

Tender Document

For

**Civil Work for 350 TPD Kiln & Captive Power Plant at Village
Jorehira, P.S. Chhatna, Dist. Bankura, West Bengal.**

Tender No. SIP-CPP/CIVIL/01/09-10 Dated 29.09.2009

Due on 25.10.2009

ANKIT METAL & POWER LIMITED

35, Chittaranjan Avenue, (1st Floor)

Kolkata 700012

NOTICE INVITING TENDER

TENDER NO. SIP-CPP/CIVIL/01/09-10 DATED 29.09.2009

Dear Sir,

Sub: Invitation to tender for Civil Work for our Sponge Iron and Captive Power Plants
At Village Jorehira, Dist. Bankura, West Bengal.

Competitive Bids are invited fro Civil Work for our Sponge Iron & Captive Power Plants under implementation at the aforesaid premises.

We have pleasure in enclosing the following Tender Documents for the above work and would invite you to submit your most competitive offer in a Sealed Cover superscribed with the tender no and due date in the manner laid down and with due compliance of the instructions set-forth in the tender documents so as to reach this office on or before 15.00 hours on 25th October, 2009.

- 1.0 This Notice Inviting Tender
- 1.1 Instructions to Tenderers
- 1.2 General Conditions of Contract
- 1.3 Special Conditions of Contract
- 1.4 Specification and bill of quantity
- 1.5 Proforma of Bank Guarantee in lieu of E.M.D
- 1.6 Proforma of Performance Bond in lieu of Security Deposit
- 2.0 Place of Work
M/s. Ankit Metal & Power Limited
Village & P.O. Jorehira, P.S. Chhatna
Dist., Bankura, West Bengal
- 2.1 Office of the Owner
M/s. Ankit Metal & Power Ltd
35, Chittaranjan Avenue, 1st Floor
Kolkata 700012

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|-----|--|---|
| 2.2 | Earnest Money Deposit | Two percent of the tender value OR Rs.5.00 lakh (Rupees five lakh only) whoever is lower by Demand Draft OR Bank Guarantee in the format referred under Sl.1.5 above. |
| 2.3 | Last Date, Time & Place for Receipt of Tenders | 15.00.00 hours on 25.10.2009 at the office of the the Owner specified under 2.1 above. |
| 2.4 | Date of LOI | |
| 2.5 | Date of Commencement of Works | December 2009 |
| 2.6 | Date of Completion of Work | September 2010 |

The Owner does not bind himself to accept the lowest or any other tender and reserves himself the authority to reject any or all the tenders without assigning any reason whatsoever. The Owner also reserves to himself the right to accept any tender in whole or any part of the tender and the tender(s) shall be bound to perform the accepted portion of work at the rate quoted.

Tender received after due time and date is liable for rejection. Postal delay or any other cause resulting in receipt of any tender after due date, shall not make the tender liable for consideration by the Owner.

For Ankit Metal & Power Limited

Sd/-

Director Technical

Encl: as above.

**ANKIT METAL & POWER LIMITED
KOLKATA 700012**

INSTRUCTIONS TO TENDERERS

TENDER NO. SIP-CPP/Civil/01/09-10 Due on 25.10.2009

- 1.0 TENDERER TO INFORM HIMSELF FULLY
- 1.1 The tenderer shall carefully study the enclosed tender documents and the documents referred to therein before submitting his offer. Failure to furnish all information required in the Tender documents or submission of a Tender not substantially conforming to the Tender documents in every respect will be at the Tenderer's risk and may result in the rejection of his Tender.
- 1.2 The Tenderer shall inspect the site and satisfy himself of the site conditions and shall collect any other information which he may require before submitting the tender. Claims and objections due to ignorance of site conditions shall not be considered after submission of the tender.
- 1.3 One set of tender drawings are available for perusal and the tenderer should go through the drawings and subscribe his signature along with his official seal as token of his having seen and understood the work.
- 2.0 SCOPE OF WORK
- 2.1 The work is outlined in the tender documents listed in Notice Inviting Tenders. The tenderer shall fully satisfy himself of the correctness of any data or information given in these documents & the tender drawings and submit his offer in accordance with the tender documents.
- 3.0 SUPERVISION OF WORKS
- 3.1 The successful tenderer shall provide resident supervisory personnel in accordance with the relevant provisions of the Contract. The tenderer shall in his offer the number and category of technical & other personnel, he proposes to depute for the supervision services as well as the estimated duration of their stay at site along with site organization chart. The successful tenderer would make his own arrangements and at his own cost for providing all necessary facilities for the stay at site of his personnel such as accommodation, food, transport to the work site etc.

4.0 INFORMATION TO BE SUBMITTED WITH THE TENDER

4.1 In addition to the information called for in the different sections of the tender documents, tenderer shall furnish the following information pertaining to him with the tender, without which the tender is liable to be rejected.

4.2 Name of the Company/Firm/Individual

4.3 Full address of Registered Office/Principal place of Business and Factory with Telephone No/Mobile No/Fax Nos/E-Mail ID.

4.4 Name of the representative authorized by the Tenderer to deal with the Owner indicating his address, office and residential telephone numbers/mobile no.

4.5 Details of branch offices and that of associates, if any.

4.6 Details of Tenderer's organization including technical and financial capacity

4.7 List of Plant, machinery, equipment & other construction related items with capacity specification of each and that will be deployed by him including age of each and duration of deployment.

4.8 A detailed statement of similar work executed by him during the last 3 years including name(s) of the client, nature of work, value of each work, duration & year of completion.

5.0 TIME SCHEDULE

5.1 The target completion of the Work has been indicated in the Tender documents. The tenderer shall take this into consideration while submitting his tender.

5.2 The tenderer shall submit with his offer a time schedule in the form of a bar chart showing the individual time periods for each activity as well as for completion of each item of work.

6.0 RATES

6.1 While quoting the rates, the tenderer shall include in his offer prices for materials and services as specified in the tender documents and submit rate analysis for different items of work.

6.2 Rates quoted shall be firm and fixed and shall be indicated item-wise separately for each items of supply and work.

7.0 EARNEST MONEY DEPOSIT

7.1 The Tenderer shall deposit along with the Tender Earnest Money Deposit calculated @ two percent of the Tender Value or Rupees Five lakh whichever is less in the form of Bank Draft drawn on any Scheduled Bank in favour of the Owner payable at Kolkata or in lieu of E.M.D. a Bank Guarantee for the like amount in the Proforma enclosed with the tender documents . The Earnest Money should be deposited along with the Tender Documents and not sent separately failing which the Tender is liable to be rejected. In case of unsuccessful Tenderers, the Earnest Money Deposit shall be returned to him on finalization of the Tender by the Owner. In case of Successful Tenderer, the Earnest Money Deposit will be adjusted against amount of Security Deposit. The Tender received without Earnest Money Deposit will be rejected.

8.0 LANGUAGE

8.1 The Tender shall be submitted in the English language.

9.0 ARRANGEMENT OF TENDER

9.1 The Tender shall be neatly arranged, typewritten with consecutively numbered pages in solid binding. They shall not contain any terms and conditions, drawings or other documents which are not applicable to the tender. The original and all copies of the tender shall be signed by the Tenderer or a person(s) authorized by him to make the tender binding.

9.2 Insertions, postscripts, additions and alterations shall not be recognized, unless confirmed by the tenderer's signature.

9.3 If the tender is being submitted by an individual, it shall be signed with his full name mentioning the name of his father in addition. He shall furnish his present address as well as permanent address.

If the tender is being signed by one of the Partners of the Tenderer, being a Partnership Company, a copy of the Partnership Deed signed by all the Partners and duly notarized shall be submitted along with a letter signed by all the Partners authorizing his to sign the Tender Documents on their behalf.

If the Tender is being submitted by a Company, the Tender should be signed by a duly authorized person holding the Power of Attorney. A duly notarized copy of the Power of Attorney shall be submitted by the Tenderer along with the Tender documents, failing which the Tender may not be accepted.

10. SUBMISSION OF TENDER

10.1 Sealed Tenders shall be sent so as to reach in the Office of the Owner on or before the last date and time of submission of tenders as specified. Tender shall be submitted in duplicate. In addition, a Compact Disk (CD) of the tender shall be submitted along with the tender.

