**GENERAL CONDITIONS OF CONTRACT (GCC)**

**CROSS BORDER POWER TRANSMISSION COMPANY LIMITED**

**TENDER NO: C/CPTC/CSR/2022-23/01**

**DATE: 05.12.2022**

**SCOPE OF WORK:**

The scope of work includes Repair, Renovation & construction of New Toilet Building as per detailed Bill of Quantities in the following schools

1. Rajkiya Madhaya Vidhalaya, Ladaura, Muzaffarpur &
2. Rajkiye Madhaya Vidhalaya, Madhaul, Muzaffarpur.
3. **Contract Documents**

The Contract documents consist of Contract Agreement, Bid Documents, General Conditions of Contract, Letter of Award and CPWD specifications.

1. **Amendment**

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party hereto.

1. **Severability**

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

1. **Notices**

All notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, India Post or email.

1. **Governing Law & its Jurisdiction**

The Contract shall be governed by and interpreted in accordance with laws of Union of India and the Courts of Patna shall have exclusive jurisdiction in all maters arising under this Contract.

1. **SCOPE AND PERFORMANCE**

**SCOPE OF THE WORK**

Scope of the work under this Contract shall be on single source responsibility basis completely covering all the services, works and materials specified under the accompanied Technical Specifications/Bill of Quantities indicated in Bid Proposal Sheets & drawings. It will inter-alia include the following:

a) All labour, materials, tools, plants and equipment, loading, unloading, transportation and handling thereof, unless otherwise, specified elsewhere in the Tender Documents.

b) Preparatory activities including scaffoldings required to be performed for carrying out the work.

c) All necessary services required for complete installation testing and commissioning in accordance with the relevant drawings/Bill of Quantities meeting the specification requirements.

d) Receipt/storage, preservation and conservation of materials/ equipment at site in accordance with the scheme /and provisions approved by Engineer-in-charge in advance.

e) Any item(s), though not covered in specification/drawings /schedule but are required for reliability and safety and as per good engineering practice shall be deemed to be included in the scope of work unless specifically excluded in the exclusion list.

f) All wastage of materials, their carriage /cartage and return of empties(if Applicable).

g) Furnishing of documents and signing of Contract Agreements.

h) Obtaining clearances /approvals from concerned local/ statutory bodies.

k) To complete all activities under the Contract to the satisfaction of the Engineer-in-charge and Employer or their representative in respect of all works covered in this contract. Tenders not covering the above entire scope of work are liable to be treated as incomplete and will accordingly be deleted from further consideration.

l) To co-ordinate with various sub-vendors involved in the works in order to complete the works in a phased and logical manner necessary for completion and handing over of entire work within the stipulated date and also to provide fronts to the contractors to be appointed by the Employer as and when required by the Engineer-in-Charge.

1. **Time for Commencement and Completion**

The time schedule for completion of works is 60 days from the date of Letter of Award.

1. **Contract Price**

 The Contract Price shall be as specified in Notification of Award / Letter of Award / Contract Agreement. The Contractor confirms that it has entered into this Contract on the basis of proper examination of the data relating to the subject package provided by the Employer, and on the basis of information that the Contractor could have obtained from the site and of other data readily available to it relating to the works. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the contract. The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

1. **TAXES, DUTIES & LEVIES**

The Contractor shall be entirely responsible for payment of all taxes, duties, licence fees and other such levies legally payable/incurred until delivery of the contracted supplies to the Employer.

If it is statutory requirement to make deductions towards such taxes and duties or any other applicable taxes and duties, the same shall be made by the Employer and a certificate for the same shall be issued to the Contractor.

The Contractor shall be solely responsible for the taxes that may be levied on the Contractor's persons or on earnings of any of his employees and shall hold the Employer indemnified and harmless against any claims that may be made against the Employer. The Employer does not take any responsibility whatsoever regarding taxes under Indian Income Tax Act, for the Contractor or his personnel. If it is obligatory under the provisions of the Indian Income Tax Act, deduction of Income Tax at source shall be made by the Employer.

The Input Tax Credit (ITC) available, if any, under GST as per the relevant Government laws wherever applicable has been taken into account by the Contractor.

Employer would not bear any liability on account of any other taxes, duties, levies applicable locally. Employer shall, deduct taxes at source as per the applicable laws/rules, if any, and issue Tax Deduction at Source (TDS) Certificate to the Contractor.

