NORTHEAST FRONTIER RAILWAY

ENGINEERING DEPARTMENT

REGULATION FOR TENDERS CONTRACTS

GENERAL CONDITIONS OF CONTRACTS

&

STANDARD SPECIFICATIONS

(On which the Schedule of Rates is Based)

PANDU

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PREFACE

1. This Handbook is issued for the guidance of all staff in charge of "Works" and of Contractors on the Engineering side. The Standard Conditions of Contract which were prevalent before have been made up-to-date incorporating modification as per Railway Board's directive received from time to time.

2. This Manual supersedes the existing General Conditions of Contract and Standard Specification, 1970 edition, followed so far. The works let out prior to the issue of this G.C.C. and Standard Specification will be governed by the existing G.C.C. and Standard Specification, as specified in different Contracts.

3. Each Officer and Subordinate of, and above, the rank of Assistant Inspector, or holding an equivalent charge, and in charge of "Works", shall have a copy of this Handbook. He is responsible for having a thorough knowledge of the instructions, given herein as affecting his duties and responsibilities.

4. Every Contractor, having any contract on the Engineering side, shall purchase a copy of this Handbook, and the Instructions, Conditions and Specifications contained herein are binding on him unless specially modified in writing.

5. No modifications may be made in this Handbook without the Chief Engineer's written permission being obtained.

6. The Handbook, when issued to a Railway servant, shall be retainned by him throughout his service. It is the property of the Northeast Frontier Railway and is to be handed back when he retires, leaves the service, or goes on permanent transfer elsewhere.

The Handbook, when issued to a Contractor on sale, will remain as his Private property.

7. Whenever a reference to any Indian Standard Specification or Indian Standard Code of Practice appears in this Handbook, it shall be taken as a reference to the latest version of the Standard,

8. If there is anything conflicting in the Specifications with Indian Railway Standard Code e.g. "Indian Railway Standard Code of Practice for Reinforced Concrete Construction" etc. the latter shall prevail.

9. A record of all correction slips issued must be maintained in the Register at the end of this book and all staff and Contractors are individually responsible for seeing that all correction slips have been properly pasted and recorded.

A. R. S. RAO
Chief Engineer
NORTHEAST FRONTIER RAILWAY

A Standard General Conditions of Contract.

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A. STANDARD GENERAL CONDITIONS OF CONTRACT

NORTHEAST FRONTIER RAILWAY
A STANDARD GENERAL CONDITIONS OF CONTRACT
for use in connection with

CIVIL ENGINEERING WORKS

Definitions and Interpretations

Definitions.

1. (1) In these general conditions of contract, the following terms shall have the meaning hereby assigned to them except where the context otherwise requires :—

(a) "Railway" shall mean the President of the Republic of India or the Administrative Officers of the Northeast Frontier Railway or of the Successor Railway authorized to deal with any matters with which these presents are concerned on his behalf.

(b) "General Manager" shall mean the officer in administrative charge of the whole of Northeast Frontier Railway and shall mean and include the General Manager of the Successor Railway.

(c) "Chief Engineer" shall mean the officer in charge of the Engineering Department of Northeast Frontier Railway and shall also include the Engineer-in-Chief Chief Engineer (Construction), Chief Signal and Telecommunication Engineer and shall mean and include the Chief Engineer/Engineer-in-Chief, Chief Engineer (Consruction) and Chief Signal and Telecommunication Engineer of the Successor Railway.

(d) "Divisional Superintendent (Works)" shall mean the Officer-in-Charge of works (open line or construction) of a Division of the Noitheast Frontier Railway and shall mean and include Divisional Superintendent of the Successor Railway.

(e) "Engineer" shall mean the Divisional/District Engineer or the Executive Engineer in executive charge of the works and shall include the superior officers of the Engineering Department of the Northeast Frontier Railway, i.e. the Deputy Chief Engineer/Chief Engineer/Chief Engineer (Construction)/ Engineer-in-Chief/Chief Signal and Telecommunication Engineer/Deputy/Chief Signal and Telecommunication Engineer and shall mean and include the Engineers of the Successor Railway.

(f) "Engineer's Representive" shall mean the Assistant Engineer in direct charge of the works and shall include any Resident Engineer or Sub-Engineer or any Inspector of the Civil Engineering/Signal/Telecommunication Engineering Department *appointed by the Northeast Frontier Railway and shall mean and include the Engineer's Representative of the Successor Railway.*

(g) "Successor Railway" shall mean and include such other Railway to which for administrative or other reasons this contract may during its pendency be transferred.

(h) "Contractor" shall mean the person, firm or company *whether incorporated or not* who enters into the contract with the Railway and shall include their executors, administrators, Successors and permitted assigns.

(i) "Contract" shall mean and include the Agreement or Work Order, the accepted schedule of rates or the Schedule of Rates for the N. F. Railway modified by the tender-percentage for items of works quantified or not quantified, the general conditions of contract, the special conditions of contract if any, the drawings, the specifications, the special specifications if any, and tender forms of any.

(j) "Works" shall mean the works to be executed in accordance with the contract.

(k) "Specifications" shall mean the Specifications for Materials and Works, N. F. Railway, issued under the authority of the Chief Engineer or as amplified, added to or superseded by special specification if any.

(l) "Schedule of Rates of Northeast Frontier Railway" shall mean the schedule of rates issued under the authority of the Chief Engineer from time to time.

(m) "Drawings" shall mean the maps, drawings, plans and tracings or prints there of annexed to the contract and shall include any modification of such drawings and further drawings as may be issued by the Engineer from time-to-time.

(n) "Constructional Plant" shall mean all appliances or things of whatsoever nature required for the execution, completion or maintanance of the works or temporary works (as hereinafter defined) but does not include materials or other things intended to form or forming part of the permanent work.

(o) "Temporary works" shall mean all temporary works of every kind required for the execution, completion or maintenance of the works.

(p) "Site" shall mean the lands and other places on, under, in or through which the works are to be carried out and any other lands or places provided by the Railway for the purposes of the contract.

(q) "Period of Maintenance" shall mean the specified period of maintenance from the date of completion of the works as certified by the Engineer.

Singular and Plural

(2) Words importing the singular number shall also include the plural and vice versa where the context requires.

Headings and marginal headings.

(3) The headings and marginal headings in these general condition are solely for the purpose of facilitating reference and shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof or of the contract.

GENERAL OBLIGATIONS

Execution Correlation and Intent of Contract Documents.

2. The contract documents shall be signed in duplicate by the Railway and the Contractor. The contract documents are complementary, and what is called for by anyone shall be as binding as if called for by all; the intention of the documents is to include all labour and materials, equipment and transportation necessary for the proper execution of the works. Materials or work not covered by or properly inferable from any heading or class of the speci-

fications shall not be supplied by the Railway to the Contractors unless distinctly specified in the contract documents. Materials or works described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

2. (a) If a work is transferred from the jurisdiction of one Railway to another Railway or to a Project authority or vice versa while the contract is in subsistence, the contract shall be binding on the Contractor and the Successor Railway/Project in the same manner and take effect in all respects as if the Contractor and the Successor Railway/Project were parties thereto from the inception and corresponding officer or the competent authority in the Successor Railway/Project will exercise the same powers and enjoy the same authority as conferred to the predecessor Railway/Project under the original contract/agreement entered into.

(b) If for administrative or other reasons the contract is transferred to the Successor Railway the contract shall not-withstanding any thing contained herein contrary thereto, be binding on the Contractor and the Successor Railway in the same manner and take effect in all respects as if the Contractor and the Successor Railway had been parties thereto from the date of this contract.

Law governing the contract.

3. (1) The contract shall be governed by the law for the time being in force in the Republic of India.

Compliance to regulations and By-laws.

(2) The Contractor shall conform to the provision of any statute relating to the works and regulations and by-laws of any local authority and of any water and lighting companies or undertakings with whose system the work is proposed to be connected and shall before making any varation from the drawings or the specifications that may be necessitated by so conforming, give to the Engineer notice specifying the variation proposed to be made and the reason for making the variation and shall not carry out such variation until he has received instructions from the Engineer in respect thereof. The Contractor shall be bound to give all notices required by statute, regulations or by-laws as aforesaid and to pay all fees and taxes payable to any authority in respect thereof.

Communications to be in writing.

4. All notices, communications, references and complaints made by the Railway or the Engineer or the Engineer's Representative or the Contractor inter se concerning the works shall be in writing and no notice, communication, reference or complaint not in writing shall be recognized.

Service of Notices on contractor.

5. The Contractor shall furnish to the Engineer the name, designation and address of his authorized agent and all complaints, notices, communication and references shall be deemed to have been duly given to the Contractor if delivered to the Contractor or his authorized agent or left at or posted to the address so given and shall be deemed to have been so given in the case of posting on the day on which they would have reached such address in the ordinary course of post or on the day on which they were so delivered or left. In the case of contract by partners, any change in the constitution of the firm shall be forthwith notified by the Contractor to the Engineer.

Occupation and use of land.

6. No land belonging to or in possession of the Railway shall be occupied by the Contractor without the permission of the Railway. The Contractor shall not use, or allow to be used, the site for any pupose other than that of executing the works.

Assignment or sublettin of contract.

7. The Contractor shall not assign or sublet the contract or any part thereof or allow any person to become interested therein in any manner whatsoever without the special permission of the Railway. Any breach of this condition shall entitle the Railway to rescind the contract under clause 61 of these conditions and also render the Contractor liable for payment to the Railway in respect of any loss or damage arising or ensuing from such cancellation. Provided always that execution of the details of the works by petty contract under the direct and personal supervision of the Contractor or his agent shall not be deemed to be subletting under this clause. The permitted subletting of work by the Contractor shall not establish any contractual relationship between the subcontractor and the Railway and shall not relieve the Contractor of any responsibility under the contract.