10.2 Unsealed, unsigned, incomplete tenders & tenders not accompanied with E.M.D. and those received after expiry of the stipulated time and date even due to postal delay are liable to be rejected.

11.0 PERIOD OF VALIDITY OF TENDER

11.1 The tender shall remain valid for acceptance by the Owner for a period of 60 days from the specified due date of submission of the tender or the revised due date if any as the case may be.

12.0 NO CLAIM FOR COMPENSATION FOR SUBMISSION OF TENDER

12.1 The tenderers shall not be entitled to claim any costs charges and expenses, incidental to or incurred by them, through or in connection with their preparation and submission of tenders, even though the Owner may decide to withdraw the Invitation to Tender.

13.0 ACCEPTANCE /REJECTION OF TENDER

The Owner reserves the right to accept or reject any tender without assigning any reasons whatsoever. The Owner also reserves the right to split the scope of work and award the same to more than one tenderer.

Signed and sealed copy of this document shall be submitted along with the tender.

I/We have read and understood all the above instructions and conditions and I/We agree to abide by them. A signed & sealed copy of this documents is enclosed by me/us with this tender.

Signature of Tenderer with Seal.

Place:

Date:

ANKIT METAL & POWER LIMITED, KOLKATA 700012

GENERAL CONDITIONS OF CONTRACT

Tender No. SIP-CPP/Civil/01/09-10 Due on 25.10.2009

1.0 DEFINITIONS

- 1.1.1 The following words and expressions shall, unless excluded by or repugnant to the context have the meanings hereby respectively assigned to them.
- 1.1.2 "Company" shall mean Ankit Metal & Power Limited, having its Registered Office at 35, Chittaranjan Avenue, Kolkata 700012 and shall include its representatives, executors, administrators, successors, heirs, assigns and presents.
- 1.1.3 'Owner/employer/client' shall mean Ankit Metal & Power Limited , and shall include its representative, executors, administrators, successors, heirs, assigns and presents.
- 1.1.4 'Tender' shall mean an individual or a firm whether registered or not or a company whether incorporated or not, submitting a tender and shall include his/its representative, executors, administrators, successors, heirs, assigns and presents.
- 1.1.5 'Contractor' shall mean an individual or a firm whether registered or not or a company whether incorporated or not, whose Tender has been accepted either wholly or partly by the Owner for undertaking the works and/or supply of goods & services and shall deemed to include the Contractor's representative, executors, administrators, successors, heirs, assigns and presents.
- 1.1.6 'Sub-Contractor' shall mean an individual or a firm whether registered or not or a company incorporated or not named in the Contract for executing any part of the work sub-let by the Contractor with the written consent of the Owner and shall include Sub-contractor's representative, executors, administrators, successors, heirs, assigns and presents.
- 1.1.7 'Consulting Engineer' shall mean, an individual or a firm or an agency or a company appointed by the Owner to render professional services in the matter of design, drawings, supervision of works under this Contract.

- 1.1.8 'Contract' shall mean Tender Documents as a whole, Contract Documents accepting the Tender in part or full including its subsequent authorized variations if any, the Work Order and its subsequent authorized variations, all instructions conveyed in writing, a repeat order without inviting fresh tender but having regard to earlier Contract, Contract placed through negotiations between the Contractor and the Owner and shall cover all works pertaining to execution, construction, maintenance and completion or set-forth and required in by the specifications and schedules thereto, annexed to or implied there from or incidental there to or specified.
- 1.1.9 'Contract Documents' shall mean the documents listed below which shall form part of the Agreement, including any amendment thereto:
- 1.1.9.1 Notice Inviting Tender
 - 1.1.9.2 Instructions to Tender
 - 1.1.9.3 General Conditions of Contract
 - 1.1.9.4 Special Conditions of Contract
 - 1.1.9.5 Specification and Bill of Quantity
 - 1.1.9.6 Proforma of Bank Guarantee in lieu of E.M.D.
 - 1.1.9.7 Proforma of Performance Bond in lieu of Security Deposit
- 1.1.10 'Contract Price' means the sum agreed between the Owner and the Contractor being the value of goods and services and works within the scope of the contract which sum is specified in the Agreement, subject to such additions and adjustments thereto or deductions therefrom as may be made pursuant to the Contract.
- 1.1.11 The 'Works' shall mean the works to be executed in accordance with the contract or part(s) thereof as the case may be and shall include all extra or additional, altered or substituted works or temporary and urgent works as required for performance of the contract.
- 1.1.12 'Specification' shall mean design, drawings, sketches, descriptions, technical parameters, detailed written instructions, technical and other conditions of supply and/or manufacture, fabrication, construction, erection, maintenance, supply of goods and services incorporated in or arising out of the Tender Documents or the Contract or any other information and/or instruction furnished in writing in relation to performance of the Contract in the manner in which it is prescribed or intended to perform.
- 1.1.13 'Testing and Certification' shall mean such tests as are in normal trade and/or industrial practice conducted prior to accepting or taking over of materials and/or Works and/or such tests as are prescribed by the specifications.

- 1.1.14 'Material' shall mean all construction materials including water and electricity and all goods and services or combination of all this forming part and/or associated with the fulfillment of the Contract.
- 1.1.15 'Site' shall mean that piece of land or other place(s) upon which work under this Contract is to be executed by the Contractor including covered and uncovered spaces for storage of construction equipment and materials and such other land or place(s) as may be specified in the Contract as forming part of the site and shall include path or street which may be allotted for use for purposes of implementation of the Contract.
- 1.1.16 'Mobilization' shall mean establishment of sufficiently adequate infrastructure by the Contractor at Site comprising of construction equipment, aids, tools and tackles including setting up stores and site offices with facilities such as power, water, communication etc. establishing manpower organization comprising of Owners, Supervisory Personnel and an adequate strength of skilled, semi skilled and unskilled workers, who with the so established infrastructure shall be in a position to commence execution of work at site, in accordance with the agreed time schedule of completion of work. "Mobilization" shall be considered to have been achieved if the Contractor is able to establish infrastructure as indicated above to begin the work at site in accordance with agreed time schedule of work to the satisfaction of the Owner.
- 1.1.17 'Temporary work' means all temporary work of every kind required in or about the execution, completion or maintenance of works and includes all temporary erections, scaffolding, timbering, shuttering, enclosures, gates, entrances and hoarding.
- 1.1.18 'Urgent works' shall mean any urgent measures which, in the opinion of the Owner, become necessary during the progress of the work to obviate any risk of accident or failure of which becomes necessary for security.
- 1.1.19 'A Day' shall mean a day of 24 hours from midnight to midnight irrespective of the number of hours worked in that day.
- 1.1.20 'Schedule(s)' referred to in those conditions shall mean the relevant schedule(s) of rate and quantity annexed to the tender papers by owner or the standard schedule of rates prescribed by owner and the amendments thereto issued from time to time.
- 1.1.21 'Constructional Plant' shall mean all appliances or things of whatsoever nature required for the execution, completion or maintenance of the Works or temporary works (as hereinbefore defined) but does not include materials or other things intended to form or forming part of the permanent work.
- 1.1.22 'Period of Maintenance' shall mean the specified period of maintenance from the date of completion of the work as certified by the owner.

1.1.23 'Word importing the singular number shall also include the plural and vice versa where the context requires.

1.1.24 'Virtual Completion' shall mean that the Building, in the opinion of the Consulting engineer is fit for occupation and use for the purpose for which it is intended.

1.1.25 'Effective Date' shall mean the date that the contract enters into full force and effect being the date incorporated in Article of Agreement.

1.1.26 'Final acceptance' shall mean taking over by the owner of the building, structures or any other work(s) entered in full or in part which have been constructed by the contractor and certified by the Consulting engineer as fit for use for the purpose for which they are so constructed as per the specification.

2.0 SUFFICIENCY OF QUANTITIES AND TENDER

2.1 The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for works. The tender rates shall cover all this obligations under the contract, and all matters and things necessary for the proper completion of the work.

