

Standard Template for Bank Guarantee for Payment of Arbitral Award Amount

The Chairman,

WHEREAS:

- (A) [name and address of contractor] (hereinafter called the "Contractor") has executed a contract (hereinafter called the "Contract") with the [name and address of the Govt. Department/PSU], (hereinafter called the "Employer") for the execution of the ***** project/ work, subject to and in accordance with the provisions of the Contract.
- (B) In accordance with Clause ----- of the Contract, the Contractor/ Employer referred a dispute with the Employer/ Contractor to the arbitration and the arbitration have made and arbitral award dated ----- for an amount of Rs. ----- in favour of the Contractor.
- (C) The Employer has challenged the aforesaid arbitral award in a court of law. However, the Employer has to pay 75% of this arbitral award amount, along with the interest amount, to the Contractor against a Bank Guarantee without prejudice to the final order of the court in the matter under challenge in terms of NITI Aayog O.M No. N-14070/14/2016-PPPAU dated Sept 5, 2016.
- (D) In consideration of the above, the Contractor has approached the Bank with a request to issue a guarantee in favour of the employer and We, _____ through our branch at _____ (the "Bank ") have agreed to furnish this bank guarantee (herein after called the "Guarantee") for an amount of Rs. _____ (the "Guarantee Amount"), which is 75% of the arbitral award along with the interest amount.

NOW, THEREFORE, the Bank hereby unconditionally and irrevocably guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably undertakes to pay to the Employer, upon its first written demands, and without any demur, reservation, recourse, contest or protest or any dispute/litigation between the Contractor and the employer, and without any reference to the Contractor, such sum or sums up to an aggregate sum not exceeding Guarantee Amount as the Employer shall claim.
2. A written demand shall be a letter from the Authority, under the hand of an officer not below the rank of _____, stating that the arbitral award dated _____ has been set aside/modified by the court or has been decided at an amount less than 75% of the arbitral award inclusive of interest shall be conclusive, final and binding on the Bank.

3. Any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under the Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Employer to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 6 below and unless a demand or claim in writing is made by the Employer on the Bank and received by the Bank within the validity of this Guarantee, all rights of the Employer under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
6. The Guarantee shall cease to be in force and effect after _____ irrespective of the fact whether the Bank Guarantee is returned or not by the Employer.
7. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Employer in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
8. This Guarantee shall come into force with immediate effect and shall remain in force and effect for up the end _____ month in the year _____ or until it is released earlier by the Employer pursuant to the provisions of the Contract.
9. Notwithstanding anything contained herein,
 - i. Bank's liability under the Bank Guarantee shall not exceed Rs. _____ (Rupees _____ only).
 - ii. The Bank Guarantee shall be valid upto _____.
 - iii. The Bank is liable to pay the guarantee amount or any part thereof under this Bank Guarantee only and only on compliance of Para no. 2 above and also if a written claim or demand from the Employer is served upon and received by the Bank on or before _____ (Expiry date of Bank Guarantee).

Signed and sealed this _____ day of _____, 20 _____ at _____

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the head office of the Bank as well as of the issuing branch should be mentioned on the covering letter of issuing branch.
- iii. In case of a Concession Agreement for a Public Private Partnership (PPP) project, the words "Contract", "Contractor" and "Employer" may be substituted by "Agreement", "Concessionaire" and "Authority" respectively.