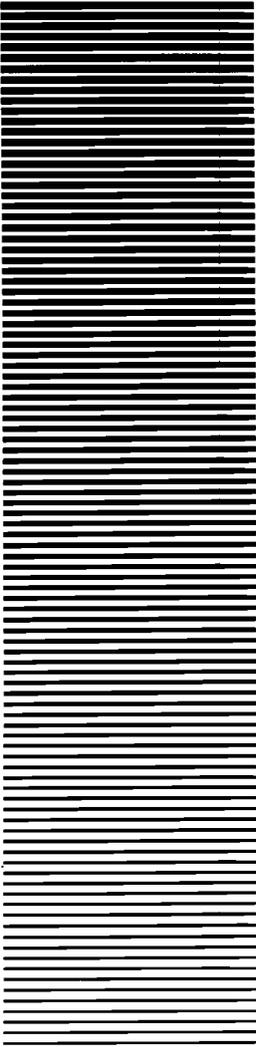




FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS  
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS  
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE  
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES

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## **CONDITIONS OF CONTRACT FOR DESIGN – BUILD AND TURNKEY**

**PART I GENERAL CONDITIONS**

**FIRST EDITION 1995**

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# CONTENTS

## **PART I: GENERAL CONDITIONS**

<b>1</b>	<b>THE CONTRACT</b> .....	<b>173</b>
1.1	Definitions	
1.2	Headings and Marginal Notes	
1.3	Interpretation	
1.4	Law and Language	
1.5	Contract Agreement	
1.6	Priority of Documents	
1.7	Documents on Site	
1.8	Communications	
1.9	Provision of Construction Documents	
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 Statutes, Regulations and Laws	
1.14	Joint and Several Liability	
<b>2</b>	<b>THE EMPLOYER</b> .....	<b>178</b>
2.1	General Obligations	
2.2	Access to and Possession of the Site	
2.3	Permits, Licences or Approvals	
2.4	Employer's Entitlement to Terminate	
<b>3</b>	<b>THE EMPLOYER'S REPRESENTATIVE</b> .....	<b>178</b>
3.1	Employer's Representative's Duties and Authority	
3.2	Requirements for Employer's Representative	
3.3	Employer's Representative's Authority to Delegate	
3.4	Employer's Representative's Instructions	
3.5	Employer's Representative to Attempt Agreement	
<b>4</b>	<b>THE CONTRACTOR</b> .....	<b>179</b>
4.1	General Obligations	
4.2	Performance Security	
4.3	Contractor's Representative	
4.4	Co-ordination of the Works	
4.5	Subcontractors	
4.6	Assignment of Subcontractor's Obligations	
4.7	Setting Out	
4.8	Quality Assurance	
4.9	Site Data	
4.10	Matters Affecting the Execution of the Works	
4.11	Unforeseeable Sub-Surface Conditions	
4.12	Access Route	
4.13	Rights of Way and Facilities	
4.14	Programme	
4.15	Progress Reports	
4.16	Contractor's Equipment	
4.17	Safety Precautions	
4.18	Protection of the Environment	
4.19	Electricity, Water and Gas	
4.20	Employer Supplied Machinery and Materials	