(The contractor must have concrete batching plant along with Mobile transit mixer minimum 2 in nos. Capacity of transit mixer must be minimum 2m³ or above)

3.0 CONTRACTOR TO VISIT SITE

3.1 Each Tenderer must before submitting his Tender, visit the site of works, so as to ascertain the physical site conditions and prices, availability and quality of materials according to specifications before submitting the Quotations.

4.0 CONTRACTOR'S CAPACITY

4.1 Tenders will be considered only from recognized Contractors. Each tender shall submit along with the Tender Quotations, a list of large projects like nature with details of volume and cost and the time within which the works were completed. The Contractor shall also submit a list of machinery and construction equipments that he will bring for the proposed work and site organization chart indicating the technical and other manner with their qualification and experience.

5.0 ACCEPTANCE OF TENDER BY OWNER

5.1 The Owner reserves sole and exclusive rights to reject any or all Tenders or to accept any Tender either wholly or partly without assigning any reason whatsoever, and the

Owner's decision in this behalf shall be final and by virtue of submission of each Tender by every Tenderer, it shall construe that he expressly and undisputedly admits and agrees the Owners rights of accepting or rejecting any of the Tender including owners rights to accept any tender wholly or partly and the Tenderer by virtue of submission of Tender, also agrees that submission of his Tender and his depositing the Earnest Money with the Owner does not qualify or confer upon him any right or claim of acceptance of his Tender and in case his Tender is not accepted, he shall have no right to any claim or expenses if any incurred by him in preparation and submission of the Tender except refund by the Owner of his Earnest Money Deposit free from interest.

5.2 The Owner shall communicate his decision of acceptance of any Tender(s) to the Tenderer whose Tender is accepted either after negotiations or otherwise within 45 days from the date of opening of the Tenders including extended due date of opening of the Tender if any to be notified by the Owner before the due date originally specified in the Tender Documents. No communication will be sent to Tenderers whose Tenders have not been accepted.

5.3 In case of unsuccessful Tenderers, the Owner shall within 30 clear working days from the effective date referred to herein above, refund the Earnest Money Deposit against No claim Certificate to be issued by the Tenderer in favour of the Owner. No interest shall accrue or become payable on the Earnest Money Deposit.

6.0 PERFORMANCE GUARANTEE BOND

6.1 The Contractor shall be required to furnish to the Owner within two weeks of the acceptance of his tender a Demand Draft or Bank Guarantee in the form approved by the Owner and in Owner's favour from a Scheduled bank for an amount equal to ten (10) per cent of the Contract Price as a Performance Guarantee for the satisfactory performance of the Contractor from its commencement upto final acceptance as defined Clause 1.1.25

6.2 The Performance Guarantee shall be for the due and proper performance of the Contract and shall be held by the Owner as a pecuniary guarantee for recovery of any penalties or damages or other sums for which the Contractor may become liable to the Owner under the Contract. The Owner shall be entitled on its first demand to the immediate payment by Bank upto the full amount of the Performance Guarantee notwithstanding any contestation by the Contractor or any third party.

6.3 The Owner shall not be liable for payment of any interest on the Performance Guarantee or any depreciation thereof.

6.4 The Bank Guarantee towards Performance Guarantee Bond shall remain valid till the issue of the final Acceptance Certificate as per Clause 1.1.26 hereof.

6.5 Language of the Contract

6.5.1 The contract shall be administered in English language. All drawings, documents, details, data, information to be furnished by the Contractor shall be in English language. All correspondence in connection with the contract shall be made in English language.

7.0 ENTIRE AGREEMENT

7.1 All documents forming part of the Contract (and all parts thereof) are intended to correlate, complementary and mutually explanatory of one another. The Contract shall be read as a whole.

7.2. The Contract constitutes the entire agreement with the Owner and the Contractor with respect to the subject matter of the Contract and supersedes all communications, negotiations and agreements (whether written or oral) with respect thereto made prior to the date of Agreement save those specially provided in or referred to in the Contract.

7.3 Amendment of Contract

7.3.1 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.

7.4 Discrepancies and Adjustment of Errors.

7.4.1 The several documents forming the Contract are to be taken as mutually explanatory of one another.

7.5 Status of the Contractor

7.5.1 The contractor shall be an independent Contractor performing the contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Contractor and the Owner.

7.5.2. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Works are performed. All employees, representatives, suppliers, workmen, labour or Sub-contractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Owner, and nothing contained in the Contract or in any sub-contract awarded by the Contractor shall be construed to create any contractual relationship or relationship of employer &

employee between any such employees, representatives, suppliers, workmen, labour or Sub-contractors and the Owner.

7.6 Severability

7.6.1 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 other provisions and conditions of the Contract.

7.7 Authority of a Person signing the Contract on behalf of the Contractor

7.7.1 A person signing the Tender Document or any other document in respect of the Contract on behalf of the Contractor without disclosing his authority to do so shall be deemed to warrant that he has authority to bind the Contractor. If it is discovered at any time that the person so signing had no authority to do so, the Owner may, without prejudice to any other right or remedy, cancel the Contract and process a fresh Contract with any other person or a firm at the risk and cost of the Contractor and hold him liable to the Owner for all costs and damages arising from the cancellation of the Contract including any loss which the Owner may sustain on account of processing a fresh Contract.

7.8 Address of the Contractor

7.8.1 For all purposes of the Contract, the address of the Contractor mentioned in the Tender shall be address to which all communications addressed to the Contractor shall be sent, unless the Contractor has notified a change and taken written acknowledgement thereof from the Owner. The Contractor shall be solely responsible for the consequence of an omission to notify a change of address in the manner aforesaid.

7.8.2 All notices given under the contract shall be in writing and send by fax, personal delivery, airmail post, special courier, cable, telegraph, facsimile or electronic data interchange (EDI/E-mail) Where service of notice is barred by any limitation, the same may be posted on the address of the Contractor and/or published in any one local News Paper in English .

7.8.3 Any notice delivered personally or sent by telegraph, facsimile or EDI/E-mail shall be deemed to have been delivered on the day following the date of its dispatch.

7.8.4 Notice shall include any approvals, consents, instructions, orders and certificates to be given under the Contract.

7.9 Sub-Contract

7.9.1 The Contractor shall not sub-let, transfer or assign the Contract or any part thereof without the written permission of the Owner. In the event of the Contractor contravening this condition, the Owner shall reserve the right to cancel the Contract and get the work completed through other agency or agencies at the risk and cost of

the Contractor, and the Contractor shall be liable for any loss or damage which the Owner may sustain in consequence or arising out of such cancellation or Contract, and completion of work through other source(s) No claim or benefit shall however, accrue to the Contractor against cost advantage if any achieved by the Owner arising out of cancellation of the Contract.

7.10 Non-entity

7.10.1 Provided also that notwithstanding the Owner having accorded written permission to the Contractor to sub-let any part or whole of the Contract, the Contract will still be deemed to be a transaction between the Contractor and the Owner to the exclusion of the Sub-contractor. The Sub-contractor shall have no right on the Owner and the Owner shall have no obligation to the Sub-contractor. Any laps or failure by the Sub-contractor will be treated as though such lapses and failure were caused, occasioned or committed by the Contractor himself.

7.11 Changes in a Firm

7.11.1 Where the Contractor is a partnership firm, a new partner shall not be introduced in except with the previous consent in writing of the Owner, which may be granted only upon execution of written undertaking by the new partner to perform the contract and accept all liabilities incurred by the firm under the Contract prior to the date of such undertaking.

7.11.2 On the death or retirement of any partner of the Contractor's firm before complete performance of the Contract, the Owner may, at his option cancel the Contract and in such case the Contractor shall have no claim of whatsoever compensation against the Owner.

8.0 SCOPE OF CONTRACT

8.1 The Contractor shall carry out and complete the works in every respect in accordance with this contract and in accordance with the directions and to the satisfaction of the Consulting Engineer and for the Owner.

