



DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

MINISTRY OF HIGHWAYS, PORTS & SHIPPING

ROAD DEVELOPMENT AUTHORITY

**CHINA DEVELOPMENT BANK FUNDED IMPROVEMENT
AND REHABILITATION OF
PRIORITY ROAD PROJECT 3 (PRP3)**

CIVIL WORK CONTRACT NO: RDA/RNIP/PRP3/PHASE-1/PACKAGE-1

Contract Component No.	Description
RDA/RNIP/PRP3/Phase1/Package-1/C1	Kiriella - Nedurana - Eheliyagoda Road (0.00-14.75 km)
RDA/RNIP/PRP3/Phase1/Package-1/C2	Ratnapura - Palawela - Karawita Road (0.00-21.28 km)
RDA/RNIP/PRP3/Phase1/Package-1/C3	Ratnapura - Wewalwatta Road (0.00-27.5 km)
RDA/RNIP/PRP3/Phase1/Package-1/C4	Veyangoda - Ruwanwella Road (12.4-32.2 km) - Road Package
	Veyangoda - Ruwanwella Road (12.4-32.2 km) - Bridge Package

CONTRACTOR

**CHINA NATIONAL AERO - TECHNOLOGY INTERNATIONAL
ENGINEERING CORPORATION (CATIC - ENG)**

VOLUME 2
The Particular Conditions
The General Conditions of Contract

DECEMBER 2013

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VOLUME 1

- (a) The Contract Agreement
- (b) The Letter of Acceptance
- (c) The Letter of Tender
- (d) Appendix to Tender

VOLUME 2

- (e) The Particular Conditions
- (f) The General Conditions of Contract

VOLUME 3

- (g) Technical Specification - Special Provisions and Appendix to Special Provisions
- (h) The Standard Specifications

VOLUME 4

- (i) The Drawings

VOLUME 5

- (j) Scope of Work
- (k) The Preamble to the Bill of Quantities
- (l) The Priced Bill of Quantities and Schedules

VOLUME 2

CONTENTS

(e) The Particular Conditions.....

(f) The General Conditions of Contract.....

THE PARTICULAR CONDITIONS

The Particular Conditions of Contract (PCC)

The following Particular Conditions shall supplement the General Conditions. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

1 General Provisions

1.1 Definitions

Substitute the Sub-Clause 1.1.6.8 with the following.

"Unforeseeable" means not reasonably foreseeable and against which adequate preventive precautions could not reasonably be taken by an experienced contractor by the date for submission of the Tender.

1.12 Confidential Details

Add the following as Second paragraph to Sub-Clause 1.12.

The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out the Contractor's obligations under the Contract or to comply with applicable Laws. The Contractor shall not publish or disclose any particulars of the Works without the previous agreement of the Employer. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

2 The Employer

2.4 Employer's Financial Arrangements

In the last sentence of the first para of Sub-Clause 2.4, delete the words "If the employer intends to make" and replace with words "Before the Employer makes".

3 The Engineer

3.1 Engineer's Duties and Authority

Add the following at the end of Sub-Clause 3.1.

The following provisions shall apply:

The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clause of these Conditions:

- (a) Sub-Clause 4.12: Agreeing or determining an extension of time and/or additional cost.
- (b) Sub-Clause 13.1: Instructing a Variation, except:
 - (i) in an emergency situation as determined by the Engineer, or
 - (ii) if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Appendix to Tender.
- (c) Sub-Clause 13.3: Approving a proposal for Variation submitted by the Contractor in accordance with Sub Clause 13.1 or 13.2.
- (d) Sub-Clause 13.4: Specifying the amount payable in each of the applicable currencies.

- (e) Sub-Clause 20.1: Approving a claim submitted by the Contractor.
- (f) Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer.

3.4 Replacement of the Engineer

Notwithstanding Sub-Clause 3.1, if the Employer intends to replace the Engineer, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. If the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to raise reasonable objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection.

4 The Contractor**4.1 Contractor's General obligations**

Insert the following at the end of the Sub-Clause 4.1.

The contractor is required to carry out the design of all components of the work in the contract.

The contractor is required to carry out improvements to the geometry of the road within the existing right of way unless otherwise specified. The topographical survey, level survey and cross section survey necessary for this work is also required to be carried out by the contractor. The proposed improvements to the geometry require the approval of the Engineer.

A road condition investigation consisting of visual inspection, DCP testing & trial pits with materials testing is required to be done by the contractor. Based on this investigation, sections of road that require rehabilitation over and above the pavement thickness shown in the bid documents is to be identified by the contractor. The additional thicknesses of construction proposed (if any) require the approval of the Engineer.

The contractor will design bridges & culverts identified for widening and reconstruction. The contractor will also design all protection work in the form of gabion walls, retaining walls, toe walls etc. These designs require the approval of the Engineer.

The contractor will prepare the working drawings resulting from the above and submit same to the Engineer for approval.

The contractor will set out the centre line in accordance with the approved drawings.

4.2 Performance Security

Insert the following at the end of the Sub-Clause 4.2.

Performance Security shall be an on-demand unconditional Bank Guarantee in the form and from a bank acceptable to the Employer. If the Performance Security is issued by a foreign bank situated outside Sri Lanka, it shall be endorsed by a bank in Sri Lanka acceptable to the Employer to make it enforceable in Sri Lanka. This endorsement is unnecessary if the entity that issues the guarantee is an Export Credit Agency of any foreign government or a reputed International Financier acceptable to the Central Bank of Sri Lanka;

4.3 Contractor's Representative

Substitute the last paragraph of Sub-Clause 4.3 with the following paragraph.

The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 (Law and Language). If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

4.7 Setting Out

Add a Paragraph (c) as follows:

(c) When setting out any part of the Works, the Contractor shall give the Engineer sufficient notice to enable the Engineer to check the setting out before the Contractor commences construction of the part concerned.

4.9 Quality Assurance

Delete Sub-Clause 4.9, and replace with the following :

Quality control by the Engineer will apply.

4.10 Site Data

Insert following the first paragraph of Sub-Clause 4.10:

Data made available by the Employer in accordance with the preceding paragraph shall be deemed to include data listed elsewhere in the contract as open for inspection at the address stipulated in the Contract.

7 Plant, Material and Workmanship**7.1 Manner of Execution**

Add the following subparagraph at the end of Sub-Clause 7.1

The Contractor is encouraged to use Goods from sources within the Country, to the extent practicable and reasonable.

8 Commencement, Delays and Suspension**8.1 Commencement of Work**

Substitute the 2nd sentence of the 1st paragraph of Sub-Clause 8.1 with the following sentence.

The commencement date shall be fixed after the signing of the loan agreement between the Government of Sri Lanka and the Bank extending the loan and 21 days after the receipt of the first advance payment by the contractor.

8.3 Programme

Delete Sub paragraph (a) of Sub Clause 8.3 and replace with the following:

(a) the order in which the Contractor intends to carry out the Works including;

- (i) A detailed works programme indicating the anticipated timing of each stage of design and construction. The work programme shall be prepared using MS Project or similar Project Management software.
- (ii) A detailed mobilization programme with all principal mobilization events including the anticipated timing of procurement, delivery to site, construction, erection and commissioning, provision of Contractors' Engineers facilities, mobilization of key personnel, etc. This programme will provide the basis for the stage release of advance payments as prescribed under Clause 14.2.

Extend Sub paragraph (d) of Sub Clause 8.3 with the following:

- (iii) a supplementary programme in the form of a "time/location" or "Vector" diagram on which the principal activities are displayed against which, corresponding quantities and equipment requirements are detailed; and

Add the following sub paragraph (e) at the end of sub paragraph (d)

- (e) The Contractor shall provide to the Engineer a detailed cash flow estimate, in monthly periods, of all payments in the Contract to which the Contractor is entitled to in his opinion. He shall subsequently provide revised cash flow estimates at monthly intervals as and when necessary, if required to do so by the Engineer.

Add the following as a separate paragraph at the end of sub paragraph (e)

The submission to and consent by the Engineer of such programmes or the provision of such general descriptions of cash flow estimates shall not relieve the Contractor from any of his duties or responsibilities under the Contract.

8.4 Extension of time for Completion

Delete the words "entitled to an extension of time" and substitute "entitled to have his claim for an extension of time considered", in Clause 8.4.

Add at the end of Sub-Clause 8.4

Exceptionally adverse climatic conditions mentioned in Sub-Clause 8.4 (c) means:

- (A) For the purposes of Sub-Clause 8.4 (c), it is agreed that "exceptionally adverse climatic conditions" shall be exclusively where:
- (i) In any single day, the rainfall measured at the nearest meteorological station, exceeds the 98 percentile value of the daily rainfall for that calendar month for that station, as calculated using the last 120 calendar months of that station's rainfall records or, in the case where the station's rainfall records do not extend back as far as 120 months, then that station's available records, and
 - (ii) work is in progress that day in that station's zone of influence.
- (B) If the Contractor is of the opinion that exceptionally adverse climatic conditions have occurred on any day then he shall notify the Engineer within 42 days of the event and shall supply relevant confirmatory rainfall data. If the Contractor does not so inform the Engineer then no extension of the Time for Completion in relation to that event will be considered or allowed.
- (C) Within 28 days of receiving the Contractor's notification of exceptionally adverse climatic conditions the Engineer shall determine the amount, if any, of the extension of the Time for Completion, taking due account of the nature and extent of the work affected, and shall notify the Contractor accordingly with a copy to the Employer. If the Engineer does not so make his determination then the contractor shall be entitled to one day's extension of the Time for Completion in relation to that event.
- (D) Any delay caused by exceptionally adverse climatic conditions will be "no fault delay" and cost will be deemed to lie where they fall. That is, in the case of such delay the Employer agrees to forego the right to claim liquidated damages for the period of delay and the Contractor agrees to forego any right to claim additional costs arising from such delay.

