

**RITES Ltd./ Contract Policy Cell/ Gurgaon
General Conditions of Contract for Works, July 2019**

Correction Slip No. 3

1. The existing Clause 25 may be deleted and replaced with the following :

Clause 25

Settlement of Disputes & Arbitration

1. Except where otherwise provided in the Contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the Contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:
2. If the Contractor considers any work demanded of him to be outside the requirements of the Contract, or disputes any drawings, record or decision given in writing by the Engineer on any matter in connection with or arising out of the Contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days, request the Engineer-in-Charge in writing for written instruction or decision. Thereupon, the Engineer-in-Charge shall give his written instructions or decision within a period of one month from the receipt of the Contractor's letter.
3. If the Engineer-in-Charge fails to give his instructions or decision in writing within the aforesaid period or if the Contractor is dissatisfied with the instructions or decision of the Engineer-in-Charge, the Contractor may, within 15 days of the receipt of the Engineer-in-Charge's decision or within 15 days of expiry of one month from the date of the Contractor's letter to the Engineer-in-Charge, whichever is earlier, refer to conciliation through Expert Committee ("EC") to be constituted by the Appointing Authority specified in Schedule F as provided hereunder :

3.1 Proposal for EC

The contractor shall give notice to the Appointing Authority for appointing the EC clearly bringing out the points of dispute and the amount claimed with documents in support of the claim.

3.2 Constitution of EC

- i. The Appointing Authority will have the sole discretion to constitute EC which will comprise three Members. One of the three Members will be designated Presiding Member by the Appointing Authority. The Appointing Authority will have authority to reconstitute an EC to fill any vacancy or if any EC Member fails to fulfil his functions or fails to attend two or more consecutive meetings of the EC. The Presiding Member shall convene meetings of the Committee and keep minutes of the same.

- ii. Upon constitution of the EC, the Appointing Authority will issue the appointment letter to EC Members and endorse copies thereof to the parties concerned.
- iii. The EC members shall give a declaration of independence and impartiality to both the parties before commencement of the EC proceedings.

3.3 Proceedings before EC

- i. The claimant shall submit its statement of claims to EC members, the other party to the contract and the Employer within 30 days of the issue of the appointment letter to EC members.
- ii. The respondent shall file its reply and counter claim (if any) within 30 days of the receipt of the statement of claims.
- iii. Parties may file their rejoinder/additional documents if any in support of their claim/counter claim within next 15 days. No documents shall be allowed thereafter, except with the permission of EC.
- iv. EC will commence its meetings only after completion of the pleadings. The Presiding Member shall fix the date, time and venue for the first meeting within 15 days of completion of pleadings in consultation with other Members. Thereafter, the next and subsequent meetings of the Committee shall be fixed with mutual consultations during such meetings.
- v. Two Members will constitute a valid quorum and the meeting can take place to proceed in the matter. EC recommendations will be valid if signed by all Members present in the meeting. Further, Members shall make efforts for unanimous recommendations.
- vi. The parties shall be represented by their in house employees/executives. No party shall bring any advocate or outside consultant/advisor/agent. Ex-officers of RITES who have handled the matter in any capacity are not allowed to attend and present the case before EC on behalf of Contractor. However, ex-employees of parties may represent their respective organizations.
- vii. Solicitation or any attempt to bring influence of any kind on either EC Members or Employer/ Engineer – in – Charge is completely prohibited in conciliation proceedings and Employer/ Engineer – in Charge reserves the absolute right to close the conciliation proceedings at its sole discretion if any such attempt is made by the Contractor or its representatives.
- viii. Parties agree to rely only upon documentary evidence in support of their claims and not to bring any oral evidence in the EC proceedings.

- ix. EC will give full opportunity of hearing to the parties before giving its recommendations.
- x. EC will conclude its proceedings in maximum 5 meetings and give its recommendations within 90 days of its first meeting. EC will give its recommendations to both the parties recommending possible terms of settlement. The Appointing Authority may extend the time/ number of meetings in exceptional cases, if EC requests for the same with sufficient reasons.
- xi. EC members will be paid fees and provided facilities as detailed in Annexure - 'F4'.
- xii. Parties shall not claim any interest on claims/counter claims from the date of notice invoking conciliation till execution of settlement agreement, if so arrived at. In case, parties are unable to reach a settlement, no interest shall be claimed by either party for the period from the date of notice invoking conciliation till the date of EC recommendations and 30 days thereafter in any further proceeding.
- xiii. The venue of the EC meeting shall be the place specified by the Presiding Member of EC.
- xiv. Legally, parties are under no obligation to refer a dispute to conciliation or continue with conciliation proceedings. Parties are free to terminate the conciliation proceedings at any stage as provided under the Arbitration and Conciliation Act, 1996 duly amended .