The Contractor shall comply with all tax laws in force in India. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, interest, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such tax laws by the Contractor or its personnel, including the Subcontractors and their personnel.

1. **INCOME TAX DEDUCTIONS**

 Income Tax deductions shall be made from all payments made to the Contractor as per rules and regulations in force, in accordance with the Income Tax Act prevailing from time to time.

**11.0 SECURITIES**

**CONTRACT PERFORMANCE GUARANTEE**

As a security towards satisfactory performance of the Contract, the successful Bidder, to whom the work is awarded, shall be required to furnish a Performance Guarantee for the due performance of the Contract in the amount equivalent to three percent(3%) of the Contract Price in favour of the Employer within 10 days from the date of Notification of award and it shall guarantee the faithful performance of the contract in accordance with the terms and conditions specified in the documents valid for 90 days after the end of defect liability period of 12 months. The guarantee amount shall be encashed by the Employer without any condition whatsoever, in the event of defects or deficiencies which come up during the validity of the guarantee period.

No interest shall be payable to the contractor against EMD and Contract Performance Guarantee.

The Issuing Banks shall be as per bidding documents.

**12.0 Copy Right**

The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including supplies of materials, the copyright in such materials shall remain vested in such third party.

The Employer shall however be free to reproduce all drawings, documents and other material furnished to the Employer for the purpose of the Contract including, if required, for operation and maintenance.

**13.0 Confidential Information**

The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract.

**14.0 QUALITY ASSURANCE**

The Contractor shall carry out the works in accordance to CPWD specifications & or as per instructions of Engineer In-Charge.

**15.0 INSURANCE**

 Tender price shall include all the costs to be incurred for fulfilling any / all insurance requirements and costs under the Contract. CPTC shall not make any payment on account of Insurance or any issues arising on account of Insurance.

**16.0 TIME THE ESSENCE OF CONTRACT**

The time schedule for completion of works is 60 days from the Letter of Award.

17.0 **DISCREPANCIES AND ADJUSTMENT OF ERRORS**

In case of discrepancy between Bill of Quantities, Specifications and/or the Drawings, the following order of preference shall be observed: a) Description in the Bill of Quantities. b) Particular Specifications and Special Conditions, if any c) Approved Drawings cleared for Construction. d) N.I.T. Provisions, Specifications and General Conditions of Contract

**18.0 DEVIATIONS/ VARIATIONS EXTENT & PRICING**

Engineer-in-Charge shall have powers (i) to make alteration in, omission from, additions to, or substitutions in the original specifications, drawings, designs and instructions that may appear to him to be necessary or advisable during the progress of the work, and (ii) to omit a part of the works in case of non-availability of a portion of the site or for any other reasons, and the Contractor shall be bound to carry out the Works in accordance with any instructions given to him in writing by the Engineer-in-Charge and such alterations, omission, additions or substitutions shall form a part of the contract and any altered, additional or substituted work which the Contractor may be directed to do in the manner above specified as part of the Works, shall be carried out by the Contractor on the same conditions in all respects including price on which he agreed to do the main work. Any alterations, omissions, additions or substitutions which radically change the original nature of the Contract shall be ordered by the Engineer-in-Charge as a deviation and in the event of any deviation being ordered which in the opinion of the Contractor changes the original nature of the Contract, he shall nevertheless carry it out and the disagreement, if any, so to the nature of work and the rate to be paid therefore shall be resolved in accordance with Clause 59 ‘Arbitration’.

The time for completion of the Works shall, in the event of any deviations resulting in additional cost over the Contract Sum being ordered, be executed as mutually agreed.

 **19.0 SUSPENSION OF WORKS**

The works can be suspended on receipt of the order-regarding suspension of work in writing of the Engineer-in-Charge, suspend the progress of the works or any part thereof for such time and in such manner as the Engineer-in-Charge may consider necessary for any of the following reasons :i) On account of any default on part of the Contractor; or ii)for improper 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 carryout the instructions given on that behalf by the Engineer-in-Charge.

 **20.0 Termination**

The Contract can be terminated in case of default on account of Contractor failing to complete the works on time, due to quality issue, negligence on safety account or any misconduct including malpractice. The order shall be issued by Engineer In-charge in writing.

