

G.P.W. FORM-9

General Conditions of Contract :

(1) The 'Contract' means the documents forming the tender and acceptance thereof and the formal agreement executed between the Housing Commissioner, U.P. Avas Evam Vikas Parishad and the Contractor, together with the documents referred to therein, including these conditions, the specifications, designs, drawings and instructions issued from time to time by the Engineer-in-Charge and all these documents taken together shall be deemed from one contract and shall be complimentary another.

(2) In the contract the following expressions shall, unless the context otherwise requires, have the meanings herewith respectively assigned to them :-

(a) the 'Works' or 'Work' unless there be something either in the subject or context repugnant to such construction, shall be continued and taken to mean the works by, or by virtue of the contract, contracted to be executed, whether, temporary or permanent and whether original, altered substituted or additional.

(b) the 'Site' shall mean the land and/or other places on, into or through which work is to be executed under the contract, or any adjacent land, path or street through which work is to be executed under the contract, or any adjacent land, path or street which may be allotted or used for the purpose of carrying out the contract.

(c) the 'Contractor' shall mean the individual or firm or company whether incorporated or not, undertaking the works and shall include the legal personal representatives of such individuals or the persons composing such firm or company or the successors of such firm or company and the permitted assigns of such individual or firm or company.

(d) the 'Housing Commissioner' shall mean the 'Housing Commissioner' Avas Evam Vikas Parishad, of Uttar Pradesh, his successors or assigns.

(e) the 'Engineer in-charge' shall mean the Divisional Officer the executive Engineer/Superintendent of Works, the Sub-Divisional Officer the Assistant Engineer, as the case may be, who shall supervise and be in-charge of the work.

(f) the 'Chief Engineer' shall mean the Chief Engineer/Director of Works U.P. Avas Evam Vikas Parishad.

(g) the 'Estimated Cost' shall mean the cost of the work or works as estimated on the basis of the tendered rate or rates agreed to between the parties to the contract.

(h) the 'Parishad' shall mean the U.P. Avas Evam Vikash Parishad constituted under Act No. 1 of 1966.

Words importing the singular number include the plural number & vice versa.

Security Deposit :

Clause (1) — The Contractor shall permit the Parishad at the time of making any payment to him for work done under the contract to deduct ten percent of all moneys so payable

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untill such deductions along with the sum already deposited as earnest money to be adjusted in last deduction will amount.

Security amount of 10% at the bonded cost, must be deposited by the contractor at the time of the execution of contract bond, which shall be with contractor is unable to deposit the 10% security amount at the time of execution of Bond, It will be deducted from payment from the running bills to be paid time to time during the execution of work. Earnest money will be adjusted in the security.

The Security may be in cash or such other from as may be prescribed by the parishad, such as Fixed Deposit Receipts of any Scheduled Bank, Nationalised Bank or Government Securities.

If the Security is furnished and accepted in the form of Guarantee Bonds, the Contractor shall undertake to renew or to furnish fresh guarantee to cover the period of time extensions, if any failure on his part to do so shall be contrued as a breach of this contract and without prejudice to any other remedy provided in these conditions, the Engineer-in-Charge shall have the right to withhold payment and deduct the entire Security amount from any moneys becoming payable to the contractor.

The amount of the Security money shall if not withheld on account of breach of conctrct, be refunded after six months of the date of the completion of the work or after payment of the final bill whichever is later.

Provided that in case the payment of the final bill is not made within six months of the completion of the work, 75% of the amount of the Security money can be refunded with the prior approval of the authority next higher to the person accepting the contract on behalf of the Parishad.

"All compensation or other sums of money payable by the contractor to the Parishad under the terms of this contract may be deducted from realised by the sale of a sufficient part of his security deposit or from the interest arising therefrom or from any sums which may be due or may become due to the contractor by the Parishad of any account whatsoever, and in the event of his security deposit being reduced by reason of any such deduction or sale as aforesaid, the contractor shall within ten days thereafter make good in cash or Government Securities endorsed any sum or sums which may have been deducted, from, or raised by sale of his security deposit or any part thereof".

Compensation for Delay :

Clause (2) — The time allowed for carrying out the work as entered in the tender shall be strictly observed by the Contractor and shall be recknoed from the date on which the order to commence work is given to the Contractor. The work shall throughout the stipulated period of the contract be proceeded with all due diligence (time being deemed to be of the essence of the contract on the part of Contractor) and the Contractor shall pay as compensation an amount equal to one percent or such smaller amount of the estimated cost of the whole work shown by the tender for every day that the work remains uncommenced or unfinished after the proper dates. And further, to ensure good progress during the execution of the work, the Contractor shall be bound, all cases in which the time allowed for any work exceeds one month, to complete one-fourth the value of the whole of the work within..... months from the date of written order to commence the work; one-half the value of the work within months from such date and 3/4 the value of the work within months form such

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date. In the event of the Contractor failing or comply with this condition he shall be liable to pay as compensation and amount equal to 1%, or such smaller amount as the authority next higher to the officer accepting the Contract on behalf of the Parishad (whose decision in writing shall be final) may decide on the said estimated cost of the whole work for every day that the due quantity of work remains incomplete. Provided that before taking action under this clause the officer accepting the contract on behalf of the Parishad, shall give a notice of 15 days in writing to the Contractor and provided always that the entire amount of compensation to be paid under the provisions of this clause shall not exceed the maximum amount of security as specified in Clause 1.

