

CSIR-INDIAN INSTITUTE OF CHEMICAL BIOLOGY
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(COUNCIL OF SCIENTIFIC & INDUSTRIAL RESEARCH NEW DELHI)

**TENDER FOR SUPPLY & ERECTION OF MODULAR TYPE
LABORATORY FURNITURE
FOR
NEW CAMPUS OF CSIR-INDIAN INSTITUTE OF
CHEMICAL BIOLOGY SALT LAKE KOLKATA**

VOLUME – III

ARTICLES OF AGREEMENT

&

GENERAL CONDITIONS OF CONTRACT

JANUARY 2013



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**TENDER FOR SUPPLY & ERECTION OF MODULAR
LABORATORY AND OFFICE FURNITURE FOR NEW CAMPUS OF
CSIR-IICB AT SALT LAKE, KOLKATA**

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VOLUME – III

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A. ARTICLES OF AGREEMENT

ARTICLES OF AGREEMENT MADE AT _____ this _____ day of _____, 2013 BETWEEN the Council of Scientific & Industrial Research, New Delhi, a Society registered under the Societies Registration Act 1860 (Hereinafter referred to as the Employer, which expression shall include its successors and assignees and authorized officers of the Society) of the one part and _____ trading in the name and style of— —(herein after referred to as the contractors) which expression shall include his/their respective heirs, executors, administrators and permitted assignees) of the other part.

WHEREAS the Employer is desirous of getting the work of _____ done and has caused drawings, Schedule of Quantities and Specifications describing the work to be prepared.

AND Whereas the said specifications and the schedule of quantities and other documents have been signed by on behalf of the parties.

NOW IT IS HEREBY AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. In consideration of the payments to be made to them as hereinafter provided the Contractor shall upon and subject to the conditions hereinafter contained execute and complete, the work at the rates specified in the attached schedule of quantities and with such materials as are provided for and in accordance in all respect with specifications, designs, drawings and instructions in writing. Time for carrying out the work will be **04 Calendar months** and the date of commencement shall be reckoned from the tenth day of issue of award letter.
2. The Employer shall pay to the Contractors such sums as shall become payable hereunder at the times and in the manner specified in the said conditions.
3. This agreement contains the following documents in addition to pages of Articles of Agreement.
 - (i) Prequalification Document Page No ___ to ___
 - (ii) General Conditions of Contract Page No ___ to ___
 - (iii) Special Conditions Page No _____

- (iv) Additional Conditions Page No _____
- (v) Indenture for Secured Advance Page No _____ to _____
- (vi) Original tender document alongwith the covering letter of the firm dated _____ Page No: 1 to ____
- (vii) _____
- (viii) _____
- (ix) _____

In witness whereof the parties hereto have set their respective hands the day and year herein above written. Signed by, for and on behalf of Employer _____

In the presence of

(1) _____

(2) _____

Signed by the said contractor
In the presence of

(1) _____

(2) _____

B. GENERAL CONDITIONS OF CONTRACT

1. INTERPRETATION

- (a) In construing these conditions, the Technical Specifications, the Schedule of Quantities, Tender, Special Conditions, Additional Conditions, Additional Technical Conditions and Agreement, the following words shall have the meanings herein assigned to them except where the subject or context otherwise requires.
- (b) This contract shall comprise of the Articles of Agreement, General Conditions of Contract, Special Conditions of contract, Additional conditions, the Schedule of Quantities, Specifications, Letter of acceptance of tender and other documents mentioned in the contents sheet attached hereto and including those to which only reference is made herein.

WORK OR WORKS: shall mean all work or works defined in schedule of quantities, specifications and such other work or works as the contractor may be entrusted with for carrying out under this contract.

EMPLOYER: shall mean the Director-General, CSIR or any office authorized by Director General for the purpose.

ENGINEER: shall mean the Engineer designated by the Employer to superintend and perform other duties as indicated in the contract.

CONTRACTOR: shall mean the individual or Firm or Company, whether incorporated or not, undertaking the work and shall include the legal personal representative or such individual or the persons composing such Firm or Company or the successors of such Firm or Company and the permitted assignees of such individual or Firm or Firms or Company.

SITE: shall mean the site of the contract works including any buildings and erections thereon and any other land adjoining thereto (inclusive) as aforesaid allotted by the Employer or the Engineer for the contractor's use.

COMPENSATION: Shall mean all sums payable by way of compensation under any of the conditions shall be considered as reasonable compensation without reference to the actual loss or damage sustained and whether or not any damage sustained, and whether or not any damage shall have been sustained.

Words imputing persons include firms and corporations; words imputing the singular only also include the plural and vice versa where the context so required.

The headings are given to the clauses for convenience and they will not limit the meaning or scope of the clauses in any way.

2. DRAWINGS AND SPECIFICATIONS

The contractor shall execute whole and every part of the work in the most substantial and workmanlike manner both as regards material and otherwise in every respect in accordance with the specifications. The contractor shall also conform exactly and faithfully to the design, drawings and instructions given in the respect of the work by the Engineer. The contractor shall be furnished free of charge one copy of such specifications and all such designs, drawings and instructions as are not included in the printed publications.

3. CONTRACTOR TO PROVIDE EVERYTHING NECESSARY

a. Sufficiency of Tender

The contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of the tender for the works and rates and prices quoted in the schedule of items, which rates and the prices quoted in the schedule of items, which rates and the prices shall, except as otherwise provided, cover all his obligations under the contract and all matters and things necessary for the proper completion and maintenance of works.

