

SPECIAL CONDITIONS

SPECIAL CONDITIONS OF CONTRACT

Number of GC Clause

A. Amendments of, and Supplements to, Clauses in the General Conditions of Contract

1.1 (a) The words “in the Government’s country” are amended to read “in INDIA”.

1.1 (g)Add. 1.1 (g) and “Government means “Government of Gujarat”

1.4 The language is : English

1.6.1 The address are :

For the Client : Government of Gujarat,
Roads & Buildings Department,
Block No. 14/2,
Nava Sachivalaya,
Gandhinagar – 382 010
Gujarat, India.

Attention : Mr. D. S. Vasava
Executive Engineer
Bharuch (R & B) Division, Bharuch

Telephone No. :
Facsimile

For the Consultants :
Attention :
Telephone No :
Facsimile :

1.6.2 Notice will be deemed to be effective as follows:

- (a) in the case of personal delivery or registered mail, on delivery;
- (b) in the case of telexes, 24 hours following confirmed transmission;
- (c) in the case of telegrams, 24 hours following confirmed transmission; and
- (d) in the case of facsimiles, 24 hours following confirmed transmission.

1.8 The Member in Charge is :

1.9 The authorized Representatives are :

For the Client Mr. D. S. Vasava
Executive Engineer
Bharuch (R & B) Division, Bharuch

:

1.10 For the Consultant :

1.10.1 For domestic consultants / sub-consultants / personnel / and foreign consultants / personnel who are permanent residents in India.

The Consultants, Sub- consultants and the Personnel shall pay the taxes, duties, fees, levied under the existing, amended or enacted laws during life of this contract and the Client shall perform such duties in regard to the deduction of such tax as may be lawfully imposed.

1.10.2 For foreign Consultants

The Consultants, Sub- consultants and the Personnel shall pay the taxes, duties, fees, levies and other impositions levied under the existing, amended or enacted laws during life of this contract and the Client shall perform such duties in regard to the deduction of such tax as may be lawfully imposed.

1.10.3 **DELETED**

2.1 The effectiveness conditions are the following :

- 1) Approval of the Contract by the Government of Gujarat
- 2) Client's Approval of Consultant's Proposals for appointment of specified key staff members.
- 3) Notice of R&BD to the consultant to proceed with the works.

2.2 The time period shall be four months or such other time period as the parties may agree in writing.

2.3 The time period shall be one month or such other time period as the Parties may agree in writing.

2.4 The time period shall be 12 months, or such other period as the parties may agree in writing.

3.4 Limitation of the Consultant's Liability towards the Client

(a) Except in case of gross negligence's or willful misconduct on the part of the Consultants or on the part of any person or firm acting on behalf of the Consultants in carrying out the Services, the Consultants, with respect to damage caused by the Consultants to the Client's property shall not be liable to the Client :

(i) for any indirect or consequential loss or damage : and

(ii) for any direct loss or damage that exceeds (A) the total payments for Professional Fees and Reimbursable Expenditures made or expected to be made to the Consultants hereunder, or (B) the proceeds the Consultants may be entitled to receive from any insurance maintained by the Consultants to cover such a liability whichever of (A) or (B) is higher.

(iii) For pollution / contamination and asbestos claims in aggregate to the levels in

(ii) above.

(iv) For loss or damage caused by terrorism or toxic mould.

(b) This limitation of liability shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultants or any person or firm acting on behalf of the Consultations in carrying out the Services.