****To be struck off in all cases when the time allowed for completion does not exceed one month.**

Action when whole of Security deposit is forfeited.

CLASUE 3 (1) The officer accepting the contract on behalf of the Parishad or the Engineer-in-Charge shall have the power without prejudice to have right against the contractor in any respect of any delay or interior workmanship or otherwise or to any claims for damage 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 in writing, to determine the contract in any of the following cases.

(a) If the contractor having been given by the Engineer-in-charge a notice in writing (which notice under the hand of the Engineer-in-charge or communicated through the Executive Engineer Superintendent of works/Sub Divisional Officer/Assistant Engineer shall be conclusive evidence) to rectify, reconstruct or replace any defective work or any defective work or any work damage by any reason whatsoever or that the work is being performed, in any inefficient or otherwise improper or unworkmanlike manner shall omit to comply with the requirements or such notice for a period of seven days of such notice or if the contractor shall delay or suspend the execution of the work so that either in the judgement of the Engineer-in-charge (which shall be final and binding) he will be unable to secure completion of the work by the date of completion or he has already failed to complete the work by that date.

(b) 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 or creditor to appoint a receiver or manager or which entitle the court to make a winding up order.

(c) If the contractor, commits breach of any of the terms and condition of this contract other than those mentioned in clause (a) above.

(d) If the contractor commits any acts mentioned in clause 2 here of.

(2) When the contractor has made himself liable for action under any of the cases aforesaid, the Officer accepting the contract on behalf of the Parishad or the Engineer-in-charge shall have powers to adopt any one or more of following course as he may deem best suited to the interest of Parishad.

(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 Engineer-in-charge or communicated through the Executive Engineer/Superintendent of Works/Sub-Divisional Officer/Assistant Engineer, shall be conclusive evidence). Upon such

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determination or rescission the security deposit of the contractor shall be liable to be forfeited and shall be absolutely at the disposal of the Parishad.

(ii) To employ labour paid by the Department and to supply materials to carry out the works or any part of the work debiting the contractor with the cost of the labour and price of the materials (of the amount of which cost and price the certificate under the hand of the Engineer incharge or communicated through the Executive Engineer/ Superintendent of Works/Sub-Divisional Officer/Assistant Engineer shall be final and conclusive against the Contractor) and crediting him with value of the work done all respects in the same manner and at the same rate as if it had been carried out by the contractor to the value of the work done shall be final and conclusive against the contractor, provided always that action under this sub-Clause shall only be taken after giving notice in writing to the Contractor provided also that if the expenses incurred by the Department are less than the amount payable to the contractor at his agreement rates, difference shall 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 excess the certificate in writing or the Engineer-in-charge 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 Parishad under this contract or on any other account whatsoever or from his Security Deposit or the proceeds of sales thereof or a sufficient part thereof as the case may be.

(3) In the event of any one or more of the courses mentioned in Sub-Clause (2) above being adopted by the Engineer-in-charge the Contractor shall have no claim to compensation for any loss sustained by him reason of his having purchased or procured any materials or entered into any engagements or made any advances on account of with a view, to the execution of the work or the performance of 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 actually performed under this contract unless and until the Engineer-in-Charge 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.

Clause 4-In any case in which any of the powers conferred upon the officer accepting the contract on behalf of the Parishad or the Engineer-in-Charge by Clause 3 here to shall have become exercisable and the same are not exercised, the non-exercise thereof shall not constitute a waiver of any of the Conditions hereof, and such power shall notwithstanding be exercisable in the event of any future case of default by the Contractor for which by any clause or clauses hereof he is declared liable to pay compensation and the liability of the contractor for past and future compensation shall remain unaffected. In the event of the Engineer-in-Charge putting in force all or any of the powers vested in him under the preceding Clause, the Engineer-in-Charge may if he so desires take possession of all or any tools plant materials or and Stores, in or upon the works or the sites thereof or belonging to contractor or procured by him and intended to be used for the execution of the work or any part thereof, paying or allowing for the same in account, at the contract rates or in the case of these not being applicable, at current market rates to be certified by the Engineer-in-Charge whose certificate thereof shall be final, otherwise the Engineer-in-Charge may by notice in writing to the contractor or his clerk of the works, foreman or other authorised agent require him to remove such

Contractor remains liable to pay compensation if action not taken under Clause - 3.

Power to take possession of, require removal of or sell contractor's Plant.

tools, plant materials or Stores from the premises (within a time to be specified in such notice); and in the event of the Contractor failing to comply with any such requisition, the Engineer-in-Charge may remove at the Contractor's expense or sell them by auction or private sale on the account of the contractor and at his risk in all respects, and the certificate of the Engineer-in-Charge as to the expense of any such removal and the amount of the proceeds and expense of any sale shall be final and conclusive against the contractor.

Extension of Time.

Clause 5-If the Contractor shall desire an extension of the time for 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 officer accepting the contract on behalf of the Parishad through the Engineer-in-Charge and a copy thereof is sent to the Engineer-in-Charge within 30 days of the date of the hindrance on account of which he desires such extension as aforesaid, and the officer accepting the contract on behalf of the Parishad shall, if in his opinion (which shall be final) reasonable grounds be shown therefore, authorise such extension of time, if any, as may in his opinion be necessary or proper, provided that the extension of time should be limited to 50% of the total period or the contract but in no case exceeding six months. The cases of the extension of time beyond such period shall be submitted to the authority next higher to the officer accepting the contract continues to perform the work beyond the date of completion or the extended date as the case may, without obtaining approval for extension as aforesaid the right of the Parishad to claim compensation under clause 3 shall not be deemed to have been waived.