**21.0** **EXTENSION FOR DELAY**

If the work is delayed by: i) Force Majeure and /or ii)any other risks causing delay, the Contractor shall immediately give notice thereof in writing to the Engineer-in-Charge but shall nevertheless make constantly his best endeavors to prevent or make good the delay and shall do all that may be reasonably required to the satisfaction of the Engineer-in-Charge for proceeding with the works. Request for extension of time, on grounds to be eligible for consideration of extension, shall be made by the Contractor in writing at the 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.

**22.0 TOOLS, PLANTS & EQUIPMENT**

The Contractor shall arrange at his own expense all tools, plant and equipment (hereinafter referred to as T&P) required for execution of the work.

**22.0 MATERIALS**

The Contractor shall at his own expense, provide all materials required for the works. All the materials shall conform to the makes, specified in the approved makes of materials enclosed with the specification. All materials to be provided by the Contractor shall be in conformity with the specifications laid down in the Contract and the Contractor shall, if requested by the Engineer-in-Charge, furnish proof to the satisfaction of Engineer-in-Charge that the materials so comply to the specifications.

**23.0 CEMENT & STEEL FOR THE WORK**

The Contractor shall make his own arrangements for all the construction materials including cement and steel as are required for proper completion of the project. The materials to be incorporated in the work are required to confirm the CPWD/ IS standards/ the specification, as applicable indicated elsewhere herein the contract documents. The storage & safety of the materials are Contractor’s responsibility.

**24.0 LABOUR**

**Valid License for Labour**

 The Contractor shall obtain a valid license under the contract labour (R&A) Act 1970 and the contract labour Act Central Rules 1971, before the commencement of work.

**Labour Safety Provision**

The Contractor shall be fully responsible to observe the labour safety provisions.

**Observance of Labour Laws**

The Contractor shall be fully responsible for observance of all labour laws and other laws applicable in this matter and shall indemnify and keep indemnified the Employer against effect or non-observance of any such laws. The Contractor shall be liable to make payment to all its employees and make compliance with labour laws. If Employer is held liable as “Principal Employer” to pay contributions etc. under legislation of Govt. or Court decision in respect of the employees of the Contractor, then the Contractor would reimburse the amount of such contributions so paid by Employer.

If the Employer is caused to pay under any law as Principal Employer such as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the Notifications/ Byelaws / Acts/Rules/ Regulations including amendments, if any, on the part of the Contractor, the Employer shall have the right to deduct any money due to the Contractor under this contract or any other contract with the Employer including his amount of performance security for adjusting the aforesaid payment. The Employer shall also have right to recover form the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.

The Contractor shall keep the Employer indemnified in all cases if any action is taken against officers of the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules related to Labor and safety made under, regulations or notifications including amendments.

**25.0 SAFETY CODE**

The Contractor shall, at all times at his own expense exercise reasonable and proper precautions for the safety of all people directly or indirectly employed for the performance of the work and shall comply with the safety regulations/ instructions/ measures as per measures contained in the IS Code of practices for different works. The Contractor shall furnish a Safety Plan.

**26.0 CONTRACTORS USE OF LAND FOR SITE OFFICE ETC.**

Not applicable.

**27.0 SETTING OUT THE WORKS**

 The Engineer-in-Charge shall provide information necessary to enable the Contractor to set out the works and the Contractor shall set out the works and be responsible for the accuracy of the same.

**28.0 SITE DRAINAGE**

All water which may accumulate on the site during the progress of the works, or in trenches and excavations, shall be removed and drained out from the site to the satisfaction of the Engineer-in-Charge by the Contractor at his expense.

**29.0 NUISANCE**

The Contractor shall not at any time do, cause or permit any nuisance on site or do anything which shall cause unnecessary disturbance or inconvenience to Owner, Tenants or Occupiers of other properties near the site and to the public generally.

**30.0 MATERIALS OBTAINED FROM EXCAVATION**

Not applicable.

**31.0 TREASURE, RELIC, MONUMENT & FOSSILS, ETC.**

Not applicable.

**32.0 SECURITY & PROTECTION OF TREES**

Not applicable.

