

# **1. - INSTRUCTIONS TO BIDDERS**

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**Instructions to Bidders**

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**NATIONAL WATER SUPPLY AND DRAINAGE BOARD**  
**SUPPLY AND INSTALLATION OF WATER PUMPING SETS AND ACCESSORIES**  
**INSTRUCTION TO BIDDERS**

**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**.
- The successful bidder shall be expected to complete the supply of goods, installation of those 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 shall 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:
- (i)      the term “in writing” means communicated in written form by mail (other than electronic mail) or hand delivered with proof of receipt;
  - (ii)     if the context so requires, “singular” means “plural” and vice versa; and
  - (iii)    “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:

- i) “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;
- ii) “fraudulent practice” means a misrepresentation or omission 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.

**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;

- i) The bidder shall be a manufacturer or their local Accredited Agent.
- ii) All bidders shall possess legal rights to supply the Goods under this contract.
- iii) 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.

- iv) 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 NWSDB/NPA.
- v) The bidder who is blacklisted by the NWSDB at the date of submission of Bids shall be disqualified for contract award.
- vi) Posses ISO 9001: 2015 Quality Management System certificate for the factory for the current year from an Accredited Agency. Manufacturer shall maintain the validity of this certificate during the contract period.
- vii) 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 with the name of Registrar of Companies.
  - i. Compliance with contract Act No. 03 of 1987 as per the **Clause 47** hereof.
  - ii. Bidder shall have the authorization from the manufacturer to sign and negotiate in the bidding on behalf of the manufacturer.

#### 4.2 Qualification of bidders

- i) The Bidder shall have the Minimum Qualifications and experience in works of at least one contract of a similar nature pump installation & Complexity incorporating a pump of Kw capacity not less than 65% of the Kw capacity of this Bid within last 5 years as specified in **Bidding Data**. List of such supplies and installation and certified copies of award letters and completion certificates of such contracts shall be submitted with the Bid in the form given in **Appendix 1A & 1B**. Total monetary value of the Supply/ Supply & Installation Works perform for the last five years shall be as specify in **Bidding Data**.
- ii) Bidder shall have and have maintained workshop, stocks of spare parts, equipment and Qualified Engineers/Technical Officers and skilled personnel required as specified in **Appendix 2**.
- 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 3** 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 3** 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 to the Board (Employer) 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 3A**.

- iv) The bidder shall have minimum amount of working capital cash as given in **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 4**.
- vi) That, in the case of a bidder offering to supply goods under the Contract which the bidder does not manufacture or otherwise produce, the bidder has been duly authorized by the goods' manufacturer or producer to sign & negotiate in the bidding on behalf of the manufacturer. This authorization shall be submitted with the Bid in the form given in **Appendix 5**.

## **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.
- 5.3** Pump, motor and accessories to be supplied under this contract shall only be from the approved factory location.



## **B- Contents of Bidding Documents**

### **6. Sections of Bidding Documents**

**6.1** The Bidding Documents comprises the following section of documents and any addendum that will be issued in accordance with **ITB Clause 8**.

Page VI	Invitation for Bids
Section 1.	Instructions to Bidders (ITB)
Section 2.	General Conditions of Contract (CC)
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

**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 no 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. Shall 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 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 **Clause 10.1**.
  - d) Descriptive literature relating to all items offered in the language stated in the **Clause 10.1**.
  - e) The manufacturer's technical report containing general description of the materials offered in the language stated in the **Clause 10.1**.
  - f) Availability of after sale service and workshop facilities.
  - g) Reference to similar works already installed or being installed and information covering the financial stability of the bidder in sufficient detail 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) Product conformity certificates to prove that the products offered conform to the relevant standards specified in the bidding document, from an Accredited Agency acceptable to the Employer. The certificate shall be valid for the entire contract period.
- l) All details requested in Appendices.
- m) In the case of a local agent bidding on behalf of a Manufacturer, he shall submit the following with his Bid:
  - i) Company Registration in accordance with **ITB Clause 47**.
  - ii) A letter from Manufacturer certifying the name and address of the local Accredited Agent together with a duly executed Power of Attorney authorizing such local accredited agent to act on behalf of the Manufacturer; in the form given as **Appendix 5** and
  - iii) A letter from the Manufacturer stating that he guarantees to supply the Goods as specified in the Bid and according to the Schedule of delivery specified in the form given as **Appendix 4**.
- n) 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 .....

- o) Any other document required in the Bidding Data.
- p) Any other document that bidder may think useful in the evaluation of Bids.

**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 Bills of Quantities 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 shall correspond to 100 % of the items specified in the contract and to 100% of the quantities specified for each item of the contract..

**14.3** In pricing the items of the Bills of Quantities, the bidder shall cover himself and will be deemed to have covered himself for:

- i) 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.
- ii) All the duties, obligations, liabilities and responsibilities which the Contract documents place upon the bidders in connection with or in relation to the Contract.
- iii) 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.
- v) Prices charged by the Supplier for the preceding incidental services, shall be included in the Contract Price for the Goods.
- vi) Any taxes as stated in the **ITB Clause 44** hereof.

**14.4** **If Bidders are registered for the purpose of VAT**, they shall 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 shall indicate the value of the Bid in Bidding Documents. Under this category Bidder shall obtain a letter from the Commissioner of Inland Revenue Department certifying that his Company has not been registered for VAT and that letter shall 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.

