

Ref. No.: NWSDB/SBD/S&I/ AC /LC/Ver2

REVISED ON 21-01-2019

**GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

MINISTRY OF CITY PLANNING, WATER SUPPLY AND HIGHER EDUCATION

NATIONAL WATER SUPPLY AND DRAINAGE BOARD

**SUPPLY AND INSTALLATION OF
AIR CONDITIONING UNITS AND ACCESSORIES**

VOLUME 1

REVISED ON 21-01-2019

NATIONAL WATER SUPPLY AND DRAINAGE BOARD

GALLE ROAD,

RATMALANA.

SRI LANKA

.....
Month & Year

DOCUMENT ISSUANCE CERTIFICATE

(To be filled at the time of issue by the authorized issuing officer)

1. STANDARD DOCUMENT REFERENCE NUMBER : NWSDB/SBD/ S&I/AC/ LC/Ver 2
2. CONTRACT NUMBER :
3. a) ISSUED TO :
- b) ADDRESS :
- c) TELEPHONE NUMBER :
- d) FACSIMILE NUMBER :
4. a) TENDER FEE : Rs. RECEIVED/NOT RECEIVED
 IN CASH/BANK DRAFT
- b) RECEIPT/BANK DRAFT NUMBER :
5. NUMBER OF COPIES ISSUED :
6. NUMBER OF CANCELLED COPIES ISSUED :
7. CANCELLED COPY FEE : Rs..... RECEIVED/NOT
 RECEIVED
 (IN CASH/BANK DRAFT)
8. BUSINESS REGISTRATION NUMBER :
9. a) ISSUING OFFICER :
- b) DESIGNATION :
- c) SIGNATURE :
10. PLACE OF ISSUE :
11. SEAL :
12. DATE : TIME :

TABLE OF CONTENTS

SECTION	PAGE NUMBER	
VOLUME 1	From	To
Document Issuance Certificate	a	
Table of Contents	b - d	
1 Instructions to Bidders	1 - 1	1 - 25
2 Conditions of Contract	2 -1	2- 37
VOLUME 2		
Table of Contents	i	ii
Checklist of Submissions	iii	
Invitation for Bids	iv	
3 Form of Bid	3 – 1	3 – 2
4 Bidding Data	4 – 1	4 – 4
5 Contract Data	5 – 1	5 - 3
6 Specifications	6a-1	6b -8
7 Schedule of Particulars	7-1	7 -2
8 Deviation from Specifications	8 – 1	
9 List of Drawings	9 - 1	
10 Delivery Schedule	10-1	10 -2
11 Bills of Quantities	11 – 1	11 - 5

SECTION	PAGE NUMBER	
	From	To
VOLUME 2		
12	Specimen Forms	
	1. Bid Security	12 – 1
	2. Contract Agreement	12 – 2 12 - 5
	3. Performance Security	12 – 6
	4. Advance Payment Security	12 – 7
	5. Letter of Acceptance	12 – 8 12 - 9
13	Appendices	
	Appendix 1 – Details of Similar Supply and Installations Completed within The last three years and ongoing.	13 - 1
	Appendix 2 – Financial Statement	13 – 2
	Appendix 2A - Authorization from Bankers	13 - 3
	Appendix 3 - Confirmation of capability of Supply and installation according to delivery schedule	13 - 4
	Appendix 4 - Manufacturer’s Authorization to sign the Contract.	13 - 5
	Appendix 5 - Contractor’s Authorization to sign the Contract	13 – 6
	Appendix 6 - TOR for the independent Inspection Agency	13 – 7
	Appendix 7 - Manufacturer’s awareness of the TOR for Independent Inspection Agency	13 – 8
	Appendix 8 - Manufacturer’s warranty for the goods supplied under the contract	13 – 9
	Appendix 9 - Confirmation of supplying Goods Manufactured at the Factory Quoted	13 - 10
	Appendix 10 - Manufacture’s guarantee for the replacement of unacceptable/rejected goods supplied under the contract	13 - 11
	Appendix 11- Affidavit by the Bidder	13 - 12

TABLE OF CONTENTS

SECTION		PAGE NUMBER	
		From	To
VOLUME 1			
1	Instructions to Bidders	1 - 1	1 - 25
2	Conditions of Contract	2-1	2 - 37

1. - INSTRUCTIONS TO BIDDERS

Table of Clauses
Instructions to Bidders

ITB Clause Number	Page Number
A - General	
1. Scope of Bid	1 - 4
2. Source of Funds	1 - 4
3. Ethics, Fraud and Corruption	1 - 4
4. Eligibility & Qualification Bidders	1 - 5
5. Eligible Goods and Related Services	1 - 7
B - Contents of Bidding Documents	
6. Sections of Bidding Documents	1 - 7
7. Clarification of Bidding Documents	1 - 9
8. Amendment of Bidding Documents	1 - 9
C - Preparation of Bids	
9. Cost of Bidding	1 - 9
10. Language of Bid	1 - 9
11. Documents Comprising the Bid	1 - 9
12. Form of Bid and Price Schedules	1 - 11
13. Alternative Bids	1 - 11
14. Bid Prices and Discounts	1 - 11
15. Currencies of Bid	1 - 13
16. Documents Establishing the Eligibility of the Bidder	1 - 13
17. Document Establishing the Conformity of the Goods and Related Services	1 - 13
18. Documents Establishing the Qualifications of the Bidder	1 - 14

ITB Clause Number	Page Number
19. Period of Validity of Bids	1 - 14
20. Bid Security	1 - 14
21. Format and Signing of Bid	1 - 16
D - Submission and Opening of Bids	
22. Submission, Sealing and Marking of Bids	1 - 16
23. Deadline for submission of Bids	1 - 17
24. Late Bids	1 - 17
25. Withdrawal, and Modification of Bids	1 - 17
26. Bid Opening	1 - 18
E - Evaluation and Comparison of Bids	
27. Confidentiality	1 - 19
28. Clarification of Bids	1 - 19
29. Responsiveness of Bids.	1 - 19
30. Arithmetic Corrections, Errors and Omissions	1 - 20
31. Preliminary Examination of Bids	1 - 21
32. Examination of Terms and Conditions Technical Evaluation	1 - 22
33. Conversion to Single Currency	1 - 22
34. Domestic Preference	1 - 22
35. Evaluation of Bids	1 - 22
36. Comparison of Bids	1 - 23

ITB Clause Number	Page Number
37. Post qualification of the Bidder	1 - 23
38. Procurement Committee's Right to Accept any Bid, and to reject any or all bids.	1 - 23
F - Award of Contract	
39. Award Criteria	1 - 23
40. Employer's Right to vary Quantities at time of award	1 - 24
41. Notification of Award	1 - 24
42. Signing of Contract	1 - 24
43. Performance Security	1 - 24
44. Taxes and Duties	1 - 25
45. Advance Payment	1 - 25
46. Vessels of Sri Lanka Shipping Corporation	1 - 25
47. Compliance with Contract Act No. 3 of 1987	1 - 25

Section I. Instructions to Bidders (ITB)

ITB shall be read in conjunction with the Section 4, Bidding Data (BIDDING DATA), which shall take precedence over ITB.

A- General

1. Scope of Bid 1.1 The Employer indicated in the **Bidding Data**, issues these Bidding Documents for the supply & installation of Goods and Related Services incidental thereto as specified in **Bidding Data** in Volume 2.

The successful bidder shall be expected to complete the supply of goods and related services by the Intended Completion Date specified in **Bidding Data**.

The name and identification number of this procurement are specified in the **Bidding Data**.

Bids should be submitted in the forms available from the office given in the **Bidding Data** on a payment of a non-refundable fee stated in the **Bidding Data**. Bidding Forms can be collected until the date specified in the **Bidding Data**.

1.2 Throughout these Bidding Documents:

(a) the term “in writing” means communicated in written form by mail (other than electronic mail) or hand delivered with proof of receipt;

(b) if the context so requires, “singular” means “plural” and vice versa; and

(c) “day” means calendar day.

2. Source of Funds 2.1 Payments under this contract shall be financed by the source specified in the **Bidding Data**

3. Ethics, Fraud and Corruption 3.1 Parties associated with Procurement Actions, namely, Contractors/Consultants and officials shall ensure that they maintain strict confidentiality throughout the process;

Officials shall refrain from receiving any personal gain from any Procurement Action. No gifts or inducement shall be accepted. Contractors/Consultants are liable to be disqualified from the bidding process if found offering any gift or inducement which may have an effect of influencing a decision or impairing the objectivity of an official.

- 3.2 The Employer requires the bidders, Contractors, and consultants to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy:
- (a) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
 - (b) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (c) “collusive practice” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Employer to establish bid prices at artificial, noncompetitive levels; and
 - (d) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract.
- 3.3 If the Employer found any unethical practices as stipulated under ITB Clause 3.2, the Employer will reject a bid, if it is found that a Bidder directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract in question.

4. Eligibility & Qualification of Bidders

4.1 Eligibility of Bidders

Eligible bidder is one who satisfies all the following requirements listed under this clause

- 4.1.1 All bidders shall possess legal rights to supply the Goods under this contract.
- 4.1.2 A Bidder shall not have a conflict of interest. All bidders found to have conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in this bidding process, if they are or have been associated in the past, with a firm or any of its affiliates which have been engaged by the Employer to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under these Bidding Documents

- 4.1.3 A Bidder that is under a declaration of ineligibility by the National Procurement Agency (NPA), at the date of submission of bids or at the date of contract award, shall be disqualified. The list of debarred firms is available at the website of NPA, www.npa.gov.lk.
- 4.1.4 The bidder who is blacklisted by the NWSDB at the date of submission of bids or at the date of award of the contract shall be disqualified for contract award.
- 4.1.5 The Bidder shall be a manufacturer or their local accredited agent.
- 4.1.6 The Manufacturer shall Posses ISO 9001:2015 Quality Management System certificate for the Manufacturing factory from an accredited agency. Accredited Agency shall be a member of International Accredited Forum (IAF) and shall have the authority for the accreditation of mentioned goods in their scope of accreditation. Scope of the production shall be clearly specified in the certificate. Manufacturer shall maintain the validity of this certificate during the contract period.
- 4.1.7 The bidder shall furnish documentary evidence, as a part of the bidding documents establishing the Bidder's eligibility to Bid and qualifications to perform the Contract with certified copy of business registration from the Registrar of Companies.

4.2 Qualification of bidders

- (i). The Bidder shall have the Minimum experience in Air conditioning and refrigeration works of at least one contract of a similar nature & Complexity within last 3 years as specified in **Bidding Data**. List of such supplies and installation and certified copies of award letters and completion certificates of such suppliers shall be submitted with the bid in the form given in **Appendix 1**.
- (ii) Bidder shall have the average of Annual Volume of work performed in the last three years as stated in the **Bidding Data**
- (iii) that the bidder has the financial and technical capability necessary to perform the Contract. The bidder shall submit the financial details requested in **Appendix 2** including audited financial statements for the last three years. If the business has not been in operation for three years then audited financial statements together with the financial details requested in **Appendix 2** for the period that the business has been in operation to ascertain the financial stability of the bidder shall be submitted with the offer. The bidder shall provide authority from the bidder to the Board to seek reference from the Bidder's bankers about the financial capability and credit facilities to the bidder exclusively for this contract, in the **Appendix 2A**.