3.4 Actions after EC Recommendations

- i. The recommendations of EC are non-binding and the parties may decide to accept or not to accept the same. Parties are at liberty to accept the EC recommendation with any modification they may deem fit.
- ii. The Parties shall give their response, if any, to the Appointing Authority and the other Party within 15 days of receiving EC recommendation.
- iii. If the recommendations are acceptable to the Parties partly or fully, Appointing Authority will consider and take a decision on EC recommendations and communicate its decision to the parties. If decision of Appointing Authority is acceptable to the parties, a settlement agreement under Section 73 of the Arbitration and Conciliation Act, 1996 will be signed within 15 days of acceptance by the parties.
- iv. The timelines mentioned in the above sub-clauses are with an objective to achieve expeditious conclusion of EC proceedings. However, it does not mean that any action beyond the timelines will be invalid. However, the parties concerned will make all efforts to complete the actions within the stipulated time.

- v. The parties shall keep confidential all matters relating to the conciliation proceedings including minutes of EC meeting and recommendations of EC. Parties shall not rely upon them as evidence in any Forum / arbitration / court proceeding whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,
- a) Views expressed or suggestions made by other party in respect of a possible settlement of the dispute
 - b) Admissions made by the other party in the course of the EC proceedings,
 - c) Proposals made by the EC,
 - d) The fact that the other party had indicated his willingness to accept a proposal for settlement made by the EC.
- vi. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement. This stipulation will not apply to disclosure made by Employer to Govt. of India or its authorities, if required.
- vii. Subject to terms and conditions contained in the above paras, the provisions of the Part III of Arbitration and Conciliation Act, 1996 shall be applicable to the conciliation proceeding and the parties and the EC members shall be bound by the same.
4. If any party is dissatisfied with the decision given by the Appointing Authority after considering recommendations of the EC, it shall, within a period of 30 days from receipt of the decision, give notice in writing to the Appointing Authority for appointment of arbitrator, specifying the issues which the Party is dissatisfied with the decision of the EC and final claims in Form **Annexure 'F2'**, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.
5. In case conciliation under sub-clause 3 is not resorted to and if the contractor (s) does /do not prefer his/their specific and final claims in writing in Form **Annexure 'F2'**, within a period of 90 days after receiving the intimation from RITES that the final bill is ready for payment, he/they will be deemed to have waived his/their claim (s) and the Employer shall be discharged and released of all liabilities under the contract in respect of these claims.
6. **Appointment of Arbitrator:** Except where the decision has become final, binding and conclusive in terms of Sub Clause (4) or (5) above, such disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Appointing Authority. The Arbitration Clause shall not be applicable in case the total value of all claims of the Contractor submitted in Form **Annexure 'F2'** exceeds Rs. 2,00,00,000/- (Rupees Two Crore only).
7. Sub Clause 6 shall not be applicable in case the dispute is (i) between two Public Sector Enterprises or (ii) between a Public Sector Enterprise and a Government Department. In such a case the provisions of Sub Clause 31 hereinafter shall apply.
8. The parties may waive off the applicability of sub-section 12(5) of Arbitration and Conciliation Act 1996; if they agree for such waiver, they may do so in writing, after dispute(s) having arisen between them, in the format given under **Annexure 'F3'** of these conditions.

9. Appointment of Arbitrator where applicability of Section 12 (5) of Arbitration and Conciliation Act. has been waived off:

- i. The Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a RITES Officer not below the level of a General Manager in RITES or retired officer of Executive Director or above and empanelled as an arbitrator with RITES. The Sole Arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority.
- ii For this propose, RITES will send a panel of at least four (4) names of RITES Officers of GM level or above which may also include the name(s) of retired RITES Officer(s) of ED level or above, empanelled to work as RITES Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority.
- iii Contractor will be asked to suggest to the Appointing Authority at least 2 (two) names out of the panel for appointment as Arbitrator within 30 days from the date of dispatch of the request by RITES. The Appointing Authority shall appoint Sole Arbitrator from the selected two names. The Appointing Authority shall complete this exercise of constituting the Arbitral Tribunal within 30 days of the receipt of the names from the contractor.

However, if the Contractor fails to suggest any two names out of the list given to him for appointment as sole arbitrator, as aforesaid, then the Appointing Authority may appoint any one out of the list referred in (ii) above, as the sole arbitrator which decision shall be binding on the Contractor.

10. Appointment of Arbitrator where applicability of section 12 (5) of A&C Act has not been waived off:

- i. The Arbitral Tribunal shall consist of a Sole Arbitrator who shall be an Officer retired from Central/State Government or a Central PSE (other than RITES Ltd.) not below the rank of SAG Officer, empanelled in RITES as arbitrators. For this purpose, the Appointing Authority will send a list of at least four (4) names from the said panel of retired officers duly indicating their retirement date to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the Appointing Authority.
- ii. Contractor will be asked to suggest at least 2 (two) names out of the list given to him for appointment as Arbitrator within 30 days from the date of dispatch of the list by the Appointing Authority. The Appointing Authority shall appoint one of them as the Sole Arbitrator. The Appointing Authority shall complete this exercise of constituting the Arbitral Tribunal within 30 days of the receipt of the names from the contractor.