Final Certificate

Clause 6 - On completion of the works the contractor shall send a registered notice to the Engineer-in-Charge giving the date of completion and sending a copy of it to the officer accepting the contract on behalf of the Parishad and shall request the Engineer-in-Charge to give him a certificate of completion but on such certificate shall be given not shall the work be considered to be complete until the contractor shall have removed from the site on which the work shall be executed all scaffolding, surplus materials and rubbish and cleared off the dirt from all wood work, door, 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, and he has filled up the pits. If the contractor shall fail to comply with requirement of this clause as to removal of scaffolding, surplus materials, and rubbish and cleaning of dirt and filling of pits on or before the date fixed for completion of the work the Engineer-in-Charge may at the expense of the contractor remove such scaffolding, surplus materials, and the rubbish and dispose of the same as he thinks fit, and clean off such dirt and fill the pits as aforesaid, and the contractor shall forthwith pay the amount of all expenses so incurred and shall have no claim in respect of any such scaffolding or surplus materials as aforesaid except for any sum actually realized by the sale thereof. On completion the work shall be measured by the Engineer-in-Charge himself or through his sub-ordinates, whose measurements shall be binding and Conclusive against the contractor. Provided that if subsequent to the taking of measurements by the subordinates as aforesaid the Engineer-in-Charge had reason to believe that the measurements taken by his subordinates are the measurement already taken by his subordinates and acknowledged by the contractor and to take measurements again after giving reasonable notice to the Contractor and such re-measurements shall be binding on the contractor "Delete whichever is not applicable" (Ten days will apply to works at the head quarters of Engineer-in-Charge and thirty days for works at other places).

Within ten/thirty days of the receipt of the notice the Engineer-in-Charge shall in respect the work and if there is visibly no defect on the face of the work, shall give the contractor a certificate of completion. If the Engineer-in-Charge finds that the work has been in full completion, it shall be mentioned in the certificate so granted. If on the other hand it is found that there are certain visible defects to be removed the certificate to be granted by Engineer-in-Charge shall specifically mention the details of the visible defects along with the estimate of the cost for removing these defects. The final certificate of completion or work shall be given after the visible defects pointed out above have been removed.

Clause 7 - No Payments shall be made for works estimated to cost less than rupees one thousand till after the whole of the works shall have been completed and a Certificate of completion given. But in the case of works estimated to cost more than rupees one thousand, the contractor shall, on submitting the bill there of be entitled to receive a monthly payment proportionate to the part thereof then approved and passed by the Engineer-in-charge whose certificate of such approval and passing of the sum so payable shall be final and conclusive against the contractor. But all such intermediate payments shall be regarded as payments for works actually done and completed and shall not preclude the requiring of bad, unsound and imperfect or unskilled work to be removed and take away and re-constructed, or re-erected or it shall not be considered as an admission of the due performance of the contract or 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 Engineer-in-Charge under these conditions or any of the as to the final settlement and adjustment of the accounts or otherwise or in any other way vary or affect the contract.

Payments on intermediate Certificate to be regarded advances.

The final bill shall be submitted by the contractor within one month of the date fixed for completion of the work or of the date of the certificate of completion furnished by the Engineer-in-Charge and payment shall be made within three months of the submission of such bills, if the amount of the contract plus that of the additional items is up to Rs. 2 lacs and in six months if the same exceed Rs. 2 Lacs. 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. The contractor shall submit a list of the disputed items within 30 days from the disallowance thereof and if he fails to do so, this claim shall be deemed to have been fully waived and absolutely extinguished.

Clause 8 - A bill shall be submitted by the contractor each month on or before the date fixed by the Engineer-in-Charge for all work executed in the previous month and the Engineer-in-Charge shall take or cause to be taken the requisite measurement for the purposes of having the same verified and the claim, as far as admissible, adjusted, is 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-in-Charge may get the said work measured up in the presence of the contractor whose counter-signature to the measurement list will be sufficient warrant, and the Engineer-in-Charge may prepare a bill from such list which shall be binding on the contractor in all respect.

Bills to be submitted monthly

Clause 9 - Before taking any measurement of any work as has been referred to in clause 6, 7 and 8, hereof the Engineer-in-Charge or a subordinate deputed by him shall give reasonable notice to the Contractor. If the contractor fails to attend at the time of measurements after such notice or fails to countersign or to record the difference within a week from the date of measurement in the manner required by the Engineer-in-Charge then and in any such event the measurements taken by the Engineer-in-Charge or by

Contractor to be given a week to file objection to the measurements recorded by the U.P. Avas Evam Vikas Parishad.

the subordinate deputed by him as the case may be shall not with-standing the provision in clause 8 be final and binding on the contractor and the contractor shall have no right to dispute the same.

**Bills to be on
Printed forms.**

Clause 10 - The contractor shall submit all bills on the printed forms to be had on application at the office of the Engineer-in-Charge and the charges in bills shall always be entered at the rates specified in the tender or in the case of any extra work ordered in pursuance of these conditions and not mentioned or provided for in the tender, at the rates specified in the tender or in the case of any extra work ordered in pursuance of these conditions and not mentioned or provided for in the tender, at the rates here in after provided for such work.