- (iv) Bidders financial capacity to award this contract shall be as stated in the **Bidding Data.**
- (v) That the agreement of the manufacturer or producer to confirm that the supply will be made in accordance with “Delivery Schedule ” and that the manufacturer of goods has the production capacity necessary to perform the contract. This confirmation shall be submitted with the bid in the form given in **Appendix 3.**
- (vi) That the bidder shall provide documentary evidence to prove that goods supplied under the contract shall conform to the Specifications given in Section 6.

5. Eligible Goods and Related Services

- 5.1 All goods supplied under this contract shall be complied to the standards Specified in Section 6 Specifications and the bidder shall provide certificates for the conformity of goods / materials to the standards and the Quality Management System ISO 9001:2015 from an accredited Agency, valid for the contract period.
- 5.2 All goods and related services to be supplied under the contract and Installation of goods shall be from manufacturer or their local accredited agent.

B - Contents of Bidding Documents

6. Sections of Bidding Documents

- 6.1 The Bidding Documents consist of 2 Volumes, which include all the sections indicated below, and should be read in conjunction with any addendum issued in accordance with ITB Clause 8

Volume 1

- Page (a) Document Issuance Certificate
- Section 1 Instructions to Bidders (ITB)
- Section 2 General Conditions of Contract (CC)

Volume 2

- Page iii Checklist of Submissions
- Page iv Invitation for Bids
- Section 3 Form of Bid
- Section 4 Bidding Data

	Section 5	Contract Data
	Section 6	Specifications.
	Section 7	Schedule of Particulars
	Section 8	Deviations from specification.
	Section 9	List of drawings
	Section 10	Bill of Quantities
	Section 11	Specimen Forms
	Section 12	Appendices
Appendix 1	-	Details of similar supplies carried out within the last three years and ongoing similar ones.
Appendix 2	-	Financial Statement
Appendix 2A	-	Authorization for Bank References.
Appendix 3	-	Capability of production and delivery according to Delivery Schedule
Appendix 4	-	Manufacturer's Authorization to sign the contract
Appendix 5	-	Bidder's Authorization to sign the Contract.
Appendix 6	-	TOR for the independent Inspection Agency
Appendix 7	-	Manufacturer's awareness of the TOR for Independent Inspection Agency
Appendix 8	-	Manufacturer's warranty for the goods supplied under the contract
Appendix 9	-	Confirmation of supplying Goods Manufactured at the Factory Quoted
Appendix 10	-	Manufacture's guarantee for the replacement of unacceptable/rejected goods supplied under the contract
Appendix 11	-	Affidavit by the Bidder

6.2 The Bidder is expected to examine all instructions, forms, terms, and specifications, General Conditions of Contract, Contract Data, Bidding Data, drawings, BOQ, Standard forms, appendices and etc. in the Bidding Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid.

7. Clarification of Bidding Documents

7.1 A prospective Bidder requiring any clarification of the Bidding Documents including the restrictiveness of specifications shall contact the Employer in writing at the Employer's address specified in the **Bidding Data**. The Employer will respond in writing to any request for clarification, provided that such request is received not later than ten (10) days prior to the deadline for submission of bids. The Employer shall forward copies of its response to all those who have purchased the Bidding Documents, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Documents as a result of a clarification, he shall do so following the procedure under ITB Clause 8.

8. Amendment of Bidding Documents

8.1 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have purchased the Bidding Documents.

8.2 Employer may, at his own discretion, extend the deadline for the submission of bids if reasonable, to take an addendum into account in preparation of their bids, pursuant to ITB Sub-Clause 23.2

8.3 Such Addendum/addenda shall be submitted along with the bids as per clause 11.1 hereof.

C- Preparation of Bids

9. Cost of Bidding

9.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process

10. Language of Bid

10.1 The Bid, as well as all correspondence and documents relating to the Bid (including supporting documents and printed literature) exchanged by the Bidder and the Employer, shall be written in the English language.

11. Documents Comprising the Bid

11.1 The Bid shall comprise the following:

- (a) Duly perfected set of Volume 2 of bidding document which included section 3 to 12 ;
- (b) Bid Security accordance with ITB Clause 20;
- (c) All drawings, letters, programs, descriptive literature, calculations and any other particulars prepared by the bidder to accompany his bid in the language stated in the Cl. 10.1.

- (d) Descriptive literature relating to all items offered in the language stated in the Cl. 10.1.
- (e) The manufacturer's technical report containing general description of the goods offered in the language stated in the Cl. 10.1.
- (f) Availability of after sale service and workshop facilities.
- (g) Reference to similar works already installed or being installed as in the form of Appendix 1 and information covering the financial stability of the bidder in sufficient detail as in the form of Appendix 2 as to permit assessing the ability of the bidder to meet the requirements of this contract.
- (h) The subsequent addendum /addenda if any
- (i) Documentary evidence established in accordance with clause 4 hereof, to prove that the bidder is eligible to bid and is qualified to perform the contract if his bid is accepted.
- (j) Documentary evidence established in accordance with clause 5 hereof, to prove that the goods and ancillary services and works to be supplied by the bidder are eligible goods and services and conform to the specifications and other requirements in the bidding document.
- (k) The bidder shall supply the following document at the time of bidding
 - material conformity as per specification and standards given issued by the manufacturer for the product
 - The bidder shall submit a calculation to justify the capacity of the Air Conditioning unit quoted on requirement in Clause 2.8 Specific Specification.
- (l) All details requested in Appendices.
- (m)The Photostat copies of documentary evidence shall be one sided clear copies to the original size which bear both the initials and the seal of the bidder. The bidder shall certify these copies referred to as follows.

I/we hereby certify that this is a true Photostat copy of the certificate which has (Page (s), issued by (name of the institution which issued the certificate).

Authorized Signature /date

Seal of the Company
- (n) Any other document required in the Bidding Data.
- (o) Any other document that bidder may think useful in the evaluation of bids.
- (p) Programme of maintenance for 24 months period maintenance should be done at least once in 3-4 month period.

- 12. Form of Bid and Price Schedules**
- 12.1 The Form of Bid must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. The original and the copy of the Form of Bid shall be signed by a person or persons duly authorized. Proof of authorization shall be furnished in the form of a written power of attorney which shall accompany the bid.
- 13. Alternative Bids**
- 13.1 Each set of bidding documents shall contain only one offer. All alternative offers will be rejected without assigning reasons. If offers marked as offer 1,2 etc. offer 1 will be treated as original offer and the others as alternative offers. Bidders may purchase bidding documents in required number and may submit one or more independent offers. The independent offers shall be in separate set of bidding documents together with separate bid securities.
- 14. Bid Prices and Discounts**
- 14.1 The Bidder shall indicate on the Price Schedule the unit prices and total bid prices of the goods, services and installation it proposes to supply and Install under the Contract.
- 14.2 Prices quoted by the Bidder shall be firm and not subject to variation on any account. A Bid submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to clause 29 hereof.
- 14.3 The Bidder shall fill in rates and prices for all items of the Bill/s described in a Bill/s in the Bill of Quantities (BOQ). If a bidder does not quote for a bill, the particular bill shall be considered as incomplete and that bill shall not be taken for evaluation.
- 14.4 Prices quoted shall correspond to all the items specified in the contract and to all the quantities specified for each item of the contract.
- 14.5 In pricing the items of the Bills of Quantities, the bidder shall cover himself and will be deemed to have covered himself for:
- a) All services and goods which according to the true intent and meaning of the contract may be reasonably inferred as necessary for completion of delivery of the goods in sound condition to the Stores which is specified in Contract data.
 - b) All the duties, obligations, liabilities and responsibilities which the Contract documents place upon the bidders in connection with or in relation to the Contract.
 - c) All costs arising out of inspection including testing and inspection by the one of the Independent Inspection

Agencies listed in the clause 25 of the General conditions of Contract, testing, packing, transportation, clearing, loading, unloading, stacking, shipping line charges, warehouse rent, port chargers , any demurrages, cost of insurance from the manufacturer's plant to the purchaser's stores , Agents Commission if any and other minor expenses and charges.

- d) Cost of accessories not specifically listed, but necessary for proper completion.
- (e) Prices charged by the Supplier for the preceding incidental services, shall be included in the Contract Price for the Goods.
- (f) Any taxes and duties as stated in the Clause 44 hereof

14.6 **If Bidders are registered for the purpose of VAT**, they should indicate the amount of VAT claimed separately in the Bidding documents, in addition to the value of the Bidding, along with the VAT registration number. Declaration of VAT registration number is a mandatory requirement to pay the VAT amount.

If any Bidder is not registered for VAT, he should indicate the value of the Bid in Bidding documents. Under this category Bidder should obtain a letter from the Commissioner of Inland Revenue Department certifying that his Company has not been registered for VAT and that letter should be attached to the Bidding document.

VAT component shall not be included in the rates. The amount written in the Form of Bid shall be without VAT. However, VAT component shall be shown separately at the summary of the Bills.

- 14.7 The Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account. A bid submitted with an adjustable price quotation shall be treated as non-responsive and rejected, pursuant to ITB Clause 29 hereof.
- 14.8 All items shall be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be deemed to be included in the prices of other items.
- 14.9 Bidder shall indicate any discount offered or differed in the Summary of Bills. Discounts stated any where else shall not be considered.
- 14.10 The bidder all carefully study the design data provided by the employer and carry out necessary calculations to find out the

accuracy of those data. If the bidder found that the design data provided by the employer is inaccurate, the bidder shall provide the goods to meet the correct design requirement. The bidder inform this situation to the employer 14 days prior to the deadline of submission of bids.

14.11 If a Bidder has given a discount of his bid price, the discount shall be distributed to each and every item excluding provisional sums in the Bills of Quantities by adjusting the rates in the Bills of Quantities by the percentage of discount offered. This rate is applicable for all extra works to complete the works in the Contract.

15. Currencies of Bid

15.1 Unless otherwise stated in **Bidding Data** the Bidder shall quote in Sri Lankan Rupees and payment shall be payable only in Sri Lanka Rupees.

16. Documents Establishing the Eligibility of the Bidder

16.1 To establish their eligibility in accordance with ITB Clause 4 Bidders shall

- (i) Be manufacturer or their local accredited agent. Authorization letter from the manufacturer in case of accredited agent participate in the bidding, in the form given in Appendix 4 shall be submitted.
- (ii) Shall possess ISO 9001:2015, Quality Management System Certificate for the manufacturing factory. Manufacturer shall maintain validity of this certificate during the contract period.
- (iii) Shall not be disqualified / black listed by the NPA/NWSDB.
- (iv) Shall submit certified copies of Business Registration with the Registrar of companies.
- (v) Bidder shall comply with the requirements of the Public Contracts Act No.3 of 1987 and subsequent Gazette Notifications, for amount of bid more than Rs.5 million.
- (vi) All Appendices included in the Bidding Document.

17. Document Establishing the Conformity of the Goods and Related works and Services

17.1 To establish the conformity of the Goods, Installation works and Related Services to the Bidding Documents, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods conform to the technical specifications included in the Bidding Document.

17.2 The documentary evidence may be in the form of literature performance curves, drawings or data, and shall consist of a detailed item by item description (given in Section 7, Schedule of Particulars) of the essential technical and performance characteristics of the Goods, Installation works and Related Services, demonstrating substantial responsiveness of the Goods, works and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the specifications.