4.21	Clearance of Site	
4.22	Security of the Site	
4.23	Contractor's Operations on Site	
4.24	Fossils	
<b>5</b>	<b>DESIGN</b> .....	<b>186</b>
5.1	General Obligations	
5.2	Construction Documents	
5.3	Contractor's Undertaking	
5.4	Technical Standards and Regulations	
5.5	Samples	
5.6	As-Built Drawings	
5.7	Operation and Maintenance Manuals	
5.8	Error by Contractor	
5.9	Patent Rights	
<b>6</b>	<b>STAFF AND LABOUR</b> .....	<b>189</b>
6.1	Engagement of Staff and Labour	
6.2	Rates of Wages and Conditions of Labour	
6.3	Persons in the Service of Others	
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	Disorderly Conduct	
<b>7</b>	<b>PLANT, MATERIALS AND WORKMANSHIP</b> .....	<b>190</b>
7.1	Manner of Execution	
7.2	Delivery to Site	
7.3	Inspection	
7.4	Testing	
7.5	Rejection	
7.6	Ownership of Plant and Materials	
<b>8</b>	<b>COMMENCEMENT, DELAYS AND SUSPENSION</b> .....	<b>192</b>
8.1	Commencement of Works	
8.2	Time for Completion	
8.3	Extension of Time for Completion	
8.4	Delays Caused by Authorities	
8.5	Rate of Progress	
8.6	Liquidated Damages for Delay	
8.7	Suspension of Work	
8.8	Consequences of Suspension	
8.9	Payment for Plant and Materials in Event of Suspension	
8.10	Prolonged Suspension	
8.11	Resumption of Work	
<b>9</b>	<b>TESTS ON COMPLETION</b> .....	<b>195</b>
9.1	Contractor's Obligations	
9.2	Delayed Tests	
9.3	Retesting	
9.4	Failure to Pass Tests on Completion	

<b>10</b>	<b>EMPLOYER'S TAKING OVER</b> .....	<b>195</b>
10.1	Taking-Over Certificate	
10.2	Use by the Employer	
10.3	Interference with Tests on Completion	
<b>11</b>	<b>TESTS AFTER COMPLETION</b> .....	<b>197</b>
11.1	Employer's Obligations	
11.2	Delayed Tests	
11.3	Retesting	
11.4	Failure to Pass Tests after Completion	
<b>12</b>	<b>DEFECTS LIABILITY</b> .....	<b>198</b>
12.1	Completion of Outstanding Work and Remedying Defects	
12.2	Cost of Remedying Defects	
12.3	Extension of Contract Period	
12.4	Failure to Remedy Defects	
12.5	Removal of Defective Work	
12.6	Further Tests	
12.7	Right of Access	
12.8	Contractor to Search	
12.9	Performance Certificate	
12.10	Unfulfilled Obligations	
<b>13</b>	<b>CONTRACT PRICE AND PAYMENT</b> .....	<b>200</b>
13.1	The Contract Price	
13.2	Advance Payments	
13.3	Application for Interim Payment Certificates	
13.4	Schedule of Payments	
13.5	Plant and Materials for the Permanent Works	
13.6	Issue of Interim Payment Certificates	
13.7	Payment	
13.8	Delayed Payment	
13.9	Payment of Retention Money	
13.10	Statement at Completion	
13.11	Application for Final Payment Certificate	
13.12	Discharge	
13.13	Issue of Final Payment Certificate	
13.14	Cessation of Employer's Liability	
13.15	Calculation of Payments in Foreign Currency	
13.16	Changes in Legislation	
<b>14</b>	<b>VARIATIONS</b> .....	<b>206</b>
14.1	Right to Vary	
14.2	Value Engineering	
14.3	Variation Procedure	
14.4	Payment in Applicable Currencies	
14.5	Provisional Sums	
<b>15</b>	<b>DEFAULT OF CONTRACTOR</b> .....	<b>207</b>
15.1	Notice to Correct	
15.2	Termination	
15.3	Valuation at Date of Termination	
15.4	Payment after Termination	
15.5	Bribes	

<b>16</b>	<b>DEFAULT OF EMPLOYER</b> .....	<b>208</b>
16.1	Contractor's Entitlement to Suspend Work	
16.2	Termination	
16.3	Cessation of Work and Removal of Contractor's Equipment	
16.4	Payment on Termination	
<b>17</b>	<b>RISK AND RESPONSIBILITY</b> .....	<b>210</b>
17.1	Indemnity	
17.2	Contractor's Care of the Works	
17.3	Employer's Risks	
17.4	Consequences of Employer's Risks	
17.5	Contractor's Risks	
17.6	Limitation of Liability	
<b>18</b>	<b>INSURANCE</b> .....	<b>212</b>
18.1	Insurance for Design	
18.2	Insurance for Works and Contractor's Equipment	
18.3	Insurance against Injury to Persons and Damage to Property	
18.4	Insurance for Workers	
18.5	General Requirements for Insurances	
<b>19</b>	<b>FORCE MAJEURE</b> .....	<b>213</b>
19.1	Definition of Force Majeure	
19.2	Effect of Force Majeure Event	
19.3	Contractor's Responsibility	
19.4	Employer's Responsibility	
19.5	Payment to Contractor	
19.6	Optional Termination, Payment and Release	
19.7	Release from Performance under the Law	
<b>20</b>	<b>CLAIMS, DISPUTES AND ARBITRATION</b> .....	<b>215</b>
20.1	Procedure for Claims	
20.2	Payment of Claims	
20.3	Dispute Adjudication Board	
20.4	Procedure for 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	