8.2 The Consulting Engineer may, in his absolute discretion from time to time issue further drawings and/or written instructions, details, directions and explanations which are hereafter collectively referred to as 'The Instructions' in regards to :

- 8.2.1 The variation or modification of the design, quality or the quantity of works or the additions or commissions or substitution of any works.
- 8.2.2 Any discrepancy in the drawings or between the Schedule of quantities and/or drawing and/or specification.
- 8.2.3 The removal from the site of any materials brought thereon by the Contractor and the substitution of other materials thereof.
- 8.2.4 The removal and or re-execution or any work executed by the Contractor
- 8.2.5 The dismissal from the work of any persons employed thereupon
- 8.2.6 The opening up for inspection of any work covered up.
- 8.2.7 The amending the making good of any defects.
- 8.3 The Contractor shall forthwith comply with and duly execute any work comprised in such Instructions provided always that verbal instructions, directions and explanations given to the Contractor or his representative by the "Consulting Engineer" , if involving a variation shall be confirmed in writing by the Contractor within seven days otherwise shall be deemed to be valid "Instructions" within scope of contract. Rates of items not mentioned in the Price Schedule of Quantities shall be fixed by the "Consulting Engineer" on the basis of tendered rate. In case the rate can not be derived from tendered rates the same shall be derived on the basis of rate analysis to be furnished by the Contractor based on prevailing market rates which shall be subject to approval and as accepted by the Consulting engineer.

9.0 DRAWINGS & SCHEDULE OF QUANTITIES

- 9.1 One complete set of the drawings and specifications and schedule of quantities shall be furnished by the "Consulting Engineer" to the Contractor, and the Consulting Engineer shall furnish , within such time as may be considered reasonable one copy of any additional drawing which in their opinion may be necessary for the execution of any part of the work. Such copies shall be kept at the work site and the Consulting Engineer and their representatives shall at all reasonable times have access to the same, and they shall be returned to the Consulting Engineer by the Contractor before the issue of the final Acceptance Certificate under the contract. The contract and the signed drawing and specifications and schedule of quantities shall remain in the custody of the Consulting engineer or the Owner, and shall be produced by them at their office and when required by the Contractor.

10.0 CONTRACTOR TO PROVIDE EVERYTHING NECESSARY

- 10.1 The contractor shall provide everything necessary for proper execution of the works according to the intent and meaning of the drawings and/or the specification, priced schedule of quantities and specification taken together whether the same may or may not be particularly shown or described therein provide that the same can reasonably be inferred therefrom and if the Contractor finds any discrepancy therein he shall immediately and in writing refer the same to the Consulting engineer whose decision shall be final and binding on the Contractor. Figured dimension shall be followed in preference to scale. The Owner shall provide water at one point to the Contractor free of cost for the quantity consumed being reasonable quantity as determined by the Consulting engineer and the Contractor shall make arrangement at his own cost for further distribution of water within the site.
- 10.2 Power from sources available near the site shall be made available to the Contractor at one point. Further distribution, installation of the switch board, meter etc. shall be arranged by the Contractor at his own cost.
- 10.3 All connections made shall be to the Contractor's account. He shall arrange to install, a tested meter and pay for the energy consumed by him All wiring from the switch board and meter will be removed by the "Contractor" on completion of the work. He shall reinstate and made good any work disturbed by the temporary power lines to the satisfaction of the Consulting Engineer and Owner. Alternatively the Contractor may mobilize DG Set of requisite capacity at his cost and expenses for operation with prior approval of the Consulting Engineer and Owner.
- 10.4 The Contractor shall supply, fix and maintain at his cost, during the execution of any work, all the necessary centering, scaffolding, staging, planking, timbering, strutting, shoring, pumping, fencing, hoarding, watching and lighting by night as well as by day, required not only for the proper execution and protection of the said work, but also for the protection of the public and the safety of any adjacent roads, streets, cellars, vaults, ovens, pavements, walls, houses, buildings and all other erections, matters or things and the Contractor shall take down and remove any or all such centering scaffoldings, staging, planking, timbering, strutting, shoring etc as occasion shall require or when ordered to do so and shall fully reinstate and make good all matters and things disturbed during the execution of the works, to the satisfaction of the Consulting engineer and Owner.
- 10.5 Duties and Responsibilities of the Contractor including compliance of Statutory Law.
 - 10.5.1 All matters and workmanship shall be of the respective kinds described in the Contract and in accordance with the Consulting engineer's instruction and shall be subjected

from time to time to such tests as the Consulting Engineer may direct at the places of manufacture or fabrication on the site or at all or any of such places. The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for examine, measuring and testing any work and the quality, weight or quantity of any material used shall supply samples of materials before incorporation in the works for testing as may be selected and required by the Consulting engineer.

10.5.2 The contractor confirms that he has entered into this Contract on the basis of reasonable examination of the data relating to the Works including, any data provided by the Owner and of information which it could have obtained from visual inspection of the Site and other data readily available to him relating to the Works as on the date of the Agreement and acknowledges that any failure by him to acquaint himself with all such data and information shall not relieve him of his responsibility for estimating properly the constraints if any, or cost of successfully performing the Works.

10.5.3 The Contractor shall acquire all permits, wayleaves approvals and/or licenses from all local, state or central government authorities or statutory authorities which are necessary for the performance of the Contract including + without limitation , and entry permits for Construction equipment, materials etc. whether required under the law or under local business practice or conditions.

10.5.4 The Contractor shall comply with all laws in force for the time being where the Works are carried out, whether national , provincial, municipal or otherwise affecting the performance of the Contract and binding upon the Contractor. The contractor shall indemnify and hold harmless the Owner from and against and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising out of or resulting from the violation of such laws by the Contractor or its person el including the Sub-contractors and their personnel.

10.5.5 The Contractor shall give all notices and pay all fees required to be given or paid under any National and/or State statute, ordinance or other law or any regulation or Bye-laws of such National or other duly constituted authority in relation to the execution of the work or of any temporary work and by the rules and regulations of all public bodies and utilities whose property or rights are affected or may be affected in any way by the work or any temporary work.

10.6 Access to Site

10.6.1 The Contractor shall allow at all times the Consulting Engineer or Owner and any person authorized by them access to the works and to the site and to all workshops and places where work is being performed from where materials, manufactured articles or machinery are being obtained for the work and the Contractor shall afford every facility for and every assistance in or in obtaining the right to such access.

10.7 Interference with Traffic and Adjoining Properties.

10.7.1 The Contractor shall carry out all operations necessary for the execution of the work and for the construction of any temporary work so far as compliance with the requirements of the contract permits, in a manner so as not to interfere unnecessarily or improperly with the public convenience or access to the occupation of public or private roads and footpaths or of properties whether in the possession of any of the persons and the contractor shall hold harmless and indemnify the owner in respect of all claims, demands, proceedings, damages, costs, charges & expenses, whatsoever out of or in relation to any such matters.

10.8 Opportunities to the Other Contractors

10.8.1 The Contractor shall, in accordance with the requirement of the Consulting engineer, afford all reasonable opportunities for carrying out their work to any other contractor employed by the Owner and their workmen and to the workmen of the owner and of any other duly constituted authorities who may be employed in the execution on or near the site of any contract which the owner may enter into in connection with or ancillary to the works.

10.9 Contractor's Employee

10.9.1 The Contractor shall provide and employ on the site in connection with execution and maintenance of the works:

10.9.1.1 Only such technical personnel who are qualified, skilled and experienced in their respective area of work and are competent to render proper supervision to the work respectively assigned to them subject to the approval of the Owner or the Owner and such skilled, semiskilled and unskilled workmen and labour as is necessary for the proper and timely execution and maintenance of the works.

10.9.1.2 The Contractor shall employ required categories of labour in sufficient number to ensure the required rate of progress, quality and workmanship of the degree required by the specification and to the satisfaction of the Consulting engineer and/or the Owner. The contractor shall be responsible at his own cost for the recruitment, transportation, accommodation, catering, welfare, sanitary and other provisions for all labour, personnel and employees required for the execution of the works and bear all expenses and make all payments in connection therewith.

10.10 Commencement of Works

10.10.1 The Contractor shall commence the work on site within seven days from the effective date of the Agreement or the date of Letter of Intent (LOI) whichever is earlier and shall proceed with the work with due expedition.