- 17.3 The Bidder shall also furnish a list giving full particulars, including quantities, available sources and current prices of spare parts, (Itemised price list) special tools, etc., necessary for the proper and continuing functioning of the Goods during the period if specified in the **Bidding Data** or following commencement of the use of the goods by the Employer.
- 18. Documents Establishing the Qualifications of the Bidder**
- 18.1 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Employer's satisfaction:
- (a) A Bidder that does not manufacture or produce the Goods that he offers to supply shall submit the Manufacturer's Authorization using the form included in Section 13, Appendices to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods;
 - (b) That, in case of a Bidder not doing business within Sri Lanka, the Bidder is or shall be (if awarded the contract) represented by an accredited Agent in Sri Lanka equipped and able to carry out the Contractor's maintenance, repair and spare parts stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
 - (c) That the Bidder meets each of the qualification criterion specified in Clause 4 of ITB.
- 19. Period of Validity of Bids**
- 19.1 Bids shall remain valid until the date specified in the **Bidding Data**. A bid valid for a shorter period shall be considered non responsive and rejected by the Employer.
- 19.2 In exceptional circumstances, prior to the expiration of the bid validity date, the Employer may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 20, it shall also be extended for a corresponding period. If a bidder does not agree for an unconditional extension of the validity of his bid, his bid shall be rejected without forfeiting the bid security.
- 19.3 In any case bidder shall not be permitted to modify his bid
- 20. Bid Security**
- 20.1 The Bidder shall furnish as part of its bid, a Bid Security as specified in the **Bidding Data**.
- 20.2 A bid security which is encashable on demand equivalent to the sum as stated in the **Bidding Data** and shall be furnished in one of the following forms. The format of security shall be as specified in the specimen form included in the Bidding Document to indicate the requirement.

- (a). A Bank Guarantee issued by a Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka.
- (b). A fixed deposit or a pass book of a Bank operating in Sri Lanka approved by the Central Bank of Sri Lanka and the deposits made in the name of the National Water Supply and Drainage Board, Sri Lanka.
- (c). A Sri Lanka Rupee cash deposit to the National Water Supply and Drainage Board, Sri Lanka (The original receipt for such deposit shall be attached to the original bidding document).
- (d). A certified cheque issued by a Bank operating in Sri Lanka approved by the Central Bank of Sri Lanka in favour of the National Water Supply and Drainage Board, Sri Lanka.
- (e). A Bank guarantee issued by a Bank based in another country but the security or guarantee “confirmed” by a Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka.

However, the requirement of confirmation of Bid guarantees issued by a bank based in another country, by a bank operating in Sri Lanka is not necessary, if the entity that issues the guarantee is an Export Credit Agency of any foreign government or a reputed International Financier acceptable to the Central Bank of Sri Lanka.

20.3 The validity of the above security shall be up to the date specified in the **Bidding Data**.

20.4 Any bid not accompanied by an acceptable bid security shall be rejected by the Procurement Committee as non-responsive.

20.5 Unsuccessful bidders' bid securities shall be discharged and returned as promptly as possible but not later than 30 days after the award of the contract to the successful bidder.

20.6 The successful bidder's Bid Security shall be discharged upon the bidder's executing and furnishing the Performance Guarantee pursuant to clause 43 hereof.

20.7 The bid security shall be forfeited:

- (a) if a bidder withdraws its bid during the period of bid validity specified by the bidder on the form of bid ; or
- (b) if the bidder does not accept the correction of its bid price, pursuant to Instructions to Bidders (ITB) Clause 30.
- (c) if the successful bidder fails or refuse within the specified time to;
 - (i). furnish the required performance guarantee in accordance with ITB, or

(ii). sign the Contract Agreement

20.8 No interest will be paid on Bid Security

**21. Format and
Signing of
Bid**

21.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB Clause 11 and clearly mark it as "ORIGINAL." In addition, the Bidder shall submit a copy of the bid and clearly mark it as "COPY." In the event of any discrepancy between the original and the copy, the original shall prevail.

21.2 The original and the Copy of the bid shall be typed or written in indelible ink and shall be signed on the Form of Bid by a person duly authorized to sign on behalf of the Bidder. Authorization to sign the bid shall be submitted with the bid, as per Appendix 5.

21.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

D - Submission and Opening of Bids

**22. Submission,
Sealing and
Marking of
Bids**

22.1 Bidders may always submit their bids by mail or by hand

(a) Bidders submitting bids by mail or by hand, shall enclose the original and the copy of the Bid in separate sealed envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." These envelopes containing the original and the copy shall then be enclosed in one single envelope.

22.2 The inner and outer envelopes shall:

(a) bear the name and address of the Bidder;

(b) be addressed to the Employer as specified in **Bidding Data**

(c) bear the specific identification of this bidding Document as indicated in the **Bidding Data**; and

(d) bear a warning not to open before the time and date for bid opening, in accordance with ITB Sub-Clause 26.1.

If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid.

- 23. Deadline for Submission of Bids**
- 23.1 Bids must be addressed to the Chairman, procurement committee at the Address specified in the **Bidding Data** received by the Employer before the date and time specified in the **Bidding Data**
- 23.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB Clause 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 24. Late Bids**
- 24.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB Clause 23. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.
- 25. Withdrawal, and Modification of Bids**
- 25.1 A Bidder may withdraw, or modify its Bid after it has been submitted by sending a written notice in accordance with ITB Clause 22, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Sub-Clause 21.2, (except that no copies of the withdrawal notice are required). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:
- (a) Submitted in accordance with ITB Clauses 21 and 22(except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” or “MODIFICATION;” and
 - (b) Received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 23.
- 25.2 Bids requested to be withdrawn in accordance with ITB Sub-Clause 25.1 shall be returned to the Bidders only upon notification of contract award to the successful bidder in accordance with sub clause 41.1.
- 25.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Form of Bid or any extension thereof.

26. Bid Opening

26.1 The Bid Opening Committee (BOC) approved by the Procurement Committee shall conduct the bid opening in public at the address, date and time specified in the **Bidding Data**.

26.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding bid may be opened at the discretion of the Employer. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Completion of all the bids that have been modified, envelopes marked “ORIGINAL” of other bidders shall be opened and readout subsequently. No Bid shall be rejected at Bid opening except for late bids, in accordance with ITB Sub- Clause 24.1.

Only envelopes that are opened and read out at Bid opening shall be considered further.

26.3 The Bid Opening Committee shall read out the following at the bid opening committee.

- a) Name and address of the bidder (if joint venture read the name of the joint venture)
- b) Absence or presence of the bid security; All members of the committee shall initial the bid security;
- c) The bid price given in words in the form of bid; if the bid price is not given in words the bid price given in figures; if bid price is not filled in the form of bid, the respective price given in the BOQ or Price Schedules; Whether the announced prices are inclusive or exclusive of VAT shall be indicated clearly
- d) If the contract will be awarded as a whole the announcement of final bid price is suffice; If contracts will be awarded in different items or lots such prices shall be announced;
- e) The discounts offered shall be announced separately by clearly indicating that the announced prices are inclusive or exclusive of discounts.
- f) Any other information that the BOC consider as relevant; however, the details of the make-up of the bid price shall not be read out.

26.4 After opening original of each and read out the relevant information, the BOC shall reseal the envelopes before

handing over the documents to the PE. The PE shall hand over the bid documents to the chairman of TEC in sealed form.

- 26.5 The Bid Opening Committee shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, or modification; the Bid Price, per lot if applicable, including any discounts, and the presence or absence of a Bid Security. The Bidders' representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Bidders who submitted bids in time.

E - Evaluation and Comparison of Bids

- 27. Confidentiality** 27.1 Information relating to the examination, evaluation, comparison, and post-qualification (if applicable) of bids, and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process until publication of the Contract Award.
- 27.2 Any effort by a Bidder to influence the Employer/ Procurement Committee in the examination, evaluation, comparison, and post-qualification of the bids or contract award decisions may result in the rejection of its Bid.
- 28. Clarification of Bids** 28.1 During the evaluation of the bids, there may be a need to seek clarification from a bidder with the sole purpose of ensuring that the Bid can be properly and fairly evaluated. These clarifications should not
- (a) permit any substantive change to the bidder's initial response ; and
 - (b) Change in the bid price except correction of arithmetical errors in the pricing of the bid
- The bidder should not be able to clearly comprehend that any clarification sought is only for the aforementioned purpose only.
- At the request made by the Technical Evaluation Committee (TEC), the procurement Entity (PE) will seek such clarification from the bidder in writing.
- 29. Responsiveness of Bids** 29.1 Prior to the detailed evaluation of Bids the Procurement Committee will determine whether each Bid,
- a) Meets the eligibility and qualification criteria defined in clause 4 hereof.

- b) Has been properly signed and accompanied by a proper power of attorney.
- c) is accompanied with the required Bid security as defined in Clause 20 hereof .
- d) Has sufficient bid validity period as per cl 19 hereof, and
- e) is substantially responsive to the requirements of the Bid documents,

29.2 A substantially responsive Bid is one which conforms to all the terms, in clause 29.1 hereof without material deviation or reservation.

A material deviation or reservation is one,

- a) Bidder requires price fluctuation whereas bidding document specifies otherwise,;
- b) Deviation from bid documents which affects the bid price but cannot be given monetary value;
- c) Departure from technical specifications of critical nature;
- d) Absence of documents intended to substantiate the legitimacy of the bid (i.e. that the Bid is not a ‘speculative’, ‘exploratory’ or ‘wait and see’ Bid) or proof of reliability of the equipment offered.
- e) Bidder proposes to subcontract major components of the work against the conditions provided.
- f) Conditional bids, that is, subject to prior sale, availability of components in the market,
- g) Un acceptable technical features
- h) Bids which are not responsive to critical, technical or commercial requirements in the bidding document.

29.3 If a Bid is not substantially responsive, it will be rejected by the Procurement Committee, and may not subsequently be made responsive by correction or withdrawal of the non conforming deviation or reservation.

**30. Errors,
Omissions
and Arithmetic
Corrections.**

30.1 Provided that a Bid is substantially responsive, the Employer may waive any omissions in the Bid that do not constitute a material deviation.

- 30.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 30.3 Bids determined to be substantially responsive shall be checked by the Employer, for any arithmetic errors.

Errors will be corrected by the Employer as follows:

- a). Where there is a discrepancy between the amounts in figures and in words, the amounts in words will govern; and
- b). Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity,
- i). the unit rate as quoted will govern,
- ii). unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected.
- 30.4 If the bid price changes by the above procedure, the amount stated in the Form of Bid shall be adjusted with the concurrence of the bidder and shall be considered as binding upon the bidder.
- 30.5 If the bidder does not accept the corrected amount of Bid, its Bid shall be rejected, and the bid security shall be forfeited in accordance with sub clause 20.7

31. Preliminary Examination of Bids

- 31.1 The Procurement Committee shall examine the bids to confirm that all documents requested in ITB Clause 11 have been provided, and to determine the completeness of each document submitted.
- 31.2 The Procurement Committee shall determine that the following documents and information have been provided in the Bid. If any of these documents or information is not provided with the bid, the Bid shall be rejected.

- (a) Form of Bid, in accordance with ITB Sub- Clause 12.1;

- (b) Price Schedules, in accordance with ITB Clause 14;
- (c) Bid Security in accordance with ITB Clause 20.
- (d). Eligibility and qualification requested in ITB clause 4.

32. Examination of Terms and Conditions; Technical Evaluation

- 32.1 The Procurement Committee shall examine the Bid to confirm that all terms and conditions specified in the Condition of Contract and the Contract Data have been accepted by the Bidder.
- 32.2 The Procurement Committee shall evaluate the technical aspects of the Bid submitted in accordance with ITB Clause 17, to confirm that all requirements specified in Section 6, Specifications of the Bidding Document have been met.
- 32.3 If, after the examination of the terms and conditions and the technical evaluation, The Procurement Committee shall evaluate the technical aspects of the Bid determines that the Bid is not substantially responsive in accordance with ITB Clause 29, the Procurement Committee shall evaluate the technical aspects of the Bid shall reject the Bid.