**Stores supplied by
U.P. Avas Evam
Vikas Parishad.**

Clause 11 - If the specification or estimate of the work provided for the use of any special description of materials to be supplied from the Engineer-in-Charge's store or if it is required that the contractor shall use certain stores to be provided by the Engineer-in-Charge (such materials and stores and the prices to be charged therefore as herein after mentioned being so far as practicable for convenience of the contractor but not so as in any way to control the meaning or effect of this contract, specified in the schedule or memorandum here to annexed) the Contractor shall be supplied with such materials and store as are required from time to time to be used by him for the purpose of the contract only and the value of the full quantity of materials and stores so supplied at the rates specified in the said shedule of memorandum may be set off or deducted as provided in clause 32. It shall be the responsibility of the contractor to ascertain from time to time from the Engineer-in-Charge about the position of availity of the materials as aforementioned and any delay on the part of the Engineer-in-Charge to arrange supplies of the same shall not entitle the contractor shall be granted reasonable extension of time. All materials supplied to the contractor are the property of the contractor, but shall not on any account be removed from the site of the work, except with the written permission of the Engineer-in-Charge or under his orders and shall at the times be open to inspection by the Engineer-in-Charge. Any such materials unused and in perfectly good condition may, be special arrangement, be taken over by Parishad at the prevailling market rates, if required for use on other works in progress provided that the price allowed shall not exceed the amount charged to the contractor.

**Works to be
executed in
accordance with
specifications,
drawings, orders,
etc.**

Clause 12 - The contractor shall execute the whole and every part of the work in the most substantial and work man like manner and both as regards materials and otherwise in every respect in strict accordance with the specifications. The contractor shall also conform exactly full and faithfully to the design, drawings and instructions in writing relating to the work signed by the Engineer-in-Charge and lodged in his office, and to which the contractor shall be entitled to have access to such office for the purpose of inspecting during office hours, and the contractor shall be furnished free of charge one copy of the specification and of all such designs drawings and instructions as are not included in the detailed P.W.D. specifications for buildings and roads enforced from time to time or any other printed publications on general specifications referred to elsewhere in the contract.

**Alterations in
specifications and
designs.**

Clause 13 - The Engineer-in-Charge shall have power to make any alteration in, omissions from additions to or substitutions for, original specifications, drawings designs, and instructions that may appear to him to be necessary during the progress of the work and the contractor shall carry out the work in accordance with any instructions which may be given to him in writing signed by the Engineer-in-Charge and such alterations, omissions, additions, or substitution, shall not invalidate the work which the contractor may be directed to do in the manner above specified 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 time for the completion of the work shall be extended proportioning that the altered additional or substituted work bears to the original contract work, and the certificate of the Engineer-in-Charge shall be conclusive as to such proportion. Over and above this, a further period as may be deemed necessary not exceeding 25 percent of the time so extended may be allowed to the contractor. The rates for such additional, altered or substituted work under this clause shall be worked out in accordance with the following provisions in their respective order :

Do not invalidate Contract.

Extension of time in Consequence of alterations.

(i) If the rates for the additional, altered or substituted work are specified in the contract for the work, the contractor is bound to carry out the additional, altered or substituted work at the same rates as are specified in the contract for the work, the contractor is bound to carry out the additional, altered or substituted work at the same rates as are specified in the contract for the work.

(ii) If the rates for the additional altered or substituted work or not specifically provided in the contract for the work, the rates will be derived from the rates for similar class of work as are specified in the contract for the work.

(iii) If the altered, additional or substituted work includes any work for which no rates are specified in the contract for the work or can not be derived from the similar class of work in the contract then such work shall be carried out at the rates entered in the schedule of Rates for District/minus/plus per-centage which the total tendered amount bears to the estimated cost of the entire work put to tender.

(iv) If the rates for the altered, additional or substituted work can not be determined in the manner specified in sub-clauses (i) to (iii) above, then the rates for such work shall be worked out on the basis of the Schedule of rates of the District specified above minus/plus the percentage which the total tendered amount bears to the estimated cost of the entire work put to tender provided always that if the rate for a Particular part or parts of the item is not in the Schedule of Rates, the rates for such parts or parts will be determined by the officer accepting the contract on behalf of the Parishad on the basis of the prevailing market rate when the work was done.

(v) If the rates for the altered, additional or substituted work can not be determined in the manner specified in sub-Clauses (i) to (iv) above, then the contractor shall within 7 days of the date of receipt of order to carryout the work inform the officer accepting the contract on behalf of the Parishad of the rate which it is his intention to charge for such class of work, supported by analysis of the rate or rates claimed and the Superintending Engineer shall determine the rate or rates on the basis of the prevailing market rates and pay the contractor accordingly. However, the officer accepting the contract on behalf of the Parishad by notice in writing, will be at liberty to cancel his order to carry out such class, of work and arrange to carry it out in such manner as he may consider advisable. But no circumstances, the contractor shall suspend the work on the plea of nonsettlement of rates of items, failing under this clause.

The rates under sub-clauses (i), (ii) and (iii) shall be worked out by the officer accepting the contract on behalf of Parishad.