10.11. Possession of Site

10.11.1 Save in so far as the Contract provides, the extent of portions of the site of which the Contractor will be allowed to enter upon from time to time and the Order in which such portion 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 Owner shall in consultation with the Consulting engineer give written permission to the Contractor to enter upon so much of the site as may be required to enable the Contractor to commence and proceed with the construction of the works in accordance with the programme referred to in clause 11.2.1 hereof, otherwise in accordance with such reasonable proposals of the Contractor as he shall by notice in writing to the Consulting Engineer make and Owner shall from time to time, as the work proceeds, give to the Contractor permission to enter upon such further portions of the site as may be required to enable the Contractor to proceed with the construction of the works in accordance with the said programme or proposal as the case may be.

10.12 Labour

10.12.1 The Contractor shall, in all dealings with labour engaged by him and his sub-contractor(s) have due regard to all recognized festival, day of rest and religious or other customs.

10.12.2 The contractor shall at all times take all reasonable precautions to prevent any unlawful riots or disorderly conduct by or amongst the labour and other persons engaged by him for the preservation of peace and protection of persons and property in the neighbourhood of the works against the same.

10.12.3 The Contractor shall be responsible for observance by his Sub-contractors of the foregoing provisions.

10.12.4 The Contractor shall fully comply with and be responsible for compliance of all provisions under various Acts as amended namely Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employees Liability Act 1936, Workmen's Compensation Act, 1923, Indian Employment of Children Act, 1938, the Factories Act, 1948, the Employees state Insurance Act, 1948, contract Labour (Regulation & abolitions) 1970 and any other Act or Law that the Contract may attract for the time being and any statutory amendment and reenactment thereof and rules thereunder for the time being in force. All payments to the workmen, labour and persons engaged by him

that may become payable under any of the provisions of the aforesaid laws or rules framed thereunder shall be borne by and paid forthwith by the Contractor to the persons eligible for such payments.

10.12.5 The Contractor shall not employ child labour or any other person who has not completed his/her eighteenth year of age or such age as is prescribed by the Law for the time being.

10.12.6 The Contractor during the progress of the works shall provide, erect and maintain at his own expenses and to approved standards and scales all necessary temporary sanitary accommodation required for his workmen on the site in connection with the execution of the works and the whole of such temporary accommodation shall at all times during the progress of the works be kept tidy and in a clean and sanitary conditions to the entire satisfaction of the Consulting Engineer and at the Contractor's expenses. The Contractor shall conform to the sanitary requirement of local medical and health authorities and at all times adopt such precautions as may be necessary to prevent soil pollution of the site. The Contractor will bear the cost of any charges levied by the authority for the execution of any work on his behalf.

10.12.7 The Contractor will not at any time do cause or permit any nuisance on the site or adjoining Areas or do anything which shall cause unnecessary disturbance or inconvenience to the Owners, tenants or occupiers of other properties near the site and to the authorities or to the Public generally and will secure the efficient protection of all land pollution.

10.12.8 The Contractor shall provide and maintain upon the works sufficient, proper and efficient Life saving appliances and first aid equipment to the approval of the Consulting Engineer and in accordance with the requirements of LLO Convention No. 62 The appliances and equipment shall be available for use at all times.

109.12.9 Where required by law or regulation of local or other authority such personnel workmen and labour shall be duly licensed by the competent authority to practice their trades, professions and callings.

12.12.10 The Contractor shall if required by the Consulting Engineer, deliver to the Consulting Engineer or Owners returns in such form and at such intervals as the Consulting Engineer may prescribe, showing in detail, the supervisory staff and the number of the several classes of labour, from time to time, employed by the Contractor on the site.

10.12.11 The Consulting Engineer and for the owner shall be at liberty to object to and require the Contractor to remove forthwith from the works any persons employed by the Contractor for execution or maintenance of the works, who in the opinion of the Consulting Engineer or misconducts himself, or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by the Consulting Engineer or the Owner be undesirable and such person shall not be again employed upon the works without the written permission of the Consulting Engineer

or the owner. Any person so removed from the works shall be replaced without delay by a competent substitute approved by the Consulting Engineer.

10.12.12 The Contractor shall be responsible for obtaining all necessary permission and/or consent From the appropriate authorities and/or person/s weather required under law or by practice for the entry of all labour and personnel to be employed on the Site

10.12.13 The Contractor shall at his own expense be responsible for the repatriation of all his and that of his Sub-contractor's personnel, workmen and labour employed upon the Works at the Site to their respective place of origin. The Contractor shall be responsible for the suitable maintenance of all such persons from the cessation of their employment on the works to their departure from the Site and the Owner shall not be responsible in any manner whatsoever in event of failure of the Contractor to fulfill his obligation to such personnel, workmen and labour.

10.13 Third Party Insurance

10.13.1 Before commencing the execution of the works, the contractor shall insure against any damage, loss or injury which may occur to any property including that of the owner or to any person including any employee of the owner by or arising out of the execution of the works or temporary works or in the carrying out of the Contract. This shall, however, not absolve the Contractors of his obligations and responsibilities arising out of the Contract.

10.14 Insurance Against Accident etc. to Workmen

10.14.1 The Contractor shall insure adequately as per law and rule or current practice against such Liability with an insurer approved by the owner (which approval shall not be unreasonably withheld) and shall continue such insurance during whole of the time that any persons are employed by him on the works and shall when required produce to the Consulting Engineer or the Owner such policy of insurance and the receipt for payment of the current premium. Provided always that in respect of and persons employed by any sub-contractor, the Contractor's obligation to insure as aforesaid under this clause shall be satisfied, if the sub-contractor shall have insured against the liability in respect of such persons and, in such manner, that the employer is indemnified under this policy but the contractor shall require such sub-contract to produce to Owner when required such policy of insurance and the receipt for payment of the current premium.

10.15 Damage to Persons and Property

10.15.1. The Contractor shall indemnify and keep indemnified the owner against all losses and claims for injuries or damages to any person or any property whatsoever which may arise out of or in consequence of in construction or maintenance of the works and

against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.

11.0 WORK EXECUTION

11.1 Contractor's Organization

11.1.1 The Contractor shall supply to the Owner in organization chart showing the proposed Organization to be established by the Contractor for carrying out the Works including the identities of the key personnel together with the curricula vitae of such key personnel to be employed in the Works, within fifteen days from the date of acceptance of his Tender. The Contractor shall promptly inform the Owner in writing of any revision or alteration of such organization chart, acceptance of such revision so far as it relate to the Contract shall be subject to the approval of the Owner.

11.2 Programme of Works

11.2.1 Within Seven days from the date of Acceptance of his Tender by the Owner, the Contractor shall prepare and submit to the Owner a programme of the works showing the sequence in which he proposes to carry out the work and the date by which the Contractor reasonably requires that the Owner shall have fulfilled its obligation under the Contract so as to enable the Contractor to execute the works in accordance with the programme and to achieve work completion in accordance with the Contract. The Programme so submitted by the Contractor shall accord with any dates and periods specified in the Contract. The Contractor shall revise the Programme as and when appropriate in consultation with the Owner and shall submit all such revisions to the Owner.

11.3 Bench Mark/Setting Out

11.3.1 Contractor shall be responsible for the true and proper setting out of the Works in relation to bench marks, reference marks and lines provided to it in writing by the Owner or the Consulting Engineer. The Contractor shall be responsible for the true and proper setting out of works and for the correctness of the position, levels, dimensions, and alignment of all parts of the works and for the provision of all necessary instruments, and labour in connection therewith. If at any time during the progress of the works any error shall appear or arise in the position, levels, dimensions or alignment of any part the works, the Contractor on being required to do so by the Consulting Engineer or Owner shall at his own expenses rectify such error to the satisfaction of the Consulting Engineer or Owner. The checking of any setting out or of any line or level by the Consulting Engineer or Owner shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, sight rails, pegs and other things used in setting out the works.