33. Conversion to Single Currency

- 33.1 If the bidders are allowed to quote in foreign currencies in accordance with sub clause 15.1, for evaluation and comparison purposes, the Procurement Committee shall convert all bid prices expressed in foreign currencies into Sri Lankan Rupees using the selling rates prevailed 28 days prior to closing of bids as published by the Central Bank of Sri Lanka. If this date falls on a public holiday the earliest working day prior to the date shall be applicable

34. Domestic Preference

- 34.1 Domestic preference shall not be Applicable

35. Evaluation of Bids

- 35.1 The Procurement Committee will evaluate and compare Bids previously determined to be substantially responsive, pursuant to clause 31 hereof
- 35.2 In evaluating the Bids the Procurement Committee will determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
 - a) Making any correction of errors pursuant to clause 30 hereof.
 - b) Discounts , if any
 - c) Evaluation of Acceptable omissions (line items or parts of work)
 - d) Conversation to a common currency
 - e) Delivery periods of completion times
 - f) Adjustment for various minor deviations
 - g) The availability of after sale services and spare parts

- h) The acceptable departures of warranties
- i) Assessment of monetary implications on deviations and other matters.
- j) Adjusted price according to the above procedure shall be added to the Life cycling cost and it shall be used for the further evaluation.

35.3. For the evaluation purposes the rates and prices in the BOQ shall be considered to be excluding VAT. Any notes or remarks by bidders contrary to this shall be disregarded.

36. Comparison of Bids

36.1 The Procurement Committee shall compare all substantially responsive bids to determine the lowest-evaluated bid, in accordance with ITB Clause 35.

37. Right of Procurement Committee to Accept Any Bid, and to Reject Any or All Bids

37.1 The Procurement Committee reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders.

F- Award of Contract

38. Post qualification of the Bidder

38.1 The Procurement Committee shall determine to its satisfaction whether the evaluated and substantially responsive bid is qualified to perform the Contract satisfactorily

38.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 4, 18 and 35.

38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Procurement Committee shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

39. Award of Contract

39.1 The Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily

- 40. Employer's Right to Vary Quantities at Time of Award**
- 40.1 At the time the Contract is awarded, the Employer reserves the right to increase or decrease the quantity of Goods Related Services, and Installation works originally specified in Section 11, Bill of Quantities , provided this does not exceed twenty five percent (25%) or one unit which ever is higher and without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents.
- 41. Notification of Award**
- 41.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted.
- 41.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract
- 41.3 Upon the successful Bidder's furnishing the required performance security pursuant to ITB Clause 43, the Employer will promptly notify each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Clause 20.5.
- 42. Signing of Contract**
- 42.1 The successful Bidder will be required to sign a Contract Agreement. The Contract Agreement must be executed within twenty eight (28) days after the receipt of the Letter of Acceptance.
The Contract Agreement will be prepared by the Board. The Contractor will be required to pay the stamp duty in accordance with the law relating to stamp duty in Sri Lanka. The prevailing rate of stamp duty on contracts for supply installation work is prescribed in the **Bidding Data**
- 42.2 If a Bidder has given a discount of his bid price, the discount shall be distributed to each and every item excluding provisional sums in the Bills of Quantities by adjusting the rates in the Bills of Quantities by the percentage of discount offered. Contractor shall adjust all BOQ Rates deducting the discounted amount and shall endorse with the Contractor's Signature. This rate is applicable for all extra works to complete the works in the Contract.
- 43. Performance Security**
- 43.1 Within fourteen (14) days of the receipt of the notification of the acceptance of the contract by the Board, the successful Bidder shall furnish to the Board a Performance Security encashable on demand in accordance with the Clause17 of the Conditions of Contract, in the format of Performance Security provided in the Bidding Document.
- 43.2 The performance Security shall be valid until a date 28 days beyond the contract period. On due performance of the contract in all respects and issuance of the Final Acceptance Certificate by the Engineer the Performance Guarantee will be returned to the Contractor without any interest.
- 43.3 Failure of the successful Bidder to comply with the requirements of clause 42 or clause 43 hereof shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security, in which event the Board may make the award to the next lowest evaluated Bidder or call for new Bids.

- 44 Taxes and Duties**
- 44.1 The Supplier shall be entirely responsible for all taxes, stamp duties, license fees, etc. including all costs stipulated in Preamble Notes on Pricing incurred until delivery of the contracted Goods to the Purchaser.
- 43.2 The Contractor shall comply with the regulations of the Department of Inland Revenue of Sri Lanka for payment of Value Added Tax, Profit Tax and other taxes and duties arising out of the Contract. Employer shall not be responsible for any taxes or duties which are to be paid by the Contractor.
- 43.3 National Water Supply & Drainage Board is a VAT registered institution according to Value Added Tax Act No. 14 of 2002. The VAT registration number of NWSDB is 4090 31820 7000. The contractors who are VAT liable shall issue VAT invoices specifically stated as 'TAX INVOICES' to NWSDB including their VAT registration numbers and showing bill amounts and applicable VAT separately along with the requests for payments. The date of TAX INVOICE shall be within 28 days of work done.
- 45. Advance Payment**
- 45.1 The Board will pay advance payment on the Contract Price as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the **Bidding Data**. The Advance Payment Guarantee shall be a bank guarantee form a reputed Bank operating in Sri Lanka approved by the Central Bank of Sri Lanka ,in the form prescribed in the Bidding Document in section 12 for the amount requested
- 46. Vessels of Sri Lankan Shipping Corporation**
- Supplier shall use vessels of Sri Lanka Shipping Corporation at all instances for sea transport of Goods. If vessel of Sri Lanka Shipping Corporation is not available, to supply goods within the delivery schedule, goods can be transported by any other authorized vessels.
- 47. Compliance with Contract Act No.3 of 1987.**
- Bidder shall comply with the requirement of the Public Contracts Act No.3 of 1987 and subsequent Gazette Notifications, for amount of bid more than Rs.5 million.
- Except principal bidders, all agents, sub-agents, representatives or nominees for and behalf of the bidders shall be require to submit their certificates of registration under this Act and shall register the contract with the Register of Public Contracts, Sri Lanka.

2. GENERAL CONDITIONS OF CONTRACT

Table of Clauses**Page Number****Clause Number**

1	Definitions	2 - 3
2.	Contract Documents	2 - 5
3.	Fraud and Corruption	2 - 6
4.	Interpretation	2 - 6
5.	Language	2 - 7
6.	Joint Venture, Consortium or Association	2 - 7
7.	Eligibility	2 - 7
8.	Notices	2 - 7
9.	Governing Law	2 - 7
10.	Resolution of Disputes	2 - 8
11.	Scope of Works	2 - 11
12.	Delivery and Documents	2 - 12
13.	Contractor's Responsibilities	2 - 12
14.	Contract Price	2 - 15
15.	Terms of Payment	2 - 16
16.	Taxes and Duties	2 - 19
17.	Performance Security	2 - 20
18.	Copyright	2 - 21
19.	Confidential Information	2 - 21
20.	Subcontracting	2 - 21
21.	Specifications and Standards	2 - 22
22.	Packing and Documents	2 - 22
23.	Insurance	2 - 22

24.	Transportation	2 - 24
25.	Inspections and Tests	2 - 25
26.	Liquidated Damages	2 - 28
27.	Warranty	2 - 28
28.	Patent Indemnity	2 - 29
29.	Limitation of Liability	2 - 29
30.	Change in Laws and Regulations	2 - 30
31.	Force Majeure	2 - 30
32.	Change Orders and Contract Amendments	2 - 30
33.	Extensions of Time	2 - 32
34.	Termination	2 - 33
35.	No night work and Sunday works	2 - 34
36.	Lighting for night work	2 - 34
37.	Rate of Progress	2 - 34
38.	Suspension of work	2 - 34
39.	All risks	2 - 35
40.	Taking Over	2 - 35
41.	Defects after taking over	2 - 35
42.	Final Certificate	2 - 36
43.	Accident or injury to workman	2 - 36
44.	Payment or claims and Demands	2 - 36
45.	Riots and unlawful behavior	2 - 36
46.	Day Work	2 - 36
47.	Contractor's Default	2 - 37

1. Definitions and Engineer's Superintendence

1.1 Definitions

The following words and expressions shall have the meanings hereby assigned to them:

- (a) "Contract" means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein, including all attachments, appendices, addenda and all documents incorporated by reference therein.
- (b) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.
- (c) "Contract Price" means the price payable to the Contractor as specified in the Contract agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.
- (d) "Day" means calendar day.
- (e) "Completion" means the fulfillment of the supply of Goods to the destination specified, Installation of these goods and completion of the Related works & testing and commissioning by the Contractor in accordance with the terms and conditions set forth in the Contract.
- (f) A "Defect" is any part of Works or services not completed in accordance with the contract
- (g) The " Defect Liability Period" is the period named in the contract data and calculated from the Completion date.
- (h) "CC" means the Conditions of Contract.
- (i) "The Engineer" means the officer for the time being holding the office as specified in the **Contract Data**, or any other person appointed by the Employer from time to time by notice in writing to the Contractor to act in replacement of.
- (j) "Goods" means all of the commodities, pumps, motors, pipes, fittings, specials, machinery and equipment, and/or any other materials that the Contractor is required to complete the work under the Contract.
- (k) "Employer / Purchaser / Board" means the National Water Supply & Drainage Board, Sri Lanka.
- (l) "Related Services/Services" means the services incidental to the supply of the goods and works, such as insurance, installation, training and initial maintenance and other such obligations of the Contractor under the Contract.

(m) "Subcontractor" means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related works or Services is subcontracted with the approval of the Engineer by the Contractor.

(n) "The Contractor or the Supplier" means the person or persons, firm or firms, company or companies who have contracted for supply and installation of Goods and provision of the Services under this Contract; "

(o) "The Project Site/Site" where applicable, means the place named in the **Contract Data**.

(p) "The works/ Installation" means supply of goods and provision of the installation and related services, testing and Commissioning and handing over to the Employer.

(q) "Final Certificate" means the certificate issued by the Engineer after the Defects Liability period and on correction of the Defects by the Contractor and acceptance by the Employer.

(r) "Bills of Quantities" means the completed and priced schedule of prices with corrections as per clause 30 of Instructions to Bidders in any or any part or individual schedule thereof, submitted by the Supplier with his bid and forming a part of the Contract Documents.

(s). "Secretary" means the officer time being holding the office of secretary to the Ministry of City Planning, Water Supply and Higher Education.

(t). "Procurement Committee" means the Procurement Committee appointed for this Bid.

(u) "Start Date" shall mean the date specified in the **Contract Data**.

1.2 Engineer's Representative

The Engineer may from time to time in writing delegate to such person or persons nominated by him such of the powers, discretions and authorities vested in the Engineer as he may think fit and shall furnish to the Contractors a copy of all such written delegations of powers, discretions and authorities such person (referred to as Engineer's Representative) will be named in the **Contract Data**. Any written instruction or approval given by such person or persons to the Contractor within the terms of such delegation (but not otherwise) shall bind the Contractor as though it had been given by the Engineer. Provided always that failure of such person or persons to disapprove any work or materials shall not prejudice the power

of the Engineer thereafter to disapprove such work or materials and to order the pulling down, removal or breaking up thereof.