However, if the Contractor fails to suggest any two names out of the list given to him for appointment as sole arbitrator, as aforesaid, then the Appointing Authority may appoint any one out of the list referred in (i) above, as the sole arbitrator which decision shall be binding on the Contractor.

11. If the arbitrator appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/her office or is unable or unwilling to perform his/her functions as arbitrator for any reason whatsoever or dies or in the opinion of the Appointing Authority, fails to act without undue delay, the Appointing Authority shall appoint new arbitrator to act in his/her place in the same manner in which the earlier arbitrator had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator.
12. The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The proceedings shall normally be conducted on the basis of documents and written statements.
13. Before proceeding into the merits of any dispute, the Arbitral Tribunal shall first decide and pass its orders over any plea submitted/objection raised by any party, if any regarding appointment of Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Tribunal to deal with the dispute (s) submitted to arbitration, applicability of time "limitation" to any dispute, any violation of agreed procedure regarding conduct of the arbitral proceeding or plea for interim measures of protection and record its orders in day to day proceedings. A copy of the proceedings duly signed by the Arbitrator shall be provided to the parties.
14. The claimant shall submit his claim stating the facts supporting the claim along with all the relevant documents and the relief remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.
15. The Other Party/Parties shall submit its/their counter - statement and counter claim(s), if any, within a period of 60 days of receipt copy of claims from Claimant/Tribunal unless extension has been granted by Tribunal
16. Place of Arbitration: The seat of arbitration shall be in Delhi. The venue of arbitration shall be the place as agreed in writing by both the parties and consented by the Sole Arbitrator.
17. Except dispute and claims preferred under sub-Clause (4) and (5) of Clause 25, no new claim shall be added during proceedings by either Party. Arbitrator will adjudicate only upon the matters referred to it by the Appointing Authority and not on Excepted Matters/Non-Arbitrable Disputes as per the Contract. However, a Party may file Counter Claim or amend or supplement the original claim or defence thereof during the course of arbitration proceeding subject to acceptance by Tribunal having due regards to the delay in making it.
18. **Obligation during pendency of Arbitration:** Work under the Contract shall unless otherwise directed by the Engineer-in-Charge continue during the Arbitration proceeding and no payment due or payable by the Employer shall be withheld on account of such proceedings, provided however, it shall be open for the Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.

19. While appointing arbitrator under Sub-Clause 9 and 10(i) above, due care shall be taken that he/she is not the one who had opportunity to deal with the matters to which the contract relates or who in the course of his/her duties as RITES Officer expressed views on all or any of the matters under dispute or differences. The proceedings of the Arbitral Tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that arbitrator, in the course of his/her service, had opportunity to deal with the matters to which the contract relates or who in the course of his/her duties expressed views on all or any of the matters under dispute.
20. The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that award could be inferred therefrom.
21. A party may apply for corrections of any computational errors, any typographical or clerical errors or any other errors of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.
22. A party may apply to the Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
23. Deleted
24. Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made. The arbitral tribunal shall indicate i) the Award amount payable on the date of award ii) the period within which it is to be paid and iii) Simple rate of interest applicable beyond the stipulated free period for making payment of Award amount.
25. The cost of arbitration shall be borne equally by the respective parties. The cost shall inter-alia include fee of the arbitrator(s) and expenses on facilities as per the following schedule and the fee shall be borne equally by both the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid. Notwithstanding anything contrary provided in any Act, Law or Agreement, the scale of Arbitrators' fee and expenses on facilities shall not exceed the following -

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S. No	Particulars	Fee payable per Arbitrator per case
1	Arbitrator's fee	Rs.20,000/- per day or Rs.10,000/- per half day subject to a maximum of Rs.3,00,000/- per case Notes: 1. The assessment of work shall be on the following basis : i. 'A day' means more than 2 1/2 hours continuous work on any date ii. 'A half day' means work of 2 1/2 hours or less on any date. iii. If two or more hearings of more than 2 1/2 hours continuous duration are held on any date, then the work shall be treated as equal to two days. 2. The above fee is for hearings and shall also apply to a maximum of three internal meetings held at RITES office by the arbitrator for finalization of award without the presence of the parties involved.
2	Studying of documents	Rs. 50,000/-
3	Secretarial assistance and incidental charges (telephone, fax, postage etc.)	Rs. 25,000/-
4	Charges for publishing/ declaration of award/ settlement agreement	Rs. 20,000/-
5	Other expenses (actuals against bills subject to the prescribed ceiling)	
	i) Travelling Expenses	Economy Class (by air), First Class AC (by train) and AC Car (by road)
	ii) Lodging and Boarding	a) Rs. 12,000/- per day of stay in hotel (in Metro cities) b) Rs. 8,000/- per day of stay in hotel (in other cities) c) Rs. 3000/- per day if the Arbitrator does not stay in hotel as mentioned in a) and b) above.
		Notes : 1) Lodging, Boarding and Travel Expenses shall be allowed for those members who are residing 100 Kms or more from the place of meeting. 2) Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad shall be considered as Metro cities.
6	Local Travel	Rs. 2000/- per day
7	Providing facilities of hearing rooms	To be arranged by Claimant / Respondent for alternate Hearings