- 14.5** 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.
- 14.6** All items shall be listed and priced separately in the Bills of Quantities. If a Bill of Quantity shows items listed but not priced, their prices shall be deemed to be included in the prices of other items.
- 14.7** Bidder shall indicate any discount offered or differed in the Summary of Bills. Discounts stated anywhere else shall not be considered.
- 14.8** The bidder all carefully studies 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.
- 14.9** Bidder shall quote in FOB price including all cost which are to be incurred outside Sri Lanka in foreign cost column of BOQ and all local cost including Agency Commission, clearing, inland transportation, loading and unloading, staking, shipping line charges and other minor expenses, etc. which are to be incurred locally in the local cost column of the BOQ. Freight charges and inspection charges shall be included in the Summary of each Bills in BOQ. Summary of each bill shall be carried forwarded to the "Summary of Bills" in the BOQ and that will be carried forwarded to the Form of Bid.
- 14.10 Insurance shall be carried out by the Purchaser with a reputed insurance Company/Corporation registered under Insurance Board of Sri Lanka as per Clause 23 of the General Conditions.**
- 14.11** Shipping of Pumps and Accessories shall be done as described in **Clause 46** hereof.

- 14.12** If a Bidder has given a discount of his Bid price, the discount shall be distributed to each and every item excluding Provisional Sum 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** The Contract Price shall be paid in the currencies in which the price has been quoted in the successful Bid. The foreign component will be paid as per the payment schedule given in Contract Data and **Clause 16** of General Conditions of Contract.
- 15.2** Local charges shall be paid in Sri Lanka Rupees.
- 15.3** Charges for clearing from port, Local transport, and all other local costs shall be included in the Bid price and quoted in Sri Lanka Rupees. Agency commission shall be separately indicated as a percentage of in relation to the FOB price. If no local agency commission is payable, it shall be clearly stated in the summary of Bills.
- 15.4** Custom duties, Port dues, and import license fee levied on imported materials by the Government of the Democratic Socialist Republic of Sri Lanka, shall be paid directly by the Purchaser to the Government of the Democratic Socialist Republic of Sri Lanka on production of certified customs entries. Any other charges, demurrages, etc. shall be borne by the Contractor. Any VAT payable shall be charged to the purchaser as a separate item and shall be supported with VAT registration number and Tax Invoice.
- 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.
  - ii) Shall possess ISO 9001:2015, Quality Management System Certificate. Manufacturer shall maintain validity of this certificate during the contract period.
  - iii) Shall possess product conformity to required standards specified in the specifications.
  - iv) Shall not be disqualified / black listed by the NPA/NWSDB.
  - v) Shall submit certified copies of Business Registration with the Registrar of companies.

- vi) Company registration in accordance with ITB **Clause 47**.

**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, (Itemized 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:
- i) 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 **Appendix 5** to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to Bid on behalf of the manufacturer and supply these Goods;
- ii) 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
- iii) 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** shall be furnished in one of the following forms. The Bid security shall be as per the format in the Bidding Document to indicate the requirement and payable to the National Water Supply and Drainage Board, Sri Lanka.

- a) A Bank Guarantee issued by a Bank operating in Sri Lanka, approved by the Central Bank of Sri Lanka.
- b) 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).
- c) 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.
- d) 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
- e) Foreign Exim bank (Which needs to be registered in the framework of Uniform Rules of Demand Guarantee 788).

**The term “confirmed” in relation to bank guarantee issued by a Bank based in another country means that the “confirmed” bank held liable for paying the respective guaranteed amount at the request of first demand by the beneficiary.**

- 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 Security pursuant to **Clause 43** hereof.
- 20.7** The Bid security shall be forfeited:
- i) if a bidder withdraws its Bid during the period of Bid validity specified by the bidder on the Form of Bid ;or
  - ii) if the bidder does not accept the correction of its Bid price, pursuant to Instructions to Bidders (ITB) **Clause 30**.
  - iii) 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.
- 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.
- 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:
- i) bear the name and address of the Bidder;
  - ii) be addressed to the Employer as specified in **Bidding Data**
  - iii) bear the specific identification of this bidding Document as indicated in the **Bidding Data**; and
  - iv) 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:

- i) 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
- ii) 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.

- i) Name and address of the bidder (if joint venture read the name of the joint venture)
- ii) Absence or presence of the Bid security; All members of the committee shall initial the bid security;
- iii) 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; whether the announced prices are inclusive or exclusive of VAT shall be indicated clearly.

- iv) 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;
- v) The discounts offered shall be announced separately by clearly indicating that the announced prices are inclusive or exclusive of discounts.
- vi) 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 resealed 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 shall 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 shall 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,

- i) Meets the eligibility and qualification criteria defined in **Clauses 3** hereof.
- ii) Has been properly signed and accompanied by a proper power of attorney (Authorization to sign the Contract).
- iii) Is accompanied with the required Bid security as defined in **Clause 20** hereof.
- iv) Has sufficient Bid validity period as per **clause 19** hereof, and
- v) Is substantially responsive to the requirements of the Bid documents,

If a Bid does not meet any one of (i) – (iv), that bid shall be considered non responsive and shall be rejected by the Procurement Committee.