Stores arranged by Railway.

8. Owing to difficulty in obtaining certain materials (including tools and plant) in the open market, the Railway may have agreed without any liability therefor to endeavour to obtain or assist the Contractor in obtaining the required quantities of such materials as may be specified in the Tender. In the event of delay or failure in obtaining the required quantities of the aforesaid materials, the Contractor shall not be deemed absolved of his own responsibility and shall keep in touch with the day-to-day position regarding their availability and accordingly adjust the progress of works including the employment of labour and the Railway shall not in any way be liable for the supply of materials or for the non-supply thereof for any reasons whatsoever nor for any loss or damage arising in consequence of such delay or non-supply.

Railway Passes.

9. No Railway Pass for the conveyance of Contractor's labour by train or for the use of the Contractor or his agents shall be granted unless otherwise specified but Passes will be given to the Contractor or his agents when specially called to the office of the Engineer or the Engineer's representative.

Carriage of materials.

10. No forwarding orders shall be issued by the Railway for the conveyance of Contractor's materials, tools and plant by the rail which may be required for use in the works and the Contractor shall pay full freight charges at public tariff rates therefor.

Use of Ballast Trains.

11. The Railway may agree to allow the Contractor the use of ballast or material trains under such conditions as shall be specially prescribed, provided that the Contractor shall pay for the use thereof charges calculated at public tariff rates on the marked carrying capacity of each vehicle subject to specified minimum charge per day or part of day and provided further that the Contractor shall indemnify the Railway against any claims or damages arising out of the use or misuse thereof and against any liabilities under the Workmen's Compensation Act, 1923 or any Statutory amendments thereto.

Representation on works.

12. The Contractor shall, when he is not personally present on the site of the works, place and keep a responsible agent at the works during working hours who shall on receiving reasonable notice, present himself to the Engineer and orders given by the Engineer or the Engineer's representative to the agent shall be deemed to have the same force as if they had been given to the Contractor. Before absenting himself, the Contractor shall furnish the name and address of his agent for the purpose of this clause and failure on the part of the Contractor to comply with this provision at any time will entitle the Railway to rescind the contract under clause 61 of these conditions.

Relics

13. All gold, silver, oil and other minerals of any description and all precious stones, coins, treasure, relics, antiquities and other similar things which shall be found in or upon the site shall be the property of the Railway and the Contractor shall duly preserve the same to the satisfaction of the Railway and shall from time-to-time deliver the same to such person or or persons as the Railway may appoint to receive the same.

Excavated materials

14. The Contractor shall not sell or otherwise dispose of or remove except for the purpose of this contract, the sand, stone, clay, ballast, earth, rock or other substances or materials which may be obtained from any excavation made for the purpose of the works or any building or produce upon the site at the time of delivery of the possession thereof but all such substances, materials, buildings and produce shall be the property of the Railway provided that the Contractor may, with the permission of the Engineer, use the same for the purpose of the works either free of cost or pay the cost of the same at such rates as may be determined by the Engineer.

Indemnity and compensation

15. The Contractor shall indemnify and save harmless the Railway from and against all actions, suits proceedings, losses, costs, damages, charges, claims and demands of every nature and description brought or recovered against the Railway by reason of any act or omission of the Contractor, his agents or employees, in the execution of the works or in the guarding of the same. 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 the Railway without reference to the actual loss or damage sustained, and whether or not any damage shall have been sustained.

Earnest money and Security deposit.

16 (1) The Earnest Money (other than lump-sum deposit made by the tenderer/tenderers as a standing earnest money) deposited by the contractor with his tender will be retained by the Railway as part of Security for the due and faithful fulfilment of the contract by the contractor. The balance to make up the security deposit which will be calculated as under, unless otherwise specified in the special conditions, if any, may be deposited by the contractor in cash or in the form of Govt. securities or may be recovered by percentage deductions from the contractor's on account bills.

For contracts up to Rupees one Lakh in value.	.. 10% of the value of the contract.
For contracts costing more than Rupees one Lakh and up to Rupees Two Lakhs.	.. 10% of the fust Rs. 1 lakh & 7½% of the balance.
For contracts costing more than Rupees Two Lakhs.	.. 10% of the first 1 lakh 7½% of the next 1 Lakh and 5% of the balance subject to a maximum of Rs. 1.50 lakhs.

Provided also that in case of a defaulting contractor the Rlys. may retain any amount due for payment to the contractor on the pending "on account bills" so that the amount or amounts so retained may not exceed 10% of the total value of the contract.

(2) The lump sum deposit made by the tenderer/tenderers as a standing earnest money will not be adjustable towards the security deposit but the Railways shall be entitled to forfeit the equivalent earnest money specified for the

particular work out of lump sum deposit if the tenderer/tenderers fails/fail to execuite the agreement bond or start the work within the reasonable time. The tenderer/tenderers who have deposited lump-sum deposit as earnest money shall also be required to deposit the security deposit for the due and faithful fulfilment of the contract in the manner as enumerated in sub-clause (1) above.

Interest on amount

16(3) No interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract, but Government Securities deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereto.

time limitation

17(1) Subject to any requirement in the contract as to completion of any portion or portions of the works before completion of the whole the Contractor shall fully and finally complete the whole of the works comprised in the contract (with such modifications as may be directed under clause 42 of these conditions) by the date entered in the contract provided that, if any modifications have been ordered which, in the opinion of the Engineer have materially increased the magnitude of the work, then such extension of the contracted date of completion may be granted as shall appear to the Engineer to be resonable in the circumstances, provided moreover that the Contractor shall be responsible for requesting such extension of the date as he may consider necessary as soon as a cause thereof shall arise and in any case not less than one month before the expiry of the original date fixed for completion of the works.

Delays and extension of time

(2) If in the opinion of the engineers the progress of the work has at any time been delayed by any act or neglect of the Railway's employee or by any other contractor employed by the Railway under Sub-Clause (4) of clause 20 of these conditions or by strikes, lockouts, fire, unusual delay in transportation, exceptionally inclement weather, unavoidable casualties or any causes beyond the contractor's control as by the reasons of proceedings taken or threatened by or dispute with adjoining or neighbouring owners or public authorities arising otherwise than through the contractor's own default etc., or by delay authorised by the Engineer pending arbitration or in consequence of the contractor not having received in due time necessary instructions from the Railway for which he shall have specifically applied in writing to the engineer or his authorised representatives or by any other cause which the engineer shall decide to justify the delay, then the time of completion of the works may be extended for such reasonable time as the Engineer on behalf of the Railway may decide.

Extension of time on Railway account.

(3) In the event of any failure or delay by the Railway to hand over to the Contractor possession of the lands necessary for the execution of the works or to give the necessary notice to commence the works or to provide the necessary notice to commence the works or to provide the necessary drawings or instructions or any other delay caused by the Railway due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the contract or alter the character thereof or entitle the Contractor to damages or compensation therefor but in any such case, the Railway may grant such extension or extensions of the completion date as may be considered reasonable.

Time to be the essence of this contract.

(4) The time for completing the works by the date or extended date fixed for completion shall be deemed to be of the essence of the contract and If the Contractor shall fail to complete the works within the time prescribed, the Railway shall, if satisfied that the works can be completed by the Contractor within a reasonable short time thereafter be entitled, without prejudice

to any other right or remedy available on that behalf, to recover by way of ascertained and liquidated damages a sum equivalent to one half of one percent of the contract value of the works for each week or part of the week the Contractor is in default and allow the contractor such further extension of time as the Engineer may decide. If the Railway is not satisfied that the works can be completed by the contractor and in the event of failure on the part of the Contractor to complete the works within the further extension of time allowed as asforesaid the Railway shall be entitled, without prejudice to any other right or remedy available in that behalf to appropriate the Contractor's security deposit and rescind the contract under clause 61 of thes conditions, whether or not actual damage is cause by such default.

Illegal gratification.

18. Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the contractor or his partner, agent or servant or any one on his or on their behalf to any officer, or employee of the Railway or to any person on his or their behalf in relation to the obtaining or the execution of this or any other contract with the Railway shall, in addition to any criminal liability which he may incur, subject the contractor to the rescission of the contract and all other contracts with the Railway and to the payment of any loss or damage resulting from such rescission and the Railway shall be entitled to deduct the amounts so payable from any moneys due to the contractor under the contract or any other contracts with the Railway. The Contractor shall not lend or borrow from or have or enter into any monetary dealings or transactions either directly or indirectly with any employees of the Railway and if he shall do so the Railway shall be entitled forth with to rescind the contract and all other contracts with the Railway. Any question or dispute as to the commission of any offence or compensation payable to the Railway under this clause shall be settled by the General Manager of the Railway in such manner as he shall consider fit and sufficient and his decision shall be final and conclusive.

Execution of Works.

Contractor's understanding

19(1) It is understood and agreed that the contractor has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be enountered, the character of equipment and facilities, needed preliminary to and during the prosecution of the works, the general and local conditions, the labour conditions prevailing therein and all other matters which can in any way affect the works under the contract.

Commencement of works.

(2) The Contractor shall commence the works within seven days after the receipt by him of an order in writing to this effect from the Engineer and shall proceed with the same with due expedition and without delay.

Compliance to Engineer's instructions.

20(1) The Engineer shall direct the order in which the several parts of the works shall be executed and the Contractor shall execute without delay all orders given by the Engineer from time to time but the Contractor shall not be relieved thereby from responsibility for the due performance of the works in all respects.

Alteration to be authorised.