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26. In case of a serving officer of RITES acting as arbitrator, the fee payable shall be 50% of the fee worked out at the above scale.

27. Further, the fee payable to the arbitrator would be governed by the above schedule irrespective of the fact whether the arbitrator is appointed by the Appointing Authority or by the Court of law.

28. Deleted

29. The Arbitrator shall be entitled to 25% extra fee if Award is decided within Six months of appointment.

30. Subject to the provisions of Arbitration and Conciliation Act 1996 as amended upto the date of receipt of tenders, and the rules there under and relevant clauses of General Conditions of contract (GCC) and any statutory modifications there of shall apply to the appointment of arbitrators and arbitration proceedings under this Clause.

31. In case the dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs) / Port Trusts inter se and also between CPSEs and Government Departments / Organizations (excluding disputes concerning Railways, Income Tax, Customs & Excise Departments), such dispute or difference shall be taken up by either party for resolution through AMRCD as mentioned in Government of India, Ministry of Heavy Industries & Public Enterprises, Department of Public Enterprises OM No. 4(1)/2013-DPE(GM) /FTS-1835 dated 22-05-2018 as amended.

32. It is a term of this Contract that the party invoking arbitration shall give a list of disputes with amount claimed in respect of each such dispute along with the notice for appointment of arbitrator in the form at **Annexure 'F2'**. It is a term of this Contract that "**Excepted matters**" or matters where the decision of the Engineer-in-Charge or any higher authority has been stipulated as "**Final and Binding**" in various Clauses of Contract, stand specifically excluded from the purview of disputed claims of the contractor.

33. It is also a term of this Contract that no person other than a person appointed by such Appointing Authority as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all. It is also a term of this Contract that if the Contractor does not make any specific and final claims in writing within 90 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the Contractor shall be deemed to have been waived and absolutely barred and the Employer shall be discharged and released of all liabilities under the Contract in respect of these claims.

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34. Signing of " No Claim" certificate

The Contractor shall not be entitled to make any claim or initiate any legal action, suit or proceedings whatsoever against the Employer under or by virtue of or arising out of the Contract, nor shall the Employer entertain or consider any such claim if made by the Contractor after he shall have signed a "No Claim Certificate" in favour of the Employer in such form as stipulated by the Employer, after the works are finally measured up. The Contractor shall be debarred from disputing the correctness of any item covered by the "No Claim Certificate" or demanding a reference to arbitration in respect thereof.

35. Parties to be impleaded in the conciliation and arbitration proceedings

In case of any claims or legal proceedings by the Contractor, the Employer as well as RITES Ltd acting as Agent to the Employer will be impleaded as parties to the Conciliation or Arbitration or legal proceedings.

36. Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended and any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause, except for cases falling under Sub Clause 31.
37. It is also a term of this Contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases the arbitrator shall give reasons for the award.
38. It is also a term of the Contract that the arbitrator shall be deemed to have entered on the reference on the date he/she issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties.

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2. Clause 46 : GENERAL OBLIGATIONS OF THE CONTRACTOR

The existing sub-clause 46.17 may be deleted and replaced with the following :


Court Jurisdiction

Unless otherwise specified in 'Schedule F', the Courts in Delhi, India shall have the exclusive jurisdiction to entertain any suit, application or other proceedings in respect of anything arising under this Contract or any award or awards made by the Arbitrator where Arbitration & Conciliation Act 1996 is applicable shall be filed in the concerned Courts in Delhi only.

No. RITES/CPC/GCC 2019/Correction Slip 3

Date: 16.09.2020

The above correction to General Conditions of Contract for Works, July 2019 is issued with approval of the competent authority.


16/9/2020
(Pawan Chowdhry)
ED (P&C-CP) & Head
Contract Policy Cell

All Divisional Heads and SBU Heads : As per standard mailing list of dispatch

Copy to:

1. Secy to CMD/DP/DF/DT/. The above correction slip may be inserted in the copy of GCC for works, July 2019, for information of CMD and Directors
2. CVO
3. AGM/IT for getting uploaded on RITES website (Tender/RITES-GCC July 2019/Correction slip-3.