

COCHIN PORT TRUST

SECTION –IV- SPECIAL CONDITIONS OF CONTRACT

1. GENERAL

Special Conditions shall be read in conjunction with the General Conditions of Contract, Specifications, Drawings and any other document forming part of this Contract wherever the context so requires.

Notwithstanding the Sub-division of the documents into 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.

Where any portion of the General Conditions of Contract is repugnant to or at variance with any provision 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 the extent of such repugnancy of variations, prevail.

2. RATES FOR VARIOUS ITEMS

The rates /lumpsum amount as applicable shall except in so far as the contract otherwise provides, cover all obligations of the contractor under this contract and all matters and things necessary for the proper completion and maintenance of the works. The rates / lump sum amount quoted for each item shall be all inclusive value of the finished work as per drawings and specifications and shall cover the cost of all constructional plants, temporary works, appliances, materials, both for the works and temporary works, labour and all other matter in connection with each item quoted for and shall be in multiples of ten paise.

The contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his tender for the works and of the rates and prices stated in the Schedule of Quantities.

The contractor's rates and prices shall include all taxes, duties and fees including Port charges like wharfage, Port dues, berth hire, pilotage etc. if any applicable, all charges and taxes whatsoever in respect of materials, labour and plant and all other things obtained or used by the contractor for the execution and maintenance of the works or any temporary works.

3. BASIC RATES AND ADJUSTMENT FOR SUBSEQUENT PRICE VARIATION

No price adjustment shall be made for the variation in price of any item under this contract.

4. CARE OF WORKS

From the commencement to the completion of the work the contractor shall take full responsibility for the care of the work and his employees in connection with the work thereof and in case any damage, loss or injury shall happen to the works

or any part thereof or to any temporary work from any cause whatsoever (save and except the excepted risks as defined in clause 5 given below shall at his own cost repair and make good the same so that the work shall be completed in good order and in conformity in every respect with requirement of the contract. In the event of any such damage, loss or injury happening from any of the excepted risks, the Contractor shall if and to the extent required by the Engineer-in-Charge, make good the same as aforesaid and it will be to the account of the Board.

5. EXCEPTED RISKS

The excepted risks are riot (in so far as it is uninsurable) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military usurped power or a cause solely due to use of occupation by the Board of any portion of the work, any operation of the forces of nature that the contractor could not have foreseen or reasonably provided against. (All of such are herein collectively referred to as the excepted risks).

6. WORKS EXECUTED THROUGH SUBLETTING

The contractor may sublet any portion of the contract, as per clause 8 of Conditions of Contract of GCC.

Notwithstanding any subletting with such approval as required under above and notwithstanding that the Engineer-in-Charge shall have received copies of any sub-contract, the contractor shall be solely responsible for the quality and proper execution of the works, performance of all conditions of contract in all respects as if such subletting had not taken place and as if such work has been done directly by the contractor.

If any sub-contractor engaged upon the works at the site executes, any work which, in the opinion of the Engineer-in-Charge, is not in accordance with the contract condition, written notice may be given to the contractor requesting him to terminate such sub contract and the contractor upon receipt of such notice shall terminate such sub contract and the said sub contractor shall forthwith leave the works, failing which the department shall have right to remove such sub contractors from site. No action taken by the department under this clause shall relieve the contractor of any of his liabilities under the contract or give rise to any compensation, extension of time or otherwise.

7. SECURED ADVANCE. (Not applicable)

8. SETTLEMENT OF DISPUTES AND ARBITRATION

Clause No 25 of General Conditions of Contract (GCC) shall be modified as below;

“Clause No 25- Settlement of Disputes & Arbitration.”

General

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:-

If the Contractor considers any work demanded of him to be outside the

requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Engineer in writing for written instruction or decision. Thereupon, the Engineer shall give his written instructions or decision within a period of one month from the receipt of the Contractor's letter.

If the Engineer fails to give his instructions or decision in writing within the aforesaid period or if the Contractor is dissatisfied with the instructions or decision of the Engineer, the Contractor may, within 15 days of the receipt of Engineer's decision, appeal to the Chairman who shall afford an opportunity to the Contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chairman shall give his decision within 30 days of receipt of Contractor's appeal. If the Contractor is dissatisfied with this decision, then:

- a) The dispute in respect of contract value up to Rs 1 Crore shall not be referred for adjudication through arbitration and
- b) If the value of the contract is exceeding Rs 1 Crore and up to Rs 5 Crores,
 - (i) The Dispute shall be resolved through arbitration by a sole arbitrator appointed by the Chairman of Cochin Port Trust.
 - (ii) The contractor shall within a period of 30 days from receipt of the decision of the Chairman, give notice to the Chairman for appointment of arbitrator failing which the said decision shall be final, binding and conclusive and not referable to adjudication by the arbitrator.