8.5 Delays Caused by Authorities

Add the following at the end of the paragraph:

It is understood and mutually agreed that the Contractor has considered in his tender that on certain stretches of road where earthwork is involved in cutting and filling for widening of the road platform it is not practicable to shift Electricity, Telegraph posts etc. and divert any underground services until the entire earthwork has been completed; therefore the Contractor will be given possession of the Site on these stretches and carry out the earthwork with the posts or underground services in their existing position and that no additional monetary compensation nor extension of time for completion will be allowed by the Engineer for delays, inconvenience or damage sustained by the Contractor.

10 Employer's Taking Over

10.1 Taking Over of the Works and Sections

Add the following after first paragraph of 10.1

In no circumstance will any part of the Permanent Works be considered substantially complete until at least the following components, if provided in the Contract, are complete to the satisfaction of the Engineer:

- (i) Bituminous surfacing
- (ii) Road shoulders
- (iii) Side drains
- (iv) Culverts & Bridges
- (v) Retaining walls & Masonry work
- (vi) Grassing & slope protection
- (vii) Safety measures

In exceptional circumstances, and where the Engineer is of the view that the safety of public and the Works are not likely to be placed at under risk and, at his sole direction, the Engineer may allow the following components, if specified, to be completed within the Defects Liability Period:

- (i) Kilometre posts

After second paragraph, add additional paragraph as follows:

Before the Works are taken over in accordance with this Clause 10, the Contractor shall supply all drawings approved as appropriate of the work as-built. Unless otherwise agreed, the Work shall not be considered to be completed for the purpose of Taking Over until such approved drawings have been supplied to the Employer.

13 Variations and Adjustments

13.8 Adjustments for Changes in Cost

Delete the text entirely and replace with:

No price adjustment shall apply to foreign currency portion of the contract price payable to the Contractor.

The amounts computed from the formula given under this sub-clause in respect of the rise or fall in the base cost of Labour, Materials, Plant and other inputs to the Works, shall be added to or deducted from the payment to the Contractor if the Contract Price is subjected to adjustments due to fluctuation of prices and stated in the Appendix to Tender.

(a) The adjustment to the Contract Price in respect of changes in Cost and legislation for local currency shall be determined from following formula,

$$F = \frac{0.966(V - V_{na})}{100} \frac{\sum P_x (I_{xc} - I_{xb})}{I_{xb}} \text{ All inputs}$$

Where:

- F = Price adjustment for the period concerned
- V = Current valuation of work done for the period.
- V_{na} = Value of non adjustable element. or value of work not considered for price variation.
- P_x = Input percentage of input named X.
- I_{xc} = Current indices of input X.
- I_{xb} = Base indices of input X.

No other adjustment of the Contract Price on account of

fluctuations off inputs shall be made, notwithstanding the fact that the contractor has to pay additional amount under special circumstances.

- (b) The "Input Percentage" means the percentage proportionate contribution of any input in terms of cost of the construction based on the prices prevailing on one month prior to submission of the tender and listed under Clause numbered 13.8 in the Appendix to Tender.
- (c) The "Non adjustable elements" means,
- (i) The work done under the BOQ items that shall not be considered for valuation of price adjustment which are listed under Clause 13.8 in the Appendix to Tender.
- (ii) Extra works or additional works carried out by the Contractor on orders of the Engineer and are valued under Clause 13 based on the prices prevailing at the time of execution.
- (iii) Works done under Daywork rates.
- (d) The "Current Valuation" means the gross value of Permanent Work executed during the current valuation period.
- (e) The "Indices" means the monthly indices published by Institute for Construction Training and Development (ICTAD) for different Inputs.
- (f) "Base Indices" means the indices for the input, prevailing one month prior to the latest date for submission of tenders.
- (g) In the case of first interim bill, the current indices for the purpose of calculation of price adjustment shall be taken as the indices prevailing on first month after the commencement of the contract. For any other interim claim or for the final claim the current indices shall be taken as the indices prevailing for the calendar month, one month after the previous valuation was done.

If the Contractor fails to complete the Works within the time for completion prescribed under Sub-Clause 8.2 (*Time for Completion*) or 8.4 (*Extension of Time for Completion*) the price adjustment for the work performed after the due date of completion as described above shall be made using the current indices prevailed at the due date for completion.

If, after the date 28 Days prior to the latest date for submission of Bids for the Contract, there are changes in the country in which the Works are being or are to be executed changes to any Statute, Ordinance, Decree, or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or

by-law which causes additional or reduced cost to the Contractor, other than under the preceding sub-clauses of this clause, in the

execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the Price Adjustment Formula in accordance with the provisions of this Clause.

14 Contract Price and Payment

14.2 Advance Payment Substitute the sub- clause 14.2 with the following:

- (a) The Employer will make an interest-free advance payment to the Contractor exclusively for the costs of mobilisation in respect of the Works in an amount equivalent to 15 (Fifteen) per cent of the Accepted Contract Amount named in the Letter of Acceptance, payable in proportions of foreign and local currencies of the Accepted Contract Amount. Payment of such advance amount will be due under separate certification by the Engineer after (i) execution of the Form of Agreement by the parties hereto; (ii) provision by the Contractor of the performance security in accordance with Sub-Clause 4.2; (iii) Submission of Programme, cash flow estimate and methodology as per clause 8.3 (iv) completion of mobilization {except mobilization of items provided under sub paragraphs (b) and (c) below} as set out in the detailed mobilization schedule which the contractor be required to submit with his Bid and which identifies key personnel and key mobilization targets and (v) provision by the Contractor of an on-demand unconditional Bank Guarantee in the form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. If the Bank Guarantee is issued by a foreign bank situated outside Sri Lanka, it shall be endorsed by a bank in Sri Lanka acceptable to the Employer to make it enforceable in Sri Lanka. This endorsement is unnecessary if the entity that issues the guarantee is an Export Credit Agency of any foreign government or a reputed International Financier acceptable to the Central Bank of Sri Lanka; Such bank guarantee can be split up into 4 guarantees for equal amounts to be released on repayments. Such bank guarantee shall remain effective until the advance payment has been repaid pursuant to the last paragraph below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates issued in accordance with this Clause.
- (b) In addition to the advance mentioned in sub para (a) above, the Employer will pay another interest free advance on satisfactory evidence of Letter of Credit or other financial instrument for purchase or leasing of stone crushers, pug mills, bitumen distributors & aggregate spreaders, asphalt concrete hot-mix plants and pavers as applicable to the contract, or in the case of such plant and equipment already owned by the contractor, satisfactory evidence of condition and availability for the project e.g. photographic evidence and certification from the Employer of the current or previous project on which the plant or equipment was deployed, and

subject to the same terms and conditions specified in paragraph (a) above. The maximum of such advance shall be 10 (ten) percent of the Accepted Contract Amount. This advance shall be further subject to the condition that (i) such equipment is considered by the Engineer to be necessary for the works, (ii) such equipment are in working order

- (c) In addition to the advance mentioned in sub para (a) and (b) above, the Employer will pay one more interest free advance on erection and commissioning and calibration of plant subject to the same terms and conditions specified in paragraph (a) above. The maximum of such advance shall be 5 (Five) percent of the Accepted Contract Amount.
- (d) The advance payment under (a) (b) and (c) above shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with this Clause. Deductions shall commence in the next Interim Payment Certificate following that in which the total of all interim payments certified to the Contractor has reached 10 (Ten) percent of the Accepted Contract Amount and shall be made at an amortization rate calculated in accordance with the following formula
- $$Y = \frac{(X - 0.1) \times Z}{(0.8 - 0.1)}$$
- Y = Cumulative repayment
Z = Total amount of Advance
X = Percentage value of cumulative work done
- in the types and proportionate amounts of currencies of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when 80% of the Accepted Contract Amount has been certified for payment.
- (e) The advance loan shall be used by the Contractor exclusively for the purposes mentioned above in sub paragraphs (a), (b) and (c). Should the Contractor misappropriate any portion of the advance loan, it shall become due and payable immediately, and no further loan will be made to the Contractor thereafter.

14.7 Payment

Delete the words "in the payment country (for this currency) specified in the Contract" of the last sentence of the Sub-Clause 14.7.

And add the following at the end of Sub-Clause 14.7.

However the above payments shall become due only upon receipt of the required funds from the Bank extending the loan to the Employer.

18 Insurance

18.1 General Requirements for Insurances

Add the following at the end of Sub-Clause 18.1:

The Contractor shall place all insurance relating to the contract with insurers in Sri Lanka acceptable to the Employer or in the alternative with insurers outside Sri Lanka provided such insurance is endorsed

by an insurer in Sri Lanka acceptable to the Employer to make it enforceable in Sri Lanka.

20 Claim, Disputes and Arbitration**20.6 Arbitration**

Delete the word 'international' from the 2nd line of the first paragraph.

Delete the contents of sub paragraph (a) and insert the following in its place

- (b) The dispute shall be finally settled under the UNCITRAL rules of arbitration. Arbitration proceedings shall be conducted in Colombo, Sri Lanka.

ADDITIONAL CLAUSES**21 Taxation****21.1 Foreign Taxation**

The priced bid by the Contractor shall include all taxes, duties and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the Contractor's Equipment, Plant, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.

21.2 Local taxation

All duties, taxes and other levies (other than custom duties at importation and Value Added Tax) payable by the Contractor under the Contract, or for any other cause, as of the days 28 days prior to the latest date for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder. Nothing in the contract shall relieve the contractor from his responsibility to pay any tax that may be levied in Sri Lanka on profits made by him in respect of the Contract.

Value added Tax (VAT) payable by the contractor shall be shown separately in the summary of the bid.