(2) No alterations in or additions to or omissions or abandenment of any part of the works shall be deemed authoorised, except under instructions from the Engineer and the Contractor shall be responsible to obtain such instructions in each and every case.

Extra work.

(3) Should works over and above those included in the contract require to be executed at the site, the Contractor shall have no right to be entrusted with execution of such works which may be carried out by another Contractor or Contractors or by other means at the option of the Railway.

Separate contracts in connection with works.

(4) The Railway shall have the right to let other contracts in connection with the works. The Contractor shall afford other Contractors reasonable opportunity for the storage of their materials and the execution of their work and shall properly connect and co-ordinate his work with theirs. If any part of the Contractor's work depends for proper execution or results upon the work of another Contractor, the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure so to inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other Contractor's work after the execution of his work.

Instructions of Engineers representative.

21. Any instructions or approval given by the Engineer's Representative to the Contractor in connection with the works shall bind the Contractor as though it had been given by the Engineer provided always as follows :—

(a) Failure of the Engineer's Representative to disapprove any work or materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the removal or breaking up thereof.

(b) If the Contractor shall be dissatisfied by reason of any decision of the Engineer's Representative he shall be entitled to refer the matter to the Engineer who shall thereupon confirm or very such decision.

Adherence to specification and drawings.

22(1) The whole of the works shall be executed in perfect conformity with the specifications and drawings of the contract. If the Contractor perform any work in a manner contrary to the specifications or drawings or any of them and without such reference to the Engineer he shall bear all the costs arising or ensuing there from, and shall be responsible for all loss to the Railway.

Drawing and specification on the works.

(2) The Contractor shall keep one copy of drawnings and specifications at the site, in good order, and such other contract documents as may be necessary available to the Engineer and the Engineer's Representatives.

Ownership of drawings & specifications.

(3) All drawings and specifications and copies thereof furnished by the Railway to the Contractor are deemed to be the property of the Railway. Those shall not be used on other works and, with the exception of the signed contract set shall be returned by the Contractor to the Railway on completion of the works or termination of the contract.

Compliance with Contractor's request for details.

(4) The Engineer shall furnish with reasonable promptness, after receipt by him of the Contractor's request for the same, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the works or any part thereof. All such drawings and instruction shall be consistent with the Contract Documents and reasonably inferable there from.

Meaning and intent of specifications & drawings.

(5) If any ambiguity arises as to the meanining and intent of any portion of the Specifications and Drawings or as to execution or quality of any work or material or as to the measurements of the works, the decision of the Engineer thereon shall be final subject to appeal (within seven days of such decision being intimated to the Contractors to the Chief Engineer who shall

have the power to correct any errors, ommissions, or discrepancies in the Specifications, Drawings, Classification of work or materials, and whose decision in the matter in dispute or doubt shall be final and conclusive.

works during night.

23. The Contractor shall not carry out any work between sun-set and sun-rise without the previous permission of the Engineer.

Damage to Railway property or private life & property.

24. The Contractor shall be responsible for all risks to the work and for trespass and shall make good at his own expense all loss or damage whether to the works themselves or to any other property of the Railway or the lives, persons or property of others from whatsoever cause in connection with the works until they are taken over by the Railway and this although all reasonable and proper precautions may have been taken by the Contractor and in case the Railway shall be called upon to make good any such costs, loss or damages, or to pay compensation (including that payable under the provisions of the Workmen's Compensation Act or any Statutory amendments thereof) to any person or persons sustaining damage as aforesaid by reason of any act, or any negligence or omission on the part of the Contractor the amount of any costs or charges (including costs and charges in connection with legal proceedings), which the Railway may incur in reference thereto, shall be charged to the Contractor. The Railway shall have the power and right to pay or to defend or compromise any claim of threatened legal proceedings or in anticipation of legal proceedings being instituted consequent on the action or default of the Contractor, to take such steps as may be considered necessary or desirable to ward off or mitigate the effect of such proceedings, charging to the Contractor, as aforesaid, any sum or sums of money which may be paid any expenses whether for reinstatement or otherwise which may be incurred and the propriety of any such payment, defence or compromise and the incurring of any such expenses shall not be called in question by the Contractor.

Store houses, sheds, and yards.

25. The Contractor shall at his own expense provide himself with sheds store-houses and yards in such situations and in such numbers as in the opinion of the Engineer is requisite for carrying on the works and the Contractor shall keep at each of such sheds, store-houses and yards a sufficient quantity of materials and plant in stock as not to delay the carrying out of the works with due expedition and the Engineer and the Engineer's representative shall have free access to the said sheds, store-houses and the yards at any time for the purpose of inspecting the stock of materials and plant so kept in hand, and any materials or plant which the Engineer may object to shall not be brought upon or used in the works, but shall be forthwith removed from the sheds, store-houses or yards by the Contractor. The Contractor shall at his own expense provide and mantain suitable mortar mills, soaking vats or any other equipment necessary for execution of the works.

Provision of efficient and competent staff.

26. The Contractor shall place and keep on the works at all times efficient and competent staff to give necessary directions to his workmen and to see that they execute their work in sound and proper manner and shall employ only such supervisors, workmen and labourers in or about the execution of any of the works as are careful and skilled in their various trades and callings. The Contractor shall at once remove from the works any agent, permitted sub-Contractor, supervisor, workman or labourer who shall be objected to by the Engineer and, if and whenever required by the Engineer, he shal submit a correct return showing the names of all staff and workmen employed by him. In the event of the Engineer being of the opinion that the

Contractor is not employing on the works a sufficient number of staff and workmen as is necessary for the proper completion of the works within the time prescribed, the Contractor shall forthwith on receiving intimation to this effect take on the additional number of staff and labour specified by the Engineer within seven days of being so required and failure on the part of the Contractor to comply with such instructions will entitle the Railway to rescind the contract under clause 61 of these conditions.

Workmenship and Testing.

27(1) The whole of the works and/Or supply of materials specified and provided in the contract or that may be necessary to be done in order to form and complete any part thereof shall be executed in the best and most substantial workmanlike manner with materials of the best and most approved quality of their respective kinds, agreeably to the particulars contained in or implied by the specifications and as referred to in and represented by the drawings or in such other additional particulars, instructions and drawings may be found requisite to be given during the carrying on of the works and to the entire satisfaction of the Engineer according to the instructions and directions which the Contractor may from time to time receive from the Engineer.

The materials may be subjected to tests by means of such machines, instruments and appliances as the Engineer may direct and wholly at the expense of the Contractor.

Removal of improper work and materials.

(2). The Engineer or the Engineer's Representative shall be entitled to order from time to time.

(a) the removal from the site within the time specified in the order of any materials which in his opinion are not in accordance with the specifications or drawings.

(b) the substitution of proper and suitable materials, and

(c) the removal and proper re-execution (not withstanding any previous tests thereof or "on account" payments therefor) of any work which in respect of materials or workmanship is not in his opinion in accordance with the specifications and in case of default on the part of the Contractor in carrying out such order, the Railway shall be entitled to rescind the contract, under clause 61 of these conditions.

Facilities for Inspection

28. The Contractor shall afford the Engineer and the Engineer's Representative every facility for enterings in and upon every portion of the work at all hours for the purpose of inspection or otherwise and shall provide all labour, materials, planks, ladders, pumps, appliances and things of every kind required for the purpose and the Engineer and the Engineer's Representative shall at all time have free access to every part of the works and to all places at which materials for the works are stored or being prepared.

Examination of work before covering up.

29. The Contractor shall give seven days notice to the Engineer or the Engineer's Representative whenever any works or materials are intended to be covered up in the earth, in bodies or walls or otherwise to be placed beyond the reach of measurement in order that the work may be inspected or that correct dimensions may be taken before being so covered/placed beyond the reach of measurement in default whereof the same shall at the option of the Engineer or the Engineer's Representative be uncovered and measured at the Contractor's expense or no allowance shall be made for such work or materials.

Temporary works.

30. All temporary work necessary for the proper execution of the works shall be provided and maintained by the Contractor and subject to the consent of the Engineer shall be removed by him and at his expense when they are no longer required and in such manner as the Engineer shall direct. In the event of the failure on the part of the Contractor to remove the temporary works, the Engineer will cause them to be removed and the cost as increased by supervision and other incidental charges shall be recovered from the Contractor. If temporary huts are provided by the Cotractor on the Railway land for labour engaged by him for the execution of the works the Contractor shal arrange for handing over vacant possession of the said land after the work is completed ; if the Contractor's labour refuse to vacate and have to be rejected by the Railway necessary expenses incurred by the Railway in connection there with shall be borne by the Contractor.

Contractor to supply water for works.

31(1) Unless otherwise provided in the contarct, the Contractor shall be responsible for the arrangements to obtain supply of water necessary for the works.

Water supply from Railway system.

(2) The Railway may supply to the Contractor part or whole of the quantity of water required for the execution of works from the Railway's existing water supply system at or near the site of works on specified terms and conditions and at such charges as shall be determined by the Railway and payable by the Contractor, provided that the Contractor shall arrange, at his own expense, to effect the connections and lay additional pipe lines and accessories on the site and that the Contractor shall not be entitled to any compensation for interruption or failure of the water supply.

Water supply by Railway Transport.

(3) In the event of the Railway arranging supply of water to the Contractor at or near the site of works by travelling water tanks or other means, the freight and other charges incurred thereby, including demurrage charges that may be levied, shall be paid by the Contractor in addition to the charges referred to in sub-clause (2) of this clause provided that the Contractor shall not be entitled to any compensation for interruption or failure of the water supply.

Property in materials and plant.