11.4 Contractor's Supervision

- 11.4.1 The Contractor shall give or provide all necessary superintendence during the execution of the works and as long thereafter as the Consulting Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor or his competent and authorized representative approved in writing by the Consulting Engineer (which approval may at any time be withdrawn) is to be constantly on the works and shall give his whole time to the superintendence of the same. If such approval shall be withdrawn by the Consulting Engineer, the Contractor shall as soon as is practicable (having regard to the requirement of replacing him as hereinafter mentioned) after receiving written notice of such withdrawal, remove the person from the site and shall not thereafter employ him again on the site in any capacity and shall replace him by another person approved by the Consulting Engineer. Such authorized person shall receive, on behalf of the Contractor, directions and instructions from the Consulting Engineer or the Owner.

11.5 Construction Equipment

- 11.5.1 All construction equipment brought by the Contractor on to the Site shall be deemed to be intended to be used exclusively for the execution of the Works and the Contractor shall not remove the same from the Site until such Construction Equipment is no longer required for execution of the Works.
- 11.5.2 Unless otherwise specified in the Contract, upon completion of the Works, the Contractor Shall remove from the site all construction equipment brought by the Contractor on to the site and any surplus materials remaining thereon.

11.6 Site Regulations and Safety

- 11.6.1 The Owner and the Contractor shall establish Site Regulations setting out the rules to be Observed in the execution of the Works at the Site and shall comply therewith. The Contractor shall prepare and submit to the Owner proposed Site regulations for the Owner's approval which shall not be unreasonably withheld.
- 11.6.2 Such site regulations shall include, but not be limited to, rules in respect of :
- 11.6.2.1 Security
 - 11.6.2.2 Safety of works

- 11.6.2.3 Gate Control
- 11.6.2.4 Sanitation
- 11.6.2.5 Medical Care
- 11.6.2.6 Fire Prevention

11.7 Emergency Work

11.7.1 If, by reason of an emergency arising in connection with and during the execution of the Works, any protective or remedial work shall be necessary as a matter of urgency to prevent the damage to the Works, the Contractor shall immediately carry out such work.

11.7.2 If the Contractor is unable or unwilling to do such work immediately, the Owner may do or cause to be done such work as the Owner may determine is necessary in order to prevent damage to the Works. In such events the Owner shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefore. If the work done or caused to be done by the Owner is work which the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Owner in connection therewith shall be paid by the Contractor to the Owner or recovered by the Owner from any sum due to the Contractor.

11.8 Clearance of site During Construction

11.8.1 The site shown on the plan shall be cleared by the Contractor of obstructions, loose stones, and materials, rubbish of all kinds. All holes or hollows whether originally existing or produced by removal or loose stones or materials shall be carefully filled up with earth, well-rammed and leveled off as defected at his own cost.

11.8.2 The materials brought at site shall not be stacked at random. The Contractor shall stack all These materials as directed by the Consulting Engineer or the Owner. The contractor shall not deposit material on any place which will seriously inconvenience the public. The Consulting Engineer may require the contractor to remove any material which are considered by him to be a danger or inconvenience to the public or cause them to be removed at the Contractor's cost.

11.8.3 The Contractor shall also not allow any rubbish or debris to remain on the site during or after repairs, but shall remove the same and keep the place neat and tidy during the progress of the work. The Consulting may get the site or premises cleared of debris etc. and recover the cost from the bill of contractor if the latter show slackness in observing this clause. All soil, filth or other matters of any offensive nature taken out of trench, sewer, cess pool or other place shall not be deposited on

the surface but shall be at once carted away by the contractor as directed by the Consulting Engineer or Owner.

11.9 Watching and Lighting

11.9.1 The Contractor shall provide and maintain at its own expense all lighting, fencing and watching when and where necessary for the proper execution and the protection of the Works, or for the safety of the owners and occupiers of adjacent property and the public.

12 REMOVAL OF INFERIOR MATERIALS AND WORK DEFECTIVE

12.1 The Consulting Engineer shall have power, during the progress of the work to order from to time.

12.1.1 The removal from the site of any materials which in the opinion of the Consulting Engineer are not in accordance with the specifications and the instructions of the Consulting Engineer.

12.1.2 The substitutions of proper suitable materials, and

12.1.3 The removal and proper re-examination of any work which in respect of materials of Workmanship is not in accordance with the specifications and drawings or instructions of the Consulting Engineer.

12.2 The Contractor shall carry out such order at his own cost. In case of default on the part of the Contractor to carry such orders, the owner shall have full power to employ and pay other persons to carry out the same and all expenses consequent thereof incidental thereto shall be recoverable from him by the Owner, or may be deducted by the Owner from any amount or that may become due to the Contractor.

13.0 THE CERTIFICATE OF VIRTUAL COMPLETION

13.1 The work shall not be considered completed until the Consulting Engineer has certified in writing that they have been virtually completed and the defects liability period or maintenance period shall commence from the date of such certificate.

14.0 MAINTENANCE OF WORK

14.1 The Contractor shall at his own expenses, during the execution of the works and for A period of six months referred to as the period of maintenance from the date of issue of certificate of virtual completion by the Consulting Engineer, in all respects,

maintain the works in good and perfect order, repair and rectify defects, shrinkage and other faults arising out of improper or defective materials or workmanship as the Consulting Engineer may consider necessary. The Contractor shall, at the expiration of the period of maintenance, deliver the works in good and satisfactory order, to the satisfaction of the Consulting Engineer and the Owner.

15.0 POWER TO VARY WORKS

15.1 Should the Consulting Engineer consider it necessary, he shall have power to order any of the following:-

15.1.1 Increase of or decrease the quantity of any work included in the drawings or specifications or bill of quantities:

15.1.2 Omit any such works;

15.1.3 Change the character or quality of any kind of such work;

15.1.4 Change the levels, lines, positions and dimensions of part of the works; and

15.1.5 Order to open up for inspection of any work covered-up.

15.1.6 Execute additional work if any necessary for the completion of the works provided that such variations shall not in any way vitiate or invalidate the contract.

16. PAYMENT FOR EXTRA WORK

16.1 The Consulting Engineer shall determine and the amount (if any) to be added to or deducted from the contract price in respect of extra or additional work done or omitted by his instruction. All such work shall be valued at the rate basis, by the Consulting Engineer.

17.0 PAYMENT :-

The Contractor will be paid on the basis of the Certificate of the Consulting Engineer upto 80% when the amount due to him on account of permanent work executed exceeds Rs. 10 Lacs (Rs. Ten Lacs only) subject to a retention of two and half percent.

18.0 RETENTION OF MONEY

18.1 Security Deposit will be deducted 10% from each running bill. This will be deducted upto ceiling amount being 5% of the contract price. 50% of retained amount as security deposit will be released against the certificate of virtual completion issued by the Consulting Engineer and the remaining 50% after the expiry of the maintenance period (i.e., period of six months after issue of certificate of virtual completion issued by the Consulting Engineer),

19.0 **TIME FOR COMPLETION & LIQUIDATED DAMAGE FOR DELAY**

19.1 The time stipulated in the contract for delivery shall be reckoned from the effective date mentioned in the contract agreement unless any other date has been specifically stipulated in the contract or the letter of intent as the case may be.

19.2 Should the Contractor fail to complete the Contractor or any part thereof, within the period prescribed for such completion, the Owner shall be entitled at his option either to recover from the Contractor liquidated damages, and not by way of penalty, a sum not less than 1% of the value of such Contractor or portion thereof which the Contractor failed to complete as aforesaid, for each week or part of a week, during which the completion of such Contract may be in arrears or to cancel the Contract or portion thereof, and if so decided, to process a fresh Contract with alternate sources at the risk and cost of the Contractor.

19.3 The Contractor shall not have any claim nor shall he be entitled to any gain that may accrue to the Owner by terminating the incomplete portion of the work and award the Contract for completion of the said portion by alternate means and source and the Owner's discretion as to the manner of getting the said portion of the work complete shall be final and binding on the Contractor.

20.0 **FORFEITURE/TERMINATION CANCELLATION OF THE CONTRACT**

20.1. The Owner at his option, may cancel the contract or part thereof at any time by simple written notice to the contractor in case of contractor's non-compliance with his undertaking under the contract and more specifically in case any of the following circumstances occur.