21.3 Personal Income Taxes

The Contractor's staff, and labour will be liable to pay personal income taxes in Sri Lanka in respect of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations

21.4 Custom Duties

Equipment, machinery, vehicles, materials, all accessories and all other consumables to be used in the civil works, imported to Sri Lanka by the contractor, will be exempt from custom duties subject to the condition that all such equipment, machinery, vehicles, materials, accessories and un-used consumables at the end of the contract will be exported by the contractor.

22. Drawings and Photographs of the works

The Contractor shall not disclose details of drawings furnished to him and works on which he is engaged without the prior approval of the Engineer in writing. No photograph of the works or any part thereof or equipment employed thereon shall be taken or permitted by the Contractor to be taken by any of his employees or any employees of his sub-contractors without the prior approval of the Engineer in writing and no such photographs shall be published or otherwise circulated without the approval for the Engineer in writing.

THE GENERAL CONDITIONS OF CONTRACT

GENERAL CONDITIONS

**GUIDANCE FOR THE
PREPARATION OF
PARTICULAR CONDITIONS**

**FORMS OF LETTER OF
TENDER, CONTRACT
AGREEMENT AND
DISPUTE ADJUDICATION
AGREEMENT**

Conditions of Contract
for **CONSTRUCTION**

General Conditions

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



ERRATA to the First Edition 1999 inside back cover

General Conditions

CONTENTS

1	GENERAL PROVISIONS	1
1.1	Definitions	
1.2	Interpretation	
1.3	Communications	
1.4	Law and Language	
1.5	Priority of Documents	
1.6	Contract Agreement	
1.7	Assignment	
1.8	Care and Supply of Documents	
1.9	Delayed Drawings or Instructions	
1.10	Employer's Use of Contractor's Documents	
1.11	Contractor's Use of Employer's Documents	
1.12	Confidential Details	
1.13	Compliance with Laws	
1.14	Joint and Several Liability	
2	THE EMPLOYER	8
2.1	Right of Access to the Site	
2.2	Permits, Licences or Approvals	
2.3	Employer's Personnel	
2.4	Employer's Financial Arrangements	
2.5	Employer's Claims	
3	THE ENGINEER	10
3.1	Engineer's Duties and Authority	
3.2	Delegation by the Engineer	
3.3	Instructions of the Engineer	
3.4	Replacement of the Engineer	
3.5	Determinations	
4	THE CONTRACTOR	12
4.1	Contractor's General Obligations	
	Performance Security	
	Contractor's Representative	
	Subcontractors	
	Assignment of Benefit of Subcontract	



i
s f

- 4.6 Co-operation
- 4.7 Setting Out
- 4.8 Safety Procedures
- 4.9 Quality Assurance
- 4.10 Site Data
- 4.11 Sufficiency of the Accepted Contract Amount
- 4.12 Unforeseeable Physical Conditions
- 4.13 Rights of Way and Facilities
- 4.14 Avoidance of Interference
- 4.15 Access Route
- 4.16 Transport of Goods
- 4.17 Contractor's Equipment
- 4.18 Protection of the Environment
- 4.19 Electricity, Water and Gas
- 4.20 Employer's Equipment and Free-Issue Material
- 4.21 Progress Reports
- 4.22 Security of the Site
- 4.23 Contractor's Operations on Site
- 4.24 Fossils

5 NOMINATED SUBCONTRACTORS

- 5.1 Definition of "nominated Subcontractor"
- 5.2 Objection to Nomination
- 5.3 Payments to nominated Subcontractors
- 5.4 Evidence of Payments

6 STAFF AND LABOUR

- 6.1 Engagement of Staff and Labour
- 6.2 Rates of Wages and Conditions of Labour
- 6.3 Persons in the Service of Employer
- 6.4 Labour Laws
- 6.5 Working Hours
- 6.6 Facilities for Staff and Labour
- 6.7 Health and Safety
- 6.8 Contractor's Superintendence
- 6.9 Contractor's Personnel
- 6.10 Records of Contractor's Personnel and Equipment
- 6.11 Disorderly Conduct

7 PLANT, MATERIALS AND WORKMANSHIP

- 7.1 Manner of Execution
- 7.2 Samples
- 7.3 Inspection
- 7.4 Testing
- 7.5 Rejection
- 7.6 Remedial Work
- 7.7 Ownership of Plant and Materials
- 7.8 Royalties

COMMENCEMENT, DELAYS AND SUSPENSION

- Commencement of Works
- Time for Completion

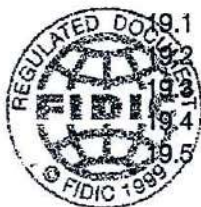


8.3	Programme	
8.4	Extension of Time for Completion	
8.5	Delays Caused by Authorities	
8.6	Rate of Progress	
8.7	Delay Damages	
8.8	Suspension of Work	
8.9	Consequences of Suspension	
8.10	Payment for Plant and Materials in Event of Suspension	
8.11	Prolonged Suspension	
8.12	Resumption of Work	
9	TESTS ON COMPLETION	29
9.1	Contractor's Obligations	
9.2	Delayed Tests	
9.3	Retesting	
9.4	Failure to Pass Tests on Completion	
10	EMPLOYER'S TAKING OVER	30
10.1	Taking Over of the Works and Sections	
10.2	Taking Over of Parts of the Works	
10.3	Interference with Tests on Completion	
10.4	Surfaces Requiring Reinstatement	
11	DEFECTS LIABILITY	32
11.1	Completion of Outstanding Work and Remedying Defects	
11.2	Cost of Remedying Defects	
11.3	Extension of Defects Notification Period	
11.4	Failure to Remedy Defects	
11.5	Removal of Defective Work	
11.6	Further Tests	
11.7	Right of Access	
11.8	Contractor to Search	
11.9	Performance Certificate	
11.10	Unfulfilled Obligations	
11.11	Clearance of Site	
12	MEASUREMENT AND EVALUATION	35
12.1	Works to be Measured	
12.2	Method of Measurement	
12.3	Evaluation	
12.4	Omissions	
13	VARIATIONS AND ADJUSTMENTS	36
13.1	Right to Vary	
13.2	Value Engineering	
13.3	Variation Procedure	
13.4	Payment in Applicable Currencies	
13.5	Provisional Sums	
13.6	Daywork	
13.7	Adjustments for Changes in Legislation	
13.8	Adjustments for Changes in Cost	



st

14	CONTRACT PRICE AND PAYMENT	40
14.1	The Contract Price	
14.2	Advance Payment	
14.3	Application for Interim Payment Certificates	
14.4	Schedule of Payments	
14.5	Plant and Materials intended for the Works	
14.6	Issue of Interim Payment Certificates	
14.7	Payment	
14.8	Delayed Payment	
14.9	Payment of Retention Money	
14.10	Statement at Completion	
14.11	Application for Final Payment Certificate	
14.12	Discharge	
14.13	Issue of Final Payment Certificate	
14.14	Cessation of Employer's Liability	
14.15	Currencies of Payment	
15	TERMINATION BY EMPLOYER	47
15.1	Notice to Correct	
15.2	Termination by Employer	
15.3	Valuation at Date of Termination	
15.4	Payment after Termination	
15.5	Employer's Entitlement to Termination	
16	SUSPENSION AND TERMINATION BY CONTRACTOR	49
16.1	Contractor's Entitlement to Suspend Work	
16.2	Termination by Contractor	
16.3	Cessation of Work and Removal of Contractor's Equipment	
16.4	Payment on Termination	
17	RISK AND RESPONSIBILITY	50
17.1	Indemnities	
17.2	Contractor's Care of the Works	
17.3	Employer's Risks	
17.4	Consequences of Employer's Risks	
17.5	Intellectual and Industrial Property Rights	
17.6	Limitation of Liability	
18	INSURANCE	53
18.1	General Requirements for Insurances	
18.2	Insurance for Works and Contractor's Equipment	
18.3	Insurance against Injury to Persons and Damage to Property	
18.4	Insurance for Contractor's Personnel	
19	FORCE MAJEURE	56
19.1	Definition of Force Majeure	
19.2	Notice of Force Majeure	
19.3	Duty to Minimise Delay	
19.4	Consequences of Force Majeure	
19.5	Force Majeure Affecting Subcontractor	



19.6 Optional Termination, Payment and Release
19.7 Release from Performance under the Law
20 CLAIMS, DISPUTES AND ARBITRATION 58

20.1 Contractor's Claims
20.2 Appointment of the Dispute Adjudication Board
20.3 Failure to Agree Dispute Adjudication Board
20.4 Obtaining Dispute Adjudication Board's Decision
20.5 Amicable Settlement
20.6 Arbitration
20.7 Failure to Comply with Dispute Adjudication Board's Decision
20.8 Expiry of Dispute Adjudication Board's Appointment

APPENDIX

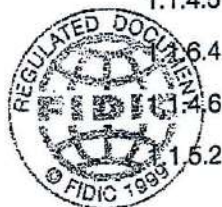
GENERAL CONDITIONS OF DISPUTE ADJUDICATION AGREEMENT 63

INDEX OF SUB-CLAUSES i



Definitions listed alphabetically

1.1.4.1	Accepted Contract Amount	1.1.4.7	Interim Payment Certificate
1.1.1.9	Appendix to Tender	1.1.6.5	Laws
1.1.3.1	Base Date	1.1.1.3	Letter of Acceptance
1.1.1.10	Bill of Quantities	1.1.1.4	Letter of Tender
1.1.3.2	Commencement Date	1.1.4.8	Local Currency
1.1.1.1	Contract	1.1.5.3	Materials
1.1.1.2	Contract Agreement	1.1.2.1	Party
1.1.4.2	Contract Price	1.1.4.9	Payment Certificate
1.1.2.3	Contractor	1.1.3.8	Performance Certificate
1.1.6.1	Contractor's Documents	1.1.6.6	Performance Security
1.1.5.1	Contractor's Equipment	1.1.5.4	Permanent Works
1.1.2.7	Contractor's Personnel	1.1.5.5	Plant
1.1.2.5	Contractor's Representative	1.1.4.10	Provisional Sum
1.1.4.3	Cost	1.1.4.11	Retention Money
1.1.6.2	Country	1.1.1.7	Schedules
1.1.2.9	DAB	1.1.5.6	Section
1.1.3.9	day	1.1.6.7	Site
1.1.1.10	Daywork Schedule	1.1.1.5	Specification
1.1.3.7	Defects Notification Period	1.1.4.12	Statement
1.1.1.6	Drawings	1.1.2.8	Subcontractor
1.1.2.2	Employer	1.1.3.5	Taking-Over Certificate
1.1.6.3	Employer's Equipment	1.1.5.7	Temporary Works
1.1.2.6	Employer's Personnel	1.1.1.8	Tender
1.1.2.4	Engineer	1.1.3.6	Tests after Completion
1.1.2.10	FIDIC	1.1.3.4	Tests on Completion
1.1.4.4	Final Payment Certificate	1.1.3.3	Time for Completion
1.1.4.5	Final Statement	1.1.6.8	Unforeseeable
1.1.6.4	Force Majeure	1.1.6.9	Variation
1.1.4.6	Foreign Currency	1.1.5.8	Works
1.1.5.2	Goods	1.1.3.9	year