- (b) The contractor shall provide at his own cost all materials, (except such materials, if any as may in accordance with the contract be supplied by the Employer) plants, tools, appliances, implements, ladders, scaffolding, temporary works, etc. requisite or proper for the execution of the work whether original, altered or substituted and whether included in the specifications or other documents forming part of the contract or which may be necessary for the purpose of satisfying or complying to the requirements of Engineer, as to any manner as to which under these conditions he is entitled to be satisfied together with carriage there for to and from the work. The contractor shall also supply without charge the

- requisite number of persons with means and materials necessary for the purpose of setting out works and counting, weighing and assisting in the measurement or examination at any time and from time to time of the work or materials. Failing his so doing, the same may be provided by the Engineer at the expense of the contractor and the expenses may be deducted from any money due to the contractor under the contract and/or from his Security Deposit.
- (c) The contractor shall provide himself with requisite quantity and quality of water for carrying out the works at this own cost. If, however, piped water is supplied by the Employer, the contractor shall pay for the water at one per cent of the total cost of the work done except on Electrical work, Air-conditioning work & Furniture work. The contractor shall make his own arrangement for water connection and laying of further pipelines from the source of supply of the Employer. It should be clearly understood that the Employer does not guarantee to maintain un-interrupted supply of water and it will be incumbent on the part of the contractor to make alternative arrangement for water at his own cost in the event of any temporary break-down in the water mains so that the progress of work is not held up for want of water. No claim as damages or refund of water charges will be entertained on account of such breakdowns. However, if the contractor is permitted to make his own arrangement to draw water from a well, hand-pump, or natural river or pond of the Employer, no charges will be made for the water drawn from the same, but the contractor will make good any damage done to the installations and ensure that the quality of water used in the work is conforming to BIS codes and provide for any treatment at his own cost.
- (d) The contractor shall be allowed to construct temporary wells in Employers' land for taking water for construction purpose only after he has permission of the Employer in writing. No charges shall be recovered from the contractor on this account but the contractor shall be required to provide necessary safety arrangement to avoid any accident or damage to adjacent buildings, roads and service lines. He shall be responsible for any accident or damage caused due to construction and subsequent maintenance of the wells and shall restore the ground to its original condition after the wells are dismantled on completion of the work.
- (e) The Employer on no account shall be responsible for the expenses incurred by the Contractor for hired ground or water obtained from elsewhere.
- (f) Subject to availability, the Employer may supply power at only one point from where the Contractor shall make his own arrangement for distribution including provision of electric meters, switches, fuses etc. at his own cost. These shall be in the custody of the Employer. If there is any hindrance

caused to other works the contractor shall reroute or remove such temporary lines without any extra cost. Such temporary lines shall be removed after the completion of work. The cost of power consumed by the contractor shall be payable to the employer at rates fixed by the Employer, which would, be deducted from the running account bills. However the Employer does not guarantee the supply of power and no compensation for any failure or short supply of power shall be entertained.

4. AUTHORITIES, NOTICES & PATENTS

- (a) The contractor shall conform to any regulations and bye-laws of any Corporation and of any Electricity Supply Company and authorities with whose systems the structure is proposed to be connected, and shall before making any variations from the drawing and specifications that may be necessitated for so conforming by giving written notice to the Engineer specifying the variations proposed to be made, the reasons for making it and apply for instructions thereon. If the compliance with this clause involves any extra work not included in this contract, he shall specify these items of work and the allowance of extra payment required on their account.
- (b) The contractor shall give all notices required by the said regulations or bye-laws to be given to any Authority and pay to such Authority or to any public office all fees that may be chargeable in respect of the works and lodge the receipts with the bill to the Engineer for reimbursement.

5. RATES TO INCLUDE ALL TAXES

- (a) Rates quoted by the contractor shall include Sales Tax, Service Tax, Duties, Octroi, Toll Tax, royalties and all other taxes in respect of this contract and the Employer shall not entertain any claim whatsoever in this respect. Tendered rates are inclusive of all taxes and levies payable under the respective statutes. However, pursuant to the Constitution (Forty Sixth Amendment) Act, 1982 if any further tax or levy is imposed by Statutes, after the date of receipt of tenders and the contractor thereupon necessarily and property pays such taxes/levies the contractor shall be reimbursed the amount as per the rules on producing proof of payment so made provided such payments, if any, is not in the opinion of the Employer (whose decision shall be final and binding) attributable to delay in executing of work within the control of the contractor.
- (b) The contractor shall keep necessary books of accounts and other documents for the purpose of this condition as may be necessary and shall allow inspection of the same by a duly authorized representative of

the Employer and further shall furnish such other information and documents as the Employer may require.

- (c) The contractor shall within a period of thirty days of imposition of any further tax or levy pursuant to the Constitution (Forty Sixth Amendment) Act, 1982 give a written notice thereof to the Employer that the same is given pursuant to this condition together with all necessary information relating thereto.

6. MATERIALS

- (a) If the specifications of schedule of items provide for the use of any material to be supplied by the Employer's stores or if it is required that the contractor shall use certain stores to be provided by the Employer as shown in the schedule of materials hereto annexed, the contractor shall be bound to procure and shall be supplied such materials and stores as are from time to time required to be used by him for the purpose of the contract only and value of the materials so supplied at the rates specified in the said schedule of materials and of the quantities incorporated in the work may be set off or deducted from any sums then due, or thereafter to become due to the contractor under the contract or otherwise or against or from the Security Deposit. All materials so supplied to the contractor by the Employer shall remain the absolute property of the Employer and the contractor shall be the trustee of the materials so supplied/procured and the said materials shall not be removed/disposed off from the site of the work on any account and shall be at all times open for inspection by the Engineer or Employer. The contractor shall bear all incidental charges for cartage, storage and safe custody of all materials and against damage due to dampness, rain, sun, fire and theft and be fully responsible for their storage and maintenance. Any such material unused and in perfectly good condition in the opinion of the Employer at the time of the completion of work or termination of the contract, or earlier shall be returned to the Employer at a place directed by the Engineer at contractor's cost and at rates stipulated in the said schedule but in case the Employer decides not to take back the materials the contractor shall have no claim for compensation on account of any such materials supplied to him as aforesaid being unused by him or for any wastage or damage to any such materials.
- (b) If for any reason there is delay or non-supply of material as shown in the schedule, the contractor shall procure the same and complete the work in time after due intimation and approval of the Employer. The difference in price (between his procurement price and price shown in the schedule) shall be paid to the contractor. However, in case approval of the Employer

is not given, only suitable extension of time would be considered and no other claim of compensation/damages shall be payable by the Employer.

