 days prior notice in writing to the Engineer, within 30 days of the expiry of the said period of 90 days, of such intention and requiring the Engineer to record the final measurement of the Work already done and to pay final bill. Upon giving such notice the Contractor shall be deemed to have been charged from his obligations to complete the remaining unexecuted Work under his contract. On receipt of such notice the Engineer shall proceed to complete the measurements and make such payments as may be finally due to the Contractor within a period of 90 days from the receipt of such notice in respect of the Work already done by the Contractor. Such payment shall not in any manner prejudice the right of the Contractor to any further compensation under the remaining provisions of this clause.
- 3) Where the Engineer required the Contractor to suspend the Work for a period in excess of 30 days at any time or 60 days in the aggregate, the Contractor shall be entitled to apply to the Engineer within 30 days of the resumption of Work after such suspension for payment to the extent of pecuniary loss suffered by him in respect of Working machinery remain ideal on the site of on the account of his having and to pay the salary or wages of, labour engaged by him during the said period of suspension provided always that the Contractor shall not be entitled to any claim in respect of any such Working machinery, salary or wages for the first 30 days whether consecutive or in the aggregate or such suspension or in respect of any suspension whatsoever occasioned by unsatisfactory Work or any other default on his part. The decision of the Engineer in this regard shall be final and conclusive against the Contractor.
- 4) In the event of –
- Any total stoppage of Work on notice from Engineer under sub clause (1) in that behalf.
 - Withdrawal by the Contractor from the contractual obligations complete the remaining unexecuted Work under sub clause (2) on account of continued suspension of Work for a period exceeding 90 days.

It shall be open to the Contractor, within 90 days from the service of (i) the notice of stoppage of Work or (ii) the notice of withdrawal from the contractual obligations under the contract on account of the continued suspension of Work (iii) notice under clause 39.10(1) resulting in such curtailment to produce to the Engineer satisfactory documentary evidence that he had purchased or agreed to purchase material for use in the contracted Work, before receipt by him of the notice of stoppage, suspension or curtailment and require Government to take over on payment such material at the rates determined by the Engineer provided, however, such rates shall in no case exceed the rates at which the same was acquired by the Contractor. The Development Authority shall thereafter take over the materials so offered, provided the quantities offered, are not in excess of the requirements of the unexecuted Work as specified in the accepted tender and are of quality and specifications approved by the Engineer.

- 39.11 **Liquidated Damages for Delay:** If the Contractor fails to complete the Works and clear the Site on or before the Contract or extended Date(s)/period(s) of completion, he shall, without prejudice to any other right or remedy of Development Authority on account of such breach, pay as agreed compensation, amount calculated as stipulated below (or such smaller amount as may be fixed by the Engineer) on the Contract Value of the whole Work or on the Contract Value of the item or group of items of Work for which separate period of completion are given in the contract and of which completion is delayed for every week that the whole of the Work or item or group of items of Work concerned remains uncompleted, even though the contract as a whole be completed by the contract or the extended date of completion. For this purpose the term "Contract Value" shall be the value of the Work at Contract Rates as ordered including the value of all deviations ordered:

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- (a) For completion period not exceeding 6 months (originally stipulated or as extended): @ 1% of the balance of Contract Value on the date per week subject to a maximum of 10%
- (b) For completion period exceeding 6 months and not exceeding 2 years (as originally stipulated as extended): @ 0.5% of the balance of Contract Value on the date per week subject to a maximum of 7.5%
- (c) For completion period exceeding 2 years (as originally stipulated or as extended): @ 0.25% of the balance of Contract Value on the date per week subject to a maximum of 5%

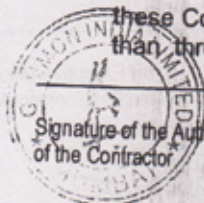
The amount of liquidated damages may be adjusted set off against any sum payable to the Contractor under this or any other contract with the Development Authority or from the security deposit of the Contractor entirely at the discretion of the Development Authority.

40. (1) **Possession of site** – Save in so far as the contract may prescribe, the extent of portions of the Site of which the Contractor is to be given possession from time to time and the order in which such portions shall be made available to him and subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer will, with the Engineer's written order to commence the Works, give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 13 hereof, if any, and otherwise in accordance with such reasonable proposals, of the Contractor as he shall, by written notice to the Engineer, make and will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with the said programme or proposals, as the case may be. If the Contractor suffers delays or incurs cost for failure on the part of the Employer to give possession in accordance with the terms of this Clause, the Employer shall grant an extension of time for the completion of the Works and certify such sum as, in his opinion, shall be fair to cover the cost incurred, which sum shall be paid by the Employer.
- (2) **Way leaves etc.** – The Contractor shall bear all costs and charges for special or temporary way leaves required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional accommodation outside the site required by him for the purpose of the Works.