General Conditions

1 General Provisions

1.1 Definitions

In the Conditions of Contract ("these Conditions"), which include Particular Conditions and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

- 1.1.1.1 "Contract" means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.
- 1.1.1.2 "Contract Agreement" means the contract agreement (if any) referred to in Sub-Clause 1.6 [Contract Agreement].
- 1.1.1.3 "Letter of Acceptance" means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression "Letter of Acceptance" means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.
- 1.1.1.4 "Letter of Tender" means the document entitled letter of tender, which was completed by the Contractor and includes the signed offer to the Employer for the Works.
- 1.1.1.5 "Specification" means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.
- 1.1.1.6 "Drawings" means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.
- 1.1.1.7 "Schedules" means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.
- 1.1.1.8 "Tender" means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract.
- 1.1.1.9 "Appendix to Tender" means the completed pages entitled appendix to tender which are appended to and form part of the Letter of Tender.
- 1.1.1.10 "Bill of Quantities" and "Daywork Schedule" mean the documents so named (if any) which are comprised in the Schedules.



**1.1.2
Parties and Persons**

- 1.1.2.1 **"Party"** means the Employer or the Contractor, as the context requires.
- 1.1.2.2 **"Employer"** means the person named as employer in the Appendix Tender and the legal successors in title to this person.
- 1.1.2.3 **"Contractor"** means the person(s) named as contractor in the Letter Tender accepted by the Employer and the legal successors in title to this person(s).
- 1.1.2.4 **"Engineer"** means the person appointed by the Employer to act as Engineer for the purposes of the Contract and named in the Appendix Tender, or other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [*Replacement of the Engineer*].
- 1.1.2.5 **"Contractor's Representative"** means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [*Contractor's Representative*], who acts on behalf of the Contractor.
- 1.1.2.6 **"Employer's Personnel"** means the Engineer, the assistants referred to in Sub-Clause 3.2 [*Delegation by the Engineer*] and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer's Personnel.
- 1.1.2.7 **"Contractor's Personnel"** means the Contractor's Representative and other personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor, and any other personnel assisting the Contractor in the execution of the Works.
- 1.1.2.8 **"Subcontractor"** means any person named in the Contract as subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.
- 1.1.2.9 **"DAB"** means the person or three persons so named in the Contract, or other person(s) appointed under Sub-Clause 20.2 [*Appointment of the Dispute Adjudication Board*] or Sub-Clause 20.3 [*Failure to Agree Dispute Adjudication Board*].
- 1.1.2.10 **"FIDIC"** means the Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers.

**1.1.3
Dates, Tests, Periods
and Completion**

- 1.1.3.1 **"Base Date"** means the date 28 days prior to the latest date for submission of the Tender.
- 1.1.3.2 **"Commencement Date"** means the date notified under Sub-Clause 8.1 [*Commencement of Works*].
- 1.1.3.3 **"Time for Completion"** means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [*Time for Completion*], as stated in the Appendix to Tender (with any extension under Sub-Clause 8.4 [*Extension of Time for Completion*]), calculated from the Commencement Date.
- 1.1.3.4 **"Tests on Completion"** means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out



out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Employer.

1.1.3.5 "Taking-Over Certificate" means a certificate issued under Clause 10 [Employer's Taking Over].

1.1.3.6 "Tests after Completion" means the tests (if any) which are specified in the Contract and which are carried out in accordance with the provisions of the Particular Conditions after the Works or a Section (as the case may be) are taken over by the Employer.

1.1.3.7 "Defects Notification Period" means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], as stated in the Appendix to Tender (with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections].

1.1.3.8 "Performance Certificate" means the certificate issued under Sub-Clause 11.9 [Performance Certificate].

1.1.3.9 "day" means a calendar day and "year" means 365 days.

1.1.4

Money and Payments

1.1.4.1 "Accepted Contract Amount" means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.

1.1.4.2 "Contract Price" means the price defined in Sub-Clause 14.1 [The Contract Price], and includes adjustments in accordance with the Contract.

1.1.4.3 "Cost" means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.

1.1.4.4 "Final Payment Certificate" means the payment certificate issued under Sub-Clause 14.13 [Issue of Final Payment Certificate].

1.1.4.5 "Final Statement" means the statement defined in Sub-Clause 14.11 [Application for Final Payment Certificate].

1.1.4.6 "Foreign Currency" means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.

1.1.4.7 "Interim Payment Certificate" means a payment certificate issued under Clause 14 [Contract Price and Payment], other than the Final Payment Certificate.

1.1.4.8 "Local Currency" means the currency of the Country.

1.1.4.9 "Payment Certificate" means a payment certificate issued under Clause 14 [Contract Price and Payment].

1.1.4.10 "Provisional Sum" means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [Provisional Sums].



1.1.4.11 **"Retention Money"** means the accumulated retention moneys which Employer retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.9 [Payment of Retention Money].

1.1.4.12 **"Statement"** means a statement submitted by the Contractor as part of application, under Clause 14 [Contract Price and Payment], for a payment certificate.

**1.1.5
Works and Goods**

1.1.5.1 **"Contractor's Equipment"** means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and for remedying of any defects. However, Contractor's Equipment excludes Temporary Works, Employer's Equipment (if any), Plant, Materials and other things intended to form or forming part of the Permanent Works.

1.1.5.2 **"Goods"** means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

1.1.5.3 **"Materials"** means things of all kinds (other than Plant) intended to form part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

1.1.5.4 **"Permanent Works"** means the permanent works to be executed by the Contractor under the Contract.

1.1.5.5 **"Plant"** means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.

1.1.5.6 **"Section"** means a part of the Works specified in the Appendix to Tender as a Section (if any).

1.1.5.7 **"Temporary Works"** means all temporary works of every kind (other than Contractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 **"Works"** mean the Permanent Works and the Temporary Works, or either or both of them as appropriate.

**1.1.6
Other Definitions**

1.1.6.1 **"Contractor's Documents"** means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

1.1.6.2 **"Country"** means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

1.1.6.3 **"Employer's Equipment"** means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Employer.



1.1.6.4 **"Force Majeure"** is defined in Clause 19 [Force Majeure].

1.1.6.5 **"Laws"** means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

- 1.1.6.6 "Performance Security" means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].
- 1.1.6.7 "Site" means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.
- 1.1.6.8 "Unforeseeable" means not reasonably foreseeable by an experienced contractor by the date for submission of the Tender.
- 1.1.6.9 "Variation" means any change to the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].

1.2

Interpretation

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and
- (d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

1.3

Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Appendix to Tender; and
- (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Appendix to Tender. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.

1.4

Law and Language

The Contract shall be governed by the law of the country (or other jurisdiction) stated in the Appendix to Tender.

If there are versions of any part of the Contract which are written in more than one language, the version which is in the ruling language stated in the Appendix to Tender shall prevail.



The language for communications shall be that stated in the Appendix to Tender. If no language is stated there, the language for communications shall be the language in which the Contract (or most of it) is written.

1.5

Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement (if any),
- (b) the Letter of Acceptance,
- (c) the Letter of Tender,
- (d) the Particular Conditions,
- (e) these General Conditions,
- (f) the Specification,
- (g) the Drawings, and
- (h) the Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

1.6

Contract Agreement

The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless they agree otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

1.7

Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

1.8

Care and Supply of Documents

The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.



**1.9
Delayed Drawings or
Instructions**

The Contractor shall give notice to the Engineer whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if it is late.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Engineer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

**1.10
Employer's Use of
Contractor's Documents**

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause.

**1.11
Contractor's Use of
Employer's Documents**

As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not,



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without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

1.12

Confidential Details

The Contractor shall disclose all such confidential and other information as the Engineer may reasonably require in order to verify the Contractor's compliance with the Contract.

1.13

Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Particular Conditions:

- (a) the Employer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or being) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
- (b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

1.14

Joint and Several Liability

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:

- (a) these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;
- (b) these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

2 The Employer

2.1

Right of Access to the Site

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Appendix to Tender. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Specification. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Appendix to Tender, the Employer shall give the Contractor right of access to, and possession of, the Site within such times as may be required to enable the Contractor to proceed in accordance with the programme submitted under Sub-Clause 8.3 [Programme].

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:



- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

2.2

Permits, Licences or Approvals

The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

- (a) by obtaining copies of the Laws of the Country which are relevant to the Contract but are not readily available, and
- (b) for the Contractor's applications for any permits, licences or approvals required by the Laws of the Country:
 - (i) which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws],
 - (ii) for the delivery of Goods, including clearance through customs, and
 - (iii) for the export of Contractor's Equipment when it is removed from the Site.