**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,

- i) Bidder requires price fluctuation whereas bidding document specifies otherwise,;
- ii) Deviation from Bid documents which affects the bid price but cannot be given monetary value;
- iii) Departure from technical specifications of critical nature;
- iv) 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.
- v) Bidder proposes to subcontract major components of the work against the conditions provided.
- vi) Conditional Bids, that is, subject to prior sale, availability of components in the market,
- vii) Unacceptable technical features.
- viii) 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:
- i) Where there is a discrepancy between the amounts in figures and in words, the amounts in words will govern; and
  - ii) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity,
    - a) the unit rate as quoted will govern,
    - b) 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 Employer shall examine the Bids to confirm that all documents and technical and Financial documentation requested in **ITB Clause 11** have been provided, and to determine the completeness of each document submitted.

- 31.2** The Employer shall confirm that the following documents and information have been provided in the Bid. If any of these documents or information is missing, the Bid shall be rejected.
- i) Form of Bid, in accordance with **ITB Sub- Clause 12.1**;
  - ii) Price Schedules, in accordance with **ITB Clause 14**;
  - iii) Bid Security in accordance with **ITB Clause 20**.
  - iv) Eligibility and qualification requested in **ITB Clause 4**.
- 32. Examination of Terms and Conditions; Technical Evaluation**
- 32.1** The Employer shall examine the Bid to confirm that all terms and conditions specified in the Conditions of Contract and the **Contract Data** have been accepted by the Bidder.
- 32.2** The Employer 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 Documents have been met.
- 32.3** If, after the examination of the terms and conditions and the technical evaluation, the Employer determines that the Bid is not substantially responsive in accordance with **ITB Clause 29**, the Employer 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 Employer 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:
- i) Making any correction of errors pursuant to **Clause 30** hereof.
  - ii) Discounts , if any
  - iii) Evaluation of Acceptable omissions. ( line items or parts of work)



- iv) Conversation to a common currency.
- v) Delivery periods of completion times.
- vi) Adjustment for various minor deviations.
- vii) The availability of after sale services and spare parts.
- viii) The acceptable departures of warranties.
- ix) Assessment of monetary implications on deviations and other matters.
- x) Omissions/Missing items.

The Bid price shall be adjusted to account for items not included in the Bid, provided that the Bid,

- i) Can be accepted as substantially responsive on account of the unquoted items being not of a critical nature, and
  - ii) Value of such items is marginal.
- xi) Adjusted price according to the above procedure shall be added to the Life cycling cost (**Clause 1.11** of specification) and it shall be used for the further evaluation.
- xii) Each proposal will be evaluated for selection on the information given in the proposal and data submitted in the brochure. The proposed Pumping units will be evaluated on the basis of capital cost and on present worth of calculated operating cost. Operating cost will be determined by computing the cost of power as detailed in the **Bidding Data**.

The guaranteed Pump efficiency at the designed duty point, Motor Efficiency and Power Factor given in the brochures will be used to calculate the operating costs.

Additional factors affecting selection will be delivery time, operating curve characteristics, NPSH requirements and after Sales Services. The NWS&DB reserve the right to select any proposal or alternative it deems to be best.

If the main pump parameters such as Capacity and Efficiency at the specified Head and Speed are not met as indicated by the Bidder then the additional costs due to any of the above factors shall be recovered from the local component of the tendered sum and or Performance Guarantee. The basis of determining the recoverable amount shall be similar to the method of computing power cost above.

- 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. Post qualification of the Bidder**
- 37.1** The Procurement Committee shall determine to its satisfaction whether the evaluated and substantially responsive Bid is qualified to perform the Contract satisfactorily.
- 37.2** 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**.
- 37.3** 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.
- 38. Employer's Right to accept any Bid, and to reject any or all Bids**
- 38.1** The Employer 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**

- 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 9, Bills of Quantities, provided this does not exceed twenty five percent (25%) or one unit whichever 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 and 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 Sum 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 **Clause 17** of the Conditions of Contract, in the format of Performance Security provided in the Bidding Document. The amount of Performance Security shall be as specified in the Bidding Data.
- 43.1.1 Furnishing of a Performance Security is not required for contracts below Rs. 250,000.00.
- 43.2** The Performance Security shall be valid until a date 28 Days beyond the Defect Liability Period.
- 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 Foreign Taxation**
- The Supplier's rates and prices shall include all taxes, duties and other charges imposed outside Sri Lanka on the production, manufacture, sale and transport of all the goods.

#### **44.2 Local Taxation**

The prices quoted by the Supplier shall include all duties other than duties mentioned in sub **Clause 44.4**, business taxes, income and other taxes that may be levied according to the laws and regulations of the Democratic Socialists Republic of Sri Lanka in being as of the date 30 Days prior to the closing date for submission of Bids, in the Purchaser's country on the goods and services supplied under the Contract. Nothing in the Contract shall relieve the Supplier from his responsibility to pay any tax that may be levied in the Purchaser's country on profits made by him in respect of the Contract.

#### **44.3 Income Taxes on Staff**

The Supplier's Staff, personnel and labour will be liable to pay personnel income taxes in the Purchaser's Country in respect of such of their salaries and wages as are chargeable under the laws and regulations of the Democratic Socialists Republic of Sri Lanka for the time being in force, and the Supplier shall perform such duties imposed on him by such laws and regulations.