41. (1) **Time of Completion and progress of Works** – The progress of the work shall conform to the approved Work Programme and subject to any requirement in the contract as the completion of any section of the Works before completion of the whole, the whole of the Works shall be completed, in accordance with the provisions of this contract hereof, within the time stated in the Contract calculated from last days of the period named in the Tender as that within which the Works are to be commenced, or such extended time as may be allowed.
- (2) **Failure in keeping to stages of work programme** – if the Contractor does not keep to the approved programmed and continues at any stage to fall behind his schedule by as much as twenty percent (20%) of the said approved work programme, within thirty (30) days from receipt by him of a written notice from the Engineer, or if in the opinion of the Engineer the delay will substantially affect operation activities or execution of a major work item and it is ascertained by the Engineer that the Contractor cannot remedy the occasion within the stipulated time, the Engineer shall have full authority to undertake measures to recover from such adverse condition in terms of the provisions of this contract.

42. EXTENSION OF TIME FOR COMPLETION

Should the amount of extra or additional work of any kind or any cause of delay referred to in these Conditions, or other special circumstances of any kind whatsoever which may occur, other than through a default of the Contractor, be such as fairly to entitle the Contractor to an



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extension of time for the completion of the works, the Engineer shall determine the period of such extension and shall notify the Employer and the Contractor accordingly. Provided that the Engineer is not bound to take into account any extra or additional work or other special circumstances unless the Contractor has within twenty-eight days after such work has been commenced, or such circumstances have arisen or as soon then after as is practicable, submitted to the Engineer's Representative full and detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

43. NO NIGHT OR SUNDAY WORK

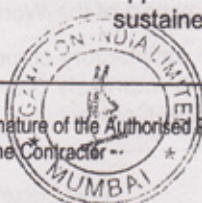
Subject to any provision to the contrary contained in the Contract, none of the Permanent Works shall, save as hereinafter provided, be carried on during the night or on Sundays, if locally recognized as days of rest, or other locally recognized equivalent without the permission in writing of the Engineer's Representative, except when the works is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer's Representative, provided always that the provisions of the Clause shall not be applicable in the case of any work which it is customary to carry out by rotary of shifts and as decided by the Govt.

44. RATE OF PROGRESS AND NIGHT WORK WHEN PERMITTED

If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any section is at any time, in the opinion of the Engineer, too slow to ensure completion by the prescribed time or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as are necessary and the Engineer may approve to expedite progress as to complete the Works or such section by the prescribed time or extended time. The Contractor shall not be entitled to any additional payment for taking such steps. If as a result of any notice given by the Engineer under this Clause, the Contractor shall seek the Engineer's permission to do any work at night or on Sundays, if locally recognized as days of rest, or their locally recognized equivalent, such permission shall not be unreasonable refused. When work at night has to be carried out, the Contractor shall, at his own cost and expense, make adequate arrangements for lighting and provide necessary facilities for safety etc. and comply with all stipulations as may have been imposed by the Engineer in granting permission for night work.

- 45. (1) Liquidated Damages for Delay** – If the Contractor shall fail to achieve completion of the Works within the time prescribed hereof, then the Contractor shall pay to the Employer the sum stated in the Contract as liquidated damages for such default and not as a penalty for every day of part of a day which shall elapse between the time prescribed by hereof and the date of certified completion of the Works. The Employer may without prejudice to any other method of recovery, deduct the amount of such damages from any money in his hands, due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.
- (2) Reduction of liquidated Damages** – If, before the completion of the whole of the Works any part or section of the Works has been certified by the Engineer as completed, and occupied or used by the Employer, the liquidated damages for delay shall, for any period of delay after such certificate and in the absence of alternative provision in the contract be reduced in the proportion which the value of the part or section so certified bears to the value of the whole of the Works.
- (3) Extent of Liquidated Damages** – As per Clause 39.11 above.
- (4) Liquidated Damage as Reasonable Compensation** – The 'Liquidated damage' referred to in sub-clause (1) to (3) above, shall be considered as reasonable compensation to the applied to the use of the Employer without reference to the actual loss or damage sustained and whether or not any damage shall have been sustained.

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- (5) **No bonus for Early completion** – The Contractor shall not be entitled to payment of any bonus for early completion of the works.

46. CERTIFICATION OF COMPLETION OF WORK

- (1) **Erection** – Erection of Mechanical and electrical equipment shall be construed to have been completed where equipment in question is placed in position undergoes all necessary tests such as those for alignment, verticality, leak proofness, insulation etc. as may be specified elsewhere in the tender documents and put to operation.
- (2) **Completion** – Completion is a stage after Commissioning of the plant but responsibility of the Contractor remains open upto one year defect liability period.

An item shall be considered as minor work where its non-completion may not in the opinion of the employer, stand in the way of commencement of plant operation.