- (c) Deleted
- (d) The provision of foregoing sub-clause shall apply Mutatis- Mutandis in the case of steel reinforcement or structural steel sections (each diameter/section or category shall be considered separately) except that the theoretical quantity of the steel shall be taken as the quantity required as per design or as authorized by the Engineer, including lappages, plus 3% wastage due to cutting into pieces. Over this theoretical quantity 2% plus/minus shall be allowed as variation due to wastage.
- (e) The provision of foregoing sub-clause shall apply Mutatis- Mutandis in the case of cables (other than under-ground cables), wires, conduits/GI pipes, GI/MS sheets used in various items of work shall be calculated on the basis of measurements recorded in the measurement books for the purpose of payment and for assessing the consumption of materials used in the works. Over this quantity a variation of 5% plus shall be allowed for wastage of materials during execution in case of cables (other than under-ground cables), wires, conduits/GI pipes, and 10% plus in case of GI/MS sheets.
- (f) The provisions made above are without prejudice to the right of the Employer to take action against the contractor under the conditions of the contract for not doing the work according to the prescribed specifications.
- (g) In case of easy availability of approved quality of cement and steel in open market, it will be Employer's discretion to make these items as Contractor's supply.

7. TESTING OF MATERIALS

The contractor shall provide assistance, instruments, materials, labour and any other arrangement normally required for testing, checking of materials and workmanship as stipulated in the specifications and by statutory authority at his own cost. The Employer has the right to appoint the testing authorities. The contractor shall pay for the cost of test samples, its packing, transportation including testing fees. Failing his so doing, the same shall be provided by the Engineer at the expense of the contractor and the expenses may be deducted from any money due to the contractor under the contract and/or from the Security Deposit or proceeds thereof or of a sufficient portion thereof.

8. CONTRACTOR'S ENGINEERS / FOREMAN & WORKMEN

- (a) The contractor shall give all necessary personal superintendence during the execution of the work and as long thereafter as the Engineer may consider necessary until the expiration of the Defects Liability Period. The contractor shall employ competent Site-Engineer as per approved by the Engineer whose qualification must conform to the requirement specified by the Engineer who shall be constantly in attendance of the work while the men are at work. Any directions, explanations, instructions or notices given by the Engineer to such Site-Engineer or Foreman or any other authorized agent shall be held to be given to the contractor. Refer Annexure – III.
- (b) The contractor shall on the request of the engineer immediately dismiss from the works any person employed thereon who may in the opinion of the engineer be unsuitable or incompetent or who may in the opinion of the employer misconduct himself.

9. ACCESS

- (a) The Engineer, and the Employer or its representative shall at all reasonable time have free access to the works and/or workshops, factories or other places the materials are being prepared or constructed for the contract and also to any place where the materials are lying or from which they are being obtained and the contractor shall give every facility to them for inspection. Except the representatives of statutory authorities and those mentioned above no other person shall be allowed on the works at any time without the permission of the Engineer.
- (b) If any work is to be done at a place other than the site of works, contractor shall obtain written permission of the Engineer.

10. VARIATION & PRICE FOR VARIATION

- (a) The Engineer with the approval of the Employer shall have power to make any alterations/omissions/additions and/or substitutions from the original specifications, drawings, designs, and written instructions and such alterations, omissions, additions, substitutions shall not invalidate the contract and any altered, additional, or substituted work which the contractor may be directed to do in the manner specified above as part of the work shall be carried out by the contractor on the same conditions in all respects on which he agreed to do the main work. The rates for such altered, additional or substituted work under this clause shall be worked out in accordance with the following provisions in their respective order.

- (b) If the rates for the altered, additional, or substituted work are specified in the contract for the work, the contractor is bound to carry out the altered, additional, or substituted work at the same rates as are specified in the contract for the work.
- (c) If the rates for the altered, additional, or substituted work are not specifically provided in the contract for the work, the rates will be derived from the rates for a similar class of work as are specified in the contract for the work.
- (d) If the rates for the altered, additional, or substituted work cannot be determined in the manner specified in sub-clause (b) and (c) above, then the contractor shall, within 10 working days from the date of receipt of the order to carry out the work through notice in writing, inform the Engineer of the rate which it is his intention to charge for such class of work, supported by analysis of the rate claimed which shall be based on actual cost of work plus 15% as contractor's profit and over-heads except in case of departmental materials for which contractors profit and over-heads shall be 2.5%. When such notice has been given, the Engineer with the consent of the Employer may agree to such a rate but if the Engineer does not agree to the contractor's rate the Engineer may cancel his order to carry out such class of work and arrange to carry out in such a manner, as he may consider advisable.
- (e) Under no circumstances, the contractor shall suspend the work on the plea of non-settlement of rates of items falling under the clause.