#### **45. Advance Payment**

**45.1** No advance payment shall be made in this contract.

#### **46. Vessels of Sri Lankan Shipping Corporation**

**46.1** Bidders shall quote freight charges on Vessels own by any shipping line that the bidder intended to deliver goods. The quoted freight charges shall be considered to calculate the CIF Price for the purpose of Bid evaluation. Before opening of Letter of Credit, the Purchaser shall obtain the freight charges from Ceylon Shipping Corporation Ltd (CSCL), Sri Lanka. If the Freight charges offered by the CSCL is less than that of the successful bidder, then Letter of Credit shall be opened on FOB basis and CSCL shall under take carriage of goods. If the Freight charges offered by CSCL is higher than that of successful bidders, then Letter of Credit shall be opened on C&F basis.

#### **47. Compliance with Contract Act No.3 of 1987.**

**47.1** 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.

**47.2** Bidders shall be required to submit their certificates of registration under this Act and shall register the contract with the Register of Public Contracts.

**47.3** However, if the bidder is forwarding his Bid as the Principal Tenderer, it is not required to register himself under the Act.

#### **48. Environmental Condition**

**48.1** Environmental Condition shall be as given in **Bidding Data**.

## **2. GENERAL CONDITIONS OF CONTRACT**

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**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 of the Contract Period.
- 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) “Sub-contractor” 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 is the manufacturer or his local accredited agent and have contractor for supply.
- 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 Acceptance 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 relevant Ministry to the Employer.
- t) “Procurement Committee” means the Procurement Committee appointed for this Bid.
- u) “Start Date” shall mean the date specified in the **Contract Data**.
- v) 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.

- w) “Contract Period” is as specified in the **Clause 11.1** of **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 The Employer will provide the land required to be occupied by the permanent works and rights of access thereto. The Contractor will be allowed to store his equipment and materials in the land acquired for the location of the Plant without causing obstruction to the construction of the permanent works and as directed by the Engineer.

#### 1.3.5 **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** Shall 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 omission 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.

- i. Agreement
- ii. Letter of Acceptance
- iii. Memorandum of Understanding (MOU)( If any)
- iv. Contractor’s bid
- v. Contract Data
- vi. Conditions of Contracts
- vii. Specifications
- viii. Drawings
- ix. Bills of Quantities
- x. 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 conditions 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** **Clause not used**
- 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 three 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.

- i) 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.
- ii) The furnishing of outline drawings giving details of the arrangement of buildings and other Civil Engineering structures and the Plant to enable the Engineers to execute the detail structural design and prepare the working drawings for the Civil Engineering Works.

**Note:** The Civil Engineering works for the plant shall be done under a separate Contract. The Employer shall therefore denote clearly on the outline drawings the lines and levels to which the Civil Engineering Contractor shall complete this work. (Bases for plant and other ancillary works to be done by the Contractor).

**11.3** All costs, charges and expenses whatsoever that may be incurred by the Contractor and all risks involved in giving effect to the provisions of this contract shall be deemed to be included in and covered by the Bill of Quantities and Schedule of Prices.

**11.4** 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 Conditions 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 Conditions of Contract **Clause 11**, and the work Programme as per Conditions 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, nature of soil and rock to be encountered in excavations, 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 shall carry out independent analysis to satisfy himself fully as to the quality of the raw water to be treated or pumped. Any serious discrepancies or omissions in the analysis furnished should be brought to the notice of the Engineer.**

**The contractor shall carefully study the environment of the location of the pump house and any gases emitted which may cause corrosion. Also contractor should thoroughly study the possible corrosive environment due to pumps and motor and other equipments provide under the contract shall be suitable for the durability and proper trouble free operation.**

- 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** As soon as practicable after the acceptance of his offer, the Contractor shall deliver to the Engineer for his approval a program showing the order of procedure and method in which he proposes to carry out the works and shall whenever required by the Engineer or engineer's Representative furnish for his information particulars in writing of the Contractor's arrangements for the carrying out of the works and of the Contractor's Equipment and Temporary Works which the Contractor intends to supply, use or construct as the case may be. The submission to the Engineer of such program or the furnishing of such particulars shall not relieve the Contractor of any of his duties and responsibilities under this Contract.
- 13.5** 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.

**13.6** The Contractor shall make all arrangements for and pay all tenants' compensation for any right of access to any land temporarily acquired by him and shall repair and make good all damage done to private roads, footways, pathways, banks, cart ways, fields, gardens, fences and ditches on the site of the temporary works or elsewhere, or to the land or things of whatsoever description. The roadways, footways, streams and ditches must be kept clear of materials etc.

**13.7** The Contractor shall submit to the Engineer for approval within the times named in the Bid such drawings and other documents as are called for in the specification or as the Engineer may reasonably require. Within a reasonable period after receiving such drawings, the Engineer shall signify his approval or otherwise. The Contractor shall make due allowance in his program for time required by the Engineer for checking these documents and for time to carry out any modifications required by the Engineer.

Subsequent to final approval being given to the documents etc., the Contractor shall supply four clear prints of the documents to the Engineer. Both parties shall sign all copies of the approved documents. Two of the copies so signed shall be retained by the Engineer and the other two copies by the contractor.

**13.8** 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

**13.9** The Contractor shall provide and employ Engineer/Technical officer on the site in connection with the execution and maintenance of the works. Only such Engineer/technical assistance as are qualified, skilled and experienced in their respective trades and such sub-agents, foremen and charge hands as are competent to give proper supervision to the work they are required to supervise. And Such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution and maintenance of the works

### **13.10 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.

The installation of the Plant can be commenced only after the Civil Engineering Works, which would be constructed under a separate contract, are substantially completed.