Clause 14 - If any time after the commencement of the work the Parishad shall for reason whatsoever not require the whole thereof as specified in the tender to be carried out through the contractor the Engineer-in-Charge shall give notice in writing of the fact to the contractor who shall have no claim to any payment compensation what so ever

No compensation for alteration in or restriction of work to be carried out.

on account or any profit or advantage, which he might have derived from the execution of the work in full, but which he did not derive consequence of the full amount of the work not having been carried out, neither shall he have any claim for compensation by reason of any alterations having been made in the original specification drawings, design and instructions which shall involve any curtailment of the work as originally contemplated not shall he have any claim to compensation by reason of his having purchased or procured materials with a view to the execution of the work or the performance of the contract. But the Engineer-in-Charge shall have the opinion either to take over the materials at site, if of approved quality and not in excess of the requirements of the work and pay to the contractor the actual cost thereof (of the amount of which cost, a certificate by the Engineer-in-Charge shall be binding on the contractor in the event of this option not being exercised, the contractor may submit to the Engineer-in-Charge, within one month of the date of the order closing down sustain by removing selling or otherwise disposing, of the materials, sustain by removing selling or otherwise disposing, of the materials. The estimate will be forwarded to the Housing Commissioner who will decide what sum if any, should as matter of grace be paid to the contractor to compensate him for the loss suffered by him, and the decision of the Housing Commissioner shall be final and binding on the contractor.

Action and compensation Payable in case of bad work.

Clause 15 - If it shall appear to the Engineer-in-Charge or his subordinate incharge of the work, that any work has been executed with unsound imperfect or unskilful workmanship, or work 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, the contractor shall, on demand in writing from the Engineer-in-Charge specifying the work materials or articles or articles complained of notwithstanding that the same may have been inadvertently passed certified and paid for forth with rectify or remove and reconstruct the work so specified in whole or in part as the case may require or as the case may, remove the materials or articles so specified and provide other proper and suitable materials or articles, at his own proper charge and cost, and in the event of his failing to do so within a period to be specified by the Engineer-in-Charge in his demand aforesaid the contractor shall be liable to pay compensation at the rate of one percent on the amount of the estimate for every day not exceeding ten days while his failure to do so shall continue, and in the case of any such failure the Engineer-in-Charge may rectify or remove and re-execute the work or remove and replace with others the materials or articles complained of as the case may be at the risk and expense in all respects of the contractor.

Acceptance of sub-standard work and Causing Technical Examination of work.

Clause 16 - Parishad shall have the right accept at reduced rate. Sub-standard or defective work and to cause an audit and technical examination of the works, and the running and final bills of the contractor including all supporting vouchers, abstracts etc., to be made before or after the payment of the final bills and if as a result of such acceptance of sub-standard or defective work, audit and technical examination, any sum is found to have been overpaid in respect of any work done by the contractor under the contract or any work claimed to have been done by him under the contract but found not to have been actually executed, the contractor shall be liable to refund to amount of the over payment and it shall be lawful for the Parishad to recover the same from him in the manner prescribed in Clause 32 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 may be duly paid by Parishad to the contractor.

Provided that the Sub-Standard or defective work accepted is not considered to be seriously defective by the Engineer-in-Charge and the rate of the work so accepted is suitably reduced by him to compensate the Parishad and such reduction is binding on the contractor.

Clause 17 - All Works under or in the course of execution or executed in pursuance of the contract shall at all times be open to the inspection and supervision of the Engineer-in-Charge and his subordinates, and the contractor shall at all times during the usual working hours, and at all other time, at which reasonable notice of intention of the Engineer-in-Charge or his subordinate to visit the work shall have been given to the contractor, either himself be present to receive orders and instructions, or have a responsible agent duly accredited in writing present for that purpose, Orders given to the contractor's agent shall be considered to have the same force as if they had been given to the contractor himself.

Work to be open to inspection

Contractor or responsible Agent to be present.

Clause 18 - The contractor shall give not less than five days notice in writing to the Engineer-in-Charge or his subordinate in charge of the work 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 or place beyond the reach of measurement, any work without the consent in writing of the Engineer-in-Charge or his subordinate in charge of the work; and if any work shall be covered up or placed beyond the reach of measurement without such notice having been given or 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.

Notice to be given before work is covered up.

Clause 19 - If the contractor or his work people or servants shall break, deface, injure or destroy any part of a building on or in which they may be working, or any building road, fence enclosure or grass land or cultivate ground contiguous to the premises on which the work or any part of is being executed, or if any damage shall happen to the work while in progress from any cause whatever, or any defect shrinkage or other faults appear in it within six months after a certificate final or otherwise of its completion shall have been given by the Engineer-in-Charge as aforesaid, the contractor shall make the same good at his own expense, or in default, the Engineer-in-Charge may cause the same to be made good by other workman and deduct the expense (or which the certificate of the Engineer-in-Charge shall be final) as provided in Clause 32.

Contractor liable for damage done and for imperfections for six months after certificates.

Clause 20 - The contractor shall supply at his own cost all materials (except such special materials if any, as may in accordance with the contract be supplied from the Engineer-in-Charge's stores). plant, tools, appliances, implements, ladders, cordage tackle scaffolding and temporary works requisite or proper for the proper execution of the work, whether original, altered or substituted and whether included in the specifications or other documents forming part of the contract or referred to in these conditions or not, which may be necessary for the purpose of satisfying or complying with the requirements of the Engineer-in-Charge as to any matter as to which under these conditions he is entitled to be satisfied or which he is entitled to require together with carriage therefore to and from the work.

Contractor to supply plant, ladders scaffolding etc.