32. The materials and plant brought by the Contractor upon the site or on the land occupied by the Contractor in connection with the works and intended to be used for the execution thereof shall immediately. They are brought upon the site or the said land, be deemed to be the property of the Railway. Such of them as during the progress of the works are rejected by the Engineer under clause 25 of these conditions or are declared by him not to be needed for the execution of the works or such as on the grant of the certificate of completion remain unused shall immediately on such rejection, declaration or grant cease to be deemed the property of the Railway and the Contractor may then (but not before) remove them from the site or the said land. This clause shall not in any way diminish the liability of the Contractor nor shall the Railway be in any way answerable for any loss or damage which may happen to or in respect of any such materials or plant either by the same being lost, stolen, injured or destroyed by fire, tempest or otherwise.

Tools, Plant and materials supplied by Railway.

33(1) The Contractor shall take all reasonable care of all tools, plant and materials or other property whether of a like description or not belonging to the Railway and committed to his charge for the purpose of the works and shall be responsible for all damage or loss caused by him, his agents, permitted sub-contractors or his workmen or others while they are in his

charge. The Contractor shall sign accountable receipts for tools, plant and materials made over to him by the Engineer and on completion of the works shall hand over the unused balance of the same to the Engineer in good order and repair, fair wear and tear excepted, and be responsible for any failure to account for the same or any damage done thereto.

Hire of Railway Plant.

(2) The Railway may hire to the Contractor such plant viz., concrete mixers, compressors and portable engines etc. for use during execution of the works on such terms as may be specified in the special conditions or in a separate agreement for Hire of Plant.

Precautions during progress of works.

34(1) During execution of works, **unless otherwise specified** the contractor shall at his own cost provide materials for and execute all shoring, timbering and strutting work as is necessary for the stability and safety of all structures, excavations and works and shall ensure that no damage, injury or loss is caused or likely to be caused to any person or property.

Roads and water course.

(2) Existing roads or water courses shall not be blocked, cut through, altered, diverted or obstracted in any way by the Contractor, except with the permission of the Engineer. All compensation claimed for any un-authorised closure, cutting through, alteration, diversion or obstruction to such roads or water courses by the Contractor or his staff shall be recoverable from the Contractor by deduction from any sums which may become due to him in terms of the contract, or otherwise according to law.

Provisions of access to premises.

(3) During progress of work in any street or thoroughfare, the Contractor shall make adequate provision for the passage of traffic, for securing safe access to all premises approached from such street or thorughfare and for any drainage, water supply or means of lighting which may be interrupted by reason of the execution of the works and shall erect and maintain at his own cost barriers, lights and other safeguards as prescribed by the Engineer for the regulation of the traffic, and provide watchmen necessary to prevent accidents. The works shall in such cases be prosecuted night and day if so ordered by the Engineer and with such vigour so that the traffic may be impeded for as short a time as possible.

Safety of public.

(4) The Contractor shall be responsible to take all precaution to ensure the safety of the public whether on public or railway property and shall post such look-out men as may in the opinion of the Engineer be required to comply with the regulations appertaining to the work.

Use of explosive.

35. Explosive shall not be used on the works or on the side by the Contractor without the permission of the Engineer and then only in the manner and to the extent to which such permission is given. When explosives are required for the works, they shall be stored in a special magazine to be provided by and at the cost of the Contractor in accordance with the Explosive Rules. The Contractor shall obtain the necessary license for the storage and the use of explosives and all operations in which or for which explosives are employed shall be at the sole risk and responsibility of the Contractor and the Contractor shall idemnify the Railway in respect thereof.

Suspension of work.

36(1) The Contractor shall on the order of the Engineer suspend the progress of the works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure the work so far as is necessary in the opinion of the Engineer. If such suspension is :—

(a) Provided for in the contract, or

(b) necessary for the proper execution of the works or by reason of weather conditions or by some default on the part of the Contractor or

(c) necessary for the safety of the works or any part thereof, the Contractor shall not be entitled to the extra costs (if any) incurred by him during the period of suspension of the works; but in the event of any suspension ordered by the Engineer for reasons other than aforementioned and when each such period of suspension exceeds fourteen days, the Contractor shall be entitled to such extension of time for completion of the works as the Engineer may consider proper having regard to the period or periods of such suspension and to such compensation as the Engineer may consider reasonable in respect of salaries or wages paid by the Contractor to his employees during the periods of such suspensions.

Suspension lasting more than three months.

(2) If the progress of the works or any part thereof is suspended on the order of the Engineer for more than three months at a time the Contractor may serve a written notice on the Engineer requiring permission within fifteen days from the receipt thereof to proceed with the works or that part thereof in regard to which progress is suspended and if such permission is not granted within that time the Contractor by a further written notice so served may (but is not bound to) elect to treat the suspension where it affects part only of the works as an omission of such part or where it affect the whole of the works as an abandonment of the contract by the Railway.

Rates for items of works.

37. The rates entered in the accepted schedule of rates of the contract are intended to provide for works duly and proprely completed in accordance with the general and special (if any) conditions of contract and the sepecifications and drawings together with such enlargements, extensions, diminutions, reductions, alterations or additions as may be ordered in terms of clause 42 of these conditions and without prejudice to the generality thereof and shall be deemed to include and cover Superintendence and labour, supply including full freight, of materials, of stores, patterns, profiles, moulds, fittings centerings scaffoldings, shoring props, timber, machinery, derricks, tackle, ropes, pegs, posts, tools, and all apparatus and plant required on the works except such tools, plant or materials as may be specified in the contract to be supplied to the Contractor by the Railway, the erection, maintenance and removal of all temporary works and buildings, all watching, lighting, bailing, pumping and draining, all prevention of or compensation for trespass, all barriers and arrangements for the safety of the public or of employees during the execution of works all sanitary and medical arrangements for labour camp as may be prescribed by the Railway, the setting of all works and the construction, repair and upkeep of all centre lines, bench marks and level pegs thereon, site clearance, all fees, duties, loyalties, rent and compensation to owners for surface damage or taxes and impositions payabe to local authorities in respect of land, structures and all materials supplied for the work or other duties or expenses for which the Contractor may become liable or may be put to under any provision of law for the purpose of or in connection with the execution of the contract, and all such other incidental charges or contingencies as may have been specially provided for in the specifications.

Demurrage and wharfage dues.

38. Demurrage charges calculated in accordance with the scales in force for the time being on the Railway and incurred by the Contractor failing to load or unload any goods or materials within the time allowed by the Railway for loding or unloadings as also wharfage charges on materials not removed in time as also charges due on consignments booked by or to him shall be paid by the Contractor, failing which such charges shall be debited to the contractor's account in the hands of the Railway and shall be deducted from any sums which may become due to him in terms of the contract.

Rate of extra items of works.

39. Any item of work carried out by the Contractor on the instructions of the Engineer which is not included in the accepted Schedule of rates shall be executed at the rates set forth in the 'Schedule of Rates N. F. Railway' modified by the tender percentage and where such items are not contained in the latter at the rates agreed upon between the Engineer and the contractor before the execution of such items of work and the Contractor shall be bound to notify the Engineer at least seven days before the necessity arises for the execution of such items of work that the accepted schedule of rates does not include a rate or rates for the extra work involved. The rates payable for such items shall be decided at the meeting to be held between the Engineer and the Contractor, in as short period as possible after the need for the special item has come to the notice. In case the Contractor fails to attend the meeting after being notified to do so or in the event of no settlement being arrived at, the Railway shall be entitled to execute the extra works by other means and the contractor shall have no claims for loss or damage tha may result from such procedure.

2. Provided that if the Contractor commences work or incurs any expenditure in regard there to before the rates are determined and agreed upon as lastly here on to fore mentioned, then and in such a case the contractor shall only entitled to be paid in respect of the work carried out or expenditure incurred by him prior to the date of determination of the rates as aforesaid according to the rates as shall be fixed by the Engineer. However, if the contractor is not satisfied with the decision of the Engineer in this respect he may appeal to the Chief Engineer within 30 days of getting the decision of the Engineer, supported by analysis of the rates claimed. The Chief Engineer's decision after hearing both the parties in the matter would be final and binding on the contractor and the Railway."

Handing over of work.

40(1) The Contractor shall be bound to hand over the works executed under the contract to the Railway Engineer complete in all respects to the satisfaction of the Engineer. The Engineer shall determine the date on which the work is considered to have been completed, in support of which his certificate shall be regarded as sufficient evidence for all purposes. The Engineer shall determine, from time to time, the date on which any particular section of the work shall have been completed, and the Contractor shall be bound to observe any such determination of the Engineer.

Clearance of site on completion.

(2) On the Completion of the works the contractor shall clear away and remove from the site all constructional plant, surplus materials, rubbish, and temporary works of every kind and leave the whole of the site and works clean and in a workman like condition to the satisfaction of the Engineer. No final payment in settlement of the accounts for the works shall be paid held to be due or shall be due or shall be made to the Contractor till in addition to any other condition necessary for such final payment, site clearance shall have been affected by him, and such clearance may be made by the Engineer at the expense of the Contractor in the event of failure to

comply with this provision within seven days after receiving notice to that effect. Should it become necessary for the Engineer to have the site cleared at the expense of the contractor, the Railway shall not be held liable for any loss or damage to such of the Contractor's property as may be on the site and due to such removal the refrom, which removal may be effected by means of public sale such materials and property or in such a way as deemed fit and convernient to the Engineer.

Variations in Extent of Contract :

Modifications to contract to be in writing.