1.3 Engineer's Superintendence

1.3.1 The Engineer shall perform technical inspection and supervision of the work. He has authority to stop the work whenever such stoppage may be necessary to ensure the proper execution of the Contract. He shall also have authority to reject all work and materials, which do not conform to the Contract, and to decide questions, which arise in the execution of the work.

1.3.2 The Engineer shall within a reasonable time after their presentation in writing to him by the Contractor, make decisions in writing on all matters relating to the execution and progress of the work or the interpretation of the Contract Documents. The Contractor shall comply with and adhere strictly to the Engineer's instructions and directions on any matter concerning the works, and he shall co-operate to the fullest extent with the Engineer in the performance of the work

1.3.3 The Engineer shall have full power and authority to supply to the Contractor from time to time during the progress of the Works, such further drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and maintenance of the Works and the Contractor shall carry out and be bound by the same

1.3.4 Management Meetings

Either the Engineer or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the programme / progress for the remaining work.

The Engineer shall record the business of management meetings and provide copies of the record to those attending the meetings and to the Employer. The responsibility of the Parties for action to be taken shall be decided by the Engineer either at the management meeting or after the management meeting and stated in writing to all who attended the meeting and to the Employer.

2. Contract Documents

2.1 Subject to the order of precedence set forth in the contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

2.2. Should there be any discrepancy or inconsistency, error of omission between or in any of the Contract Documents and/or Drawings; the contractor shall promptly submit the matter in writing to the Engineer, who shall within a reasonable time make a determination in writing. Any adjustment by the Contractor without this determination shall be at his own risk and expense. In all such cases, the Contractor shall promptly proceed in accordance with the interpretation given by the Engineer.

3. Fraud and Corruption

The Government of Sri Lanka requires the Employer as well as bidders, Contractors, Suppliers, and consultants to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy:

(i) “corrupt practice” means offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;

(ii) “fraudulent practice” means a misrepresentation or mission of facts in order to influence a procurement process or the execution of a contract;

(iii) “collusive practice” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Employer to establish bid prices at artificial, noncompetitive levels; and

(iv) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract.

4. Interpretation

4.1 Words importing the singular only also include the plural and vice versa where the context otherwise required.

4.2 Priority of documents

The documents forming the contract shall be interpreted in the following order of priority.

1. Agreement
2. Letter of Acceptance
3. Memorandum of Understanding (MOU)(If any)
4. Contractor’s bid
5. Contract Data
6. Conditions of Contracts
7. Specifications
8. Drawings
9. Bills of Quantities
10. Any other documents listed in the **Contract Data** as forming part of the contract

4.3 Amendment

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

4.4 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.

5. Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Contractor and the Employer, shall be written in English language. If supporting documents and printed literature that are part of the Contract may be in another language provided they shall be accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Contractor.

6. Joint Venture, Consortium or Association

6.1 If the Contractor is a joint venture, consortium, or, association all of the parties shall be jointly and severally liable to the Employer for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Employer.

7. Eligibility

Clause not used

8. Notices

Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **Contract Data**. The term “in writing” means communicated in written form with proof of receipt.

A notice shall be effective when delivered or on the notice’s effective date, whichever is later.

9. Governing Law

9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Democratic Socialist Republic of Sri Lanka.

9.2 The Contractor shall comply with any applicable laws, codes and regulations of the Government of Sri Lanka or any public, Municipal or other authority, which in any way affect the execution of the work.

9.3 The Contractor shall pay all royalties and license fees, and shall indemnify the Board, and the Engineer, their officers, agents and employees against liability including costs and expenses for infringement of any patent rights or other protected rights arising out of the performance of the Contract.

10. Resolution of Disputes

10.1 Amicable Settlement

Any dispute of whatever nature arising out of or in relation to this agreement shall in the first instance be attempted to be resolved by way of amicable settlement by the purchaser and the supplier.

The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

If after thirty (30) days from the commencement of such informal negotiation the Purchaser and the Supplier have been unable to resolve amicably a contractual dispute, either party may require that the dispute be referred for resolution to the formal mechanism stated in clause 10.2 herein. These mechanisms may include, but not restricted to, condition mediated by a third party, adjudication in an agreed national forum and/or arbitration

10.2 Dispute Adjudication Board (DAB)

10.2.1 Appointment of the Dispute Adjudication Board (DAB)

Any dispute of whatever nature arising out of or in relation to this agreement shall be referred to a "Dispute Adjudication Board (DAB) for decision The Parties shall appoint a DAB.

The DAB shall comprise, three suitably qualified persons ("the members"), who shall be professionals experienced in the type of Works and with the interpretation of contractual documents, one of whom shall serve as chairman.

Each of the Parties shall appoint one member to serve on the Dispute Adjudication board (DAB). The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as the chairman.

The agreement between the Parties and each of the three members shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these Contract Data, with such amendments as are agreed between them.

The terms of the remuneration of the three members, including the remuneration of any expert whom the DAB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DAB (including each member) shall expire when the Issuing Final Acceptance Certificate.

10.2.2 Failure to Agree on the Composition of the Dispute Adjudication Board

If any of the following conditions apply, namely:

either Party fails to nominate a member of a DAB by such date, the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DAB by such date, or The Parties fail to agree upon the appointment of a replacement person within 42 Days after the date on which the one of the members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment.

Then Institute for Construction Industry Development Authority (CIDA) shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the expenses / disbursements incurred by (CIDA).

10.2.3 Obtaining Dispute Adjudication Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

The DAB shall be deemed to have received such reference on the date when it is received by the chairman of the DAB.

Both Parties shall promptly make available to the DAB all such additional information, further access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrators(s).

Within 84 Days after receiving such reference, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DAB's decision, then either Party may, within 28 Days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DAB fails to give its decision within the period of 84 Days (or as otherwise approved) after receiving such reference, then either Party may, within 28 Days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reasons(s) for dissatisfaction. Except as stated in Sub-Clause 10.2.4 [Failure to Comply with Dispute Adjudication Board's Decision] and Sub-Clause 10.2.5 [Expiry of Dispute Adjudication Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 Days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

10.2.4 Failure to Comply with Dispute Adjudication Board's Decision

In the event that a Party fails to comply with a DAB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 10.3 [Arbitration]. Sub-Clause 10.2.3 [Obtaining Dispute Adjudication Board's Decision] shall not apply to this reference.

10.2.5 Expiry of Dispute Adjudication Board's Appointment

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAB in place, whether by reason of the expiry of the DAB's appointment or otherwise: Sub-Clause 10.2.3 [Obtaining Dispute Adjudication Board's Decision] shall not apply, and the dispute may be referred directly to arbitration under Sub-Clause 10.3 [Arbitration]

10.3 Arbitration

Any dispute of whatever nature arising from, out of or in connection with this agreement, on the interpretation thereof, or the rights, duties, obligations or liabilities of any Party, or the operation, breach, termination, abandonment, foreclosure or invalidity thereof, shall be referred to by either Party to arbitration for final settlement, in accordance with the Arbitration Act No. 11 of 1995, or any amendment thereof. Venue of the arbitration shall be Colombo, Sri Lanka

11. Scope of Works

11.1 The Goods to be supplied and Works and Related Services to be performed shall be as specified in the **Contract Data**

11.2 The Contract shall comprise.

The supply, installation testing, commissioning and handing over and maintenance of the plant and the provision of all labour and equipment and everything whether temporary or permanent nature required in and for any such supply, installation and maintenance so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract.

11.3 The contractor shall supply, deliver at site and erect or install the plant, test, commission and hand them over to the Engineer in all respects in accordance with the Contract Documents within the period stated in the **Contract Data** and save as herein provided. No circumstances whatever shall extend or alter the date for the completion of the said works

12. Delivery and Documents

Subject to Condition of Contract Sub-Clause 32.1, the Delivery of the Goods and completion of the Installation work, testing and commissioning shall be strictly in accordance with the Work Programme Where applicable the details of shipping and other documents to be furnished by the Contractor are specified in the **Contract Data**.

13. Contractor's Responsibilities

13.1 The Contractor shall supply all the Goods and perform works and Related Services included in the Scope of Works in accordance with Condition of Contract Clause 11, and the work Programme as per Condition of Contract Clause 12.

13.2 The Contractor shall be deemed to have fully informed himself as to the sites and local conditions, the quantities and nature of the work and material necessary for the completion of the Works, and the means of access to the sites, availability of labour and materials, transportation facilities, uncertainties of weather, facilities of handling and storing of materials and of other circumstances which may have influenced or affected his offer and he shall be deemed to have made provision in his offer for all such conditions, risks, contingencies and other circumstances. Any neglect or failure in the part of the Contractor in obtaining necessary and reliable information upon the foregoing or any other matters affecting the Contract shall not relieve him from any risks or liability or from the entire responsibility for the completion of the Works at the Scheduled Rates in strict accordance with the Contract Documents nor shall he be entitled in any such event to demand or receive any extra payment in consequence.

The analysis given in the Technical Specifications or any other place in the bidding document, are for the general guidance of the bidders. However he should carry out independent analysis to satisfy himself fully as to the Heat Loads, details of the insulation strength etc. for the capacity of the A/C units .

13.3 The Contractor shall execute complete and maintain the Works in strict accordance with the Contract and to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions and directions on any matter (whether mentioned in the Contract or not). The Contractor shall take instructions and directions only from the

Engineer or (subject to the limitations referred to in clause 1.2 or 1.3 hereof) from the Engineer's nominated representative

13.4 The Contractor shall give or execute and provide all necessary superintendence during the execution of the works and as long thereafter as the Engineer may consider necessary. The Contractor or a competent and authorized agent or representative approved of in writing by the 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. Such authorized agent or representative shall receive on behalf of the Contractor directions and instructions from the Engineer or (Subject to the limitations of Clause 1.3 thereof) the Engineer's nominated Representative

13.5 The Contractor shall be responsible for any discrepancies, errors or omissions in the drawings and other particulars supplied by him, whether such drawings and particulars have been approved by the Engineer or not.

Contractor shall provide maintenance programme as stated in the **Contract Data**.

13.6 Delivery & Installation

The contractor shall bear the costs of transport from country of origin up to the site of the works and shall further provide for and bear the cost of storage.

13.7 Setting Out

The Contractor shall be responsible for the true and proper setting-out of the 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, appliances 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 of the works, the Contractor on being required so to do by the Engineer or Engineer's Representative shall at his own expense rectify such error to the satisfaction of the Engineer or Engineer's Representative in which case the expense of rectifying the same shall be borne by the Contractor. The checking of any setting-out or of any line or level by the Engineer or the Engineer's Representative shall not in any way relieve the Contractor of his responsibility for the correctness.

13.8 From the commencement to the completion and acceptance of the works the contractor shall take full responsibility for the care thereof and of all Temporary works and all equipment and

plant brought to the Site for use on the execution of the works and in case any damage, loss or injury shall happen to the works or to any part thereof or to any Temporary Works and equipment as aforesaid from any cause whatsoever (save and except the accepted risks as defined in the sub-clause 13.9 of this Clause) shall at his own cost repair and make good the same so that at the end of the maintenance period the works shall be in good order and in conformity in every respect with the requirements of the Contract and the Engineer's instructions. In the event of any such damage or loss or injury happening from any of the expected risks the Contractor shall if and to the extent required by the Engineer repair and make good the same as aforesaid of the Contract. The Contractor shall also be liable for any damage to the works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 43.2 thereof.