The contractor shall also supply without charge the requisite number of persons with the 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

Damages arising from nonprovision of light, fencing, etc.

Engineer-in-Charge at the expense of the contractor and the expenses may be deducted as provided in clause 32. The contractor shall also provide all necessary fencing and lights required to protect the public from accident, and shall be bound to bear the expenses of defence of every suit, action or other, proceedings at law that may be brought by any person for injury sustained owing to neglect of the above precautions, and to pay any damages and costs which may be awarded in any such suit, action or proceeding to any such person, or which may with the contract of the contractor be paid to compromise any claim by any such person, if any equipment is issued departmentally rent will be recovered from the contractor's bills at current rates fixed by the parishad, the terms of such issue to be ascertained by the contractor from the Engineer-in-Charge in writing in advance.

Work not to be Sublet.

Clause 21 - The contract shall not be assigned or sublet without the written approval of the officer accepting the contract on behalf of the Parishad. And if the contractor shall assign or sublet his contract, or attempt so to do, or become insolvent or commence any insolvency proceeding or make any composition with his creditors, or attempts so to do, or if any bribe, gratuity, gift, loan perquisite reward or advantage pecuniary or other-wise shall either directly or indirectly, be given, promised or offered by the contractor, or any of his servants or agents, to any public officer person in the employ of parishad in any way relating to his office or employment or if any such officer or person shall become in any way directly or indirectly interested in the contract, the officer accepting the contract on behalf of the Parishad may thereupon by notice in writing rescind the contract, and the security deposit of the contractor shall thereupon stand forfeited and be absolutely at the disposal of Parishad and the under clause 3 hereof, and in addition the contractor shall not be entitled to recover or be paid for any work there to or for actually, performed under the contract.

Contract may be rescinded & security deposit forfeited for subletting, bribing or if contractor becomes insolvent

Clause 22 - The contractor shall not for the execution of the work employ and labour under 12 years of age and, with the limits of any contonment, any female labourer. For every breach of this covenant the contractor shall be liable to pay by way of liquidated damages such sum not exceeding fifty rupees as the Engineer-in-Charge may fix and the Engineer-in-Charge may recover such sum as provided in clause 32.

Clause 23 - (a) The contractor shall pay to his labourers a fair wage and shall supply every labourer employed by him with a wage-card on which the rate of wages the attendance and payments will be entered.

Clause 23 - (b) The Contractor before the commences work shall paste in a conspicuous place of work a notice giving the rates of wages which shall not be less than the minimum wages applicable and where no minimum wages are applicable the wages will be such as may be certified as fair wages by the Engineer-in-Charge and shall send a copy of the notice to the Engineer-in-Charge.

Clause 24 - The contractor shall be bound by all Statutory provisions with regard to the period for which wages shall be paid and deduction from wages.

Clause 25 - The contractor shall comply with all labour laws as applicable at the site of the work.

Clause 26 - In respect of all labour directly or indirectly employed in the work for the performance of the contractors part of this agreement, the contractor shall comply with or cause to be complied with all the directives issued by Parishad from time to time for the protection of health and sanitary arrangements for workers employed by the Department and its contractors.

Clause 27 - Leave and pay during leave of all labour employed by the contractor shall be regulated as follows :

Maternity benefit rules for female Workers employed by contractors.

(1) LEAVE :

(i) In case of delivery, maternity leave not exceeding & weeks, 4 weeks upto and including the day of delivery and weeks following that day.

(ii) In the case of miscarriage upto 30 weeks from the date of miscarriage.

(2) PAY :

(i) In case of delivery leave pay during maternity leave will be at the rate of the women's average daily earnings, calculated on the total wages earned on the days when full time work was done during a period of 3 months immediately preceding the date on which she gives notice that she expects to be confined or at the rate of seventy five paise a day whichever is greater.

(ii) In case of miscarriage-leave pay at the rates of average daily earning calculated on the total wages earned on the days when full time work was done during a period of three months immediately preceding date of such miscarriage.

(3) Conditions for the grant of maternity leave :

No maternity leave benefit shall be admissible to a woman unless she has been employed for a total period not less than 6 months immediately preceding the date on which she proceeds on leave.

In the event of the contractor committing a default or breach of any of the provisions of the Parishad's directions to contractor's for the protection of health and sanitary arrangements for the workers or furnishing any information or submitting or filing any statement under the provisions of the above directions which is materially incorrect, the contractor shall without prejudice to any other liability pay to the Parishad, a sum not exceeding Rs. 50/- for every default or breach, and in the event of the contractor defaulting continuously in this respect, the penalty may be enhanced to Rs. 50/- per day for each day of default subject to a maximum of 5% of the estimated cost of the work put in the tender. The decisions of the Engineer-in-Charge shall be final and binding on the parties.

Should it appear to the Engineer-in-Charge that the contractor is not properly observing and complying with the said directions for the protection of health and sanitary arrangements for work people employed by the contractor (herein referred as the said directions), the Engineer-in-Charge shall have power to give him notice in writing to the contractor requiring that the said directions be complied with and the amenities prescribed herein be provided to the work people shall fail within the period specified in the notice. If the contractor shall fail within the period specified in the notice to comply with and observe the said directions and to provide the amenities to the work-people as aforesaid, the Engineer-in-Charge shall have the power to provide the amenities herein before mentioned at the cost of the contractor. The contractor shall erect, make and maintain at his expense, and at approved standards all necessary huts and sanitary arrangements required for his work-people on the site in connection with the execution of the Works and if the same shall not have been erected or constructed, according to

(13)

the approved standards, the Engineer-in-Charge shall have power to give notice in writing to the contractor enquiring that the said huts and sanitary arrangements be remodelled and/or reconstructed according to approved standard and if the contractor shall fail to remodel or reconstruct such huts and sanitary arrangements according to the approved standards within the period specified in the notice, the Engineer-in-Charge shall have the power to remodel or reconstruct such huts and sanitary arrangements according to approved standards at the cost of the contractor, and to recover the same as provided in clause 32.