41. In the event of any of the provisions of the contract requiring to be modified after the contract documents have been signed, the modifications shall be made in writing and signed by the Railway and the Contractor, and no work shall proceed under such modifications until this has been done. Any verbal or written arrangement, abandoning, modifying, extending reducing or supplementing the contract or any of the terms thereof shall be deemed conditonal and shall not be binding on the Railway unless and until the same is incorporated in a fromal instrument and signed by the Railway and the Contractor, and till then Railway shall have the right to repudiate such arrangement.

Power of modifications to contract.

42(1) The Engineer on behalf of the Railway shall be entitled by order in writing to enlarge or extend, diminish or reduce the works or make any alteration in their designs, character, position, site, quantities, dimensions or in the method of their execution or in the combination and use of materials for the execution thereof and to order any additional works to be done or any works not be done and, save as provided in sub-claue (2) of this clause, the Contractor will not be entitled to any compensation for any reductions but will be paid only for the actual amount of work done and for approved materils furnished against a specific order.

Valuations of variations.

(2) The enlargements, extensions, diminutions, reductions, alterations or additions refered to in sub-clause (1) of this clause shall in no degree affect the validity of the contract but shall be performed by the contractor as provided therein and be subject to the same conditions, stipulations and obligations as if they had been originally and expressly included and provided for in the specifications and drawings and the amounts to be paid therefore shall be calculated in accordance with the accepted schedule or rates and for extra items of works at the rates determined under clause 39 of these conditions, provided that if the nature or amount of any variation relative to the nature or amount of whole of the works or to any part thereof shall be such that in the opinion of the Engineer the rates for any items in the accepted schedule of rates is by reason of such variation rendered unreasonable or inapplicable, the Engineer shall fix such other rate as in the circumstances he shall consider reasonable and proper.

Claims :

Monthly statement of claims.

43(1) The Contractor shall prepare and furnish to the Engineer once in every month an account giving full and detailed particulars of all claims for any additional expense to which the Contractor may consider himself entitled and of all extra or additional works ordered by the Engineer which he has executed during the preceding month and no claim for payment for any such work will be considered which has not been included in such particulars.

Signing of "No claim" certificate.

(2) The contractor shall not be entitled to make any claim whatsoever against the Railway under or by virtue of or arising out of this contract, nor shall the Railway entertain or consider any such claims, if made by the Contractor after he shall have signed a "No-Claim" certificate in favour of the Railway, in such form as shall be required by the Railway after the works are finally measured up.

Measurement, Certificates and Payment :

Quantities in schedule annexed to contract.

44. The quantities set out in the accepted schedule or rates with items of works quantified are the estimated quantities of the works and they shall not be taken as the actual and correct quantities of the works to be executed by the contractor in fulfilment of his obligations under the conract.

45. The Contractor shall be paid for the works at the rates in the accepted schedule of rates and for extra works at rates determined under clause 39 of these conditions on the measurements taken by the Engineer or the Engingineer's Representative in accordance with the rules prescribed for the purpose by the Railway. The quantities for items the unit of which in the prevalent accepted schedule of rates is ten, one hundred, or one thousand, shall be calculated to the nearest whole number, any fraction below half being dropped and half and above being taken as one ; for items the unit of which in the accepted schedule of rates is single, the quantities shall be calculated to two places of decimals. Such measurements will be taken of the work in progress from time to time and at such intervals as in the opinion of the Engineer shall be proper having regard to the progress of works. The date and time on which "On account" or final measurement are to be made shall be communicated to the Contractor who shall be present at the site and shall sign the results of the measurements (which shall also be signed by the Engineer or the Engineer's Representative) recorded in the official measurement book as an acknowledgement of his acceptance of the accuracy of the measurement. Failing the contractor's attendance the work may be measured up in his absence and such measurements shall, notwithsatanding such absence, be binding, upon the Contractor whether or not he shall have signed the measurement book ; provided always that any objection made by him to any measurement shall be duly investigated and considered in the manner set out below :—

Measurements of works.

(a) It shall be open to the Contractor to take specific objection to any recorded measurement of classification on any ground within seven days of the date of such measurements. Any re-measurements aken by the Engineer of the Engineer's Representative in the presence of the Contractor or in his absence after due notice has been given to him in consequence of objection made by the Contractor shall be final and binding on the Contractor and no claim whatsoever shall thereafter be entertained regarding the accuracy and classification of the measurements.

(b) If an objection raised by the Contractor is found by the Engineer to be incorrect the contractor shall be liable to pay the actual expenses incurred in measurements.

"On-Account" Payments.

46(1) The Contractor shall be entitled to be paid from time to time by way of "On-account" payments only for such works as in the opinion of the Engineer he has executed in terms of the contract. All payments due on the Engineer's of the Engineer's Representative's certificates of measurements shall be subject to any deductions which

may be made under these presents and shall further be subject to, unless otherwise required by clause 16 of these conditions, a retention of ten per cent by way of security deposit, until the amount of security deposit, by way of retained earnest money and such retentions shall amount to ten per cent of the total value of the contract ; provided always that the Engineer may by any certificate make any correction or modification in any previous certificates which shall have been issued by him and that the Engineer may withhold any certificate if the works or any part thereof are not being carried out to this satisfaction.

Rounding of amounts.

(2) In calculating the amount of each item due to the Contractor in every certificate prepared for payment, sums of less than Re. 0.025 P. shall be omitted and sums of Re. 0.025 P and more upto Re. 0.05 P shall be reckoned as Re. 0.05 P and the total amount on each certificate shall be rounded off to the nearest rupee, i.e. sums of less than Re. 0.50 P. shall be omitted and sums of Re. 0.05 P. and more upto one rupee shall be reckoned as one rupee.

"On-Account" payments not prejudicial to final settlement.

(3) "On-account" payments made to the Contractor shall be without prejudice to the final making up of the accounts (except where measurements are specifically noted in the Measurement Book as "Final Measurements" and as such have been signed by the Contractor) and shall in no respect be considered or used as evidence of any facts stated in or to be inferred from such account nor of any particular quantity of work having been executed nor of the manner of its execution being satisfactory.

Manner of payment.

(4) Unless otherwise specified, payment to the Contractor will be made by cheque but no cheque will be issued for an amount less than ten rupees.

Maintenance of works.

47. The Contractor shall at all times during the progress and continuance of the works and also for the period of maintenance specified in the Tender form and after the date of the passing of the certificate of completion by the Engineer or any other earlier date subequent to the completion of the works that may be fixed by the Engineer be responsible for an effectually maintain and uphold in good substanitial, sound and perfect condition all and every part of the works and shall make good from time to time and at all times as often as the Engineer shall require, any damage or defects that may during the above period arrive or be discovered or be in any way connected with the work, provided that such damage or defect is not directly caused by errors in the contract documents, act of Providence or insurrection or civil riot, and the contractor shall be liable for and shall pay and make good to the Railway or other persons legally entitled thereto whenever required by the Engineer so to do all losses, damages, costs and expenses they or any of them may incur or be put or be liable to by reason or inconsequence of the operations of the Contractor or of his failure in any respect.

Certificate of completion of works.

48(1) As soon as in the opinion of the Engineer the works shall have been substantially completed and shall have satisfactorily passed any final test or tests that may be prescribed, the Engineer shall issue a certificate of completion in respect of the works and the period of maintenance of the works shall commence from the date of such certificate ; provided that the Engineer may issue such a certificate with respect to any part of the works before the completion of the whole of the works or with respect to any substantial part of the works which has been both completed to the satisfaction of the Engineer and occupied or used by the Railway and when any such certi-

ficate is given in respect of a part of the works such part shall be considered as completed and the period of maintenance of such part shall commence from the date of such certificate.

Contractor not absolved by completion certificate.

(2) The certificate of completion in respect of the works referred to in sub-clause (1) of this clause shall not sabsolve the Contractor from his liability to make good any defects, imperfections, shrinkages or faults which may appear during the period of maintenance specified in the tender arising in the opinion of the Engineer from materials or workmanship not in accordance with the drawings or specifications or instruction of the Engineer, which defects, imperfections, shrinkages or faults shall upon the directions, in writing of the Engineer be amended and made good by the Contractor at his own cost ; and in case of default on the part of the Contractor, Engineer may employ labour and materials, or appoint another Contractor to amend and make good such defects, imperfections, shrinkages and faults and all expenses consequent thereon and incidential thereto shall be borne by the Contractor and shall be recoverable from any moneys due to him under the contract.

Approval only by Maintenance certificate.

49. No certificate other than the Maintenance Certificate referred to in clause 50 of these conditions shall be deemed to constitute approval of any work or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the contract or any part thereof or the accuracy of any claim or demand made by the contractor or of additional or varied work having been ordered by the Engineer nor shall any other certificate conclude or prejudice any of the powers of the Engineer.

Maintenance Certificate

50(1) The Contract shall not be considered as completed until a Maintenance Certificate shall have been signed by the Engineer stating that the works have been completed and maintained to his satisfaction. The Maintenance Certificate shall be given by the Engineer upon the expiration of the period of or as soon thereafter as any works ordered during such period pursuant to sub-clause (2) of clause 48 of these conditions shall have been completed to the satisfaction of the Engineer and full effect shall be given to this clause notwithsatanding the taking possession of or using the works or any part thereof by the Railway.

Cessation of Railway's liability.

(2) The Railway shall not be liable to the Contractor for any matter arising out of or in connection with the contract or the execution of the works unless the Contractor shall have made a claim in writing in respect thereof before the issue of the Maintenance Cetificate under this clause.

Unfulfilled obligations.

(3) Notwithstanding the issue of the Maintenance Certificate the Contractor and (Subject to sub-clause (2) of this clause) the Railway shall remain liable for the fulfilment of any obligation incurred under the provisions of the contract prior to the issue of the Maintenance Certificate which remains performed at the time such Certificate is issued and for the purposes of determining the nature and extent of any such obligation the contract shall be deemed to remain inforce between the parties hereto.