(f) Deviation Limits

Building work	30%
Maintenance / Emergency Works	50%
Foundation works	100%
Service works	30%

11. FAULTY MATERIALS, WORKMANSHIP & DEFECTS AFTER COMPLETION

- (a) The Engineer shall have powers to require the removal from the site of all materials and work which in his opinion are not in accordance with specifications and in case of default, the Engineer shall be at liberty to employ other persons to remove the same without being answerable or accountable for any loss or damage that may happen or arise to such materials to be substituted thereof and in case of default the Engineer may cause the same to be supplied and all costs which may attend such removal and/or substitution are to be borne by the contractor.

- (b) If it shall appear to the Engineer or to the Employer based on audit / technical examination that any work has been executed with unsound, imperfect, or unskillful workmanship or with materials of any inferior description, or that any materials or articles provided by him for the execution of the work are unsound or of a quality inferior to that contracted for or otherwise not in accordance with the contract, any defects, shrinkage or other faults which may appear within the defects liability period of twelve months from the date of completion arising in the opinion of the Engineer, the contractor shall on demand in writing which shall be made within twelve months of the completion of the work from the Engineer specifying the work, materials, articles defects or other faults complained of notwithstanding that the same may have been passed, certified and paid for, forthwith rectify, or remove and reconstruct the work so specified in whole or in part, as the case may require or as the case may be, remove the materials or articles so specified and provide other proper and suitable materials or articles at his own cost. In case of any such failure, the Engineer may rectify or remove or re-execute the work or remove and replace with others, the material or articles complained of as the case may be at the risk and cost in all respects of the contractor.
- (c) In lieu of rectifying the work not done in accordance with the contract, the Employer may, allow such work to remain, and in that case make allowance for the difference in value, together with such further reduction as in his opinion may be reasonable.
- (d) Provided always that nothing in this clause shall relieve the contractor from his liability to execute the works in all respects in accordance with the terms and conditions of this contract, or from his liability to make good all defects.

12. WORKS TO BE OPEN FOR INSPECTION

- (a) After installation employer will inspect and test the material as per BOQ supplied by the vendor. Any faulty installation or implementation obtained during checking, no payment shall be made for such work or the material. Material to be inspected by the IT people of IICB.
- (b) All work under or in course of execution or executed in pursuance of the contract shall at all times be open to the inspection and supervision of the Engineer and the contractor shall at all times during the usual working hours, and at all other times at which reasonable notice of the intention of the Engineer to visit the works shall have been given to the contractor, either himself be present to receive order and instruction or have a responsible agent duly accredited in writing present for that purpose.

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

13. ASSIGNMENTS OR SUB-LETTING

- (a) The contract shall not be assigned or sublet without the written approval of the Employer. And if the contractor shall assign or sub-let his contract or attempt to do so or become insolvent or commence any insolvency proceedings or make any composition with his creditors or attempt to do so or if any bribe, gratuity or gift, loan, perquisite, reward or advantage pecuniary or otherwise, shall either directly or indirectly, be given, promised or offered by the contractor or any of his servants or agents to any person in the employment of the Employer in any way relating to his office or employment, or if any such employee or person shall become in any way directly or indirectly interested in the contract, the Employer shall have the power to adopt any of the courses specified under clause-23 as may be best suited to the interest of the Employer and in the event of any of the courses being adopted the consequences specified in the said clause shall ensue.
- (b) Where the contractor is a partnership firm, the approval in writing of the Employer shall be obtained before any changes in the constitution of the firm. Where the contractor is an individual or a Hindu undivided family business concern such approval as aforesaid shall likewise be obtained before the contractor enters into any partnership agreement hereunder the partnership firm would have the right to carry out the work hereby undertaken by the contractor. If previous approval as aforesaid is not obtained, the contract shall be deemed to have been assigned or sublet in contravention of clause 13(a) and the same action may be taken and the same consequences shall ensue as provided in the said clause 13(a).

14. INDEMNIFYING AGAINST DAMAGES TO PERSONS, PROPERTY & STATUTES

The contractor shall take all precautions to avoid all accidents by exhibiting necessary caution boards day and night, speed limit boards, red flags, red lights and providing barriers. He shall be responsible for all damages and accidents caused due to negligence on his part. No hindrance shall be caused to traffic during the execution of work.

- (a) The contractor shall be responsible for all injury to persons, animals or things, and for all damage, whether such injury or damage arises from carelessness or accident in any way connected therewith. This clause shall be held to include interalia any damage due to causes as aforesaid to work, building (whether immediately adjacent or otherwise) and to roads, streets, foot paths, bridges or ways as well as all damage caused to the buildings and works forming the subject of this contract by inclemency of weather. The contractor indemnifies the Employer and holds him harmless in respect of all expenses arising from such injury or damages as aforesaid and also: in respect of any award of compensation or damage consequent upon such claim including legal costs.
- (b) The contractor shall reinstate all damage of every sort mentioned in this clause, so as to deliver the whole of the contracted works complete and perfect in every respect and so as to make good and otherwise satisfy all claims for damage as aforesaid of the property of third parties.
- (c) The contractor also indemnifies the Employer against all claim which may be made upon the Employer for acts during the currency of this contract by any employee or representative of an employee of the contractor or any sub-contractors, employed by him, for any injury to or loss of life, of such employees, or for compensation payable under any law for the time being in force to any workmen or to the representative of any deceased or incapacitated workmen.
- (d). The contractor also indemnifies the Employer against all claims which may be made upon the Employer for acts during the currency of this contract by the Central/State Government or local Municipal authorities for the noncompliance of any laws, regulations, rules pertaining to wages act, safety act in force and any amendments thereof in respect of all labour and apprentices directly or indirectly employed in the work under this contract.
- (e) The Employer shall be at liberty and is hereby empowered to deduct the amount of any damages, compensation costs, charges and/or expenses arising or accruing from or in respect of any such claim and/or damages

as aforesaid from any sum or sums due or to become due to the contractor or security deposit.