Clause 28 - The contractor shall at his own cost provide his labour with a sufficient number of huts (herein after referred to as the camp) of the following specifications on suitable plot of land to be approved by the Engineer-in-Charge 1 (a) The minimum height of each hut at the eye level shall be 7 feet for each number of the workers, family staying with the labourer.

(b) The contractor shall in addition contract suitable cooking places having a minimum area 6' x 5' adjacent to hut for each family.

(c) The contractor shall also construct temporary latrines and urinals for the use of the labourers each on the scale of not less than four per each one hundred of the total strength latrines and urinals being provided for women.

(d) The contractor shall construct sufficient number of bathing and washing places, one unit for every 25 persons residing in the camp. These bathing and washing places shall be suitably screened.

2 (a) All the huts shall have walls of sun-dried or burnt bricks laid in mud mortar or other suitable local materials as may be approved by the Engineer-in-Charge. In case of sun-dried bricks, the wall should be plastered with mudgobri on both sides. the floor may be kacha but plastered with mudgobri and shall be at least 6" above the surrounding ground. The roofs shall be laid with thatched or any other materials as may be approved by the Engineer-in-charge and the contractor shall ensure that throughout the period of their occupation roofs remain water-right.

(b) The contractor shall provide each hut proper ventilation.

(c) All doors windows and ventilators shall be provided with suitable leaves for security purposes.

(d) There shall be kept as open space of atleast 8 yards between the rows of huts which may be reduced to 2 ft. according to the availability of site with the approval of the Engineer-in-Charge Back to back construction will be allowed.

(3) Water supply - The contractor shall provide adequate supply of water for the use of labourers. The provisions shall not be less than 2 gallons of pure and wholesome water per head per day for drinking purposes and 3 gallons of clean water per head for bathing and washing purposes. Where pipe water supply is available, the supply shall be at stand posts and where the supply is from wells or river, tanks which may be of metal or masonry shall be provided, The contractor shall also at his own cost make arrangements for laying pipe lines for water supply to his labour camp from the existing main where ever available and shall pay all fees and charges therefore.

(4) The site selected for the camp shall be high ground, removed from jungle.

(5) Disposal of Excreta-The contractor shall make necessary arrangements for the disposal of excreta from the latrines by trenching or incineration. Which shall be according to the requirements laid down by the Local Health Authorities. If trenching or incineration is not allowed the contractor shall make arrangement for the removal of excreta through the Municipal Committee/authority and inform it be made by such Committee/authority for the removal of the excreta. All charges on this account shall be borne by the contractor and paid direct by him to the municipality/authority. The contractor shall provide one sweeper for every eight seats in case of dry system.

(6) Drainage The contractor shall provide efficient arrangements for draining away sullage water so as to keep the camp neat and tidy.

(7) LIGHTING The contractor shall make necessary arrangements for keeping the camp area sufficiently lighted to avoid any accidents to the workers.

(8) SANITATION. Contractor shall make arrangements for conservancy and sanitation in the labour camps according to the rules of the Local Public Health and Medical Authorities.

Clause 29 - All sums payable by way of compensation under any of these conditions shall be considered as reasonable compensation to be applied to the use of Parishad without reference to the actual loss or damages sustained, and whether or not any damage shall have been sustained.

Sum payable by way of compensation to be considered as reasonable compensation without reference to actual loss

Clause 30 -In the case of tender by partners any change in the constitution of the firm shall be forthwith notified by the contractor to the Engineer-in-Charge for his information.

Change in constitution of firm.

Clause 31- All works to be executed under the contract shall be executed under the direction and subject to the approval in all respects of the Engineer-in-Charge for the time being who shall be entitled to direct at what point or points and in what manner they are to be commenced and from time to time carried on.

Works to be under direction of Engineer-in-Charge

Clause 32-(a) If the contractor considers any work demanded of him to be outside the requirements of contract, or considers any record or ruling of the Engineer-in-Charge of his subordinates to be unfair, he shall immediately upon such work being demanded or such record or ruling being made, ask in writing for written instructions or decisions, whereupon he shall proceed without delay to perform the work or conform to the record or ruling and within twenty days after date of receipt of the written instructions or decisions he shall file a written protest with the Engineer-in-Charge stating clearly and in detail the basis of his objections Except for such protests or objections, as are made on record in the manner herein specified, and within the time limit stated, the records, instructions, or decisions of the Engineer-in-Charge shall be final and conclusive. Instructions and/or decisions of the Engineer-in-Charge contained in letters transmitting drawings to the contractor shall be considered as written instructions or decisions, subject to protests or objections as wherein provided.

Protests

(b) If the contractor is dissatisfied with the final decision of the Engineer-in-Charge in pursuance of clause 32 (a), the contractor may within twenty-eight days after receiving notice of such decision give notice in writing requiring that the matter be submitted to

arbitration and furnishing detailed particulars of the dispute or difference specifying clearly the point at issue. If the contractor fails to give such notice within the period of twenty days as stipulated above, the decision of the Engineer-in-Charge shall be conclusive and binding on the contractor.