Final payment.

51(1) On the Engineer's certificate of completion in respect of the works an adjustment shall be made and the balance of account based on the Engineer's or the Engineer's Representative's certified measurements of the total quantity of work executed by the contractor up to the date of completion and on the accepted schedule of rates and for extra works on rates determined under clause 39 of these conditions shall be paid to the Contractor

subject always to any deductions which may be made under these presents and further subject to the Contractor having delivered to the Engineer either full account in detail of all claims he may have on the Railway in respect of the works or having delivered a "no claim" certificate and to the Engineer having after the receipt of such account given a certificate in writing that such claims are correct, that the whole of the works to be done under the provisions of the contract have been completed, that they have been inspected by him since their completion and found to be in good and substantial order that all properties, works and things removed, disturbed or injured in consequence of the works, have been properly replaced and made good and all expenses and demands incurred by or made upon the Railway for or in the respect of damage or loss by, from or in consequence of the works, havet been satisfied agreeably and in conformity with the contract.

Refund of excess payment.

(2) It is an agreed term of the contract that the Railway reserves to itself the right to carry out a post-payment audit and/or technical examination of the works and the final bill, including all supporting vouchers, abstracts etc. and to make a claim on the contractor for the refund of any excess amount paid to him if as a result of such examination any over payment to him is discoveted to have been made in respect of any work done or alledged to have been done by him under the contract."

Repayment of security deposit.

(3) The total security deposit shall become due and shall be paid to the Contractor after the expiration of the period of maintenance, specified in the Tender reckoned from the date on which the Engineer shall have passed certificate of completion comprising the whole of the works to be done under the provisions of the contract, or any other earlier date subsequent to the completion of the whole of such works that may be fixed by the Railway in this behalf, provided that all the stipulations of this clause have been fulfilled by the Contractor and all claims and demands made against the Railway for and in respect of damage or loss by, from or in consequence of the works have been finally satisfied ; provided further that in the event of different maintenance periods having become applicable to different parts of the works pursuant to sub-clause (1) of clause 48 of these conditions, the expression. Expiration of the period of mainteance" shall for the purposes of this clause be deemed to mean the expiry of the latest of such periods.

Book Examination cause.

51-A. For a contract of value more than one crore of rupees, the contractor shall, whenever required, produce or cause to be produced for examination by the Engineer any quotation, invoice, cost or other account, book of account, voucher, receipt, letter memorandum, paper or writing or any copy of or extract from any such document and also furnish information and returns verified in such manner as may be required in any wise relating to the execution of this contract or relevant for verifying or ascertaining the cost of execution of this contract (the decision of the Engineer on the question of relevancy of any document, information or return being final and binding on the parties). The contractor shall similarly produce vouchers etc. if required, to prove to the Engineer, that material supplied by him, are in accordance with the specifications laid down in the contract.

(ii) If any portion of the work in a contract of value more than one crore of rupees be carried out by sub-contractor or any subsidiary or allied firm or company (as per clause 7 of the General Con-

ditions of Contract), the Engineer shall have power to secure the books of such sub-contractor or any subsidiary or allied firm of company, through the contractor and such books shall be open to his inspection.

(iii) The obligations imposed by sub-clauses (i) and (ii) above is without prejudice to the obligations of the contractor under any statute, rules or orders binding on the contractor.

with holding and lien its respect of sums claimed.

52. Whenever any claim or claims for payment of a sum of money arises out of or under the contract against the Contractor, the Railway shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the contractor and for the purpose aforesaid, the Railway shall be entitled to withhold the said cash security deposit or the security, if any, furnished as the case may be and also have a lien over the same pending finalisation or adjudication of any such cliam. In the event of security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, the Railway shall be entitled to withhold and have a lien to retain to the extent of the such claimed amount or amounts referred to supra, from any sum or sums found payable or which at any time there after may become payable to the contractor under the same contract or any other contract with this or any other Railway or any other Department of the Contral Government pending finalisation or adjudication of any such claim.

It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above by the Railway will be kept withheld or retained as such by the Railway 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 supra 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 Railway 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 found payable to any partner/limited company, as the case may be whether in his individual capacity or otherwise.

Lien in respect of claims in other contract.

52A. Any sum of money due and payable to the contractor (including the security deposit returnable to him) under the contract may be withheld or retained by way of lien by the Railway against any claim of this or any other Railway or any other Department of the Central Government in respect of payment of a sum of money arising out of or under any other contract made by the contractor with this or any other Railway or any other Department of the Central Government.

It is an agreed term of the contract that the sum of money so withheld or retained under this clause by the Railway will be kept withheld or retained as such by the Railway till the claim arising out of or under any other contract is either mutually settled or determined by the arbitrator, if the other 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 on any other ground in respect of any sum of money withheld or retained under this clause and duly notified as to the contractor.

53. Every receipt for moneys which may become payable or for any security which may become transferable to the Contractor under these presents shall, if signed in the partnership name by any one of the partners of a Contractor firm be a good and sufficient discharge to the Railway in respect of the moneys or security purported to be acknowledged thereby and in the event of death of any of the Contractor partners during the pendency of the contract it is hereby expressly agreed that every receipt by any one of the surviving Contractor partners shall if so signed as aforesaid, be a good and sufficient discharge as aforesaid provided that nothing in this clause contained shall be deemed to prejudice or effect any claim which the Railway may hereafter have against the legal representatives of any Contractor partner so dying for or in respect of any breach of any of the conditions of the contract, provided also that nothing in this clause contained shall be deemed to prejudice or effect the respective rights or obligations of the Contractor partners and of the legal representatives of any deceased Contractor partner inter so.

Signature on receipts for amounts.

LABOUR.

54. The Contractor shall be responsible to ensure compliance with the provisions of the Minimum Wages Act 1948 (hereinafter referred to as the 'said Act)' and the Rules made thereunder in respect of any employees directly or through petty contractors or sub-contractors employed by him on road construction or in building operations or in stone breaking of stone crushing for the purpose of carrying out this contract.

Wages to Labour.

If, in compliance with the terms of the contract, the Contractor directly or through petty Contractors or Sub-Contractors supplies any labour to be used wholly or partly under the direct orders and contral of the Railway whether in connection with any work being executed by the Contractor or otherwise for the purpose of the Railway such labour shall for the purpose of this clause, still be deemed to be persons employed by the Contractor.

If any moneys shall, as a result of any claim or application made under the said Act be directed to be paid by the Railway, such moneys shall be deemed to be moneys payable to the Railway by the Contractor and on failure by the Contractor to repay the Railway any moneys paid by it is as aforesaid within seven days after the same shall have been demanded, the Railway shall be entitled to recover the same from any moneys due or accruing to the Contractor under this or any other contract with the Railway.

54-A. "The Contractor shall be responsible to ensure compliance with the provisions of the Apprentices Act, 1961 and the Rules and Orders issued thereafter from time to time in respect of Apprentices directly or through petty contractors or sub-contractors employed by him for the purpose of carrying out the contract.

Provision of Apprentice Act., 1961.

If the contractor directly or through petty contractors or sub-contractors fails to do so, his failure will be breach of the contract and the Railway may, in its discretion, rescind the contract. The Contractor shall also be liable for any pecuniary liability arising on account of any violation of the provisions of the act."

55. The Contractor shall comply with the provisions of the Payment of Wages Act 1936 and the rules made thereunder in respect of all employees directly or through petty contractors or Sub-Contractors employed by

Provisions of Payment of Wages Act.

him in the works. If in compliance with the terms of the contract, the contractors directly or through petty contractors or sub-contractors shall supply any labour to be used wholly or partly under the direct orders and control of the Engineer whether in connection with the works to be executed hereunder or otherwise for the purpose of the Engineer such labour shall nevertheless be deemed to comprise persons employed by the Contractor and any moneys which may be ordered to be paid by the Engineer shall be ordered to be paid by the Engineer shall be deemed to be money payable by the Engineer on behalf of the Contractor and the Engineer may on failure of the Contractor to repay such moneys to the Railway deduct the same from any moneys due to the Contractor in terms of the contract. The Railway shall be entitled to deduct from any moneys due to the Contractor (whether under this contract or any other contract) all moneys paid or payable by the Railway by way of compensation aforesaid or for costs of expenses in connection with any claim there to and the decision of the Engineer upon any question arising out of the effect or force of this clause shall be final and binding upon the Contractor.

Provisions of contract labour (Regulation and abolition Act, 1970).

55-A (1) The Contractor shall comply with the provisions of the Contract Labour (Regulation and Abolition) Act 1970, and the contract labour (Regulation and Abolition) General Rules 1971 as modified from time to time, wherever applicable and shall also indemnify the Railway from and against claims under the aforesaid Act and the Rules.

(2) The Contractor shall obtain a valid licence under the aforesaid Act as modified from time to time before the commencement of the work and continue to have a valid license until the completion of the work. Any failure to fulfil this requirement shall attract the penal provisions of the Contract arising out of the resultant non-execution of the work.

(3) The Contractor shall pay the labour employed by him directly or through sub-contractors the Wages as per provisions of the aforesaid Act and the Rules wherever applicable. The Contractor shall, not withstanding the provisions of the contract to the contrary, cause to be paid the wages of labour indirectly engaged on the work including any engaged by his sub-contractors in connection with the said work, as if the labour had been immediately employed by him.

(4) In respect of all labour directly or indirectly employed in the work for performance of the contractor's part of the contract, the contractors shall comply with or cause to be complied with the provision of the aforesaid Act and the Rules wherever applicable.