- 3.5 The risks and the coverage shall be as follows :
- (a) Third Party motor vehicle liability insurance as required under Motor Vehicles Act, 1988 in respect of motor vehicles operated in India by the Consultants or their Personnel or any Sub-consultant's or their Personnel for the period of consultancy.
 - (b) Third Party liability insurance with a minimum coverage, for Rs. 5.00 lacs for the period of consultancy.
 - (c) Professional liability insurance as mentioned in Clause 3.4 (a) (ii) of SC of the consultancy, above, with a minimum coverage equal to estimated remuneration and reimbursable.
 - (d) Client's liability and workers compensation insurance in respect of the Personnel of the Consultants and of any Sub- consultant in accordance with the relevant provisions of the Applicable Law as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and
 - (e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultants in the performance of the Services.
- 3.9 The Consultants shall not use these documents for purposes unrelated to this Contract without the prior written approval of the Client.
- 4.6 The person designated as Team Leader shall serve in that capacity, as specified in Clause GC 4.6
- 6.1 (b) The ceiling in local currency is :
- 6.2 (a) Deleted.
- 6.2(b)(i) (1) His understood (i) that the remuneration rates shall cover (A) such salaries and allowances as the Consultants shall have agreed to pay to the Personnel as well as factors for social charges and overhead, and (B) the cost of back, stopping by home office staff not included in the Personnel, and (C) the Consultants fee, (ii) that bonuses or other means of profit – sharing shall not be allowed as an element of overhead, and (iii) that any rates specified for persons not yet appointed shall be provisional and shall be subject to revision, with the written approval of the Client, once the applicable salaries and allowances are known.
- (2) Remuneration for periods of less than one month shall be calculated on an hourly basis for actual time spent in the Consultants home office and directly attributable to the Services (one hour being equivalent 1/240th of a month) and on a calendar – day basis for time spent away from home office (one day being equivalent to 1/30th of a month).
- 6.2(b)(ii) The rates for local Personnel are set forth.
- 6.3 (a) The foreign currency shall be the following :
- (i) Nil
- 6.3.(b) Remuneration for Personnel shall be paid in local currency.
- 6.3(b) (ii) The reimbursable expenditure in local currency shall be the following :

- (1) The cost of the following locally procured items: local transportation, office accommodations, camp facilities, camp services, equipment rentals, supplies, utilities and communication charges arising in India, all if and to the extent required for the purpose of the Services.
- (2) The cost of equipment, materials and supplies to be procured locally in India;
- (3) The local currency cost of any subcontract required for the Services and approaches in writing by the Client;
- (4) Any such additional payments in local currency for properly procured items as the Parties may have agreed upon pursuant to the provisions of Clauses GC 6.1(c); and
- (5) The cost of such further items as may be required by the Consultants for the purpose of the Services, as agreed in writing by the Client.
- 6.4(a) The following provisions shall apply to the advance payment and the advance payment guarantee:

Deleted

- (2) The bank guarantee shall be in the amount and in the currency, local currency portion of the advance payment.

6.4(c)

Deleted

- 6.4(e) The accounts are :

For Local Currency : (Payment in Indian Rupees)

- 8.2 Disputes shall be settled by arbitration in accordance with the following provisions :

- 8.2.1 Selection of Arbitrators

Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the following provisions :

- (a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the President, Indian Roads Congress, New Delhi, for a list of not fewer than five nominees and, on receipt of such list, the Parties shall alternately strike names there from, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner with sixty (60) days of the date of the list, the president, Indian Roads Congress, New Delhi, shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.
- (b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultants shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third

arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the required of either Party, be appointed by Secretary, the Indian Council of Arbitration, New Delhi.

- (c) if, in a dispute subject to Clause SC 8.2.1 (b), one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the Secretary, Indian Council of Arbitration, New Delhi, to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.

8.2.2 Rules of Procedure

Arbitration proceedings shall be conducted in accordance with procedure of the Arbitration & Conciliation Act 1996, of India unless the Consultant is a foreign national / firm, where arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International trade Law (UNCITRAL) as in force on the date of this Contract.

8.2.3 Substitute Arbitrators

If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator.

8.2.4 Qualifications of Arbitrators

The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause 8.2.1 hereof shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute.

8.2.5 Miscellaneous

In any arbitration proceeding hereunder.

- (a) Proceedings shall, unless otherwise agreed by the Parties, be held at Bharuch.

- (b) The English language shall be the official language for all purposes; and

- (c) The decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

Penalty :

a) Penalty Action for Delay :

In case of delay in completion of services, a penalty equal to 0.1% of the contract price per day subject to a maximum 10% of the contract value will be imposed and shall be recovered from payments due/performance security. However, in case of delay due to reasons beyond the control of the consultant, suitable extension of time will be granted.

b) Consultant liability towards the Client :

Consultant shall be liable to indemnify the Client for any loss or damage accrued or likely to accrue due to deficiency in service rendered by him which shall include any or all cost and expenses incurred by the Client in removing the deficiency in Service including engaging any other consultant.

Warning Debarring :

In addition to the penalty as mentioned in above para, warning may be issued to the erring Consultant for minor deficiencies. In the case of major deficiencies causing adverse effect on reputation of the Client, other penal action including debarring the Consultant for one to three years period may also be initiated.