**INDEX**

# PART I – GENERAL CONDITIONS

## 1 The Contract

**Definitions** 1.1 In the Contract (as defined below) the words and expressions defined below shall have the meanings assigned to them, except where the context requires otherwise:

### 1.1.1 Documents

1.1.1.1 “Contract” means these Conditions of Contract (Parts I and II), the Employer’s Requirements, the Tender, the Contractor’s Proposal, the Schedules, the Letter of Acceptance, the Contract Agreement (if completed) and such further documents as may be expressly incorporated in the Letter of Acceptance or Contract Agreement (if completed).

1.1.1.2 “Employer’s Requirements” means the description of the scope, standard, design criteria (if any) and programme of work, as included in the Contract, and any alterations and modifications thereto in accordance with the Contract.

1.1.1.3 “Tender” means the Contractor’s priced offer to the Employer for the Works, as accepted by the Letter of Acceptance.

1.1.1.4 “Appendix to Tender” means the completed appendix comprised in the Tender.

1.1.1.5 “Contractor’s Proposal” means the preliminary design submitted with the Tender, as included in the Contract.

1.1.1.6 “Schedules” means the information and data submitted with the Tender, as included in the Contract.

1.1.1.7 “Schedule of Payments” means the Schedule designated as such (if any), referred to in Sub-Clause 13.4.

1.1.1.8 “Letter of Acceptance” means the formal acceptance by the Employer of the Tender.

1.1.1.9 “Contract Agreement” means the contract agreement (if any) referred to in Sub-Clause 1.5.

### 1.1.2 Persons

1.1.2.1 “Employer” means the person named as such in the Appendix to Tender and the legal successors in title to such person, but not (except with the consent of the Contractor) any assignee of such person.

1.1.2.2 “Contractor” means the person whose Tender has been accepted by the Employer and the legal successors in title to such person, but not (except with the consent of the Employer) any assignee of such person.

1.1.2.3 “Employer’s Representative” means the person appointed by the Employer to act as Employer’s Representative for the purposes of the Contract and named as such in the Appendix to Tender, or other person appointed from time to time by the Employer and notified as such to the Contractor.

- 1.1.2.4 “Contractor’s Representative” means the person (if any) named as such in the Contract or other person appointed from time to time by the Contractor under Sub-Clause 4.3.
- 1.1.2.5 “Subcontractor” means any person named in the Contract as a subcontractor, manufacturer or supplier for a part of the Works or any person to whom a part of the Works has been subcontracted in accordance with Sub-Clause 4.5, and the legal successors in title to such person, but not any assignee of such person.
- 1.1.2.6 “Dispute Adjudication Board” means the person or persons named as such in the Contract, or other person or persons appointed from time to time under Sub-Clause 20.3.

### 1.1.3 Dates, Times and Periods

- 1.1.3.1 “Base Date” means the date 28 days prior to the latest date for submission of the Tender for acceptance by the Employer.
- 1.1.3.2 “Effective Date” means the date on which the Contract entered into legal force and effect.
- 1.1.3.3 “Commencement Date” means the date on which the Contractor receives the notice to commence issued by the Employer’s Representative under Sub-Clause 8.1.
- 1.1.3.4 “Time for Completion” means the time for completing the Works or a Section (as the case may be), and passing the Tests on Completion, as stated in the Appendix to Tender (or as extended under Sub-Clause 8.3), calculated from the Commencement Date.
- 1.1.3.5 “Contract Period” means the period from the Commencement Date to the date 365 days after the date on which the whole of the Works shall have been completed as certified by the Employer’s Representative under Clause 10 (or as extended under Sub-Clause 12.3).
- 1.1.3.6 “day” means a calendar day and “year” means 365 days.