- (f) The contractor shall indemnify the Employer against any action, claim or proceedings relating to infringement or use of any patent or design or any alleged patent or design rights and shall pay any royalties which may be payable in respect of any article or part thereof included in the contract. In the event of any claims made under or action brought against the Employer in respect of any such matters as aforesaid the contractor shall be immediately notified thereof and the contractor shall be at liberty, at his own expense, to settle any dispute or to conduct any litigation that may arise there from. Provided that the contractor shall not be liable to indemnify the Employer if the infringement of the patent or design or any alleged patent or design right is the direct result of an order passed by the said Employer or his authorized representative.

15. LIEN IN RESPECT OF CLAIM IN OTHER CONTRACTS

- (a) Any sum of money due and payable to the contractor including the security deposit under the contract may be withheld or retained by way of lien by the Employer or Government or any other contracting person or persons against any claim of the Employer or Government or such other persons in respect of payment of a sum of money arising out of or under any other contract made by the contractor with the Employer or Government or with such other persons.
- (b) It is agreed term of the contract that the sum of money so withheld or retained under this clause by the Employer will be kept withheld or retained as such by the Employer or till his claim arising out of in the same contract or any other contract is either mutually settled or determined by the Arbitrator if the contract is governed by arbitration clause or by the competent court as the case may be, and that the contractor shall have no claim for interest or damages whatsoever on this account or any other ground in respect of any sum of money withheld or retained under this clause and duly notified as such to the contractor.

16. WITHHOLDING & LIEN IN RESPECT OF SUMS CLAIMED

- (a) Whenever any claim or claims for payment of a sum of money arises out of or under the contract against the contractor, the Employer shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security deposit, if any deposited by the contractor and for the purpose aforesaid, the Employer shall be entitled to withhold the security deposit, if any, furnished as the case may be and also have a lien over the same pending finalization or adjudication of any

such claim. In the event of the security deposit being insufficient to cover the claimed amount or amounts or if no security deposit has been taken from the contractor, the Employer shall be entitled to withhold and have a lien to retain to the extent of such claimed amount or amounts referred to above, from any sum or sums found payable or which at any time thereafter may become payable to the contractor under the same or any other contract, with the Employer or any contracting person pending finalization or adjudication of any such claim. It is an agreed term of the contract that the sum of money so withheld or retained under the lien referred above, by the Employer will be kept withheld or retained as such by the Employer till the claim arising out of or under the contract is determined by the Arbitrator (if the contract is governed by the arbitration clause) or by the competent court as the case may be and that the contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to above and duly notified as such to the contractor. For the purpose of this clause, where the contractor is a partnership firm or a limited company the Employer shall be entitled to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum payable to any Partner/Limited company as the case may be, whether in his individual capacity or otherwise.

- (b) The Employer shall have the right to cause an audit and technical examination of the works and the final bills of the contractor including all supporting vouchers, abstract etc., to be made after payment of the final bill and if as a result of such audit and technical examination any sum is found to have been over paid in respect of any work done by the contractor under the contract or any work claimed-by him to have been done by him under the contract and found not to have been executed the contractor shall be liable to refund the amount of over-payment and it shall be lawful for the Employer to recover the same from him in the manner prescribed in sub-clause (a) of this clause or in any other manner legally permissible; and if it is found that the contractor was paid less than what was due to him under the contract in respect of any work executed by him under it, the amount of such under-payment shall be duly paid by the Employer to the contractor. Provided that the Employer shall not be entitled to recover any sum over-paid, nor the contractor shall be entitled to payment of any sum paid short where such payment has been agreed upon between the Employer on the one hand and the contractor on the other hand, under any term of contract permitting payment for work after assessment by the Employer.

17. IN-CASE OF DEATH OF CONTRACTOR

Without prejudice to any of the rights or remedies under this contract, if the contractor dies, the Employer shall have the option of terminating the contract without compensation to the contractor.

18. SUB-CONTRACTORS

The Employer reserves the right to use the premises and any portion of the site for the execution of any work not included in the contract. The contractor is to afford all reasonable facilities to all sub-contractors, specialists, merchants, tradesmen and others who may at any time be appointed by the Employer for executing any work or supplying any goods relating to the constructions, servicing, equipping or furnishing of the work under this contract.

19. COMPLIANCE TO LABOUR LAWS & APPRENTICE ACT

The contractor shall comply with all the provisions of the Minimum Wages Act, 1948, Contract Labour (Regulation and Abolition) Act, 1970, and rules and orders framed there under and other-labour laws affecting contract labour and Apprentice Act, 1961 and the rules and orders framed there under that may be in force or brought into force from time to time. The contractor shall obtain a valid license under Contract Labor (R&A) Act 1970 and contract Labor (R&A) Central Rules 1971 before commencing work and which should be valid till completion.

20. COMPENSATION FOR DELAY

- (a) The time for carrying out the work as entered in the tender shall be strictly observed by the contractor and shall be deemed to be the essence of the contract on the part of the contractor. The work shall throughout the stipulated period of the contract be proceeded with all due diligence and the contractor shall pay as compensation an amount equal to one per cent or such smaller amount as the Employer (whose decision in writing shall be final) may decide on the amount of the whole work as shown in the agreement, for every week that the work remains un-commenced or unfinished after the proper dates.
- (b) And further to ensure good progress during the execution of the work, the contractor shall be bound in all cases in which the time allowed for any work exceeds one month (save for special jobs) to complete one-eighth of the whole of the work before one-fourth of the whole time allowed under the contract has elapsed; three-eighths of the work before one-half of such time has elapsed, and three-fourths of the work before three-fourths of such time has elapsed. However for special jobs if a time schedule has been submitted by the contractor and the same has been accepted by the Employer, the contractor shall comply with the said time schedule. In the

event of the contractor failing to comply with this condition, he shall be liable to pay as compensation an amount equal to one per cent or such smaller amount as the Employer (whose decision in writing shall be final) may decide on the said cost of the work for every week that the due quantity of work remains incomplete. Provided that the entire compensation to be paid under the provisions of this clause shall not exceed ten per cent on the cost of the work as shown in the agreement.