### **13.11 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 thereof and the Contractor shall carefully protect and preserve all bench-marks, sight rails, pegs and other things used in setting out the works.

**13.12** The Contractor shall in connection with the works provide and maintain at his own expense all lights, guards, fencing, barriers, watching and other precautions when and where necessary or required by the Engineer or Engineer's Representative, or by any statutory or other duly constituted authority for the protection of the works, safety of life property and convenience of the public or others and shall be entirely responsible for all accidents and damage which may arise by and from or in consequence of neglect of such precautions.

**13.13** 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 (ii) 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.

### **13.14 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.

**13.15** All operations necessary for the execution of the Works and for the construction of any Temporary and Works shall so far as compliance with the requirement of the Contract permits be carried out so as not to interfere unnecessarily or improperly with the public convenience or the access to use and occupation of public or private roads and footpaths or of properties whether in the possession of the Board or of any other person, and the Contractor shall indemnify the Board in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matter in so far as the contractor is responsible thereof.

### **13.16 Other Contractors**

The Contractor shall in accordance with the requirements of the Engineer, shall cooperate, share the site and afford all reasonable facilities for any other Contractors employed by the Board and their Workmen, and for the workmen of the Board and of any other properly authorised authorities on or near the Site of any work not included in the Contract or of any Contract which the Board may enter into in connection with or ancillary to the work.

### **13.17 Safety**

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

The Contractor shall take all possible precautions to secure the efficient protection of all springs, streams and waterways against pollution, which may be likely to cause injury to human, animal, fish or plant life. He shall indemnify the Board against any claim arising from such pollution during the continuance of this Contract.

Contractor shall take all measures for the safety his workman and supervising and other employer's staff at site from any gases that may be emitted which may be detrimental to the human. Oxygen cylinders or ventilators, gas masks, life jackets etc shall be provided depending on the situation to workers or employer's supervising staff for their safety.

- 13.18** The area which shall be occupied by the Contractor is clearly defined in the drawings and the Contractor must make all allowances for carrying on his work within this area and forbid his employees to extend their operations beyond it and shall be held responsible for any trespass on other lands and for all damage to property arising out of this Contract, and in the event of accident to any person or persons, damage to property, injury of any description to any person or thing, caused by the operations under or purporting to be under the Contract, the Contractor shall indemnify the Board from all claims on account thereof.
- 13.19** 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.
- 13.20** All road surfaces directly damaged by excavations for trenches shall be restored to the same condition as they were in before the works were commenced.
- 13.21** 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.
- 13.22** The Contractor shall erect at the Site weather proof sheds of a temporary nature for the protection and storage of the Plant and equipment and he shall take every reasonable proper and necessary precaution against theft, accident, and damage to the same from any cause whatsoever.
- 13.23** Bidder shall have and have maintained workshop, stocks of spare parts, equipment and Qualified Engineers / Technical Officers and skilled personnel required for the Installation works of similar nature.



### **13.24 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.

### **13.25 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.

### **13.26 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;
- b) The Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spares such as Gaskets, Plugs, Bolts, Nuts and Washers etc. Other spare parts and components shall be supplied as promptly as possible but in any case within six months of placement of order and establishment of Letter of Credit.
- c) In the event of termination of production of the spare parts:
  - i) Advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and
  - ii) Following such termination, furnishing at no cost to the Purchaser, the blue-prints, drawings and specifications of the spare parts, if and when requested.

### **13.27 Operation & Maintenance Manuals**

13.27.1 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**.

13.27.2 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**    **Letter of Credit**

i    The Purchaser shall establish an irrevocable Letter of Credit for the foreign component quoted in accordance with **Clause 14** hereof in the name of the manufacturer.

ii    The successful Bidder shall submit the necessary proforma invoice and other connected documents together with a letter requesting the Purchaser to open Letter of Credit in the name of the manufacturers. Letter of credit shall be opened only in the Manufacture’s name. These Documents shall be submitted within 2 weeks of the award of the contract.

iii    The Bidder shall be responsible for clearing the materials from port, transport delivery and stacking of the materials at the stores as prescribed in the Delivery Schedule.

- iv Any delay in submitting proforma invoice and other connected documents as required to open the letter of credit shall be a delay of the contractor and liquidated damages shall be imposed.

## 15.2 Terms of Payment

Engineer's Representative 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, unloading stacking and etc. of goods at site prior to approve the payments.

### i. Local Component

- a) 90% of the total Rupee Component of the supply bill of the contract less Agent's commission shall be paid on delivery, testing and passed in test performed as specified in the specification.
- b) The balance 10% of the total Rupees Component of the supply bill less Agent's commission shall be paid within 60 Days (sixty) after the goods have been accepted by the Engineer.
- c) The Agent's Commission shall be paid on acceptance of all the goods delivered to site.

Installation bill of the Contract shall be paid on satisfactory installation, testing and commissioning of the installation system.

### ii. Foreign Component

Engineer's Representative should carefully go through the documents requested for payments as per **Clause 12** here of and inspect all documents at the initial payments for foreign component and inspect all delivered goods at site prior to approving for final payments and he shall be fully satisfied with the quantity, quality, unloading, stacking and etc. of goods at site prior to approving the final payment.