(5) In every case in which, by virtue of the provisions of the aforesaid Act or the Rules, the Railway is obliged to pay any amount of wages to a workman employed by the contractor or his sub-contractor in execution of the work or to incur any expenditure in providing welfare and health amenities required to be provided under the aforesaid Act and the Rules or to incur any expenditure on account of the contingent liability of the Railway due to the contractor's failure to fulfil his statutory obligations under the aforesaid Act or the Rules the Railway will recover from the contractor, the amount of wages so paid or the amount of expenditure so incurred, and without prejudice to the rights of the Railway under Section 20 Sub-section (2) and section 21 sub-section (4). of the aforesaid Act, the Railway shall be at liberty to recover such amount or part

thereof by deducting it from the Security deposit and or from any sum due by the Rly. to the contractor whether under the contract or otherwise. The Railway shall not be bound to contest any claim made against it under sub-section (1) of section 20 and sub-section (4) of section 21 of the aforesaid Act except on the written request of the contractor and upon his giving to the Railway full security for all costs for which the Rly. might become liable in contesting such claim. The decision of the Railway regarding the amount actually recoverable from the contractor as stated above, shall be final and binding on the contractor."

Reporting of accidents to labour.

56. The Contactor shall be responsible for the safety of all employees directly or through petty contractors of sub-contractors employed by him on the works and shall report serious accidents to any of them however and wherever occuring on the works to the Engineer or the Engineer's Representative and shall make every arrangement to render all possible assistance.

Provision of Workmen's Compensation Act.

57. In every case in which by virtue of the provisions of section 12 sub-section (1) of the Workmen's Compensation Act, 1923, Railway is obliged to pay compensation to a workman directly or through petty contractors or sub-contractors employed by the Contractor in executing the work, Railway will recover from the Contractor the amount of the compensation so paid, and without prejudice to the right of Railway under section 12 sub-section (2) of the Said Act, Railway shall be at liberty to recover such amount or any part thereof by deducting it from the security deposit or from any sum due by Railway to the Contractor whether under these conditions or otherwise. Railway shall not be bound to contest any claim made against it under section 12 sub-section (1) of the said Act, except on the written request of the contractor and upon his giving to Railway full security for all costs for which Railway might become liable in consequence of contesting such claim.

Provision of Mines Act.

57(a) The Contractor shall observe and perform all the provisions of the Mines Act, 1952 or any statutory modifications or re-enactment thereof for the time being inforce and any rules and regulations made thereunder in respect of all the persons directly or through petty contractors or sub-contractors employed by him under this contract and shall indemnify the Railway from and against any claim under the Mines Act, or the rules and regualtions framed thereunder, by or on behalf on any person employed by him or otherwise.

Railway not to provide quarters to Contractors.

58. No quarters shall normally be provided by the Railway for the accommodation of the contractor or any of his staff employed on the works. In exceptional cases where accommodation is provided to the Contractor at the Railway's discretion recoveries shall be made at such rates as may be fixed by the Railway for the full rent of the buildings and equipment therein as well as charges for electric current, water supply and conservancy.

Labour camp.

59.(1) The contractor shall at his own expense make adequate arrangements for housing, supply of drinking water, and provision of latrines and urinals for his staff and workmen directly a through petty contractors or sub-contractors and for temporary creche (Bal-mandar) where 50 or more women are employed at a time. Suitable sites on Railway land, if available may be allotted to the Contractor for the erection of labour camps, either free of charge or on such terms and conditions that may be prescribed by the Railway. All Camp-sites shall be maintained in clean and sanitary condition by the Contractor at his own cost.

Compliance to rules for employment of labour.

(2) The Contractor shall confirm to all laws, bye-laws, rules and regulations for the time being in force pertaining to the employment of local or imported labour and shall take all necessary precautions to ensure and preserve the health and safety of all staff employed directly or through petty contractors or sub-contractors on the works.

Preservation of peace.

(3) The Contractor shall take requisite precautions and use his best endeavours to prevent any riotous or unlawful behaviour by or amongst his workmen and others employed directly or through petty contractors or sub-contractors on the works and for the preservation of peace and protection of the inhabitants and security of property in the neighbourhood of the work. In the event of the Railway requiring the maintenance of a special Police force at or in the vicinity of the site during the tenure of works, the expenses thereof shall be borne by the Contractor and if paid by the Railway shall be recoverable from the Contractor.

Sanitary arrangements.

(4) The Contractor shall obey all sanitary rules and carry out all sanitary measures that may from time to time be prescribed by the Railway Medical Authority and permit inspection of all sanitary arrangements at all times by the Engineer, the Engineer's Representative or the Medical staff of the Railway. Should the Contractor fail to make adequate sanitary arrangements, these will be provided by the Railway and the cost herefor recovered from the Contractor.

Outbreak of infectious sease.

(5) The Contractor shall remove from his camp such labour and their families as refuse protective inoculation and vaccination when called upon to do so by the Engineer or the Engineer's Representative on the advice of the Railway Medical Authority. Should Cholera, Plague or other infectious disease break out, the contractor shall burn the huts, beddings, clothes and other belongings of or used by the infected parties and promptly erect new huts on healthy sites as required by the Engineer failing which within the time specified in the Engineer's requistion, the work may be done by the Railway and the cost therefor recovered from the Contractor.

Treatment of Contractor's staff in Railway Hospital.

(6) The Contractor and his staff, other than labourers and their families requiring medical aid from the Railway hospitals and dispensaries will be treated as private patients and charged accordingly. The Contractor's labourers directly or through petty contractors or sub-contractors and their families will be granted free treatment in the Railway hospitals and dispensaries where no other hospitals or dispensaries are available provided the Contractor pays the cost of medicines, dressings and diet money according to the normal scale and additional charges for special examinations viz pathological and Bacteriological examinations. X-rays etc. and for operations.

Medical facilities at site.

(7) The Contractor shall provide medical facilities at the site as may be prescribed by the Engineer on the advice of the Railway Medical Authority in relation to the strength of the Contractor's resident staff and workmen directly a through petty contractors or sub-contractors.

Use of intoxicants.

(8) The sale of ardent spirits or other intoxicating beverages upon the work or in any of the buildings, encampments or tenements owned, occupied by or within the control of the Contractor or any of his employees directly or through petty contractors or sub-contractors shall be forbidden and the Contractor shall exercise his influence and authority to the utmost extent to secure strict compliance with this condition.

(9) The Contractor shall see that employment of female labour directly or through petty contractors or sub-contractors in Cantonment areas, particularly in the neighbourhood of soldiers barracks, should be avoided as far as possible.

Non-employment of female labour.

(10) The Contractor shall not employ children below the age of 12 as labourers directly a through petty contractors a sub-contractors for the execution of the work.

Non-employment of labours below the age of 12.

Determination of Contract

60.(1) The Railway shall be entitled to determine and terminate the contract at any time should, in the Railway's opinion, the cessation of work become necessary owning to paucity of funds or from any other cause whatever, in which case the value of approved materials at site and of workdone to date by the Contractor will be paid for in full at the rates specified in the contract. Notice in writing from the Railway of such determination and the reason therefor shall be conclusive evidence thereof.

Right of Railway to determine contract.

(2) Should the contract be determined under sub-clause (I) of this clause and the Contractor claims payment for expenditure incurred by him in the expectation of completing the whole of the works, the Railway shall admit and consider such claims as are deemed reasonable and are supported by vouchers to the satisfiction of the Engineer. The Contractor shall have no claim to any payment of compensation or otherwise, howsoever on account of any profit or advantage which he might have derived from the execution of the work in full but which he did not derive in consequence of determination of the contract. The Railway's decision on the necessity and propriety of such expenditure shall be final and conclusive.

Payment in determination of contract.

61.(1) If the Cotractor should :

Dermination of contract owing to default of Contractor.

(i) become bankrupt or insolvent, or

(ii) make an arrangement with or assignment in favour of his creditors, or agree to carry out the contract under a committee of inspection of his creditors, or

(iii) being a Company or Corporation, go into liquidation (other than a volunatry liquidation for the purposes, of amalgamation or reconstruction) or,

(iv) have an execution levied on his goods or property on the work, or

(v) assign the contract or any part thereof otherwise than as provided in clause 7 of these conditions, or

(vi) abandon the contract, or

(vii) persistently disregard the instructions of the Engineer, or contravene any provision of the contract, or

(viii) fail to adhere to the agreed programme of work by a margin of 10% of the stipulated period, or

(ix) fail to remove materials from the site or to pulldown and replace work after receiving from the Engineer notice to the effect that the said materials or works have been condemned or rejected under clauses 25 and 27 of these conditions, or

(x) fail to take steps to employ competent or additional staff and labour as required under clause 26 of the conditions, or

(xi) fail to afford the Engineer or Engineer's representative proper facilities for inspecting the works or any part thereof as required under clause 28 of thes conditions, or

(xii) Promise, offer or give any bribe, commission, gift or advantage either himself or through his partner, agent or servant to any officer or employee of the Railway or to any person on his or on their behalf in relation to the execution of this or any other contract with the Railway.