13.9 Excepted Risks

The "excepted risks" are war, hostilities, invasion, acts of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war (otherwise than among the Contractor's own employees), riot, Civil commotion or any such operation of forces of nature as reasonable foresight and ability on the part of the Contractor could not foresee or provide against or a cause solely due to the Engineer's design of the works.

13.10. Safety

The Contractor shall be responsible for the safety of all activities on the site;

Such as All occupants & surroundings, Office equipment and documents against all types hazards from Electric , fire and gases.

13.11. On the completion of the Works the Contractor shall clear away and remove from the Site all Contractor's Equipment surplus materials, rubbish and Temporary Works of every kind and leave the whole of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer.

13.12. Except where otherwise specified, Contractor shall at his own expense supply and provide all the Plant and Construction Equipment both for the temporary and for the permanent works and labour (including the supervision thereof) transport to or from the Site and in and about the Works and other things of every kind required for the execution, completion and maintenance of the work.

13.13 Bidder shall have maintained workshop, stocks of spare parts, equipment and Qualified Engineers

Technical Officers and skilled personnel required for the Installation works of similar nature.

13.14 Quality of Work

The works shall be executed in the most substantial, proper and workmanlike manner with the best quality materials and workmanship, all to the satisfaction of the Engineer.

13.15 Local Labour

As far as possible all employees both skilled unskilled (sanitary squads excepted) employed on the work shall be Sri Lankans.

The Board shall have the right to object to the employment of any person on the work and no person so objected to shall be employed on the work thereafter whether local or foreign personnel.

13.16 Spare Parts

The Supplier shall be required to provide the following materials and notifications pertaining to spare parts manufactured or distributed by the Supplier:

(a) Such spare parts as the Purchaser may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract;

13.17 Operation & Maintenance Manuals

13.17.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the **Contract Data**.

13.17.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data, or they do not received the Engineer’s approval, the Engineer shall withhold the amount stated in the **Contract Data** from payments due to the Contractor.

14. Contract Price

14.1 Prices charged by the Contractor for the Goods supplied and Installation or the Works & Related Services performed under the Contract shall not vary from the prices quoted by the Contractor in its bid.

14.2 Price Variations shall not be paid for this contract

14.3 The Contractor shall be deemed to have satisfied himself before making his offer as to the correctness and sufficiency of the rates and prices stated in the Bill of Quantities and Schedule

of Prices presented by him, which rates and prices shall (except in so far as it is hereinafter otherwise provided in the Contract) cover all costs, including customs duties, Import license fees, Port charges, any demurrages , etc, any taxes, duties, license fees to be paid in abroad or Manufacturer's Country, any Royalties and any other associated costs expenses and liabilities of every description and all risks of every kind taken in executing, completing, maintaining and handing over the works.

15. Payments

15.1 Advance Payment

The Employer shall pay an advance payment to the Contractor in an amount equivalent to 20% of the Initial Contract Price excluding provisional sums and contingencies, within 14 days after signing of the contract and furnishing of an unconditional guarantee in a form given in the bidding document and by a reputed bank operating in Sri Lanka approved by the Central Bank of Sri Lanka and acceptable to the Employer. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer.

15.2 Recovery of Advance Payment

The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. The advance payment shall be repaid in full when the total certified value of work reaches 90% of the Initial Contract Price. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events or Liquidated Damages.

15.3 Terms of Payment and documents to be submitted

Payment shall be made as follows and payment will be made by a cheque issued to the name of the contractor The following documents shall be submitted by the Supplier to the Purchaser when making request(s) for payment at different stages of payment as follows.

Engineer should carefully go through these documents and inspect all delivered goods at site prior to approving payments

and he should be fully satisfied with the quantity, quality, installation and performance in good conditions etc. of goods at the location of installation prior to approve the payments.

Payments shall be made promptly by the Employer within twenty eight (28) days from the date of acceptance of the bill by the Engineer

15.3.1 **Advance Payment**

20% of the **Initial Contract Price** excluding provisional sums and contingencies shall be paid upon signing of the contract and on submission of documents given below

- a) Written request for payment of mobilization advance in the form of a tax invoice.
- b) A Bank Guarantee for Mobilization advance payment to the equivalent amount in the form prescribed in the bidding document.
- (c) A Performance Guarantee

15.3.2 **On Delivery to Site**

Up to 60% of the **Value of Supply Cost** shall be paid on submission of documents given below

- a) Supplier's tax invoice based on the BOQ and showing description of Goods delivered , quantity, units, amount and total amount.
- b) Manufacturer's test certificate (Original)
- c) Manufacturer's Warranty (Original)
- d) Copy of clean on – board Bill of Lading.
- e) Copy of Packing list Identifying content of each packages.
- f) Insurance Certificate. (original)
- g) Certificate of origin.
- h) Inspection and test certificates, issued by one of the Independent Inspection Agencies listed in the Contract Document.
- i) Inspection certificate issued by the Engineers' Representative or his Authorized Officer.
- j) Copy of Freight pre paid Bill of Lading.
- k) Copy of Invoice

15.3.3 On Taking Over by the Engineer.

Up to 95% of the **Contract Price** less previous payments including any advance payment of the contract shall be paid on successful installation & commissioning on submission of documents given below

- a) Supplier's request for balance payment in the form of a tax invoice.
- b) Copy of Taking over Certificate issued by the Engineer

Testing and issuing of Taking over Certificate by the Engineer but not later than 60 days after the equipment have been delivered and successfully installed.

15.3.4 Release of Retention

Balance 5% of the **Contract Price** shall be paid on submission of bank guarantee.

After one year successful operation and maintenance of equipment under this contract the guarantee shall be released.

15.4 Payment Certificates

Each Bill or application for payment shall state the amount claimed under particular bill items and shall set forth in detail in the order of the Schedule of prices and in the form required by the Engineer particulars of the work executed, and of the items of plant shipped or delivered to the site to the end of the preceding Calendar month since the period covered by the last preceding Bill, if any. In respect of each item of Bill furnished by the Contractor number shall refer to the particular item in the Schedule of prices upon which the value or price is claimed.

15.5 Contractor to deliver Bills monthly

The Contractor shall deliver to the Engineer within the first week of every calendar month during the continuance of the work a statement supported by details measurements where necessary, showing the estimated Contract value of the Works executed and items of Plant shipped or delivered to the Site.

15.6 Claims etc,

The Contractor shall include in such monthly Bill an account giving full and detailed particulars of all claims for any additional expense to which the Contractor may consider himself entitled and of all extra or additional work, or items of plant ordered by the Engineer which he has executed or supplied during the preceding month and no claim for payment

or any such work or items of plant shipped or supplied will be considered which has not been included in such particulars

15.7 Retention

The Employer shall retain from each payment due to the Contractor the proportion stated in the **Contract Data** subject to the limit of retention stated in the **Contract Data**.

On Completion of the whole of the Works, first half the total amount retained shall be repaid to the Contractor and second half when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the Contractor before the end of this period have been corrected.

15.8 Currency

Payment shall be in Sri Lankan Rupees.

16. Taxes and Duties

16.1 The Contractor shall be entirely responsible for all taxes, custom duties, Port charges, Import license fees, demurrages etc. incurred on the contractors goods Delivery/Installation works and services.

16.2 Payment of dues and Duties on disposed plant Equipment etc

The Contractor shall pay all the prescribed dues and charges including Customs Duties on all their construction plant equipment, tools, materials, appliances, personnel and household effects and other things which he and his personnel dispose of, with Government approval, in the country of purchaser after the receives the dues and charges payable shall be assessed in the manner and at the rates applicable at the time of disposal. The Contractor and his personnel shall comply with the regulations of the Government of Sri Lanka which may be issued from time to time relating to the disposal of items the import of which is under Restriction of Government of Sri Lanka.

16.3 Local Taxation.

The prices bid by the Contractor should show separately Value Added Tax (VAT) with the VAT Registration Number. All other taxes that may be levied according to the laws and regulations in being as of the date 30 days prior to the closing date for submission of bids in Sri Lanka on the Constructional Plant, materials and supplies (both permanent, temporary and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay the tax that may be levied in Sri Lanka on profits made by him in respect of the Contract.

National Water Supply & Drainage Board is a VAT registered institution. The VAT registration number of NWSDB is 4090 31820 7000. The contractors who are VAT liable shall issue VAT invoices specifically stated as 'TAX INVOICES' to NWSDB including their VAT numbers and showing bill amount and applicable VAT separately along with the requests for payments. The date of TAX INVOICE shall be within 28 days of work done.

16.4 Income Taxes on Staff.

The Contractor's staff, personnel and labour will be liable to pay personal income taxes in the Employer's country in respect of such of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations

17. Performance Security

17.1 Within 14 days after the Supplier's receipt of notification of acceptance of the Contract by the Board, the Supplier shall furnish Performance Bank Guarantee (unconditional) encashable on demand to the Purchaser in the amount of 10% of the Contract Price in the format of performance guarantee included in the Bidding document and shall be issued from any one of the following forms as stated below.

- a) A Bank Guarantee issued by a Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka.
- b) A fixed deposit or a pass book of a Bank operating in Sri Lanka approved by the Central Bank of Sri Lanka, with deposits made in the name of the National Water Supply and Drainage Board, Sri Lanka.
- c) A Sri Lanka Rupee cash deposit to the National Water Supply and Drainage Board, Sri Lanka.
- d) A certified cheque or a bank draft issued by a Bank operating in Sri Lanka approved by the Central Bank of Sri Lanka in favour of the National Water Supply and Drainage Board, Sri Lanka.
- e) A Bank Guarantee issued by a Bank based in another country but the security or guarantee "confirmed" by a Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka

However, the requirement of confirmation of Bid guarantees issued by a bank based in another country, by a bank operating in Sri Lanka is not necessary, if the entity that issues the guarantee is an Export Credit Agency of any foreign government or a reputed International Financier acceptable to the Central Bank of Sri Lanka.

17.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete his obligations under the Contract.

17.3 The Performance Security shall be denominated in the currency of the Contract and shall be submitted in the format provided in the Bid document.

17.4 The Performance Security will be discharged by the Purchaser and returned to the Supplier not later than 28 days following the date of completion of the Supplier's performance obligations, including any warranty obligations, under the Contract.

18. Copyright

Any document/ drawing furnished to the contractor by the Engineer shall remain vested in the Engineer. Copy right in such document/drawing and other materials containing data and information shall remain vested in the Engineer.

19. Confidential Information

19.1 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 completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor such documents, data, and other information it receives from the Employer to the extent required for the Subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under this Clause.

19.2 The above provisions of Condition of Contract Clause 19 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

19.3 The provisions of Condition of Contract Clause 19 shall survive completion or termination, for whatever reason, of the Contract.

20. Subcontracting

20.1 Sub Contracting shall not be allowed.

21. Specifications and Standards

21.1 Technical Specifications and Drawings

- (a) The Goods, works and Related Services performed under this Contract shall conform to the technical specifications and standards mentioned in the Specifications and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Employer, by giving a notice of such disclaimer to the Employer.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Specifications. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Engineer and shall be treated in accordance with CC Clause 32.

22. Packing

22.1 The Contractor shall pack the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. Contractor is held responsibility to provide suitable packing, which protect goods in delivery or transit.

23. Insurance

23.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, delivery and installation. All insurance shall be as specified in the **Contract Data**.