Subject to **Clause 15.1** hereof payments with respect to the foreign component shall be made in foreign currency or currencies agreed Revised on 11-06-2019 under a Letter of Credit which will be opened in favour of manufacturers through a local bank as follows:

- (a) 75% of the foreign component shall be paid on production of all the documents as detailed in **Clause 10** hereof. If the item shipped is only a part of that in the Bill of Quantities 75% of the foreign component of that portion only will be payable.
- (b) The balance 25% shall be paid within 60 (sixty) Days after satisfactory delivery to Employer's stores/site, on production of a Acceptance Certificate issued by the Engineer on goods under the foreign currency component and submission of unconditional on demand Bank guarantee from a reputed bank of Sri Lanka approved by the Central Bank of Sri Lanka in favour of NWSDB for a value of 5 % Contract price as a retention money as specified in the **Clause 15.4** hereof.

### **15.3 Mode of Payment**

The amounts due to the Supplier in terms of the contract shall be paid to the Supplier by the Purchaser in the following manner.

- (a) In respect of payment due in Sri Lanka Rupees, by a cheque in favour of the Supplier.
- (b) In respect of payments due in foreign currency through an irrecoverable Letter of Credit established by the Purchaser.

Payment shall be made by the Purchaser within 14 Days after the certificate of an invoice/claim.

### **15.4 Retention**

Employer shall retain 5% of the Contract Price as a retention money in the form of a unconditional on demand Bank guarantee issued by a reputed commercial Bank in Sri Lanka, acceptable to the Employer, in the form included in the contract document and valid for 28 Days beyond the defects liability period.

### **15.5 Release of Retention**

Retention Money Guarantee shall be released on satisfactory completion of all defects and on submission of final certificate issued by the Engineer after the Defect Liability Period.

## **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 shall 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 28 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 of the receipt of the notification of acceptance of the Contract by the Board, the successful Bidder 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 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)
- c) 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.
- d) 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.

Note: However, the requirement of confirmation of performance 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.

**The term “confirmed” in relation to bank guarantee issued by a bank based in another country means that the “confirmed” bank held liable for paying the respective guaranteed amount at the request of first demand by the beneficiary.**

**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 beyond the Defect Liability Period after issuing of Final Acceptance Certificate by the Engineer.

## **18. Copyright**

**18.1** 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 Conditions 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 Conditions of Contract **Clause 19** shall survive completion or termination, for whatever reason, of the Contract.

**20. Subcontracting**

**20.1** The contractor may subcontract with the approval of the Engineer. But shall not assign the contract without the approval of the Engineer in writing. Subcontracting shall not alter the Contractor's obligations. If any part of his obligations has been so assigned or sublet by the Contractor, he shall be held responsible for the due performance of the part so assigned or sublet and he shall be held responsible for the acts, defaults and neglects of any sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen. Provided always that the provision of labour on a piecework basis shall not be deemed to be a sub-letting under this Clause.

**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 Conditions of Contract **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.

**22.2** The Supplier shall be required to make separate packages for each consignee. Each package shall be marked on two sides with proper indelible paint as follows;

- i) National Water Supply & Drainage Board, Sri Lanka.
- ii) Contract No.
- iii) Description of Goods
- iv) Country of Manufacture of goods
- v) Suppliers Name
- vi) Packing list Reference No.
- vii) Date of Manufacture and Expiry.

## **23. Insurance**

**23.1** All insurance shall be as specified in the **Contract Data**.

The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, delivery and installation.

**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 recognized Insurance Company/Corporation registered under Insurance Board of Sri Lanka and the Contractor shall be 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 recognized 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 recognized Insurance Company/Corporation registered under 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.

**24.2**    The Contractor shall be required to arrange his temporary transport entrance to the sites and to provide suitable temporary culverts over drains and to make openings through existing wells so required and to secure the same with temporary gates to remove the same on completion of the work and to make goods any damage caused by the contractor to compound, walls or other features, to the satisfaction of the Engineer.

**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 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, documents and production data shall be furnished to the inspectors at no charge to the Purchaser.

### **25.3 Quality of Work, Plant and Materials.**

Shall 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. Shall 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 an Authorized Accredited Agency which is a member of International Accreditation Forum (IAF). The Authorized Accredited Agency shall have the Authority for the accreditation of mentioned goods in their scope of accreditation.

The selected Authorized Accredited Agency's name and cost to same has to be given in summary of Bill of Quantity. On the acceptance of the bid, the Purchaser shall inform directly to the Authorized Accredited Agency with a copy to Supplier, the specific requirements for testing including deviations accepted by the purchaser, if any, to be tested. However, the payment to the Authorized Accredited Agency 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** Nominated Authorized Accredited Agency shall carryout inspection and testing during Manufacturing process, after Manufacturing and at any time prior to shipping and shall confirm that goods are in conformity with specifications included in the contract document. He shall submit his inspection report to the Employer including all items given in the Terms of Reference (TOR) for the Nominated Authorized Accredited Agency which is included in the contract document as **Appendix – 8**.

**25.10 Certificate of Testing**

When the tests have been satisfactorily completed at the Contractor's premises, the Engineer or his duly authorized representative shall issue a certificate to that effect.

### **25.11 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) must be sent to the Engineer by registered post and obtain the approval of the Engineer before shipment.

### **25.12 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.

### **25.13 Tests on Completion**

25.13.1 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.

25.13.2 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.