If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacate his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left with his predecessor.

- c) If the value of the contract is above Rs 5 Crores, The contractor shall within 30 days of receipt of the decision of the Chairman, appoint an arbitrator and give notice to the Chairman and dispute shall be resolved through Arbitral Tribunal as detailed below,

The Arbitral Tribunal shall be a panel of three arbitrators, one to be appointed by each party and third to be appointed by the two arbitrators appointed by the parties. A party requiring Arbitration shall appoint an Arbitrator in writing, inform other party about such appointment and call upon the other party to appoint its arbitrator. If the other Party fails to appoint its Arbitrator, the party appointing Arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996 or any statutory modifications or reenactment thereof.

- d) In case of the dispute or difference is relating to interpretation and application of the provisions of commercial contract between Central Public Sector Enterprises (CPSE) Port Trust inter se CPSE and Government Department shall be referred by either party for arbitration to the Permanent Machinery of Arbitrators in the Department of Public Enterprises through the Secretary to the Government of Public Enterprises as per the guidelines issued by Department of Public Enterprises OM No.4 (1) 2011-DPE (PMA) – GL dtd. 12.06.2013 or any statutory amendment thereof.

It is a term of this contract that party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chairman of the appeal.

It is also a term of this contract that no person other than person / persons appointed as aforesaid should act as arbitrator / arbitrators and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the Contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer that the final bill is ready for payment, the claim of the Contractor shall be deemed to have been waived and absolutely barred and the Employer or his authorized representative shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or reenactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the Arbitrator / Arbitral Tribunal shall adjudicate only on such disputes as are referred and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/- the arbitrator shall give reasons for the award.

It is also a term of this contract that if any fee are payable to the arbitrator these shall be paid equally by both the parties.

It is also a term of this contract that the arbitrator / arbitrators shall be deemed to have entered on the reference on the date he / they issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be at Cochin. the fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any party by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid'

The settlement of disputes and arbitration shall be as per clause 25 of General Conditions of Contracts. However the venue of the arbitration shall be at **Cochin**.

9. ADVANCE (Not applicable)

The Mobilization Advance and Construction/Installation equipment Advance shall be as per clause 51 of General Conditions of Contracts:

10. LIQUIDATED DAMAGES:- The Clause No 49 of GCC under "Liquidated Damage is replaced as below.

49:- Liquidated Damage:

Discrepancy in Inspection (DI): If any discrepancy is found during checking /audit of inspected items received at Site or mismatching or malfunctioning etc, during use in the Erection, Testing or Commissioning and / or records and it is established that the discrepancy is on account of inaccurate/ inadequate inspection, the inspection charges of the concerned item shall be deducted from pending bills and /or security deposit amounts on pro- rata basis.

Delay In Inspection: If inspection calls are not attended within prescribed time (as per clause No 6 of Scope of Works), liquidated damages @ 1.0% of inspection charges of offered items which is computed on pro rata basis per day delay up to 5 days delay or Rs 100/- (whichever is higher) shall be payable by TPI Agency. If the delay is more than 5 days, the deduction shall be @ 2.0% of inspection charges of offered goods for per day delay or Rs 200/- (whichever is higher) for the total delay inclusive of initial delay period. The liquidated damages shall be deducted from pending bills and /or security deposit amounts.

For levying compensation as per Clause-49 of General Conditions of Contract, the

employer is not required to have documentary evidence to quantify or prove the losses suffered by the Employer due to delay in completion of work by the contractor, as per agreement conditions.

11. MEASUREMENTS OF WORK DONE

In addition to the Clause-26 of GCC- 'Computerized Measurement Book', measurement of the work can also be done as detailed below

Executive Engineer (hereinafter called the Engineer's Nominee) shall, except as otherwise provided, ascertain and determine by measurement the value in accordance with the Contract of work done.

All measurement of all items having financial value shall be entered in Measurement Book and/or level field book so that a complete record is obtained of all works performed under the Contract.

All measurements and levels shall be taken jointly by the Engineer's Nominee or his authorised representative and by the Contractor or his authorised representative from time to time during the progress of the work and such measurements shall be signed and dated by the Engineer's Nominee and the Contractor or their representatives in token of their acceptance. If the Contractor objects to any of the measurements recorded, a note shall be made to that effect with reason and signed by both the parties.

Department shall not entertain any claim from Contractor for any loss or damages on this account. If the Contractor or his authorised representative does not remain present at the time of such measurements after the Contractor or his authorised representative has been given a notice in writing three (3) days in advance or fails to countersign or to record objection within a week from the date of the measurement, then such measurements recorded in his absence by the Engineer's Nominee or his representative shall be deemed to be accepted by the Contractor.