2.3

Employer's Personnel

The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:

- (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and
- (b) take actions similar to those which the Contractor is required to take under subparagraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].

2.4

Employer's Financial Arrangements

The Employer shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment]. If the Employer intends to make any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

2.5

Employer's Claims

If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer or the Engineer shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [Electricity, Water and Gas], under Sub-Clause 4.20 [Employer's Equipment and Free-Issue Material], or for other services requested by the Contractor.

The notice shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.



The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [*Extension of Defects Notification Period*].

This amount may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

3 The Engineer

3.1 Engineer's Duties and Authority

The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. The Employer undertakes not to impose further constraints on the Engineer's authority, except as agreed with the Contractor.

However, whenever the Engineer exercises a specified authority for which the Employer's approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

- (a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;
- (b) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract; and
- (c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.

3.2

Delegation by the Engineer

The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [*Determinations*].

Assistants shall be suitably qualified persons, who are competent to carry out these



duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;
- (b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

3.3

Instructions of the Engineer

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Engineer or a delegated assistant:

- (a) gives an oral instruction,
- (b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and
- (c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

3.4

Replacement of the Engineer

If the Employer intends to replace the Engineer, the Employer shall, not less than 42 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. The Employer shall not replace the Engineer with a person against whom the Contractor raises reasonable objection by notice to the Employer, with supporting particulars.

3.5

Determinations

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].



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4 The Contractor

4.1 Contractor's General Obligations

The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.

The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.

The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Contractor's Documents shall be in accordance with the Specifications and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of the Contractor's designs;
- (c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as specified in the Contract; and
- (d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust or repair this part of the Works. Such part shall not be considered to be complete for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of Works and Sections] until these documents and manuals have been submitted to the Engineer.

4.2 Performance Security

The Contractor shall obtain (at his cost) a Performance Security for proof of performance, in the amount and currencies stated in the Appendix to Tender. If the amount is not stated in the Appendix to Tender, this Sub-Clause shall not apply.



The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued by an entity and from within a country (or countries) specified in the Appendix to Tender.

jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:

- (a) failure by the Contractor to extend the validity of the Performance Security as described in the preceding paragraph, in which event the Employer may claim the full amount of the Performance Security,
- (b) failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under Sub-Clause 2.5 [*Employer's Claims*] or Clause 20 [*Claims, Disputes and Arbitration*], within 42 days after this agreement or determination,
- (c) failure by the Contractor to remedy a default within 42 days after receiving the Employer's notice requiring the default to be remedied, or
- (d) circumstances which entitle the Employer to termination under Sub-Clause 15.2 [*Termination by Employer*], irrespective of whether notice of termination has been given.

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.

4.3

Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Engineer's prior consent, and the Engineer shall be notified accordingly.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [*Instructions of the Engineer*].



The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Delegation or revocation shall not take effect until the Engineer has received notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

4.4

Subcontractors

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall not be required to obtain consent to suppliers of Materials or to a subcontract for which the Subcontractor is named in the Contract;
- (b) the prior consent of the Engineer shall be obtained to other proposed Subcontractors;
- (c) the Contractor shall give the Engineer not less than 28 days' notice of intended date of the commencement of each Subcontractor's work, and of commencement of such work on the Site; and
- (d) each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Employer].

4.5

Assignment of Benefit of Subcontract

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defect Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

4.6

Co-operation

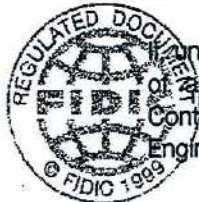
The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:

- (a) the Employer's Personnel,
- (b) any other contractors employed by the Employer, and
- (c) the personnel of any legally constituted public authorities,

who may be employed in the execution on or near the Site of any work not included in the Contract.

Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works and access arrangements which are the responsibility of the Contractor.

Under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with the Contractor's Documents, the Contractor shall submit such documents to the Engineer in the time and manner stated in the Specification.



4.7
Setting Out

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

4.8
Safety Procedures

The Contractor shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [Employer's Taking Over], and
- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

4.9
Quality Assurance

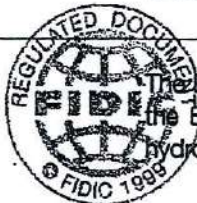
The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4.10
Site Data

The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Employer



shall similarly make available to the Contractor all such data which come into the Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

- (a) the form and nature of the Site, including sub-surface conditions,
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
- (d) the Laws, procedures and labour practices of the Country, and
- (e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

4.11

Sufficiency of the Accepted Contract Amount

The Contractor shall be deemed to:

- (a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and
- (b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [Site Data].

Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

4.12

Unforeseeable Physical Conditions

In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Engineer as soon as practicable.

This notice shall describe the physical conditions, so that they can be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Engineer may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and payment of any such Cost, which shall be included in the Contract Price.



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After receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Engineer may take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which may be made available by the Contractor, but shall not be bound by any such evidence.

4.13

Rights of Way and Facilities

The Contractor shall bear all costs and charges for special and/or temporary rights-of-way which he may require, including those for access to the Site. The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site which he may require for the purposes of the Works.

4.14

Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

4.15

Access Route

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
 - (b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route,



- (d) the Employer does not guarantee the suitability or availability of p access routes, and
- (e) Costs due to non-suitability or non-availability, for the use required Contractor, of access routes shall be borne by the Contractor.

4.16

Transport of Goods

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall give the Engineer not less than 21 days' notice of t on which any Plant or a major item of other Goods will be delivered to t
- (b) the Contractor shall be responsible for packing, loading, transporting, re unloading, storing and protecting all Goods and other things required Works; and
- (c) the Contractor shall indemnify and hold the Employer harmless again from all damages, losses and expenses (including legal fees and ex resulting from the transport of Goods, and shall negotiate and pay al arising from their transport.

4.17

Contractor's Equipment

The Contractor shall be responsible for all Contractor's Equipment. When bro to the Site, Contractor's Equipment shall be deemed to be exclusively intendec execution of the Works. The Contractor shall not remove from the Site any majc of Contractor's Equipment without the consent of the Engineer. However, c shall not be required for vehicles transporting Goods or Contractor's Person Site.

4.18

Protection of the Environment

The Contractor shall take all reasonable steps to protect the environment (both off the Site) and to limit damage and nuisance to people and property resultin pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent fr Contractor's activities shall not exceed the values indicated in the Specificatio shall not exceed the values prescribed by applicable Laws.

4.19

Electricity, Water and Gas

The Contractor shall, except as stated below, be responsible for the provisio power, water and other services he may require.

The Contractor shall be entitled to use for the purposes of the Works such st of electricity, water, gas and other services as may be available on the Site which details and prices are given in the Specification. The Contractor shall, at and cost, provide any apparatus necessary for his use of these services a measuring the quantities consumed.

The quantities consumed and the amounts due (at these prices) for such st shall be agreed or determined by the Engineer in accordance with Sub-Clau [Employer's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor sh these amounts to the Employer.

4.20

Employer's Equipment and Free-Issue Material

The Employer shall make the Employer's Equipment (if any) available for the use Contractor in the execution of the Works in accordance with the details, arrange and prices stated in the Specification. Unless otherwise stated in the Specifica

(a) the Employer shall be responsible for the Employer's Equipment, except



- (b) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*]. The Contractor shall pay these amounts to the Employer.

The Employer shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification. The Employer shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Engineer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.

After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Employer of liability for any shortage, defect or default not apparent from a visual inspection.

4.21

Progress Reports

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [*Nominated Subcontractors*]),
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture,
 - (ii) Contractor's inspections,
 - (iii) tests, and
 - (iv) shipment and arrival at the Site;
- (d) the details described in Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*];
- (e) copies of quality assurance documents, test results and certificates of Materials;
 - list of notices given under Sub-Clause 2.5 [*Employer's Claims*] and notices given under Sub-Clause 20.1 [*Contractor's Claims*];
 - safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and



- (h) comparisons of actual and planned progress, with details of any event-circumstances which may jeopardise the completion in accordance with Contract, and the measures being (or to be) adopted to overcome delays.

4.22

Security of the Site

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall be responsible for keeping unauthorised persons off Site, and
- (b) authorised persons shall be limited to the Contractor's Personnel and Employer's Personnel; and to any other personnel notified to the Contractor by the Employer or the Engineer, as authorised personnel of the Employer's or contractors on the Site.

4.23

Contractor's Operations on Site

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Engineer as well as the Site. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from unnecessary obstruction, and shall store or dispose of any Contractor's Equipment and surplus materials. The Contractor shall clear away and remove from the Site wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Rectification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

4.24

Fossils

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give further notice to the Engineer and shall be entitled subject to Sub-Clause [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.



5 Nominated Subcontractors

5.1

Definition of "nominated Subcontractor"

In the Contract, "nominated Subcontractor" means a Subcontractor:

- (a) who is stated in the Contract as being a nominated Subcontractor, or
- (b) whom the Engineer, under Clause 13 [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor.

5.2

Objection to Nomination

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees to indemnify the Contractor against and from the consequences of the matter:

- (a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;
- (b) the subcontract does not specify that the nominated Subcontractor shall indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or
- (c) the subcontract does not specify that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
 - (i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract, and
 - (ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities.

5.3

Payments to nominated Subcontractors

The Contractor shall pay to the nominated Subcontractor the amounts which the Engineer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with subparagraph (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments].

5.4

Evidence of Payments

Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Engineer may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor:

- (a) submits this reasonable evidence to the Engineer, or
- (b)
 - (i) satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and
 - (ii) submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,



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deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the Employer, the amount which the nominated Subcontractor was directly paid by the Employer.

6 Staff and Labour

- 6.1 **Engagement of Staff and Labour** Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.
- 6.2 **Rates of Wages and Conditions of Labour** The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
- 6.3 **Persons in the Service of Employer** The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.
- 6.4 **Labour Laws** The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.
- 6.5 **Working Hours** No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Appendix to Tender, unless:
(a) otherwise stated in the Contract,
(b) the Engineer gives consent, or
(c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.
- 6.6 **Facilities for Staff and Labour** Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.
The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.
- 6.7 **Health and Safety** The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities,

22



85

the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.