23.2 Without limiting his obligations and responsibilities under this Agreement the Contractor shall keep insured until issue of Final Certificate in the joint names of the National Water Supply and Drainage Board and the all plant and equipment constituting the works to its full value against all loss or damage from whatever cause arising in such manner that the National Water Supply and Drainage Board and Contractor may approve. Should the Contractor fail to obtain such insurance the Board may affect such insurance and recover all premium paid thereon from and out of any sums payable to the Contractor.

Such insurance shall be effected with a reputed insurance Company /Corporation registered under the Insurance Board of Sri Lanka and the Contractor shall required to produce to the Employer the policy or policies of insurance and the receipts for payment of the current premium.

23.3 The Contractor shall keep all personnel covered in accordance with Workmen's Compensation Ordinance throughout the period of the contract and shall effect such insurance with a reputed insurance Company /Corporation registered under Insurance Board of Sri Lanka provided always that in respect of any persons employed by any sub-contractor the Contractor's obligations to insure as aforesaid under this sub-clause shall be satisfied if the sub-contractor shall have insured against the liability in respect of such persons in such manner that the Board is indemnified under the policy but the Contractor shall require such sub-contractor to produce to the Engineer when required such policy of insurance and the receipt for payment of the current premium.

23.4 The Contractor shall be absolutely and solely and responsible for accidents and injuries (whether fatal or otherwise) damage or losses occurring to any person, property, or thing which may result from or in the opinion of the Engineer, be traceable to the operations of the Contractor or his sub-contractors or their respective agents or employees or in any way to the execution of the Works or any failure on the part of the Contractor to observe and perform any of their obligations under this Contract Documents. The responsibility of the injuries, damages and losses which may occur to persons, property and things including but not limited to (1) the public, (2) persons employed upon or about the works by the Board, the Contractor and his sub-contractor, (3) any person being for any lawful purpose upon or about the works, (4) the lands, buildings railways, roads, bridges, culverts, property, interests and rights of the Government, of the public and of parties affected or interfered with by the works; (5) the works themselves (whether permanent or temporary), (6) all buildings on the site; (7) all construction plant; (8) all work yards and materials.

23.5 Third Party Insurance

Before commencing the execution of the works the Contractor (but without limiting his obligations and responsibilities under Clause 23.2 hereof) shall insure against such damage, loss or injury which may occur to any property (including that of the Board) or to any person (including any employees of the Board) by or arising out of the execution of the works or Temporary Works or in the carrying out of the Contract otherwise than due to matters referred to in the provision to Clause 49 hereof. Such insurance shall be effected with a reputed insurance Company /Corporation registered under the Insurance Board of Sri Lanka and the Contractor shall whenever required produce to the Engineer the policy or policies of Insurance and the receipts of the premium and other payments in respect thereof.

23.6. If the Contractor shall fail to effect and keep in force the insurance referred to in Clause 23 and hereof or any other insurance which he may be required to effect under the terms of the Contract, then and in any such case the Board may effect and keep in force any such insurance and pay such premium or premium as may be necessary for that purpose and from time to time deduct the amount so paid by the Engineer as aforesaid from any monies due or which may become due to the Contractor or recover the sum as a debit due from the Contractor.

23.7. All payment under the aforesaid Insurance required shall be paid to the Board and such sums of money shall than be paid over to the Contractor by the Board in such amounts and at such times as shall be certified by the Engineer as being fair and reasonable in view of the progress made by the Contractor in making good the aforesaid damage or loss. If and so far as the said monies shall not be required for the purpose aforesaid they shall be paid to the Contractor upon the directions of the Engineer. If and so far as such monies shall be insufficient for the purposes aforesaid the deficiency shall be borne by the Contractor.

23.8 The Marine Insurance shall be in an amount equal to the amount specified in the **Contract Data**.

23.9 Damage to Persons Property

The Contractor shall indemnify the Board against all losses and claims for injuries or damage to persons (whether they are employed by the Contractor, Board or otherwise) or any property whatsoever which may arise out of or in consequence of the execution and maintenance of the 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 Board against any compensation or damage for or with respect to injuries or damage to persons or property resulting from any act or neglect done or committed during the currency of the Contract by the Board, its agents, or servants or other contractors (not being employed by the Contractor) or for in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

24. Transportation

24.1 The contractor shall transport all goods & materials for the satisfactory completion of the works.

25. Inspections and Tests for Goods

25.1 The Purchaser or his representative shall have the right to inspect and/or to test the Goods for their conformity to the Contract. The **Contract Data** of Contract and/or the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing of the identity of any representatives retained for these purposes.

25.2 The inspections and tests may be conducted on the premises of the Supplier or his subcontractor(s), at point of delivery and/or at the Contractor or the Supplier's Stores or at the Good's final destination. Where conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance including access to drawings and production data shall be furnished to the inspectors at no charge to the Purchaser

25.3 Quality of Work, Plant and Materials.

Should the Engineer consider it necessary, in order to satisfy himself as to the quality of the work done of plant supplied, or materials used (including work or materials previously passed by him as being in accordance with the bidding documents) the Contractor shall, at any time during the continuance of the Contract, as and when required by the Engineer in writing, pull down or cut into any part of the permanent works and make such openings into, and to such an extent through the same, as the Engineer may direct, and the Contractor shall make good the whole to the satisfaction of the Engineer.

Where plant in the process of manufacture or at site is required to be tested, the Contractor shall provide all necessary personnel and test equipment required for the purpose. Should the work, in the opinion of the Engineer, be faulty as regards workmanship or materials, or not in accordance with the Bidding Documents, the Engineer shall be liberty to order such further removal as he may consider necessary and the whole of the expense incurred in such removal and making goods shall be borne by the Contractor. Should however, the work prove to be sound and in accordance with the Contract Document, the Engineer shall be at liberty to order such further removal as he may consider necessary and the whole of the expense incurred in such removal and making good shall be borne by the Contractor. Should however, the work prove to be sound and in accordance with the Contract Document in pulling down, cutting into or opening up and making good the permanent works, as properly vouched for by him and approved by the Engineer will be paid to the Contractor by the Board and extension of time for completion may be granted in accordance with Clause (33) hereof.

Nothing contained in this Clause shall effect any claim by the Employer under Clause (26) (Liquidated damages).

25.4 Should any inspected or tested Goods fail to conform to the specifications, the Purchaser may reject them and the Supplier shall either replace the rejected Goods or make all alterations necessary to meet specification requirements free of charge to the Purchaser.

25.5 The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival in the Purchaser's stores shall in no way be limited or waived by reason of the Goods having previously been inspected, tested and passed by the Purchaser or its representative prior to the delivery of Goods or Goods' shipment from the country of origin, in case of importing.

25.6 The Purchaser requires the goods to be supplied under this contract shall conform to the requirements. The Supplier shall obtain the Certificates of Inspection for the specific requirement of this contract document carried out by one of the following inspection agencies acceptable to the Purchaser, if the bid value is more than Rs. 2.0 Million.

1. M/s Lloyds Register,
Lloyds Register Industrial Division,
Register House, 29 Wallesley Road,
Croydon DRO-2AJ, U.K.
2. M/s Crown Agents,
Quality assurance & Inspection Service
Townend House, Walsall WSI INT
U.K.
3. M/s Societe Generale de Surveillance S.A.,
1, Place des Alpes,
Case Postale 898, CH-1211 Geneva 1,
Switzerland.
4. M/s Bureau of Veritas,
Cedex 44,
92077 Paris Le Defense,
France.

Established registered branches of the above authorizations are also acceptable.

The selected inspection authority's name and cost to same has to be given in summary of price schedule. On the acceptance of the bid, the Purchaser shall inform directly to the inspection authority with a copy to Supplier, the specific requirements including deviations accepted by the purchaser, if any, to be tested. However, the payment to the Inspection Authority has to be made directly by the Supplier on production of test reports.

25.7 Nothing in clause 25.6 shall in any way release the Supplier from any warranty or other obligations under this Contract.

25.8 The Supplier shall obtain the consent of the Engineer to ship the goods to be imported for the Works or to deliver such materials and plant to the site. Applications for such consent to ship shall be accompanied by manufacturer's test certificates/ and certificates of inspection prescribed in the Contract or agreed with the Engineer. Application shall be made so as to give the Engineer a reasonable time to deal with such applications.

25.9 Certificate of Conformity

Where any item of plant has been dispatched, signed certificate of conformity from the Employer's duly accredited representative (nominated Inspection Agency) or the NWSDB Officers who involve in the inspection of goods, must be sent to the Engineer by registered post and obtain the approval of the Engineer before shipment.

25.10 Shipping document

The Contractor shall at the time of consigning the plant or any part thereof notify the Engineer by air mail or courier service the reference description, quantity, weight, expected date of arrival of vessel at the port of destination and shall provide at the same time the following documents so as to enable the Engineer to arrange for payment.

25.11 Tests on Completion

25.11.1 The Contractor shall give to the Engineer in writing 21 days notice of the date after which he will be ready to make the tests of completion. Unless otherwise agreed, the tests shall commence within 14 days after the expiry of such period on such day or days, as the Engineer shall in writing notify the Contractor.

25.11.2 The Contractor except where otherwise specified, shall provide free of charge, such labour, materials, electricity, fuel, water, stores, and apparatus, as may be requisite and as may be reasonably demanded to carry out such tests efficiently

25.11.3 If any portion of the works fails to pass the tests, tests of the said portion at contractor's cost shall be repeated within a reasonable time upon the same terms and conditions, save that all reasonable expenses to which the Board may be put by the repetition of the tests shall be deducted from the Contract price.

26. Liquidated Damages

Except as provided under Condition of Contract Clause 31, if the contractor fails to perform the contract by the Date of completion as specified in the Contract, the Employer may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum specified in the **Contract Data** for each day or part thereof of delay until actual delivery or performance, up to maximum deduction of the percentage specified in the **Contract Data**. Once the maximum is reached, the Employer may terminate the Contract pursuant to Condition of Contract Clause 34.

27. Warranty

27.1 The Contractor warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

27.2 Subject to CC Sub-Clause 21.1(b), the Contractor further warrants that the Goods shall be free from defects arising from any act or omission of the Contractor or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

27.3 The Contractor shall provide a comprehensive warranty for the goods provided by him under the contract for the period as specified in the **Contract Data** from the date of commissioning for the items / parts specified in the **Contract Data** for trouble free operation. The contractor should provide required material/part to be replaced during the period of warranty. The contractor shall assure that he is equipped with sufficient resources to provide maintenance support services and handle major breakdowns. Maintenance support services should be provided in free of charge within the warranty period. This warranty shall be given in the form given as Appendix 8 in the Bidding Document.

27.4 The Engineer shall give notice to the Contractor stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Engineer shall afford all reasonable opportunity for the Contractor to inspect such defects.

27.5 Upon receipt of such notice, the Contractor shall, within the period specified in the **Contract Data**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Employer.

27.6 If having been notified, the Contractor fails to remedy the defect within the period specified in the Cl 27.5, the Employer

may proceed to take within a reasonable period such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which the Employer may have against the Contractor under the Contract.

28. Patent Indemnity

28.1 The Contractor shall, subject to the Employer's compliance with Condition of Contract Sub-Clause 28.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the supply and installation of the Goods by the Contractor or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor, pursuant to the Contract.

28.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in CC Sub-Clause 28.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

28.3 If the Contractor fails to notify the Employer within twenty eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf.

28.4 The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

29. Limitation of Liability Not used.

30. Change in Laws and Regulations

30.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Sri Lanka that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with Condition of Contract Cl 14.