47. (1) **Defect Liability Period or Guarantee Period** – This period shall be a period of one year counted from the date of Commissioning of the entire plant excluding consumer meter connections.
- (2) **Cost of Execution of work of repair, etc.** – The repair work shall be carried out by the Contractor at his own expense if the necessity thereof shall, in the opinion of the Engineer, be due to the use of materials or workmanship not in accordance with the Contract, or to neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.
- (3) **Remedy on contractor's failure to carry out work required** – If the Contractor shall fail to do any such work as aforesaid requirement by the Engineer, the Employer shall be entitled to employ and pay other persons to carry out the same, which in the opinion of the Employer, the Contractor was liable to do at his own expense under the Contract. In the said event, all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any sum due or which may become due to the Contractor.

48. CONTRACTOR TO SEARCH

The Contractor shall, if required by the Engineer in writing, search under the directions of the Engineer, for the cause of any defect, imperfection or fault appearing during the progress of the Works or in the period of Maintenance. Unless such defect, imperfection or fault shall be one for which the contractor is liable under the contract, the cost of the work carried out by the contractor in searching as aforesaid shall be borne by the Employer. If such defect, imperfection or fault shall be one for which the contractor is liable as aforesaid, the cost of the work carried out in searching as aforesaid shall be borne by the contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault at his own expense in accordance with the provisions of Clause 47 hereof to the satisfaction of the Engineer.

49. ALTERATIONS, ADDITIONS AND OMISSIONS

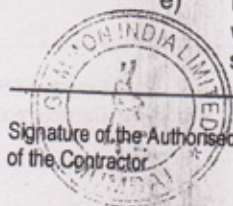
- (1) **Variations** – The Employer may make any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be desirable, he shall have power to order the Contractor to do and the Contractor shall do any of the following :
- Increase or decrease the quantity of any work included in the contract.
 - Omit any such work.
 - Change the character or quality or kind of any such work.
 - Change the levels, lines position and dimensions of any part of the Works and
 - Execute additional work of any kind necessary for the satisfactory completion of the works or for deriving satisfaction of the Employer. It is expressly provided that no such variation shall, in any way vitiate or invalidate the Contract, but the value, if

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any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price.

- (2) **Orders for variations to be in writing** – No such variations shall be made by the Contractor without an order in writing from the Employer. Provided that no order in writing shall be required for insignificant increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Schedule of prices. Provided also that if for any reason the Employer shall consider it desirable to give any such order verbally, the Contractor shall comply with such order and any confirmation in writing of such verbal order given by the Employer whether before or after the carrying out of the order, shall be deemed to be an order in writing within the meaning of this Clause. Provided further that in the event of non-receipt of written confirmation from the Employer, the Contractor shall, within seven days, confirm the same from his end in writing to the Employer, and if such confirmation is not contradicted in writing within fourteen days by the employer, it shall be deemed to be an order in writing by the Employer.
50. (1) **Valuation of variations** – All extra or additional work done or work omitted or substituted by order of the Employer shall be valued at the rates and prices set out in the Contract if, in the opinion of the Employer, the same shall be applicable as it is or with addition to or subtraction from an accepted item. If the Contract does not contain any rates or prices applicable to the extra or additional work, then the rates or prices shall be obtained from the Presidency Circle, Public Works Department schedule of rates as was in vogue on the date of submission of the tender. Where such rates are not available in P.C.P.W.D. schedule of rates, the market analyzed rate as approved by the Employer shall be final and binding. In case of such analyzed rates, 10% profit including overhead, consultant's fees, ST. Turnover Tax etc. shall be allowed. No other overhead, or other expenses shall be taken into account and shall be considered to be inclusive of contractor's profit. This valuation does not hold good for the variations mentioned in description of the project.
- (2) **Variation Exceeding 20 Percent** – If, on certified completion of the whole of the Works, it shall be found that a reduction or increase greater than twenty percent (20%) of the sum named in the Letter of Acceptance, excluding all fixed sums, provisional sums if any, results from :
- a) the aggregate effect of all Variation Orders, and
 - b) all adjustments upon measurement of the estimated quantities set out in the Schedule of Prices excluding all provisional sums, and adjustments of price made shall be adjusted by such sum as may be agreed between the Contractor and the Employer or, failing agreement, fixed by the Employer having regard to all material and relevant factors, including the Contractor's site and general overhead costs.
- (3) **Claims** – The Contractor shall send to the Engineer's Representative once in every month an account giving particulars, as full and detailed as possible, of all claims for any additional payment to which the Contractor may consider himself entitled and of all extra or additional work ordered by the Employer which he has executed during the proceeding month. No final or interim claim for payment for any such work or expense will be considered which has not been included in such particulars. Provided always that the Employer shall at his discretion be entitled to authorize payment to be made for any such working expense, notwithstanding the Contractor's failure to comply with this condition, that the Contractor has, at the earlier practicable opportunity, notified the Employer in writing that he intends to make a claim for such work, provided always that a release of payment shall be preceded by the claim and valuation of variation, in that order.



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