6.8

**Contractor's
Superintendence**

Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

6.9

**Contractor's
Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- (a) persists in any misconduct or lack of care,
- (b) carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the Contract, or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

6.10

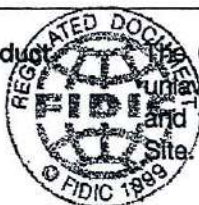
**Records of Contractor's
Personnel and
Equipment**

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

6.11

Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.



7 Plant, Materials and Workmanship

7.1 Manner of Execution

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Contract,
- (b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2 Samples

The Contractor shall submit the following samples of Materials, and relevant information, to the Engineer for consent prior to using the Materials in or for the Works:

- (a) manufacturer's standard samples of Materials and samples, specified in the Contract, all at the Contractor's cost, and
- (b) additional samples instructed by the Engineer as a Variation.

Each sample shall be labelled as to origin and intended use in the Works.

7.3 Inspection

The Employer's Personnel shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- (b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The Contractor shall give notice to the Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

7.4 Testing

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, Materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.



The Engineer may, under Clause 13 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Engineer's presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.

The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.5

Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If the Engineer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay these costs to the Employer.

7.6

Remedial Work

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:

- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- (b) remove and re-execute any other work which is not in accordance with the Contract, and
- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).



If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay to the Employer all costs arising from this failure.

7.7

Ownership of Plant and Materials

Each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

- (a) when it is delivered to the Site;
- (b) when the Contractor is entitled to payment of the value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

7.8

Royalties

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site, and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

8 Commencement, Delays and Suspension

8.1

Commencement of Works The Engineer shall give the Contractor not less than 7 days' notice of the Commencement Date. Unless otherwise stated in the Particular Conditions, the Commencement Date shall be within 42 days after the Contractor receives the Letter of Acceptance.

The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

8.2

Time for Completion

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

- (a) achieving the passing of the Tests on Completion, and
- (b) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

8.3

Programme



The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

26

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- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- (b) each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
- (c) the sequence and timing of inspections and tests specified in the Contract, and
- (d) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
 - (ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [Variation Procedure].

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

8.4

Extension of Time for Completion

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract,
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- (c) exceptionally adverse climatic conditions,
- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.



44

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**8.5
Delays Caused by
Authorities**

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the legally constituted public authorities in the Country,
- (b) these authorities delay or disrupt the Contractor's work, and
- (c) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].

**8.6
Rate of Progress**

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and
- (b) progress has fallen (or will fall) behind the current programme under Clause 8.3 [Programme],

other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Engineer may instruct the Contractor to submit, under Clause 8.3 [Programme], a revised programme and supporting report describing revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the number of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If the revised methods cause the Employer to incur additional costs, the Contractor shall be subject to Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer in addition to delay damages (if any) under Sub-Clause 8.7 below.

**8.7
Delay Damages**

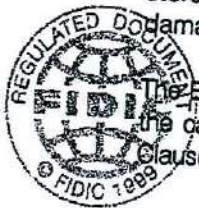
If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall be subject to Sub-Clause 2.5 [Employer's Claims] pay delay damages to the Employer for this default. These delay damages shall be the amount stated in the Appendix to Tender, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Appendix to Tender.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.1 [Termination by Employer] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

**8.8
Suspension of Work**

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 3.2, 8.10 and 8.11 shall not apply.



8.9
Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8 [Suspension of Work].

8.10
Payment for Plant and Materials in Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and
- (b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

8.11
Prolonged Suspension

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

8.12
Resumption of Work

After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

9 Tests on Completion

9.1
Contractor's Obligations

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [Contractor's General Obligations].

The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.

In considering the results of the Tests on Completion, the Engineer shall make



allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

9.2

Delayed Tests

If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 7.4 [Testing] (fifth paragraph) and/or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.3

Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4

Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Engineer shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects]; or
- (c) issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations].

10 Employer's Taking Over

10.1

Taking Over of the Works and Sections

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a



Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Engineer shall, within 28 days after receiving the Contractor's application:

- (a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

10.2

Taking Over of Parts of the Works

The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Employer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part. However, if the Employer does use any part of the Works before the Taking-Over Certificate is issued:

- (a) the part which is used shall be deemed to have been taken over as from the date on which it is used,
- (b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and
- (c) if requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such Cost plus reasonable profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.



If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages], and shall not affect the maximum amount of these damages.

10.3

Interference with Tests on Completion

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

10.4

Surfaces Requiring Reinstatement

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

11 Defects Liability

11.1

Completion of Outstanding Work and Remedying Defects

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).



If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

11.2

Cost of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) any design for which the Contractor is responsible,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, or
- (c) failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Employer, and Sub-Clause 13.3 [*Variation Procedure*] shall apply.

11.3

Extension of Defects Notification Period

The Employer shall be entitled subject to Sub-Clause 2.5 [*Employer's Claims*] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Notification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [*Suspension of Work*] or Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

11.4

Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Employer may (at his option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.5 [*Employer's Claims*] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [*Determinations*]; or
- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.



- 11.5**
Removal of Defective Work If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.
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- 11.6**
Further Tests If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.
- These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [*Cost of Remedying Defects*], for the cost of the remedial work.
-
- 11.7**
Right of Access Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employer's reasonable security restrictions.
-
- 11.8**
Contractor to Search The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Cost of the search plus reasonable profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.5 [*Determinations*] and shall be included in the Contract Price.
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- 11.9**
Performance Certificate Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.
- The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.
- Only the Performance Certificate shall be deemed to constitute acceptance of the Works.
-
- 11.10**
Unfulfilled Obligations After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.
-
- 11.11**
Clearance of Site Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and temporary Works from the Site.
- If all these items have not been removed within 28 days after the Employer receives a copy of the Performance Certificate, the Employer may sell or



otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

12 Measurement and Evaluation

12.1

Works to be Measured The Works shall be measured, and valued for payment, in accordance with this Clause.

Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

- (a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and
- (b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them. If the Contractor does not so give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

12.2

Method of Measurement Except as otherwise stated in the Contract and notwithstanding local practice:

- (a) measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- (b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

12.3

Evaluation

Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work. However, a new rate or price shall be appropriate for an item of work if:



The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property].

17.2

Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Employer's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

17.3

Employer's Risks

The risks referred to in Sub-Clause 17.4 below are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country;
- (c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (f) use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract,
- (g) design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible, and
- (h) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions.



**17.4
Consequences of
Employer's Risks**

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 [Employer's Risks], reasonable profit on the Cost shall also be included.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

17.5

**Intellectual and Industrial
Property Rights**

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- (a) an unavoidable result of the Contractor's compliance with the Contract, or
- (b) a result of any Works being used by the Employer:
 - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
 - (ii) in conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

17.6

Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under



Sub-Clause 16.4 [*Payment on Termination*] and Sub-Clause 17.1 [*Indemnities*].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [*Electricity, Water and Gas*], Sub-Clause 4.20 [*Employer's Equipment and Free-Issue Material*], Sub-Clause 17.1 [*Indemnities*] and Sub-Clause 17.5 [*Intellectual and Industrial Property Rights*], shall not exceed the sum stated in the Particular Conditions or (if a sum is not so stated) the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

18 Insurance

18.1 General Requirements for Insurances

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms consistent with the details annexed to the Particular Conditions.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the Appendix to Tender (calculated from the Commencement Date), submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances described in Sub-Clause 18.2 [*Insurance for Works and Contractor's Equipment*] and Sub-Clause 18.3 [*Insurance against Injury to Persons and Damage to Property*].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes



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to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [Employer's Claims] or Sub-Clause 20.1 [Contractor's Claims], as applicable.

18.2

Insurance for Works and Contractor's Equipment

The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Particular Conditions, insurances under this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party, shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated between the Parties for the sole purpose of rectifying the loss or damage, shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Employer's Risks];



- (d) shall also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Employer's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Appendix to Tender (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
 - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
 - (iii) a part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage, and
 - (iv) Goods while they are not in the Country, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.5 [Employer's Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

18.3

Insurance against Injury to Persons and Damage to Property

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Appendix to Tender, with no limit on the number of occurrences. If an amount is not stated in the Appendix to Tender, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties,
- (c) shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract, and
- (d) may however exclude liability to the extent that it arises from:
 - (i) the Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
 - (ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and



- (iii) a cause listed in Sub-Clause 17.3 [Employer's Risks], except to the extent that cover is available at commercially reasonable terms.

18.4

Insurance for Contractor's Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The Employer and the Engineer shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

19 Force Majeure

**19.1
Definition of Force Majeure**

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

19.2

Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.



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The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

19.3

Duty to Minimise Delay

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

19.4

Consequences of Force Majeure

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

19.5

Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

19.6

Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
 - (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;



- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

19.7

Release from Performance under the Law

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

20 Claim, Disputes and Arbitration

20.1

Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

this fully detailed claim shall be considered as interim;

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Condition Precedent



- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

20.2

Appointment of the Dispute Adjudication Board

Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*]. The Parties shall jointly appoint a DAB by the date stated in the Appendix to Tender.

The DAB shall comprise, as stated in the Appendix to Tender, either one or three suitably qualified persons ("the members"). If the number is not so stated and the Parties do not agree otherwise, the DAB shall comprise three persons.

If the DAB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman.

However, if a list of potential members is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DAB.

The agreement between the Parties and either the sole member ("adjudicator") or each of the three members shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DAB consults, shall be



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mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may jointly refer a matter to the DAB for it to give its opinion. Neither Party shall consult the DAB on any matter without the agreement of the other Party.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace (or to be available to replace) any one or more members of the DAB. Unless the Parties agree otherwise, the appointment will come into effect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment.