31. Force Majeure

31.1 The Contractor shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

31.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but not be limited to, acts of the Employer in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

31.3 If a Force Majeure situation arises, the Contractor shall promptly notify the Employer in writing of such condition and the cause thereof. Unless otherwise directed by the Employer in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

32. Change Orders and Contract Amendments

32.1 The Employer shall at any time order the Contractor through notice in accordance to the Condition of Contract Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Employer;
- (b) the place of delivery; and
- (c) the Related Works, Services to be provided by the Contractor.
- (d) Increase or decrease the quantity of any work included In the Contract.
- (e) Add, vary or delete any component of the plant.
- (f) Omit any such work.
- (f) Change the character or quality or kind of any such work

- (i) Change the levels, lines, position and dimensions of any part of the works, and
- (j) Execute additional work of any kind necessary for the completion of the works and no such variation shall in any way vitiate or invalidate the contract but the value (if any) of all such variations shall be taken into account in ascertaining the amount of the Contract Price.

32.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Contractor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Contractor for adjustment under this Clause must be asserted within Fourteen (14) days from the date of the Contractor's receipt of the Engineer's change order.

32.3 Prices to be charged by the Contractor for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Contractor for similar services.

32.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

32.5 Orders for variations to be in writing

The Contractor shall make no such variation without an order in writing of the Engineer. Provided that no order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities. Provided also that if for any reason the Engineer shall consider it desirable to give any such order verbally the Contractor shall comply with such order and any confirmation in writing of such verbal order given by the Engineer whether before or after the carrying out of the order shall be deemed to be an order in writing within the meaning of this Clause. Provided further that if the Contractor shall confirm in writing to the Engineer, any verbal order to the Engineer and such shall not be in writing by the Engineer it shall be deemed to be an order in writing by the Engineer.

32.6. Valuation of Variations

32.6.1 All altered or additional works ordered variations shall be deemed to be part of the works for all purposes thereof and shall be paid at the Scheduled Rates where applicable.

32.6.2 Any extra work the rates for which are not set out in the contract and to which the same cannot be made to apply may be made the subject of a special schedule of rates to be agreed by the Engineer and the Contractor before the work in question is put in hand or a special lump sum may be agreed before any special piece of work is commenced. Provided that in no circumstances shall any extra work or altered or modified work be postponed or delayed on account of any dispute or difference as to the price to be paid for such work ordered, and in the event of no such agreement being made, such work shall be carried out at such rates as the Engineer shall decide.

32.6.3 Any special schedules of prices shall be deemed to be inclusive of, and cover all costs, expenses and liabilities of every description and all risks of every kind to be taken in executing, completing, maintaining and handing over the said works to the Board by the Contractor.

32.6.4 Should no agreement be arrived at between the Engineer and the Contractor as the rates to be applied to or lump sum to be paid for any extra work before such work is commenced, the Contractor shall keep up detailed accounts of all costs and charges incurred by him in connection with any such work so executed in order that the facts may be established and agreed for consideration in Arbitration.

32.7 Claims

The Contractor shall submit to the Engineer once in every month an account giving full and detailed particulars of all claims for any additional, expenses to which the Contractor may consider himself entitled and of all extra or additional work ordered by the Engineer which he has executed during the preceding month and no claim for payment for any such work will be considered which has not been included in such particulars. No omission by the Engineer to reject such claims and no delay in dealing therewith shall operate as an admission of liability on the part of the Board

33. Extensions of Time

33.1 If at any time during performance of the Contract, the Contractor or its subcontractors should encounter conditions impeding timely completion of the Works in the Contract pursuant to Condition of Contract Clause 12, the Contractor shall promptly notify the Engineer in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Engineer shall evaluate the situation and may at its discretion extend the Contractor's

time for performance, in which case the extension shall be notified in writing to the contractor.

33.2 Except in case of Force Majeure, as provided under Condition of Contract Clause 31, a delay by the Contractor in the performance of the contract obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to Condition of Contract Clause 26, unless an extension of time is agreed upon, pursuant to Cl 33.1 hereof.

34. Termination

34.1 Termination for Default

(a) The Engineer, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor, may terminate the Contract in whole or in part:

(i) If the Contractor fails to complete all of the Works within the period specified in the Contract, or within any extension thereof granted by the Employer pursuant to CC Clause 33;

(ii) If the Contractor fails to perform any other obligation under the Contract; or

(iii) If the Contractor, in the judgment of the Engineer has engaged in fraud and corruption, as defined in CC Clause 3, in competing for or in executing the Contract.

(b) In the event the Engineer terminates the Contract in whole or in part, pursuant to Condition of Contract Clause 34.1(a), the Engineer may procure, upon such terms and in such manner as it deems appropriate, Goods, Works or Related Services similar to those undelivered or not performed, and the Contractor shall be liable to the Employer for any additional costs for such similar Goods or Related Services. However, the Contractor shall continue performance of the Contract to the extent not terminated.

34.2 Termination for Insolvency.

(a) The Engineer may at any time terminate the Contract by giving notice to the Contractor if the Contractor becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Employer.

34.3 Termination for Convenience.

The Employer, by notice sent to the Contractor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that

termination is for the Employer's convenience, the extent to which performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective.

35.No night Works and Sunday Works

No work shall be carried on during the night or on Sundays or on days declared public holidays or rest days by the Government or Board without the permission in writing of the Engineer except when the work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the works in which case the Contractor shall immediately advise the Engineer or the Engineer's representative. Provided always that the provisions of this paragraph shall not be applicable in the case of any work, which it is customary to carry out by rotary or multiple shifts.

36.Lighting For night work

In the event of night work being carried out, Contractor shall provide and maintain at night such good and sufficient lights as will enable the work to proceed satisfactorily and without danger

37.Rate of Progress

The Contractor shall strictly conform to the program of work provided in accordance with Clause 13. Should the rate of progress of the works or any part thereof be at any time in the opinion of the Engineer too slow to ensure the completion of the works by the prescribed time and in accordance with the programme of work or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as the Contractor may think necessary and the Engineer may approve to expedite progress so as to complete the works by the prescribed time or extended time for completion.

38. Suspension Work

The Contractor, shall if ordered in writing by the Board of through the Engineer, suspend the works or any part thereof for such periods and at such times as so ordered and shall not, after receiving such written order, proceed with the work therein ordered to be suspended until he receives written authority from the Board through the Engineer to proceed therewith. The contractor shall not be entitled to claim compensation for any loss or damage sustained by him by reason of the suspension of the works, as aforesaid, provided, however, that in the event of the works being suspended through no fault of the Contractor, the Board shall be liable to pay the Contractor any cost incurred by him on the Site by way of reasonable additional expenditure resulting from the suspension of the works on the order of the Engineer as aforesaid. The Engineer shall decide as to what is reasonable additional expenditure and the amount of such expenditure. An extension of time for completion corresponding with the delay caused by any suspension of the works as aforesaid will be granted to the Contractor should he apply for the same.

However, if the Contractor considers such suspension unreasonable, he may appeal to the Board for reconsideration of such order.

39. All risks

All risks except that such as may be caused by war, civil disturbance, storms, floods, earthquakes and any acts of God, shall be borne by the Contractor. The Contractor shall be entitled to an extension of time equivalent to the time that in consequence of such event provided the Contractor immediately upon the occurrence of such event notifies the Board and furnishes documentary evidence from the appropriate authorities in support thereof

40. Taking Over

40.1 Upon satisfactory completion of the works and tests provided for under this specification, the Engineer shall issue a certificate (hereinafter called a "taking-over certificate") in which he shall certify the date on which the works have been so completed and have passed the said tests and the Engineer shall be deemed to have taken over the works on the date so certified but the issue of a taking over certificate shall not operate as an admission that the works have been completed in every respect.

**41. Defects after
Taking Over**

41.1 The Contractor shall be responsible for making good with all possible speed any defects arising from defective design (other than a design made, furnished or specified by the Board and for which the Contractor has disclaimed responsibility in writing upon the receipt of the Engineer's instructions), materials, or workmanship or from any act or omission of the Contractor that may arise within 12 months (Defect Liability Period) after the works or that portion thereof, as the case may be, have or has been taken over, other than such as are solely attributable to the negligence of the Board or its employees

41.2 If any such defect shall occur the Engineer shall inform the Contractor thereof stating in writing the nature of the defect.

41.3 If any defects be not remedied within a reasonable time, the Engineer may proceed to do the work at the Contractor's risk and expense, but without prejudice to any other rights which the Board may have against the Contractor in respect of the failure of the Contractor to remedy such defects and may recover any such costs from and out of any sums payable to the Contractor.

41.4 Until the final certificate shall have been issued, the Contractor shall have the right of access at all responsible working hours, at his own risk and expense, by himself or his duly authorized representative whose names shall have previously been communicated in writing to the Engineer, to all parts of the works for the purpose of inspecting the working thereof and to the records of the working and performance thereof for the purpose of inspecting the same and taking notes

there from. Subject to the Engineer's approval, which shall not be unreasonably withheld.

42. Final Certificate

42.1 On application of the Contractor upon the due completion of the Contractor's obligations under this agreement and after compliance with the provisions of Clause 44.1 hereof the Engineer shall issue Final Certificate.

43. Accident or Injury to Workman

The National Water Supply and Drainage Board shall not be liable for or in respect of any damage or compensation payable in respect of or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any sub-contractor. The Contractor shall indemnify the Board against all such damage and compensation and against all claims, demands, proceedings costs, charges and expenses whatsoever in respect thereof or in relation thereto.

44. Payment or claims and Demands

Should the Board have to pay any money in respect of any claims or demands as referred to Clause 18, 20 and 23, the amount so paid and the costs incurred by the Board shall be charged to and paid by the Contractor and the Contractor shall not be at liberty to dispute or question the right of the Board to make such payments notwithstanding the same may have been made without his consent or authority.

45. Riots and unlawful

The Contractor shall at all times during the progress of the works take all requisites precautions and use his best endeavors to prevent and be responsible for any riotous or unlawful behavior by or amongst his workmen, labourers and others employed on or in connection with the works and for the preservation of peace, protection of inhabitants and the security of property on or in the neighborhood of the Site, but the Contractor shall not be entitled to institute his own police force nor shall he interfere with the Government police, who shall have free and undisputed access at all times to any part of the Site in the execution of their duties.

46. Day Work

The Engineer's Representative may, if in his opinion it is necessary or desirable, order in writing that any additional or substituted work shall be executed on a day work basis. The actual expenses corresponding to the work or works executed on a day work basis will be refunded to the Contractor based on the day work schedules included in the contract Document.

The Contractor shall furnish to the Engineer's Representative such invoices, receipts or other vouchers as may be necessary to prove the amount claimed.

Before any work, which is to be paid for at day work rates are put in hand, an order in writing must be obtained by the Contractor from the Engineer.

47. Contractor's Default If the Contractor shall.

- (i) Without reasonable excuse fail to commence the works, or
- (ii) Neglect to execute the works with due diligence or expedition, or
- (iii) Fail to remove materials from the site or to pull down and replace work after receiving from the Engineer's written notice that the said materials or work have been condemned and rejected by the Engineer under these conditions, or
- (iv) Refuse or neglect to comply with any reasonable orders given to him in writing by the Engineer in connection with the works, or
- (v) Persistently or flagrantly neglect to carry out his obligations under the Contract, or
- (vi) To the detriment of good workmanship or in defiance of the Engineer's instructions sublet any part of the Contract, or abandon the Contract.