21. DAMAGE TO WORKS IN CONSEQUENCE OF HOSTILITIES OR WAR-LIKE OPERATIONS

- (a) The work (whether fully constructed or not) and all materials, machines, tools and plants, scaffolding, temporary buildings and other things connected therewith shall bear the risk of the contractor until the work has been delivered to the Employer and a certificate from him to that effect obtained. In the event of the work or any materials properly brought to the site for incorporation in the work being damaged or destroyed in consequence of hostilities or war-like operations, the contractor shall, when ordered in writing by the Employer, remove any debris from the site, collect and properly stack or remove in store all serviceable materials salvaged from the damaged work and shall be paid at the contract rates in accordance with the provision of this agreement for the work of clearing the site of debris, stacking, removal of serviceable materials and for the reconstruction of all works ordered by the Employer such payment being in addition to compensation upto the value of the work originally executed before being damaged or destroyed and not paid for. In case of works damaged or destroyed but not already measured and paid for the compensation shall be assessed by the Employer. The contractor shall be paid for the damage/destruction suffered and for restoring the material at the rates based on the analysis of rates tendered for in accordance with the provision of this agreement. The certificate of the Employer regarding the quality and quantity of materials and the purpose for which they were collected shall be final and binding on the contractor.
- (b) Provided always that no compensation shall be payable for any loss in consequence of hostilities or war-like operations (i) unless the contractor had taken all such precautions against Air Raid as are deemed necessary by the A.R.P. Officers or the Employer, (ii) for any materials etc., not on the site of the work or for any tools and plant, machinery, scaffolding, temporary buildings and other things not intended for the work.
- (c) In the event of the contractor having to carry out reconstruction as aforesaid, he shall be allowed such extension of time for its completion as is considered reasonable by the Employer.

22. EXTENSION OF TIME

- (a) If the contractor shall desire an extension of time for the completion of the work on the grounds of his having been unavoidably hindered in its execution or any other ground, he shall apply in writing to the Employer within thirty days of the date of hindrance on account of which he desires extension as aforesaid, and the Employer shall, if in his opinion (which shall be final) reasonable grounds shown therefore, authorize such extension of time if any, which may, in his opinion, be necessary or proper.
- (b) In the event, the value of work exceeds the value of the Bill of Quantities owing to variations the contractor shall be entitled to ask for extension of time in proportion to the increased value of work.

23. SUSPENSION OF WORK BY CONTRACTOR

- (a) The Employer may without prejudice to his right against the contractor in respect of any delay or inferior workmanship or otherwise or to any claims for damages in respect of any breaches of the contract and without prejudice to any rights or remedies under any of the provisions of this contract or otherwise and whether the date for completion has or has not elapsed by notice absolutely determine the contract in any of the following cases:
 - (i) If the contractor having been given by the Engineer a notice to rectify, reconstruct or replace any defective work or that the work is being performed in any inefficient or otherwise improper or un-workman-like manner shall omit to comply with the requirements of such notice for a period of seven days thereafter or if the contractor shall delay or suspend the execution of the work so that in the judgment of the Employer (which shall be final and binding) he will be unable to ensure completion of the work by the date for completion or he has already failed to complete the work by that date.
 - (ii) If the contractor being a company shall pass a resolution or the court shall make an order that the company shall be wound up or if a receiver or a manager on behalf of a creditor shall be appointed or if circumstances shall arise which entitle the court of creditor to appoint a receiver or a manager or which entitle the court to make a winding up order.
 - (iii) if the contractor commits breach of any of the terms and conditions of this contract.

- (iv) if the contractor commits any acts mentioned in Clause-13 hereof.
- (b) When the contractor has made himself liable for action under any of the cases aforesaid, the Employer shall have the following powers:
- (i) To determine or rescind the contract as aforesaid (of which termination or rescission notice in writing to the contractor under the hand of the Employer shall be conclusive evidence). Upon such determination or rescission the security deposit of the contractor shall be liable to be forfeited and shall be absolutely at the disposal of the Employer.
 - (ii) The Engineer may employ labour paid by the Employer and to supply materials to carry out the work or any part of the work debiting the contractor with the cost of the labour and the price of the materials (of the amount of which cost and price certified by the Engineer shall be final and conclusive against the contractor) and crediting him with the value of the work done in all respects in the same manner and at the same rates as if it had been earned out by the contractor under the terms of his contract. The certificate of the Engineer as to the value of the work done shall be final and conclusive against the contractor, provided always that action under the sub-clause shall only be taken after giving notice in writing to the contractor. Provided also that if the expenses incurred by the Employer are less than the amount payable to the contractor at his agreement rates, the difference should not be paid to the contractor.
 - (iii) After giving notice to the contractor to measure up the work of the contractor and to take such part thereof as shall be unexecuted out of his hands and to give it to another contractor to complete in which case any expenses which may be incurred in excess of the sum which would have been paid to the original contractor if the whole work had been executed by him (of the amount of which exceed the certificate in writing of the Engineer shall be final and conclusive) shall be borne and paid by the original contractor and may be deducted from any money due to him by the Employer under this contract or any other account whatsoever or from his security deposit.
 - (iv) In the event any one or more of the above courses being adopted by the Employer the contractor shall have no claim to compensation for any loss sustained by him by reason of his having purchased or procured any materials or entered into any engagements or made any advances on account or with a view to the execution of the work or the performance of the contract. And in

case action is taken under any of the provisions aforesaid, the contractor shall not be entitled to recover or be paid any sum for any work thereof or actually performed under this contract unless and until the Engineer has certified in writing the performance of such work and the value payable in respect thereof and he shall only be entitled to be paid the value so certified.