If any of these circumstances occurs and no such replacement is available, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DAB (including each member) shall expire when the discharge referred to in Sub-Clause 14.12 [Discharge] shall have become effective.

20.3

Failure to Agree Dispute Adjudication Board

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DAB by the date stated in the first paragraph of Sub-Clause 20.2, [Appointment of the Dispute Adjudication Board]
- (b) either Party fails to nominate a member (for approval by the other Party) of a DAB of three persons by such date,
- (c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DAB by such date, or
- (d) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the appointing entity or official named in the Appendix to Tender shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

20.4

Obtaining Dispute Adjudication Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

If a DAB of three persons, the DAB shall be deemed to have received such reference on the date when it is received by the chairman of the DAB.

Both Parties shall promptly make available to the DAB all such additional information,



further access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DAB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [*Failure to Comply with Dispute Adjudication Board's Decision*] and Sub-Clause 20.8 [*Expiry of Dispute Adjudication Board's Appointment*], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

20.5

Amicable Settlement

Where notice of dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

Arbitration

Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:

- (a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce,
- (b) the dispute shall be settled by three arbitrators appointed in accordance with these Rules, and
- (c) the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DAB, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAB to obtain its decision, or to the reasons



Act no 11 of 1997

for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

20.7

**Failure to Comply with
Dispute Adjudication
Board's Decision**

In the event that:

- (a) neither Party has given notice of dissatisfaction within the period stated in Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*],
- (b) the DAB's related decision (if any) has become final and binding, and
- (c) a Party fails to comply with this decision,

then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [*Arbitration*]. Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply to this reference.

20.8

**Expiry of Dispute
Adjudication Board's
Appointment**

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAB in place, whether by reason of the expiry of the DAB's appointment or otherwise:

- (a) Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply, and
- (b) the dispute may be referred directly to arbitration under Sub-Clause 20.6 [*Arbitration*].



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APPENDIX

General Conditions of Dispute Adjudication Agreement

1 Definitions

Each "Dispute Adjudication Agreement" is a tripartite agreement by and between:

- (a) the "Employer";
- (b) the "Contractor"; and
- (c) the "Member" who is defined in the Dispute Adjudication Agreement as being:
 - (i) the sole member of the "DAB" (or "adjudicator") and, where this is the case, all references to the "Other Members" do not apply, or
 - (ii) one of the three persons who are jointly called the "DAB" (or "dispute adjudication board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Adjudication Agreement, which incorporates this Appendix. In the Dispute Adjudication Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2 General Provisions

Unless otherwise stated in the Dispute Adjudication Agreement, it shall take effect on the latest of the following dates:

- (a) the Commencement Date defined in the Contract,
- (b) when the Employer, the Contractor and the Member have each signed the Dispute Adjudication Agreement, or
- (c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute adjudication agreement.

When the Dispute Adjudication Agreement has taken effect, the Employer and the Contractor shall each give notice to the Member accordingly. If the Member does not receive either notice within six months after entering into the Dispute Adjudication Agreement, it shall be void and ineffective.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Adjudication Agreement shall terminate upon the expiry of this period.

No assignment or subcontracting of the Dispute Adjudication Agreement is permitted without the prior written agreement of all the parties to it and of the Other Members (if any).

3 Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Engineer. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.



When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:
(a) experienced in the work which the Contractor is to carry out under the Contract,
(b) experienced in the interpretation of contract documentation, and
(c) fluent in the language for communications defined in the Contract.

**General Obligations of
the Member**

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or the Engineer, nor any financial interest in the Contract except for payment under the Dispute Adjudication Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Adjudication Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Adjudication Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Adjudication Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Adjudication Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the DAB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

**General Obligations of
the Employer and the
Contractor**

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DAB's activities under the Contract and the Dispute Adjudication Agreement, and except to the extent that prior agreement is given by the Employer, the Contractor and the Other Members (if any). The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.



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The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the DAB under Sub-Clause 20.4 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6

Payment

The Member shall be paid as follows, in the currency named in the Dispute Adjudication Agreement:

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
 - (i) being available on 28 days' notice for all site visits and hearings;
 - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
 - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
 - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Adjudication Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by 50%. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Adjudication Agreement is otherwise terminated.

- (b) a daily fee which shall be considered as payment in full for:
 - (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
 - (ii) each working day on site visits, hearings or preparing decisions; and
 - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses incurred in connection with the Member's duties, including the cost of telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Adjudication Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Adjudication Agreement became effective.



The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Adjudication Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DAB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

7

Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Adjudication Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Adjudication Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Adjudication Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

8

Default of the Member

If the Member fails to comply with any obligation under Clause 4, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DAB which are rendered void or ineffective.

9

Disputes

Any dispute or claim arising out of or in connection with this Dispute Adjudication Agreement, or the breach, termination or invalidity thereof, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.



66

Annex PROCEDURAL RULES

- 1 Unless otherwise agreed by the Employer and the Contractor, the DAB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DAB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.
- 2 The timing of and agenda for each site visit shall be as agreed jointly by the DAB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DAB. The purpose of site visits is to enable the DAB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims.
- 3 Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DAB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
- 4 The Employer and the Contractor shall furnish to the DAB one copy of all documents which the DAB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DAB and the Employer or the Contractor shall be copied to the other Party. If the DAB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
- 5 If any dispute is referred to the DAB in accordance with Sub-Clause 20.4 of the Conditions of Contract, the DAB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DAB shall:
 - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
 - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
- 6 The DAB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
- 7 Except as otherwise agreed in writing by the Employer and the Contractor, the DAB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DAB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.



8

The Employer and the Contractor empower the DAB, among other things, to:

- (a) establish the procedure to be applied in deciding a dispute,
- (b) decide upon the DAB's own jurisdiction, and as to the scope of any dispute referred to it,
- (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
- (d) take the initiative in ascertaining the facts and matters required for a decision,
- (e) make use of its own specialist knowledge, if any,
- (f) decide upon the payment of financing charges in accordance with the Contract,
- (g) decide upon any provisional relief such as interim or conservatory measures, and
- (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.

9

The DAB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DAB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DAB comprises three persons:

- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
- (b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
- (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
 - (i) either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.



S X

INDEX OF SUB-CLAUSES

	Sub-Clause	Page
Accepted Contract Amount, Sufficiency of the	4.11	16
Access after Taking Over, Right of	11.7	34
Access for Inspection	7.3	24
Access Route	4.15	17
Access to the Site, Right of	2.1	8
Additional Facilities	4.13	17
Addresses for Communications	1.3	5
Adjudication Board	20.2	59
Adjustments for Changes in Cost	13.8	39
Adjustments for Changes in Legislation	13.7	39
Advance Payment	14.2	41
Agreement, Contract	1.6	6
Amicable Settlement	20.5	61
Approvals, Permits, Licences or	2.2	9
Arbitration	20.6	61
Assignment	1.7	6
Assignment of Benefit of Subcontract	4.5	14
Assistance by the Employer	2.2	9
Assistants, Engineer's	3.2	10
Authorities, Delays Caused by	8.5	28
Avoidance of Interference	4.14	17
Care of the Works	17.2	51
Certificate, Application for Final Payment	14.11	45
Certificate, Final Payment	14.13	46
Certificate, Performance	11.9	34
Certificate, Taking-Over	10.1	29
Certificates, Application for Interim Payment	14.3	41
Certificates, copies to be sent	1.3	5
Certificates, Interim Payment	14.6	43
Claims, Employer's	2.5	9
Claims Procedure	20.1	58
Clearance of Site after Performance Certificate	11.11	34
Clearance of Site after Taking-Over Certificate	4.23	20
Commencement of Works	8.1	26
Communications	1.3	5
Communications, Language for	1.4	5
Completion of Outstanding Work and Remedying Defects	11.1	32
Completion, Statement at	14.10	45
Completion, Time for	8.2	26
Conditions, Unforeseeable Physical	4.12	16
Confidential Details	1.12	8
Contract Price, The	14.1	40
Contractor to Search	11.8	34
Contractor's Claims	20.1	58
Contractor's Design	4.1	12
Contractor's Documents, Employer's Use of	1.10	7
Contractor's Entitlement to Suspend Work	16.1	49
Contractor's Equipment	4.17	18



Contractor's General Obligations	4.1	12
Contractor's Liability, Cessation of	2.5	9
Contractor's Liability, Limitation of	17.6	52
Contractor's Obligations: Tests on Completion	9.1	29
Contractor's Operations on Site	4.23	20
Contractor's Personnel	6.9	23
Contractor's Personnel and Equipment, Records of	6.10	23
Contractor's Representative	4.3	13
Contractor's Superintendence	6.8	23
Co-operation	4.6	14
Cost, Adjustments for Changes in	13.8	39
Currencies for Payment of Variations	13.4	38
Currencies of Payment	14.15	46
DAB - see Dispute Adjudication Board		
Data on Conditions at the Site		
Daywork	4.10	15
Default of Contractor, Notice of	13.6	38
Default of Contractor: Termination	15.1	47
Default of Employer: Entitlement to Suspend Work	15.2	47
Default of Employer: Termination	16.1	49
Defective Work, Removal of	16.2	49
Defects, Failure to Remedy	11.5	34
Defects Notification Period, Extension of	11.4	33
Defects, Remedying of	11.3	33
Defects, Searching for Cause of	11.1	32
Definition of "nominated Subcontractor"	11.8	34
Definitions	5.1	21
Delay Damages	1.1	1
Delays Caused by Authorities	8.7	28
Delegation by the Engineer	8.5	28
Design by the Contractor	3.2	10
Determinations by the Engineer	4.1	12
Discharge	3.5	11
Disorderly Conduct	14.12	45
Dispute Adjudication Board, Appointment of the	6.11	23
Dispute Adjudication Board, Failure to Agree	20.2	59
Dispute Adjudication Board's Appointment, Expiry of	20.3	60
Dispute Adjudication Board's Decision, Failure to Comply with	20.8	62
Dispute Adjudication Board's Decision, Obtaining	20.7	62
Disputes, Amicable Settlement of	20.4	60
Disputes, Arbitration of	20.5	61
Disputes, Failure to Comply with Dispute Adjudication Board's Decision on	20.6	61
Disputes: Obtaining Dispute Adjudication Board's Decision	20.7	62
Documents, Care and Supply of	20.4	60
Documents, Contractor's Use of Employer's	1.8	6
Documents, Employer's Use of Contractor's	1.11	7
Documents, Priority of	1.10	7
Drawings or Instructions, Delayed	1.5	6
	1.9	7
Electricity, Water and Gas		
Electronic Transmission of Communications	4.19	18
Employer's Claims	1.3	5
Employer's Claims: Currencies of Payment	2.5	9
Employer's Documents, Contractor's Use of	14.15	46
	1.11	7