25.13.3 If any portion of the works fail 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 Conditions 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 Conditions 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 Conditions of Contract **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 pumps and motors, panel boards and other equipment specified in the Bill of Quantities provided by him under the contract for the period as specified in the **Contract Data** from the date of commissioning for trouble free operation. The Contractor shall provide required material/part to be replaced during the period of warranty without any cost to the Employer. The contractor shall assure that he is equipped with sufficient resources to provide maintenance support services and handle major breakdowns. Maintenance support services shall be provided in free of charge within the warranty period.
- 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 **Clause 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.

The manufacturer shall submit the warranty for pumps, motors, panel boards and other equipment specified in the Bill of Quantities supplied by him for 3 years in the form given in **Appendix 10**.

**28. Patent  
Indemnity**

**28.1** The Contractor shall, subject to the Employer's compliance with Conditions 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 Conditions of Contract **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 Conditions of Contract **Clause 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, wars or revolutions, sovereign capacity 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 Conditions 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 method of shipment or packing;
- c) the place of delivery; and
- d) the Related Works, Services to be provided by the Contractor.
- e) Increase or decrease the quantity of any work included in the Contract.
- f) Add, vary or delete any component of the plant.
- g) Omit any such work.
- h) 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 Conditions 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 Conditions 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 Conditions of Contract **Clause 26**, unless an extension of time is agreed upon, pursuant to **Clause 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 Conditions of Contract **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 Conditions of Contract **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 Conditions 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, Works or Related Services. However, the Contractor shall continue performance of the Contract to the extent not terminated.

### 34.2 Termination for Insolvency

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

- a) 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.

- b) The Goods that are complete and ready for shipment within twenty-eight (28) Days after the Contractor's receipt of notice of termination shall be accepted by the Employer at the Contract terms and prices. For the remaining Goods, the Employer may elect:
  - i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - ii) to cancel the remainder and pay to the Contractor an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Contractor.

**35. Assignment**      **35.1**      The Contractor shall not assign, in whole or in part, their obligations under this Contract, except with prior written consent from the Engineer.

**36. Rates of Wages and hours of Work**      **36.1**      The Contractor shall pay the rates of Wages and any necessary allowances and observe hour's conditions of work not less favorable than those established in the trade. Where there are no such established rates etc. the rates and conditions which are fair and reasonable in respect of such worker or workers employed in a similar capacity and similar general circumstances as determined by the Commissioner of Labour.

**36.2**      The Contractor shall keep proper wage books and time sheets and other proper books of account and shall on the request of the Engineer, produce for his inspection the above mentioned documents and books showing the wages paid and the hours worked by the Contractor's employees.

**36.3**      The Board or any of its authorized officers shall have the right to have access to and to inspect books, check rolls, master rolls and other documents relating to labour employment on the work.

**37. Festivals**      **37.1**      The Contractor, the Agent, his sub-contractors and his staff shall in all their dealings with their workmen and labourers employed from time to time on or in connection with the works have due regard to all recognized festivals and religious or other customs.

**38. No night Works and Sunday Works**      **38.1**      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

works is 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.

- 39. Lighting for night work**      **39.1**      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.
- 40. Rate of Progress**      **40.1**      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. If the work is not being carried on by day and by night and the Contractor shall request permission to work by night as well as by day, then if the Engineer shall grant such permission the Contractor shall not be entitled to any additional payment for so doing. If such permission shall be refused and there shall be no equivalent practicable time method of expediting the progress of the work, the time for completion of the works shall be extended by the Engineer by such period as is solely attributable to such refusal. All work at night shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the Board from and against any liability for damages on account of noise or other disturbance created while or in carrying out the work and from or against all claims, demands, proceedings, damages costs, charges and expenses whatsoever in regard or in relation to such liability.
- 41. Suspension Work**      **41.1**      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.

**42. All risks**                      **42.1**                      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.

**43. Taking Over**                      **43.1**                      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. In the event of the works being divided by the contract into two or more sections, the Engineer shall be entitled to take over any section or sections before the other or others and thereupon the Engineer shall issue a taking over certificate in respect thereof.

**43.2**                      In the event of the Engineer failing to commence such tests within the said period, the Contractor shall be entitled to (provide the works have been substantially completed other than in minor details) obtain a certificate of due compliance with the specification upon the required tests from an International authority. Upon such certificate being issued the works will be deemed to have been completed in as though a certificate has been issued under **Clause 13.7** hereof.

**44. Defects after Taking Over**                      **44.1**                      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 24 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.

- 44.2** If any such defect shall occur the Engineer shall inform the Contractor thereof stating in writing the nature of the defect.
- 44.3** 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.
- 44.4** If the replacements of repair are of such a character as is capable of affecting the efficiency of the works or any portion thereof, the Engineer may within one month of such replacement of repair give the Contractor notice in writing requiring that Tests on Completion be made, in which case such tests shall be carried out as provided in **Clause 25.13** (Tests on Completion).
- 44.5** 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.

**45. Contractor to Search**

- 45.1** If required by the Engineer, contractor shall search for the cause of any defect, imperfection or fault under the directions of the Engineer. Unless such defect, imperfection or fault shall be one for which the Contractor is liable under the Contract the cost of the work carried out by the Contractor in searching as aforesaid shall be born by the Board. But if such defect, imperfection or default shall be one for which the Contractor is liable as aforesaid, the cost of the work carried out in searching as aforesaid shall be born by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or default at his own expense in accordance with the provisions of **Clause 44.1** hereof.

**46. Final Certificate**

- 46.1** 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 provided that, if a taking over certificate has been issued in respect of any portion of the works, the Contractor may apply for a separate final certificate

in respect of each such portion at any time, after the said obligation has ceased in relation to such portion.