**33.0 CONTRACTOR’S SUPERVISION**

The Contractor shall either himself supervise the execution of the works or shall appoint a competent representative approved by the Engineer-in-Charge. If the Contractor has himself not sufficient knowledge and experience to be capable of receiving instructions or cannot give his full attention to the works, the Contractor, shall at his own expense, employ as his accredited representative an engineer approved by the Engineer-in Charge. Orders given to the contractor’s representative shall be deemed to have the same force if these had been given to the Contractor himself. If the Contractor fails to appoint a suitable representative as directed by the Engineer-in-Charge, the Engineer-in-Charge shall have full power to suspend the execution of the works until such date as a suitable representative is appointed and the Contractor shall be held responsible for the delay so caused to the works.

**34.0 INSPECTION AND APPROVAL**

All works embracing more than one process stage shall be subject to examination and approval at each stage thereof or one stage as per instruction of Engineer-in-Charge. The Contractor shall give due notice to the Engineer-in-Charge or his authorized representative when each stage is ready. In default of such a notice, the Engineer-in-Charge shall be entitled to appraise the quality by such measures as considered appropriate, at the cost of the Contractor.

**35.0 DUTIES AND POWERS OF ENGINEER-IN-CHARGE’S REPRESENTATIVE AND ENGINEER-IN-CHARGE SHALL INCLUDE THOUGH NOT LIMITED TO THE FOLLOWING**

The duties of the representative of the Engineer-in-Charge are to watch and supervise the Works and to test and examine any materials to be used and ensure workmanship level required in the works. The Engineer-in-Charge may from time to time in writing delegate to his Representative any of the powers and authorities vested in the Engineer-in-Charge by the Employer. Any written instruction or written approval given by the representative of the Engineer-in-Charge to the Contractor within the terms of such delegation be binding on the Contractor as though it has been given by the Engineer-in-Charge. Decision of the Engineer-in-Charge shall be final and binding on the Contractor in respect of: i) Measurements. ii)Quality and workmanship. iii) Ordering variations, deviations, substitutions items, additions, deletions in the works including rescheduling and change of sequence of construction. iv) All other matters for implementation of Contract delegated to Engineer-in-Charge by the Employer.

**36.0 REMOVAL OF WORKMEN**

The Contractor shall employ in and about the Execution of the works only such persons as are skilled and experienced in their several trades and the Engineer-in-Charge shall be at liberty to object to and require the Contractor to remove from the works any person employed by the Contractor in or about the execution of the works who in the opinion of the Engineer-in-Charge misconducts himself or is incompetent or negligent towards proper performance of his duties and such person shall not be again employed in the Works without permission of the Engineer-in-Charge.

**37.0 UNCOVERING AND MAKING GOOD**

The Contractor shall uncover any part of the Works and/or make openings in or through the same as the Engineer-in-Charge may from time to time direct for his verification and shall reinstate and make good such part to the satisfaction of the Engineer-in-Charge. If any such part subsequently found, on uncovering of works, to be executed in accordance with the Contract, the expenses of uncovering and / or making opening in or through reinstating and making good the same shall be borne by the Employer. In any other case all such expenses shall be borne by the Contractor.

**38.0 WORK DURING NIGHT OR ON SUNDAYS AND HOLIDAYS**

Subject to any provisions to the contrary contained in the Contract, none of the permanent works shall be carried out during night or on Sundays or on authorized holidays without the permission in writing of the Engineer-in-Charge and subject to the Engineer-in-Charge having satisfied himself to the Contractor’s adequacy of supervision, quality assurance and safe working environments including lighting and ventilation etc.

**39.0 COMPLETION CERTIFICATE**

The Contractor shall inform the Engineer In-Charge in writing confirming completion of works. The Completion Certificate shall be issued by the Engineer In-Charge after verification.

**40.0 Taking Over**

The Engineer In-Charge shall issue taking over Certificate to the Contractor. Such certificates shall not relieve the Contractor of any of his obligations which otherwise survive by the terms and conditions of the Contract after issue of such certificate.

**41.0 LIQUIDATED DAMAGES FOR DELAY BY CONTRACTOR**

 If the Contractor fails to complete the work or clear the site before the Contract or extended date of completion, he shall, without prejudice to any other right or remedy of the Employer on account of such breach, pay to the Employer as liquidated damages, not as penalty, a sum equivalent to 0.5 percent of contract value for every week of delay or part thereof to the maximum of 5 percent of Contract Value.

**42.0 GUARANTEE**

The Contractor shall warrant that the work executed by the Contractor and the materials used therein shall be of approved quality and in accordance with prescribed specifications and the Contract document and is free from any defects in the materials, design, workmanship and any other defects whatsoever during the period as specified against clause 40 of GCC commencing immediately upon handing over the work to Employer.