20.2 Errors or insufficiencies in the specifications, drawings or other documents furnished by the Contractor and not remedied promptly by the Contractor despite being pointed out to do so by the Consulting engineer and/or Owner to carry out the work as per the contract or other similar circumstances for reasons attributable to the Contractor.

20.3. If the Contractor refuses to implement instructions received from the Consulting Engineer or the Owner within the stipulations of the Contract.

20.4 If the contractor shall become bankrupt or has received an order made against him through court receiver or shall present his petition in bankruptcy or shall make an

arrangement with or assignment in favour of his creditors shall agree to carry out the contract under committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the contractor shall assign the contract without the consent in writing of the Owner, or shall have an execution levied or in Owner's opinion the Contractor

20.5 Has abandoned the contract or

20.5.1 Without reasonable reasons has failed to commence the works or has suspended the progress of the works for Ten days after receiving from the Consulting engineer, written notice to proceed;

OR

20.5.2 Has failed to remove materials from the site or to dismantle and replace work for ten days after receiving from the Consulting engineer, written notice that the said materials or work had been rejected by the Consulting Engineer under this conditions;

OR

20.5.3 Is not executing the works in accordance with the contract or is persistently or flagrantly neglecting to carry out his obligations under the Contract,

20.5.4 Then the owner may, after giving fourteen days notice in writing to the Contractor, enter the site of the works and expel the contractor therefrom, without thereby leaving him absolved from, and/or without any prejudice to his responsibilities and obligations, and/or liabilities arising from this Contract, and or without affecting the right and powers in any manner confirmed on the Owner and/or his Consulting Engineer under this Contract. Consequent to such situation, the Owner may himself complete the works or may employ any other Contractor to complete the works and the Owner or any such other Contractor may use, for completion of the remaining works, the construction equipment, temporary works and/or materials which have been deemed to become property of the Owner under the provisions of this Contract as he may think proper. The Owner may at any time sell any of the said construction equipment, temporary works and materials and use the proceeds of the sales in any manner and/or towards recovery of the dues from the Contractor under this clause and the Security Deposit of the Contractor shall stand forfeited.

21.0 **FORCE MAJEURE**

21.1 Force Majeure" shall mean any event beyond the reasonable control of the Owner or the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:

War, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, civil war;

Or

Rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, terrorist acts;

Or

Confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or rule or any other act or failure to act of any local state or national government authority;

Or

Strike, sabotage, lock-out, lack of usual means of public transportation and communication, industrial dispute,

Or

Earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, or other natural or physical disaster, epidemics, quarantine plague;

- 21.2 If either party is prevented, hindered or delayed from or in performing any of their Obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within Seven (7) days after the occurrence of such event.
- 21.3 The party who has given such notice shall be excused from the performance or punctual performance of his obligation under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for completion shall be extended in accordance with the provisions of this contract.
- 21.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon his or their performance of the contract and to fulfill its or their obligations under the contract.
- 21.5 No delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall :
- 21.6 Constitute a default or breach of the Contract : or

- 21.7 Give rise to any claim for damages or additional costs or expenses occasioned thereby, if any and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.
- 21.8 If, during the performance of the Contract, any Force Majeure shall occur which Financially or otherwise materially affects the execution of the Works by the Contractor, the Contractor shall use his reasonable efforts to execute the Works with due and proper consideration given to the safety of his and his Sub-contractors' personnel engaged in the Works, provided, however, that if the execution of the Works becomes impossible or is substantially prevented for an aggregate period of more than sixty (60) days on account of any Force Majeure, either party may terminate the Contract by giving a notice to the other.

22. **ARBITRATION**

- 22.1 In the event of any dispute and difference arising under or out of these conditions or in in connection with this or relating to this contract (except as to any matter in decision of which is specially provided for in these conditions), the matter in dispute shall be referred to two Arbitrators, one to be determined by the Owner and one to be determined by the Contractor, or in case of the said arbitrators not agreeing, then to an Umpire to be appointed by the Arbitrators in writing, before proceeding of the reference and the decision of Arbitrators, or in the event of their not agreeing of the said Umpire,, shall be final and conclusive and the provisions of the Indian Arbitration Act, 1940 and the rules made thereunder and any statutory modification thereof shall be deemed to apply to and be incorporated in this Contract. The Arbitrators or the Umpire as the case may be, shall be entitled with the consent of the parties to enlarge the same for making the award.
- 22.2 Upon every or any such reference, the costs and incidental to the reference and award respectively shall be at the discretion of the Arbitrators and or of the Umpire, as the case may be, who may determinate this amount thereof, or direct the same to be taxed as between Contractor and Owner as between party and party, and shall direct by whom and to whom and in what manner the same shall be borne and paid.
- 22.3 Work under Contract shall be continued by the Contractor during the arbitration proceedings unless otherwise directed in writing by the Owner or unless the matter is such that it is impossible to continue, the work until the decision of the Arbitrators or the Umpire, as the case may be, is obtained.
- 22.4 It is also a term of the Contract that the party invoking Arbitration shall specify the dispute to be referred to Arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.
- 22.5 It is also a term of the Contract that if the Contractor does not make any demand for Arbitration in respect of any claim(s) in writing within 90 days of receiving the intimation from the Owner that the bill is ready for payment, the claim of the Contractor will be

deemed to have been waived and absolutely barred and the Owner shall be discharged and released of all liabilities under the Contract in respect of these claims.

- 22.6 The venue of the Arbitration shall be Kolkata, West Bengal, India.
- 22.7 Dispute, if any arising out of this Contract, which cannot be resolved through Arbitration, shall rest with the jurisdictional Civil Court/High Court at Calcutta.

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I/We have read and understood all the above instructions and conditions and I/We agree to abide by them.

A signed & sealed copy of this document is enclosed by me/us with this tender.

SIGNATURE OF TENDERER
WITH SEAL

Place:

Dated:

PROFORMA OF BANK GUARANTEE IN LIEU OF SECURITY DEPOSIT

(to be submitted on non-judicial stamp paper of appropriate amount)

No.....

Dated

To

Rohit Ferro Tech Limited
35, Chittaranjan Avenue (4th Floor)
Kolkata – 700 012

Dear Sir,

In consideration of your having agreed to exempt M/s.....(Contractor's Name) registered under.....having its Reg. Office and works..... (hereinafter called the "Contractor", which expression shall unless the context requires otherwise include their successors and assigns) from the payment under the terms and conditions of the Contract No.....dated..... (hereinafter called the "Contract") made between the Owners and the Contractor, of security deposit for the due fulfillment of the said Contract of the terms and conditions contained in said Contract on production of bank guarantee for Rs..... (Rupees.....only). We..... (Name of the Contractors' Bankers) (hereinafter referred to as "the said Bank") having its Registered

Office at..... do hereby undertake to pay the Owner an amount not exceeding Rs.....(Rupees.....only), against any loss or damage caused to or suffered or would be caused to or sufferance by the Owner by reason of any breach by the said contractor or to any of the terms and conditions contained in the said agreement.

1. We (Name of the Contractor's Bankers)..... do at the request of the said contractor hereby undertake to pay the amount due and payable under this Guarantee without any demur, merely on a demand from the Owner, stating that the amount claimed is due by way of loss or damage caused to or suffered or would be caused to or suffered by the Company by reason of any breach by the said Contractor of any of the terms or conditions contained in the said Contract by reason of the said Contractor failure to perform the said Contract. Any such demand made on the Bank shall be conclusive as regards to amounts due and payable by and the liability of the Bank, lunder this Guarantee and we..... (Name of the Contractor's Bankers) do ;hereby undertake to pay the Company, the amount demanded, notwithstanding any dispute or disputes raised by the said Contractor on any ground whatsoever and notwithstanding any proceedings pending in any court or tribunal relating to the said Contract on the guarantee, the liability of the Bank under this guarantee being absolute and unconditional. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs..... (Rupees.....only).

2. We, (Name of the Contractor's Bankers) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Contract and that it shall continue to be enforceable till all the dues of the Owner under or by virtue of the said Contract have been fully paid and its claims satisfied or discharged to till Owner certified that the terms and conditions of the said Contract have been fully and properly carried out by the said Contractor and accordingly discharges this Guarantee, Unless a demand or claim under this connection is made on us in writing or on before..... we shall be discharged from all liability under this Guarantee thereafter.