**46.2** A final certificate shall certify the total of all amounts comprised in interim certificates previously issued in respect of the works or the portion thereof to which the final certificate relates, subject to such additions thereto or deductions therefrom as may be authorized in **Clause 46.4** hereof.

**46.3** A final certificate shall, save in the case of fraud or dishonesty relating to or affecting any matter dealt with in the certificate, be conclusive evidence as to the sufficiency of the works and of the value thereof.

**46.4** Any sum payable under the Contract by or to the Contractor otherwise than for work executed or plant delivered shall be included or deducted in the next certificate (interim or final) issued by the Engineer.

**46.5** The Engineer may in any certificate give effect to any correction or modification that should properly be made in respect of any previous certificate.

**47. Removal of Workman**

**47.1** The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the works any person employed by the Contractor in or about the execution or maintenance of the works who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by the Engineer to be undesirable. Upon such notice the Contractor shall forthwith remove such person and shall not be again employed upon the works without the written permission of the Engineer. Any person so removed from the works shall be replaced without delay by a competent substitute approved by the Engineer.

The contractor shall if required by the Engineer deliver to the Engineer or the Engineer's Representative returns in such forms and at such intervals as the Engineer may prescribe showing in detail the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site.

**48. Accident or Injury to Workman**

**48.1** 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.

**49. Payment or claims and Demands**

**49.1** 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.

**50. Sufficiency of means Employed**

**50.1** The Contractor shall take upon himself the entire responsibility for the sufficiency of all the means used for the fulfillment of this Contract, whether such may or may not be approved or recommended by the Engineer or his representative and the Contractor must accept all risks of accident of damage from whatever cause they arise until the completion of the Contract.

**51. Riots and unlawful behavior**

**51.1** 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.

**52. Repatriation**

**52.1** The Contractor shall be responsible for the repatriation of all foreign personnel employed in connection with the works and shall maintain such persons as are being repatriated in a suitable manner until such time as they shall have left the island; in default the Board may maintain and repatriate such persons and recover the cost from the Contractor.

**53. Day Work**

**53.1** 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.

**54. Day work Returns**

**54.1** The Contractor shall deliver weekly to the Engineer's Representative a detailed statement, including time sheets of all labour employed, materials used and plant utilized on any portion of the work ordered to be executed at day work rates. This statement shall cover the work done during the preceding week. One copy of this statement, if found correct will be signed by the Engineer's Representative and returned to the Contractor and will have to be produced by him if required before payment can be made, the value thereof being included in the next monthly bill. The Contractor shall afford every facility for checking on the ground the time, materials and plant for which he has charged.

**55. Sole use of plant and Equipment Irrevocability of plant etc.**

**55.1** All Contractors' plant equipment brought to site for the purpose of the works shall be used solely for the purpose of the work.

**55.2** No plant or Contractor's equipment or any part thereof (except Hired Plant) shall be removed from the Site without the written consent of the Engineer which consent shall not be unreasonably withheld where the same is no longer immediately required for the purpose of completion of the Works. But the Engineer will permit the Contractor the exclusive use of all such plant and equipment in and for the completion of the works until the occurrence of any event which gives the Engineer the right to exclude the Contractor from the site and proceed with the completion of the works. If there shall be due, owing, or accruing to the Board from the Contractor any moneys under or in respect of the Contract, of which the Engineer shall be unable to obtain payment, the Engineer shall be at liberty at the cost of the Contractor to sell and dispose of any Contractors equipment as he shall think fit, and to apply the proceeds in or towards the satisfaction of such moneys as aforesaid. Upon due completion of the Contractor's obligations under this agreement the Contractor will in any event be entitled to receive all such Contractor's plant and equipment brought in for the execution of the contract.

### **55.3 No approval by vesting**

All plant and equipment and materials forming part-of the Contract shall on delivery at site vest in the Board. Such vesting shall not constitute approval by the Engineer of the said plant equipment, materials nor shall it prevent the rejection of any such items at any time by the Engineer.

### **56. Contractor's Default**

#### **56.1** 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.

### **57. Engineer's option to purchase any item of Equipment, Plant, etc.**

**57.1** If the Contractor is permitted to import any plant, equipment or vehicles solely for use on the Contract or for the use of the personnel engaged in the works the Board reserves the option of purchasing any or all of them on the completion of plant etc the work. The prices to be paid for such purchases will be subject to negotiation between the Contractor and the Board but will in general be on the basis of the prices paid for the same by the Contractor including Customs' duty etc., less depreciation under to circumstance shall the prices paid be in excess of the prices paid for same by the Contractor even if the market values of such plant, equipment or vehicles are higher at the time of completion.

**58. Remittances  
Abroad**

**58.1** If the Contractor wishes to remit out of the Island any of his earnings, in Sri Lanka Rupees representing profit, foreign overheads, home allowances and salaries of foreign personnel, he undertakes to comply with the regulations of the Department of Exchange Control.

**59. Members  
of the  
Government,  
or Officers etc  
not personally  
Liable**

**59.1** Neither the members for the time being of the Government nor any member or officer of the Government or any of its Departments and National Water Supply and Drainage Board shall be in any way personally bound or liable for the acts or obligations of the Board under the Contract, or answerable for any default or omission in the observance or performance of any of the acts, matters, or things which are herein contained.