**43.0 DEFECTS LIABILITY PERIOD**

The Defect Liability Period shall be twelve (12) months reckoned from the date of Completion of works under the contract. The Contractor shall be responsible to make good and remedy at his own expense within such period, any defect which may develop or may be noticed before the expiry of Defect Liability Period and which arises from either: a) Any defective workmanship or b) An act of commission, of the Contractor during the defect liability period. The Contractor shall make good the defects & damages immediately at his own cost to match the original specifications to the satisfaction of the Engineer-in-Charge.

**44.0 CONTRACTOR'S LIABILITY AND INSURANCE**

From commencement to completion of the works, the Contractor shall take full responsibility for the care thereof and shall take precautions to prevent any loss or damage with a view to minimize loss or damage to the maximum extent possible and shall be liable for any part thereof including any loss to all the Employer's T&P from any cause whatsoever (save and except the Excepted Risks) and shall at his own cost repair and make good the same so that on completion, the works and all Employer's T&P shall be in good order and condition and in conformity with the requirements of the Contract and instructions of the Engineer-in-Charge.

The Contractor shall indemnify and keep indemnified the Employer against all losses and claims for injuries or damage to any persons or any property whatsoever which may arise out of or in consequence of the construction and maintenance of works and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto. Provided always that nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Employer against any compensation or damage caused by the Excepted Risks.

Before commencing execution of the work, the Contractor shall, without in any way limiting his obligations and responsibilities under this condition, may insure against any damage, loss or injury which may occur to any property (excluding that of the Employer but including the Employer's building rented by the Contractor wholly or in a part and any part of which is used by him for storing combustible materials), or to any person (including an employee of the Employer) or arising out of carrying out of the Contract works.

The Contractor shall at all times indemnify the Employer against all claims, damages or compensation under the provisions of Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employer's Liability Act, 1938, the Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947 and the Maternity Benefit Act, 1961 or any modifications thereof or any other law relating thereto and rules made thereunder from time to time or as a consequence of any accident or injury to any workman or other persons in or about the Works, whether in the employment of the Contractor or not, save and except where such accident or injury has resulted from any act of the Employer his agents or servants, and also against all costs, charges and expenses of any suit, action or proceedings arising out of such accident or injury and against all sum or sums which may with the consent of the Contractor be paid to compromise or compound any claim. Without limiting his obligations and liabilities as above provided, the Contractor shall insure against all claims, damages or compensation payable under the Workmen's Compensation Act, 1923 or any modification thereof or any other law relating thereto.

**45.0 FACILITIES TO OTHER CONTRACTORS**

Not applicable.

**46.0 NOTICES TO LOCAL BODIES**

Contractor shall comply with and give all notices required under any Governmental authority, State laws or any regulation or bye-laws of any local authority relating to the works. The Contractor shall pay and indemnify the Employer against any liability in respect of any fees or charges payable under any Act of Parliament, State laws or any Government instrument, rule or other and any regulations or bye-laws of any local authority in respect of the works.

**47.0 SUB-LETTING OF WORK**

Contractor shall not further sub-contract any portion of the Contract without the prior written approval of the Accepting Authority. Employment of the piece rate workers on piece rate works shall not be deemed to be sub-contracting provided that complete responsibility under the Labour Regulation Act/Labour Laws in force shall solely rest on Contractor / agency who employs further sub-contractor and that too with prior approval of Engineer-in-Charge.

**48.0 INSTRUCTIONS AND NOTICES**

Subject to as otherwise provided in this Contract, all notices to be given on behalf of the Employer and all other actions to be taken on its behalf may be given or taken by the Engineer-in-Charge or any officer for the time being entrusted with the functions, duties and powers of the Engineer-in-Charge.

**49.0 FORECLOSURE OF CONTRACT IN FULL OR IN PART DUE TO ABANDONMENT OR REDUCTION IN SCOPE OF WORK**

If at any time after acceptance of the Tender and execution of the agreement, the Employer shall decide to abandon or reduce the scope of the works for any reason whatsoever and hence not require the whole or any part of the works to be carried out, the Engineer-in-Charge shall give notice in writing to that effect to the Contractor and the Contractor shall have no claim to any payment of compensation or otherwise whatsoever, on account of any profit or advantage which he might have derived from the execution of the works in full but which he did not derive in consequence of the foreclosure of the whole or part of the works.