24. CERTIFICATES & PAYMENTS

- (a) There will be no running bill. No payments shall be made for a work estimated to cost Rupees ten thousand or less till the whole of the work shall have been completed and certificate of completion given. But in the case of a work estimated to cost more than Rupees ten thousand, the contractor shall, on submitting the bill be entitled to receive a monthly payment proportionate to the part of the work executed, and to the satisfaction of the Engineer, whose certificate of the sum so payable shall be final, and conclusive against the contractor, provided the amount of work done is as per the value of intermediate certificate or for a lesser amount at the discretion of the Engineer as mentioned in the NIT. All such intermediate payments shall be regarded as payments by way of advance against the final payment only and not as payments for work actually done and completed and shall not preclude the requiring of bad, unsound, imperfect or unskilled work to be removed and taken away and reconstructed, or re-erected or be considered as an admission of the due performance of the contract, of any part thereof in any respect or the accruing of any claim nor shall it conclude, determine, or affect in any way the powers of the Employer under these conditions or any of them as to the final settlement and adjustment of the accounts or in any other way vary or affect the contract. The final bill shall be submitted by the contractor within two months of the date fixed for the completion of work or of the date of the certificate of completion furnished by the Employer and payment shall be made within three months if the value of the completed works is upto Rs. two lakhs and in six months if the same exceeds Rs. two lakhs of the submission of such bill. If there shall be any dispute about any item or items of the work then the undisputed item or items only shall be paid within the said period of three months or six months as the case may be.
- (b) Whenever there is likely to be delay in recording detailed measurements for making a running payment, advance payment without detailed measurements for work done worked out at 75 per cent of the tendered rates for assessed quantities may be made in running account bills by the Employer on the basis of a certificate from the Engineer. The advance payments so allowed shall be adjusted in the subsequent running bills by

taking detailed measurements thereof. Final payments shall be made only on the basis of detailed measurements.

- (c) A bill shall be submitted by the contractor each month on or before the date fixed by the Engineer on printed forms obtainable from the Engineer's office. The Engineer shall take or cause to be taken the requisite measurements, for the purpose of having the same verified and the claim, as far as admissible, adjusted as far as possible, before the expiry of ten days from the presentation of the bill. If the contractor does not submit the bill within the time fixed as aforesaid the Engineer may cause action within seven days of the date fixed as aforesaid, an authorised representative to measure up the said work in the presence of the contractor whose signature to the measurement will be sufficient warrant and the Engineer may prepare the bill from such measurements.
- (d) Before taking any measurement of any work the Engineer or his authorized representative deputed by him shall give reasonable notice to the contractor. If the contractor fails to attend after such notice or fails to sign or to record the difference within a week from the date of measurement in the manner required by the Engineer then in any such event the measurements taken by the Engineer or by the authorized representative deputed by him as the case may be, shall be final and binding on the contractor and the contractor shall have no right to dispute the same.
- (e) The charges in the bills shall always be entered at the rates specified in the agreement or in the case of any extra work ordered in pursuance of these conditions and not mentioned or provided for in the agreement at the rate determined as per clause-10. However in case of partially executed items of work, the Employer at his discretion allows proportionate rates for such items of work as determined by the Engineer whose certificate of the sum so payable shall be final and conclusive against the contractor.

25. SECURITY DEPOSIT

- (a) **A sum of 10% of the gross amount of the bill shall be deducted from each running bill of the contractor till the sum along with the sum already deposited as earnest money, will amount to security deposit of 5% of the tendered value of the work. In addition the Contractor shall be required to deposit an amount equal to 5% of the tendered value of the Contract as Performance Security within the period prescribed for commencement of work in the letter of award issued to him.**

- (b) In case a fixed deposit receipt of any scheduled bank is furnished by the contractor to the Employer as part of the security deposit and the bank goes into liquidation or for any reason is unable to make payment against the said fixed deposit receipt, the loss caused thereby shall fall on the contractor and the contractor shall forthwith on demand furnish additional security to the Employer to make good the deficit of such sum from the running bill as mentioned above. Such deductions will be held by the Employer by way of security deposit, provided always that the Employer for this purpose shall be entitled to recover the said percentage of the amount from each running bill till the balance of the amount of security deposit is realized. All compensation or the other sums of money payable by the contractor under the terms of this contract may be deducted from the security deposit or from the interest arising there from or from any sums which maybe due to or may become due to the contractor by the Employer on any account whatsoever and in the event of his security deposit being reduced by reason of any such deductions aforesaid, the contractor shall within ten days make good in cash or further fixed deposit receipt pledged in favour of the Employer. The security deposit shall be collected from the running bills of the contractor at the rates mentioned above and the earnest money if deposited at the time of tenders will be treated as part of the security deposit.
- (c) The contractor if he so desires may furnish fixed deposit receipt in advance towards the security deposit. Such fixed deposit receipt shall be of a minimum value of Rs 25000/- each (The last such fixed deposit receipt could be of a lower value on the basis of the amount). In case any recovery is affected from running account bills, such recovered amount shall not be replaced with fixed deposit receipt. It is in the contractor's interest to keep a watch about the adequacy of the fixed deposit receipt submitted.
- (d) No partial refund of security deposit shall be made during the defect liability period. In case the final bill is not settled within stipulated period for reasons beyond control and the Employer is satisfied that the security deposit is not required for adjustment of Employers dues or whatsoever dues either in this or any other contract then this security deposit either in full or in part could be refunded at the sole discretion of the Employer. However, release of security deposit would be only after written clearance of Labor Officer regarding no dues or claim is received.
- (e) In case of termination of contract, this security deposit shall be forfeited and amount necessary to make up this amount shall be recovered from money due to the contractor under this contract, or any other contract with the Employer.