3. We, (Name of the Contractor's Bankers)
Further agree to the Owner that the Owner shall have the fullest liberty without effecting in any manner our obligation hereunder to vary any of the terms and conditions of the said Contract or to extend the time of performance by the said Contractor from time to time or postpone for any time of from time to time, any of the powers exercisable by the Owner against the said Contractor and to forbear or enforce any of the terms and conditions relating to the said Contract and shall not be relieved from our liability by reason of any such variation or extension being granted to the said Contractor or for any forbearance, act or omission on the part of the Owner or any indulgence buy the S.V.I.L. Ltd., to the said Contractor or by any such matter or thing whatsoever, which under the law relating to sureties, would for this provision have effect of so relieving us.
4. Notwithstanding anything to the contrary your decision as to whether the Contractor Has made any such default or defaults and the amount or amounts to which you are entitled by reasons thereof will be binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but will pay the same forthwith on your demand without any protest or demur.
5. Should it be necessary to extend this guarantee on account of any reason, whatsoever, We undertake to extend period of this Guarantee on your request till such time as may be required by you. Your decision in this respect shall be final and binding on us.
6. This guarantee shall not in any way be affected by your taking or varying or giving up any securities from the Contractor or any other person, firm or company on its behalf or by the winding up, dissolution, insolvency or death as the case may be of the Contractor.
7. In order to give full effect to the guarantee herein contained you shall be entitled to act as if we were your principal debtors in respect of all your claims against

the Contractor hereby guaranteed by us as aforesaid and we hereby expressly waive all our rights of suretyship and other rights if any, which are in any way inconsistent with any of the provisions of the guarantee.

8. Subject to the maximum limit of our liability as aforesaid this guarantee will cover all your claim or claims against the Contractor from time to time arising out of or in relation to the said Contract and in respect of which your demand or notice in writing is lodged on or before expiry of six months from the date of expiry of this guarantee.
9. Any notice by way of demand or otherwise hereunder may be sent by special courier, fax, or registered post or hand delivered to the local address as aforesaid and if sent by post, it shall be deemed to have been given when the same has been posted.
10. This guarantee and the powers and provisions herein contained are in addition to and not by way of limitation of or substitution for any other guarantee or guarantees heretofore given to you by us (whether jointly with others or alone) and now existing uncanceled and that this guarantee is not intended to and shall not revoke or limit such guarantee or guarantees.
11. This guarantee shall not be affected by any change in the constitution of the Contractor or us nor shall it be affected by any change in your constitutions or by any amalgamation or absorption thereof or therewith but will ensure for the benefit of and be available to and enforceable by the absorbing or amalgamated company or concern.
12. This Guarantee is irrevocable during the period of its currency and shall not be revoked by us without previous consent in writing.
13. We further agree and undertake to pay you the amount demanded by you in writing Irrespective of any dispute.

14. Notwithstanding anything contained herein above our liability under this guarantee is restricted to Rs. (Rupees.....only). Unless a written claim is lodged on us for payment under this guarantee within six months from the date of expiry of this guarantee i.e., on or before all your rights under this guarantee shall be forfeited and we shall be deemed to have been released and discharged from all liabilities thereunder, irrespective of whether or not the original guarantee is returned to us.
15. We have power to issue this guarantee in your favour under the Memorandum and Articles of Association of our Bank and the undersigned has full power to execute this Guarantee under the Power of Attorney granted to hi;m by the Bank.

For and on behalf of

.....Bank

Branch Manager

(Banker's Seal)

Address.....

PROFORMA OF BANK GUARANTEE IN LIEU OF EMD
(to be submitted on non-judicial stamp paper of appropriate amount)

No.,.....

Date.....

To

M/s. Ankit Metal & Power Limited
35, Chittaranjan Avenue, 1st Floor
Kolkata 700012

Dear Sir,

In consideration of your agreeing to accept the Earnest Money Deposit of Rs.....
(Rupees Only) payable to you by M/s.
..... (name of the Tenderer) having its registered office at
..... (hereinafter referred to as the Tenderer) in terms
of your Notice Inviting Tender No. SIP-CPP/Civil/01/09-10 due on and other
Tender Documents relating thereto and pursuant to terms and conditions setforth or referred
to therein, in the form of Guarantee from us in the manner hereinafter contained, We,
..... (name of the bank with
branch details) do hereby covenant and agree with you as follows:

1. We undertake to indemnify you and keep you indemnified from time to time to the extent of Rs..... (Rupees only) against any loss or damage that may be caused to or suffered by you by reason of any breach or breaches on the part of the Tenderer of any of the terms and conditions contained in the said Tender, we shall forthwith on demand pay to you such sum or sums not exceeding in total the said sum of Rs..... (Rupees

..... only) as may be claimed by you as your losses and/or damages, costs, charges or expenses by reason of such default or defaults on the part of the Tenderer.

2. Notwithstanding anything to the contrary your decision as to whether the Tenderer has made any such default and the amount or amounts to which you are entitled by reasons thereof will be binding on us and we shall not be entitled to ask you to establish your claim or claims under this Guarantee but will pay the same forthwith on your demand without any protest of demur.
3. This Guarantee shall continue and hold good until it is released by you on the application by the Tenderer after the Tenderer has discharged all his obligations under the said Tender and submitted a "no Demand Certificate" provided always this guarantee shall in no event remain in force after the day of without prejudice to your claim or claims arisen and demanded from or otherwise notified to us in writing before the expiry of six months from the said date which will be enforceable against us notwithstanding that the same is or are enforced after the said date.
4. Should it be necessary to extend this guarantee on account of any reason, whatsoever, we undertake to extend period of this guarantee on your request till such time as may be required by you. Your decision in this respect shall be final and binding on us.
5. This guarantee shall not in any way be affected by your taking or varying or giving up any Earnest Money Deposit from the Tenderer or any other person, firm or company on its behalf or by the winding up, dissolution, insolvency or death as the case may be of the Tenderer.
6. In order to give full effect to the guarantee herein contained you shall be, entitled to act as if we were your principal debtors in respect of all your claims against the Tenderer hereby guaranteed by us as aforesaid and we hereby expressly waive all our rights of suretyship and other rights if any, which are in any way inconsistent with any of the provisions of this guarantee.
7. Subject to the maximum limit of our liability as aforesaid this guarantee will cover all your claim or claims against the Tenderer from time to time arising out of or in relation to the said Tender and in respect of which your demand or notice in writing is lodged on before expiry of six months from the date of expiry of this guarantee.
8. Any notice by way of demand or otherwise hereunder may be sent by special courier, fax or registered post or hand delivered to our local address as aforesaid and if sent by post, it shall be deemed to have been given when the same has been posted.
9. This guarantee and the powers and provisions herein contained are in addition to an not by way of limitation of or substitution for any other guarantee or guarantees heretofore given to you by us (whether jointly with others or alone) and now existing

uncancelled and that this guarantee is not intended to and shall not revoke or limit such guarantee or guarantees.

10. This guarantee shall not be affected by any change in the constitution of the Tenderer or us nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will ensure for the benefit of and be available to and enforceable by the absorbing or amalgamated company or concern.
11. This guarantee is irrevocable during the period of its currency and shall not be revoked by us without your previous consent in writing.
12. We further agree and undertake to pay you the amount demanded by you in writing irrespective of any dispute.
13. Notwithstanding anything contained herein above our liability under this guarantee is restricted to Rs..... (Rupeesonly)
Unless a written claim is lodged on us for payment under this guarantee within six months from the date of expiry of this guarantee on all our rights under this guarantee shall be forfeited and we shall be deemed to have been released and discharged from all liabilities thereunder, irrespective of whether or not the original guarantee is returned to us.
14. We have power to issue this guarantee in your favour under the Memorandum and Articles of Association of our Bank and the undersigned has full power to execute this Guarantee under the power of Attorney granted to him by the Bank.

For and on behalf of

----- Bank)

Branch Manager

(Bank Seal)

Address