The Contractor shall, without extra charge, provide all assistance with every appliance, labour and other things necessary for measurements and recording levels.

Except where any general or detailed description of the work expressly shows to the contrary, measurements shall be taken in accordance with the procedure set forth in the specifications notwithstanding any provision in the relevant Standard Method of measurement or any general or local custom. In the case of items which are not covered by specifications, measurements shall be taken in accordance with the relevant standard method of measurement issued by the Bureau of Indian Standards and if for any item no such standard is available then a mutually agreed method shall be followed.

The Contractor shall give not less than seven days' notice to the Engineer's Nominee or his authorised representative in charge of the work before covering up or otherwise placing beyond the reach of measurement any work in order that the same may be measured and correct dimensions thereof be taken before the same is covered up or placed beyond the reach of measurement and shall not cover up and place beyond reach of measurement any work without consent in writing of the Engineer's Nominee or his authorised representative in charge of the work who shall within the aforesaid period of seven days inspect the work, and if any work shall be covered up or placed beyond the reach of measurements without such notice having been given or the Engineer's Nominee's consent being obtained in writing the same shall be uncovered at the Contractor's expense, or in default thereof no payment or allowance shall be made for such work or the materials with which the same was executed.

Engineer's Nominee or his authorised representative may cause either themselves or through another officer of the department to check the measurements recorded jointly or otherwise as aforesaid and all provisions stipulated herein above shall be applicable to such checking of measurements or levels.

It is also a term of this Contract that recording of measurements of any item of work in the measurement book and/or its payment in the interim, on account or final bill shall not be considered as conclusive evidence as to the sufficiency of any work or material to which it relates nor shall it relieve the Contractor from liabilities from any over measurement or defects noticed till completion of the defects liability period.

12. PAYMENTS OF SALARY / WAGES AND OTHER BENEFITS ETC. TO CONTRACT / CASUAL WORKERS

The Contractors shall make all payments of salary/wages and other benefits etc. to the contract / casual workers deployed for the work through Bank / Cheque only.

All the payments to the contractors would be released only on submission of undertaking to comply with the clause 12.1 above.

13. Clause 45 and Clause 80 of General Conditions of Contract (GCC) shall be modified as below;

Clause 45-Rates for items to be inclusive of Taxes

The rate quoted by the Contractor shall be inclusive of the cost of provision of plant and equipment, materials, labour, execution, supervision, maintenance, overheads and profits and every incidental and contingent cost and charges whatsoever excluding Goods and Service Tax (GST). GST as may be applicable from time to time shall be shown separately in the invoice. The Employer will perform such duties in regard to the deduction of such taxes at sources as per applicable law. Any new Taxes, levies, duties imposed after signing the Contract shall be reimbursed by the Employer on production of documentary evidence.

The invoice to be submitted by the Contractor should include the GST Registration Number of the Contractor as well as the Employer. The Contractor shall comply all the GST Regulations viz. timely uploading of bills, issue of debit/ credit notes etc.

14. Clause 80-Taxes and Duties -Income Tax

The Contractor and his staff shall be responsible for payment of all personal income taxes to the concerned authorities as per the law in force from time to time. Deduction of Income Tax shall be made by the Employer from each certificate of payment to the Contractor at the rate of 2% plus surcharge or such other rates as may be specified by the Central Government from time to time, on the gross amount of the Contractor's bill for payment.

15. SECURITY DEPOSIT AND RETENTION MONEY

The Clauses 48 and 52 of the General Conditions of Contract related to the Retention Money and Security Deposit, stands modified to the extent detailed below:

- (i) In all cases, the Performance Guarantee retained till end of Defect Liability Period shall be 3 % of the Contract Value or Cost of Work Done, whichever is higher.

16. Payment Terms:

Clause No 43 under "Payment" in the GCC is modified as below

- i. Fifteen Percent (15%) of contract price on approval of General Arrangement drawing and Quality Assurance plan by the employer.

- ii. Twenty Five Percent (25%) on Design Appraisal up to Slew bearing and finalization of Materials certified by the TPIA for all parts of the crane and approved by employer.
- iii. Twenty Five Percent (25%) on final inspection of the crane at site / pre dispatch inspection at works of manufacturer and submission of reports and approval.
- iv. Twenty Five Percent (25 %) on Load testing of crane at site, certification by the TPIA and duly approved by the employer
- v. Ten Percent (10%) of contract price shall be released on final taking over the crane by the employer and client, finalization of accounts with manufacturer of the crane etc.

17. Completion period:

The time of completion for installation of crane is 12 months from the date of approval of GA drawing. Accordingly the time period for completion TPIA service is 12 months from date of approval of GA drawing of crane and is extendable depending on completion of Cranes and subsequent taking over. However time period for completion of different activities are provided in Section V- Scope of works.

SIGNATURE OF TENDERER