(xiii) (A) At any time after the tender relating to the contract has been signed and submitted by the Conttactor, being a partner ship firm, admit as one of its partners or employ under it or being an incorporated Company elect or nominate or allow to act as one of its directors or employ under it in any capacity whatsoever any retired Engineer of the gazetted rank or any other retired gazetted officer working before his retirement, whether in the executive or administrative capacity, or whether holding any pensionable post or not, in the Engineering Department of any of the Railways for the time being owned and administered by the President of India before the expiry of two years from the date of retirement from the said service of such engineer or officer unless such engineer or officer has obtained permission from the President of India or any officer duly authorised by him in this behalf to become a partner or a director or to take employment under the contractor, as the case may be or

(B) fail to give at the time of submitting the said tender :—

(a) the correct information as to the date of retirement of such retired engineer or retired officer from the said service, or as to whether any such retired engineer, or retired officer was under the employment of the contracto at the time of submitting the said tender, or

(b) the correct information as to such engineer's or officers' obtaining permission to take employment under the contractor, or

(c) being a partnership firm, the correct information as to whether any of its partners was such a retired engineer or a retired officer, or

(d) being an incorporated company, correct information as to whether any of the directors was such a retired engineer of a retired officer, or

(e) being such a retired engineer or retired officer suppress and not disclose at the time of submitting the said tender the fact of his engineer or a retired officer or make at the time of submitting the said tender a wrong statement in relation to his obtaining permission to take the contract or if the contractor be a partnership firm or an incorporated company to be a partner or director of such firm or company as the case may be or to seek employment under the contractor,

then and in any of the said causes, the Engineer on behalf of the Railway may serve the Contractor with a notice in writing to that effect and if the Contractor does not within 7 days after the delivery to him of such notice proceed to make good his default in so far as the same is capable of being made good and carry on work or comply with such directions as aforesaid to the entire satifaction of the Engineer, the Railway shall be entitled after giving 48 hours notice in writing under the hand of the Engineer to rescind the contract as a whole or in part or in part or parts (as may be specified in such notice) and adopt either or both of the following courses :—

(a1) To carry out the whole or part of the work from which the Contractor has been removed by the employment of the required labour and materials, the costs of which shall include lead, lift, freight, supervision and all incidental charges

(b1) To measure up the whole or part of the work from which the Contractor has been removed and to get it completed by another Contractor, the manner and method in which such work is completed shall, be in the entire discretion of the Engineer whose decision shall be final ;

and in both the cases (a1) and (b1) mentioned above, the Railway shall be entitled (i) to forfeit the whole or such portion of the security deposit as it may consider fit, and (ii) to recover from the contractor the cost of carrying out the work in excess of the sum which would have been payable according to the certificate of the Engineer to the Contractor if the work had been carried out by the Contractor under the terms of the contract, such certificate being final and binding upon the Contractor, provided, however, that such recovery shall be made only when the cost incurred in excess is more than the security deposit proposed to be forfeited and shall be limited to the amount by which the cost incurred in excess exceeds the security deposit proposed to be forfeited. The amount thus to be forfeited or recover may be deducted from any moneys then due or which at any time thereafter may become due to the Contractor by the Railway under this or any other contract or otherwise.

Provided always that in any case in which any of the powers conferred upon the Railway by sub-clause (1) of clause 61 hereof shall have become exercisable and the same shall not be exercised, the non-exercise thereof shall not constitute a waiver of any of the conditions thereof and such powers shall notwithstanding be exercisable in the event of any future case of deafult by the Contractor for which his liablity for past and future shall remain unaffected.

Right of Railway after rescission of contract owing to default of Contractor.

(2) In the event of any or several of the course, referred to in sub-clause (1) of this clause, being adopted :—

(a) 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 commitments or made any advances on account of or with a view to the execution of the works or the performance of the contract and the contractor shall not be entitled to recover or be paid any sum for any work thereto for actually performed under the contract, unless and until the Engineer shall have certified the performance of such work and the value payable in repect thereof and the Contractor shall only be entitled to be paid the value so certified.

(b) the Engineer or the Engineer's Representative shall be entitled to take possession of any materials, tools, implements, machinery and buildings on the works or on the property on which these are being or ught to have been executed, and to retain and emplcy the same in the further execution of the work or any part thereof until the completion of the works without the Contractor being entitled to any compensation for the use and emplcyment thereof cr fcr wear and tear or destruction thereof.

(c) the Engineer shall, as soon as may be practicalble after removal of the Contractor fix and determine exparte or by or after reference to the parties or after such investigation or enquiries as he may consider fit to make or institute and shall certify what amcunt (if any) had at the time of rescission of the contract been reascnably earned by or would reasonably accrue to the Contractor in respect of the work then actually done by him under the contract and what was the value of any unused, or partially used materials, any constructional plant and any temporary works upon the site.

(d) the Railway shall not be liable to pay to the Contractor any moneys on account of the contract until the expiration of the period of maintenance and thereafter until the costs of completion and maintenance damages for delay in completion (if any) and allother expenses incurred by the Railway have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him upon due completion by him after deducting the said amount ; but if such amount shall exceed the sum which would have been payable to the Contractor, then the Contractor shall upon demand pay to the Railway the amount of such excess and it shall be deemed a debt due by the Contractor to the Railway and shall be recoverable accordingly.

Settlement of Disputes

Excepted matters.

62. All disputes and differences of any kind whatsoever arising out of or in connection with contract, whether during the progess of the works or after their completion and whether befcre or after the determinaticn cf the contract, shall be referred by the Contractor to the Railway and the Railway shall within a reasonable time after their presentation make and notify decisions thereon in writing except the decisions for which provisicn has been made in clauses 18, 22(5), 39, 45(a), 55, 55A(5), 60(2) and 61(XXIII) (B)-(c) (b1) of the General Condtions of Contract, which are to be deemed to be excepted matters', shall be final and binding on the contractor. These matters are specifically excluded from the perview of arbitration provided fcr in clause 63 and shall not be referred to arbitration."

Demand for Arbitration.

63(1) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in questicn, dispute cr difference on any account, or as to the with-holding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within a reaonable time, then and in any such case, but except in any of the "excepted matters" referred to in clause 62 of these conditions the Contractor, after 90 days of his presenting his final claim on disputed matters may demand in writing that the dispute or

difference be referred to arbitration. Such demand for arbitration shall specify the matters which are in question, dispute or difference, and only such dispute or difference of which the demand has been made and no other, shall be referred to arbitration.

(2) Work under the contract shall, unless otherwise directed by the Engineer, continue during the arbitration proceedings, and no payment due or payable by the railway shall be withheld on account of such proceedings provided, however it shall be opened for the arbitrator or arbitrators to consider and decide whether or not such work should continue during arbitration proceedings.

Obligations during pendency of arbitration.

3(a) Matters in question, dispute or difference to be arbitrated upon shall be referred for decision to :—

Arbitration.

(i) A sole arbitrator who shall be the General Manager or a person nominated by him in that behalf in cases where the claim in question is below Rs. 3,00,000/- and in cases where the issues involved are not of a complicated nature. The General Manager shall be the sole judge to decided whether or not the issues involved are of a complicated nature.

(ii) Two arbitrators, who shall be Gazetted Railway Officers of equal status to be appointed in the manner laid down in sub-clause (3)(b) for all claims of Rs. 3,00,000/- and above and for all claims irrespective of the amount or value of such claims if the issues involved are of a complicated nature. The General Manager shall be the sole judge to decide whether the issues are of a complicated nature or not. In the event of the two arbitrators being divided in their opinions the matter under dispute will be referred to an Umpire to be appointed in the matter laid down in clause (3)(b) for his decision.

(iii) The Arbitrator/Arbitrators/Umpire so appointed as the case may be shall give the award on all matters referred to arbitration indicating therein break-up of the sums awarded separately on each individual items of disputes.

63(3)(b) (i) For the purpose of appointing to two arbitrators as referred to in sub-clause (a) (ii) above, the Railway will send a panel of more than three names of Gazetted Railway Officers of one or more departments of the Railway to the Contractor, who will be asked to suggest to the General Manager one name out of the list for appointment as the Contractor's nominee. The General Manager while so appointing the Contractor's nominee will also appoint a second arbitrator as the Railway's nominee either from the panel or from outside the panel ensuring that one of the two arbitrators so nominated is invariably from the Accounts Department. Before entering upon the reference the two Arbitrators shall nominate an Umpire who shall be a Gazetted Railway Officer to whom the case will be referred to in the event of any difference between the two arbitrators, Officers of the Junior Administrative grade of the Accounts Department of the Railways shall be considered as of equal status to the officers in the intermediate administrative grade of other departments of the Railway for the purpose of appointment as arbitrators.

Rly. Board's No. 64/W2/CI 17 dated 21.4.70.

63(3)(c) If the sole Arbitrator appointed under Sub-clause (a)(i) or one or both of the Arbitrators appointed under sub-clause (b) above resigns his appointment/resign their appointments or vacates his office/vacate their offices

is or/are unable or unwilling to act for any reasons whatsoever or dies/die, the General Manager may appoint a new Arbitrator/Arbitrators to act in his/ their place in accordance with the provisions of sub-clause (a)(i) or sub-clause (b) above as the case may be. Such Arbitrator/Arbitrators, as the case may be, shall be entitled to proceed with the reference from the stage at which it was left by the previous Arbitrator/Arbitrators.

(d) The arbitrator or arbitrators or the Umpire shall have power to call for such evidence by way of affidavits or otherwise as the arbitrator or arbitrators or Umpire shall think proper and it shall be the duty of the parties hereto to do or cuase to be done all such things as may be necessary to enable the arbitrator or arbitrators or Umpire to make the award without any delay.

(e) "It will be no objection that the person/persons appointed as arbitrator/arbitrators or Umpire is/are Government servant(s). If, however, the arbitrator/arbtrators/Umpire is/are railway servants(s) he/they shall not be one/those who had an apportunity to deal with the matters to which the contract relates or who in the course of his/their duties as railway servant(s) has/have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator or arbitrators or Umpire, as the case may be, shall be final and binding on the parties to the contract."

(f) Subject as aforesaid, Arbitration Act 1940 and the Rules thereunder and any statutory modification thereof shall apply to the Arbitration proceedings under this clause.