26. COMPLETION CERTIFICATE

With in ten days of the completion of the work, the contractor shall give notice of such completion to the Employer and within ten days of the receipt of such notice the Engineer shall inspect the work. If there is no defect in the work the Employer shall furnish the contractor with a certificate of completion otherwise a certificate of completion indicating defects shall be issued but the work shall not be considered to be completed until the contractor shall have removed from the premises on which the work shall be executed all the scaffolding, surplus material, rubbish, and all huts and sanitary arrangements required for his work, people on the site in connection with the execution of the works as shall have been erected or constructed by the contractor and cleaned of the dirt, splashes, droppings of finishing items from all wood work, doors, windows, walls, floors or other parts of any building, in, upon or about which the work is to be executed or of which he may have had possession for the purpose of the execution thereof. If the contractor shall fail to comply with requirements of this clause on or before the date fixed for the completion of the work, the Employer may at the risk and cost of the contractor take action as he may think fit and the contractor shall have no claim except for any sum actually realized by the sale thereof.

27. ARBITRATION

- a. Except where otherwise provided in the contract all questions and disputes relating to the interpretation of the specifications, designs, drawings and instructions herein before mentioned and as to the quality or workmanship or materials used on the work or as to any other question, claim, right matter or thing whatsoever in any way arising out of or relating to the contract, designs, specifications, estimates, instructions, orders on these conditions or otherwise concerning the works, or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the person appointed by the Director General, Council of Scientific and Industrial Research. The arbitrator shall be appointed within 30 days from the receipt of a request by any party. The arbitrator to whom the matter is originally referred being unwilling or unable, to act for any reason, the Director General shall appoint another person to act as of arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. The arbitrator shall give a speaking award. The award of the arbitrator shall be final and binding on the parties. The cost of the Arbitrator shall be borne equally by both the parties.

- b. It is also a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.
- c. It is also a term of the contract that if the contractor does not make any demand for arbitration in respect of any claim in writing within 90 days of receiving the intimation from the Employer that the final bill is ready for payment, the claim of the contractor will be deemed to have been waived and absolutely barred and the Employer shall be discharged and released of all liabilities under the contract in respect of these claims.
- d. Subject as aforesaid the provisions of the Arbitration and Conciliation Act 1996, or any statutory modification or re-enactment thereof and the rules made there under and the time being in- force shall apply to the arbitration reference under this clause.

28. PERFORMANCE GUARANTEE

Performance Guarantee may be taken from contractor before the award of work by the officer authorized to award the Contract. If and when considered necessary, to ensure that a part or whole of the contract is completed by the contractor. In case of non-performance, this guarantee could be en-cashed.

PROFORMA FOR PERFORMANCE BANK GUARANTEE

(On a stamp paper of appropriate value from any Nationalised Bank or Scheduled Bank)

To

Council of Scientific & Industrial Research
New Delhi,

1. In consideration of Council of Scientific & Industrial Research (hereinafter) called "The Council" having awarded to M/s _____ a Company registered under the Companies Act 1956 (hereinafter) called the Contractor, a contract for (hereinafter) called the said contract under the, terms and conditions of an Agreement dated — made between the Council and the Contractor hereinafter called the said agreement and Council agreed to accept a Deed of Guarantee as herein provided for Rs. _____ (Rupees _____ only) from a Scheduled Bank towards due performance of the contract by the Contractor as per the terms and conditions of the contract on the condition that the Bank on demand from the Council and without demur pay to the Council the aforesaid amount.
2. We, _____ Bank Ltd., (hereinafter) referred to as the 'bank' do hereby undertake to pay to the Council and amount not exceeding Rs. _____ against any loss or damage caused to or suffered or would be caused to or suffered by the Council by reasons of any breach or breaches of any of the terms of conditions of the said agreement by the said contractor.
3. We, _____ Bank Ltd., do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Council by stating the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Council for reasons of any breach by the said contractors) of any of the terms & conditions contained in the said Agreement or by reason of the contractors) failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee.

However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _____

4. This guarantee shall come into force immediately and continue in force and remain valid till six months after the completion of all works under the said contract which according to the terms of the said contract, should be twelve months from the probable date of completion viz., the _____ day of _____. If, however, the period of the completion of the works under the said contract is for any reason extended and upon such extension if the Contractor fails, before the terms of this guarantee expires, to furnish a fresh or renewed guarantee for the extended period, the Bank shall pay to Council the said sum of Rs. _____ or such lesser sum as Council may demand.
5. This guarantee shall not be affected by any change in the constitution of the Bank or of the Contractor.
6. Notwithstanding anything hereinbefore contained, the liability of the Bank under this guarantee is restricted to Rs _____ (Rupees. _____ only) and the guarantee shall remain in force till _____ day of _____ 20 ____ unless claim or demand under this guarantee is presented to the Bank within six months from that date all the rights of Council under this guarantee shall be forfeited and the Bank shall be released and discharged from all obligations hereunder.

Dated this day of

Yours faithfully,

For

Signature & seal of the Bank (Authorised Signatory)