Employer's Entitlement to Termination	15.5	48
Employer's Equipment and Free-Issue Material	4.20	18
Employer's Financial Arrangements	2.4	9
Employer's Liability, Cessation of	14.14	46
Employer's Personnel	2.3	9
Employer's Risks	17.3	51
Employer's Risks, Consequences of	17.4	52
Engineer, Delegation by the	3.2	10
Engineer, Instructions of the	3.3	11
Engineer, Replacement of	3.4	11
Engineer to act for the Employer	3.1	10
Engineer's Determinations	3.5	11
Engineer's Duties and Authority	3.1	10
Environment, Protection of the	4.18	18
Evaluation	12.3	35
Evidence of Payments to Nominated Subcontractors	5.4	21
Extension of Defects Notification Period	11.3	33
Extension of Time for Completion	8.4	27
Failure to Pass Tests on Completion	9.4	30
Final Payment Certificate, Application for	14.11	45
Final Payment Certificate, Issue of	14.13	46
Finances, Employer's	2.4	9
Force Majeure Affecting Subcontractor	19.5	57
Force Majeure, Consequences of	19.4	57
Force Majeure, Definition of	19.1	56
Force Majeure, Notice of	19.2	56
Force Majeure: Optional Termination	19.6	57
Fossils	4.24	20
Frustration of the Contract	19.7	58
Gas, Electricity, Water and	4.19	18
Goods, Transport of	4.16	18
Health and Safety	6.7	22
Indemnities	17.1	50
Inspection	7.3	24
Instructions, Delayed Drawings of	1.9	7
Instructions of the Engineer	3.3	11
Insurance against Injury to Persons and Damage to		
Property	18.3	55
Insurance for Contractor's Personnel	18.4	56
Insurance for Works and Contractor's Equipment	18.2	53
Insurances, General Requirements for	18.1	53
Intellectual Property Rights, Claims for Infringement of	17.5	52
Intellectual Property Rights in Contractor's Documents	1.10	7
Intellectual Property Rights in Employer's Documents	1.11	7
Interference, Avoidance of	4.14	17
Interference with Tests on Completion	10.3	32
Interim Payment Certificates, Application for	14.3	41
Interim Payment Certificates, Issue of	14.6	43
Interpretation	1.2	5
Joint and Several Liability	1.14	8
Labour, Engagement of Staff and	6.1	22



S J

— J

Labour, Facilities for Staff and	6.6	22
Language	1.4	5
Law, Governing	1.4	5
Laws, Compliance with	1.13	8
Laws, Labour	6.4	22
Legislation, Adjustments for Changes in	13.7	39
Liability, Cessation of Contractor's	2.5	9
Liability, Cessation of Employer's	14.14	46
Liability, Joint and Several	1.14	8
Liability, Limitation of	17.6	52
Liability Unaffected by Insurances	18.1	53
Licences or Approvals, Permits,	2.2	9
Manner of Execution	7.1	24
Materials in Event of Suspension, Payment for	8.10	29
Materials, Ownership of	7.7	26
Materials, Payment for Unfixed	14.5	42
Materials supplied by the Employer	4.20	18
Measurement, Method of	12.2	35
Measurement of the Works	12.1	35
Nominated Subcontractor, Definition of	5.1	21
Nominated Subcontractors, Evidence of Payments	5.4	21
Nominated Subcontractors, Payments to	5.3	21
Nomination, Objection to	5.2	21
Notice of Intention to Deliver	4.16	18
Notice to Correct	15.1	47
Notices, Addresses for	1.3	5
Obligations, after Performance Certificate	11.10	34
Obligations, Contractor's General	4.1	12
Omissions	12.4	36
Other contractors	4.6	14
Payment	14.7	44
Payment after Termination by the Contractor	16.4	50
Payment after Termination by the Employer	15.4	48
Payment, Currencies of	14.15	46
Payment, Delayed	14.8	44
Payment for Plant and Materials for the Works	14.5	42
Payment in Applicable Currencies	13.4	38
Payment to Contractor after Force Majeure	19.4	57
Payments, Schedule of	14.4	42
Payments to nominated Subcontractors	5.3	21
Performance Certificate	11.9	34
Performance Security	4.2	12
Permits, Licences or Approvals	2.2	9
Personnel and Equipment, Records of Contractor's	6.10	23
Personnel, Contractor's	6.9	23
Personnel, Disorderly Conduct by	6.11	23
Personnel, Employer's	2.3	9
Personnel, Insurance for Contractor's	18.4	56
Persons in the Service of Employer	6.3	22
Plant and Materials for the Works, Payment for	14.5	42
Plant and Materials in Event of Suspension, Payment for	8.10	29
Plant and Materials, Ownership of	7.7	26



S d

Programme	8.3	26
Progress, Rate of	8.6	28
Progress Reports	4.21	19
Provisional Sums	13.5	38
Quality Assurance	4.9	15
Records of Contractor's Personnel and Equipment	6.10	23
Regulations and Laws, Compliance with	1.13	8
Rejection	7.5	25
Release from Performance under the Law	19.7	58
Remedial Work	7.6	25
Remedy Defects, Failure to	11.4	33
Remediating Defects	11.1	32
Remediating Defects, Cost of	11.2	33
Removal of Contractor's Equipment after Termination	16.3	50
Replacement of the Engineer	3.4	11
Reports on Progress	4.21	19
Representative, Contractor's	4.3	13
Representative, Engineer's	3.2	10
Responsibility for the Works	4.1	12
Responsibility Unaffected by Engineer's Approval	3.1	10
Resumption of Work after Suspension	8.12	29
Retention, Deduction of	14.3	41
Retention Money, Payment of	14.9	44
Retesting after Failure of Tests on Completion	9.3	30
Right to Vary	13.1	36
Rights, Intellectual Property, in Contractor's Documents	1.10	7
Rights, Intellectual Property, in Employer's Documents	1.11	7
Rights of Way and Facilities	4.13	17
Rights, Patent	17.5	52
Risks, Employer's	17.3	51
Royalties	7.8	26
Safety and Health	6.7	22
Safety Procedures	4.8	15
Samples	7.2	24
Schedule of Payments	14.4	42
Search, Contractor to	11.8	34
Security, Performance	4.2	12
Setting Out	4.7	15
Site, Clearance of	11.11	34
Site, Contractor's Operations on	4.23	20
Site Data	4.10	15
Site, Right of Access to the	2.1	8
Site, Security of the	4.22	20
Staff and Labour, Engagement of	6.1	22
Staff and Labour, Facilities for	6.6	22
Statement at Completion	14.10	45
Statement, Final	14.11	45
Statement, Interim	14.3	41
Statutes, Regulations and Laws, Compliance with	1.13	8
Subcontract, Assignment of Benefit of	4.5	14
Subcontractor, Force Majeure Affecting	19.5	57
Subcontractors	4.4	14
Subcontractors, nominated	5.1	21



Superintendence, Contractor's	6.8	23
Surfaces Requiring Reinstatement	10.4	32
Suspension, Consequences of	8.9	29
Suspension due to Employer's Default	16.1	49
Suspension of Work	8.8	28
Suspension, Payment for Plant and Materials in Event of	8.10	29
Suspension, Prolonged	8.11	29
Suspension, Resumption of Work after	8.12	29
Taking Over of Parts of the Works	10.2	31
Taking Over of the Works and Sections	10.1	30
Taking Over: Surfaces Requiring Reinstatement	10.4	31
Termination by the Contractor	16.2	49
Termination by the Contractor, Payment after	16.4	50
Termination by the Employer	15.2	47
Termination by the Employer, Optional	15.5	48
Termination by the Employer, Payment after	15.4	48
Termination, Optional: after Force Majeure	19.6	57
Termination, Optional: at Employer's Convenience	15.5	48
Termination, Valuation at Date of	15.3	48
Termination: Cessation of Work	16.3	50
Testing	7.4	24
Tests, Further	11.6	33
Tests on Completion	9.1	29
Tests on Completion, Delayed	9.2	30
Tests on Completion, Failure to Pass	9.4	30
Tests on Completion, Interference with	10.3	32
Third Party Insurance	18.3	55
Time for Completion	8.2	26
Time for Completion, Extension of	8.4	27
Time for Payment	14.7	44
Transport of Goods	4.16	18
Tribunal, Appointment of Dispute Adjudication Board	20.2	59
Unforeseeable Physical Conditions	4.12	16
Unfulfilled Obligations	11.10	34
Valuation at Date of Termination	15.3	48
Value Engineering	13.2	37
Variation Procedure	13.3	37
Variations	13.1	36
Variations: Applicable Currencies	13.4	38
Wages and Conditions of Labour	6.2	22
Water and Gas	4.19	18
Working Hours	6.5	22
Works and Contractor's Equipment, Insurance for	18.2	54
Works, Contractor's Care of the	17.2	51
Works, Measurement and Evaluation	12.3	35
Works to be Measured	12.1	35



S X