Payment for part work completed shall be released to the Contractor after verification and certification by Engineer In-Charge.

**50.0 TERMINATION OF CONTRACT ON DEATH**

If the Contractor is an individual or a proprietary concern and the individual or the proprietor dies and if the Contractor is a partnership concern and one of the partners dies then unless the Accepting Authority is satisfied that the legal representatives of the individual Contractor or of the proprietor of the proprietary concern and in the case of partnership, the surviving partners, are capable of carrying out and completing Contract, the Accepting Authority shall have Powers to cancel the Contract in respect of its uncompleted part without the Employer being in any way liable to payment of any compensation to the estate of the deceased Contractor and/or to the surviving partners of the Contractor’s firm on account of the cancellation of the Contract. The decision of the Accepting Authority to the effect the legal representatives of deceased Contractor or the surviving partners of the Contractor’s firm cannot carryout and complete the Contract shall be final and binding on the parties. In the event of such cancellation, the Employer shall not hold the estate of the deceased Contractor and/or the surviving partners of the Contractor’s firm liable for any damages for not completing the Contract.

**51.0 LIABILITY FOR DAMAGE, DEFECTS OR IMPERFECTIONS AND RECTIFICATION THEREOF**

If the Contractor or his workman or employees shall damage or destroy any part of the building in which they may be working or any building, road, fence, etc. contiguous to the premises on which the work or any part of it is being executed, or if any damage shall happen to the work while in progress the Contractors shall upon receipt of a notice in writing in that behalf make the same good at his own expense. If it shall appear to the Engineer-in-Charge or his representative prior to the expiration of the Defects Liability period, that any works has been executed with unsound, imperfect or unskilled workmanship or that any materials or articles, provided by the Contractor for execution of the work are unsound or of a quality inferior to that contracted for, or otherwise not in accordance with the Contract, or that any defect, shrinkage or other faults have appeared or have been detected in the work arising out of defective or improper materials or workmanship, the Contractor shall, upon receipt of a notice in writing in that behalf from the Engineer-in-Charge, forthwith rectify or remove and re-construct the work so specified in whole or in part, as the case may require or as the case may be, and/ or remove the materials or articles so specified and provide other proper and suitable materials or articles at his own expense, notwithstanding that the same may have been inadvertently passed, certified and paid for and in the event of his failing to do so within the period to be specified by the Engineer-in-Charge in his notice aforesaid, the Engineer-in-Charge may rectify or remove and re-execute the work and/or remove and replace with others the materials or articles complained of, as the case may be, by other means at the risk and expense of the Contractor.

 In case of repairs and maintenance works, splashes and droppings from white-washing printing, etc., shall be removed and surfaces cleaned simultaneously with completion of these items of work in individual rooms, quarters or premises, etc., where the work is done, without waiting for completion of all other items of work in the Contract. In case the Contractor fails to comply with the requirements of this condition, the Engineer-in-Charge shall have the right to get the work done by other means at the cost of the Contractor. Before taking such action, however, the Engineer-in-Charge shall give three days notice in writing to the Contractor.

**52.0 URGENT WORKS**

If any urgent work (in respect whereof the decision of the Engineer-in-Charge shall be final and binding) becomes necessary and the Contractor is unable or unwilling at once to carry it out, the Engineer-in-Charge may by his own or other work people carry it out as he may consider necessary. If the Urgent work shall be such as the Contractor is liable under the Contract to carry out at his expenses all expenses incurred on it by the Employer shall be recoverable from the Contractor and be adjusted or set off against any sum payable to him.

**53.0 SPECIFICATIONS**

The materials and workmanship shall conform with the provisions laid down in the specifications issued to the Bidder by the Employer.

**54.0 WATER, ELECTRICITY & LAND**

Water, Electricity & land for Contractor’s site office, store, workshop etc., as per the requirement shall be arranged by the Contractor at their own cost. EMPLOYER will not entertain any claim whatsoever in this regard.

**55.0 EMPLOYER’S LIEN ON EQUIPMENT**

The Employer shall have lien on all equipment including those of the Contractor brought to the site for the purpose of erection, testing and commissioning of the equipment to be supplied and erected under the contract. The Employer shall continue to hold the lien on all such equipment throughout the period of contract. No material brought to the site shall be removed from the site by the Contractor and/or his sub-Contractors without the prior written approval of the Engineer-in-Charge.