Sub-Clause (c) of Clause 32 :

"Except where otherwise provided in the contract every dispute, difference or question which may at any time arise between the parties hereto or any Person claiming under them, touching or arising out of or in respect of this deed or the subject matter thereof shall be referred to the sole arbitration of the person appointed by the Housing Commissioner of the Parishad. It will be no objection to any such appointment that the arbitrator so appointed is a servant of the parishad, that he had to deal with the matters to which the contract relates and that in the course of his duties as a servant of the parishad he had expressed views on all or any of the matters in dispute or difference. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason he said Housing Commissioner shall appoint another person to act as arbitrator. Such person shall be entitled to proceed with the reference for the stage it was left by his predecessor. It is also a term of this contract that no person other than a person appointed as aforesaid should act as arbitrator and if for any reason that is not possible the matter is not to be referred to the arbitration at all. In all cases where the amount of the claim in dispute is Rs. 50,000/- (Rupees fifty thousand) and above the arbitrator shall give reasons for the award.

It is a term of the contract that the parties invoking the arbitration shall specify the dispute or disputes to be referred to arbitration together with the amount or amounts claimed in respect of each such dispute.

Subject as aforesaid, the provisions of the Arbitration Act 1940, or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings.

The arbitrator may from time to time with the consent of the parties enlarge the time for making and publishing the award.

Stores imported from Europe to be obtained from Parishad

Clause 33 - The contractor shall obtain from the Stores of the Engineer-in-Charge all stores and all imported materials, if required to any considerable extent for the work of any part thereof or in making article required there for or in connection therewith. The value of such stores and articles as may be supplied to the contractor by the Engineer-in-Charge will be debited to the contract and if they are not entered in the Schedule, they will be debited at cost price, which for the purpose of this contract shall include the cost of carriage and all other expenses whatsoever which shall have been incurred in obtaining delivery of the same at the stores aforesaid. The Engineer-in-Charge may issue materials contractor from existing stock if he asks for in excess of those entered in the Schedule. In such cases the price charged must be stock rate or market rate, whichever is greater.

Arbitrator.

Clause 34 - "All moneys or compensation payable by the contractor to the Parishad under the terms of this contract may be deducted from or realised by the sale of sufficient part of the security deposit of the contractor under this or any other contract

with the Parishad or from interest arising there from or from any sums which may be due or may become due to the contractor by the Parishad under this or any other account."

Clause 35 - In the case of any class of work for which there is no specification in the contract such work shall be carried out in accordance with the detailed P.W.D., specification and in the event of there being no detailed specifications for the same the work shall be carried out in all respects in accordance with the instructions and requirements of the Engineer-in-Charge.

Action where no specification is given.

Clause 36 - The additions and deduction on account of the Percentage referred to at page 3 of the accepted tender will be calculated on the gross, and not the net, amounts of the bills for the work done.

Clause 37 (i) In every case in which by virtue of the provisions of section 12 sub-Section (i) of the Workmen's Compensation Act, 1923. Parishad obliged to pay compensation to a workman employed by the contractor or by any sub-contractor from him in the execution of the said work, Parishad will/recover from the contractor the amount of the compensation so paid, and without prejudice to the rights of Parishad under Section 12, Sub-Section (2) of the said Act, Parishad shall be at liberty to recover such amount or any part thereof by deducting in either from the security deposited by the contractor or deducting in either from the security deposited by the contractor or his credit under Clause of these conditions or from any other sum due to Parishad from the Contractor whether under this contract or otherwise.

Contractor's Percentage whether applied to net or gross amount of bills (Strike out this clause in the case of an item rate contract)

(2) Parishad shall not be bound to contest any claim made against it under Section 112. Sub-section (1) of the said Act, Except on the written request of the contractor and upon his giving to Parishad full security for all costs for which Parishad might become liable in consequence of contesting the claim.

Clause 38 - No bricks for use on the work shall be manufactured within the limits of a municipality, cantonment or notified area or within half a mile of the site of work. Any bricks so manufactured may be rejected by the Engineer-in-Charge.

Clause 39 - No earth for filling, or for any other purpose, shall be excavated within half a mile of the site of work except with the written permission of the Engineer-in-Charge and then only on condition that the area, in which such excavation is made shall be levelled and dressed by the contractor at his own expense in accordance with the instructions of the Engineer-in-Charge and in such a manner as to prevent the formation of stagnant water.

If the contractor fails to comply with this condition the Engineer-in-Charge may cause the ground to be levelled and dressed by other workman and deduct the expenses (of which the certificate of the Engineer-in-Charge shall be final) from any sums which may be due, or may at any time thereafter become due, to the contractor or from his security deposit, or from the proceeds or sale thereof.

Clause 40 - The contractor shall be liable to rectify the defects in the building on account of leakage or seepage from the roof and /or depressed floors of toilets, inferior wood of doors and window, structure, unsoundness of R.C.C. work. Sinking of floors and/or electrical wiring within 3 years of completion of work. If the contractor fails to rectify the defects, his general security or 1% of contract amount whichever is available shall be forfeited and the contractor shall be black listed (As per HQ (CE'S) Letter No. 2606/M-42 dt. 12.07.03).