**56.0 VALUATION AND PAYMENT**

**Records and Measurement**

The Engineer-in-Charge shall except as otherwise stated ascertain and determine by measurement the value in accordance with the Contract work done.

All item having a financial value shall be entered in Measurement Book, level book etc. prescribed by the Employer so that a complete record is obtained of all work performed under the Contract.

Measurement shall be taken jointly by the Engineer-in-Charge or his authorized representative and by the Contractor or his authorized representative and signed by both parties in token of their correctness and acceptance.

**METHODS OF MEASUREMENT**

Measurements shall be taken in accordance with CPWD guidelines or as per the relevant Standard Method of Measurement issued by the Bureau of Indian Standards.

**58.0 TERMS OF PAYMENT**

The Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on price schedules. Payments will be made in Indian Rupees. The Contractor may make applications for payment in respect of part deliveries as work proceeds.

1. **Progressive Payment**

90% (eighty percent) of the Contract price, will be paid on progressive fortnightly basis depending on the actual work done against each completed activity, on certification of the same by the Employer and on submission of invoice by the Contractor.

1. **Payment post Completion**

05% (five percent) of the Contract price, will be paid on completion of work & certification by Engineer In-charge and on submission of invoice by the Contractor.

1. **Final Payment**

The balance 5% (five percent) of the Contract price component shall be paid upon taking over of the works by the employer and submission of invoice by the Contractor.

**59.0 CONTRACT PRICE ADJUSTMENT**

**59.1 Price Escalation:**

The Contract Price is quoted on Firm Basis. No Price Variation / escalation shall be allowed during the entire Contract Period.

**59.2 Quantity Variation:**

The billing and payment shall be on actual executed quantity basis.

For individual items, the variation in quantity shall be as per actual basis, however, the total variation shall be limited to 20% of the Contract Price.

**60.0 SETTLEMENT OF DISPUTES**

Any dispute(s) or difference(s) arising out of or in connection with the contract shall, to the extent possible, be settled amicably between the parties. If any dispute or difference of any kind whatsoever shall arise between the Employer and the contractor, arising out of the Contract for the performance of the Works whether during the progress of the Works or after its completion or whether before or after the termination, abandonment or breach of the Contract, it shall, in the first place, be referred to and settled by the Engineer-in-Charge, who within a period of thirty (30) days after being requested by either party to do so, shall give written notice of his decision to the Employer and the Contractor. Save as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the parties until the completion of the Works and shall forthwith be given effect to by the Contractor who shall proceed with the Works with all due diligence, whether he or the Employer requires arbitration as hereinafter provided or not. If after the Engineer-in-Charge has given written notice of his decision to the parties, no claim to arbitration has been communicated to him by either party within thirty (30) days from the receipt of such notice, the said decision shall become final and binding on the parties. In the event of the Engineer-in-Charge failing to notify his decision as aforesaid within thirty (30) days after being requested as aforesaid, or in the event of either the Employer or the Contractor being dissatisfied with any such decision, or within thirty (30) days after the expiry of the first mentioned period of thirty (30) days, as the case may be, either party may require that the matters in dispute be referred to arbitration as hereinafter provided.

**61.0 OVERPAYMENTS AND UNDER PAYMENTS**

Wherever any claim for the payment of a sum of money to the Employer arises out of or under this Contract against the Contractor, same may be deducted by Employer from any sum then due or which at any time thereafter may become due to the Contractor under this contract and failing that under any other Contract with the Employer or from any other sum due to the Contractor from the Employer which may be available with the Employer or from his Contract Performance Guarantee or he shall pay the claim on demand.

**62.0 ARBITRATION**

All disputes or differences in respect of which the decision, if any, of the Engineer in charge and/or the Head of the Implementing Authority has not become final or binding as aforesaid shall be settled by a sole arbitrator who shall be appointed mutually.

**63.0 LAWS & JURISDICTION OF CONTRACT**

This contract shall be governed by the Indian Laws for the time being in force. The laws applicable to the contract shall be the laws in force in India. The courts of Patna / Muzaffarpur shall have exclusive jurisdiction in all matters arising out of this contract.

**64.0** **Limitation of Liability**

Except in cases of gross negligence or willful misconduct,

(a) the Contractor and the Employer shall not be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and

(b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

**End of Section – General Conditions of Contract**