### 1.1.4 Tests and Completion

- 1.1.4.1 “Tests on Completion” means the tests specified in the Contract and designated as such, and any other such tests as may be agreed by the Employer’s Representative and the Contractor or instructed as a Variation, which are to be carried out before the Works or any Section are taken over by the Employer.
- 1.1.4.2 “Taking-Over Certificate” means a certificate issued under Clause 10.
- 1.1.4.3 “Tests after Completion” means the tests specified in the Contract and designated as such, which are to be carried out after the Works or any Section are taken over by the Employer.
- 1.1.4.4 “Performance Certificate” means the certificate issued by the Employer’s Representative under Sub-Clause 12.9.

### 1.1.5 Money and Payments

- 1.1.5.1 “Contract Price” means the sum stated in the Letter of Acceptance as payable to the Contractor for the design, execution and completion of the Works and the remedying of any defects in accordance with the provisions of the Contract.

- 1.1.5.2 “Local Currency” means the currency of the Country.
- 1.1.5.3 “Foreign Currency” means a freely convertible currency, named in the Appendix to Tender as a currency in which part of the Contract Price is payable, but not the Local Currency.
- 1.1.5.4 “Retention Money” means the accumulated retention monies retained by the Employer under Sub-Clause 13.3.
- 1.1.5.5 “Provisional Sum” means a sum (if any) specified in the Contract and designated as such, for the execution of any part of the Works or for the supply of Plant, Materials or services.
- 1.1.5.6 “Cost” means all expenditure properly incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.
- 1.1.5.7 “Interim Payment Certificate” means any payment certificate issued by the Employer’s Representative under Clause 13, other than the Final Payment Certificate.
- 1.1.5.8 “Final Payment Certificate” means the payment certificate issued by the Employer’s Representative under Sub-Clause 13.13.
- 1.1.5.9 “Final Statement” means the agreed statement defined in Sub-Clause 13.11.

**1.1.6 Other Definitions**

- 1.1.6.1 “Construction Documents” means all drawings, calculations, computer software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature, to be submitted by the Contractor.
- 1.1.6.2 “Variation” means any alteration and/or modification to the Employer’s Requirements, which is instructed by the Employer’s Representative or approved as a variation by the Employer’s Representative, in accordance with Clause 14.
- 1.1.6.3 “Works” means the Permanent Works and the Temporary Works or either of them as appropriate.
- 1.1.6.4 “Permanent Works” means the permanent works to be designed and executed in accordance with the Contract.
- 1.1.6.5 “Temporary Works” means all temporary works of every kind (other than Contractor’s Equipment) required for the execution and completion of the Works and the remedying of any defects.
- 1.1.6.6 “Plant” means machinery and apparatus intended to form or forming part of the Permanent Works, including the supply-only items (if any) which are to be supplied by the Contractor as specified in the Contract.
- 1.1.6.7 “Materials” means things of all kinds (other than Plant) to be provided and incorporated in the Permanent Works by the Contractor, including the supply-only items (if any) which are to be supplied by the Contractor as specified in the Contract.
- 1.1.6.8 “Contractor’s Equipment” means all machinery, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, but does not include Plant, Materials, or other things intended to form or forming part of the Permanent Works.

- 1.1.6.9 "Section" means a part of the Works specifically defined in the Appendix to Tender as a Section (if any).
- 1.1.6.10 "Site" means the places provided by the Employer where the Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specifically designated in the Contract as forming part of the Site.
- 1.1.6.11 "Country" means the country in which the Works are to be executed and to which Plant and Materials are to be delivered.
- Headings and Marginal Notes** 1.2 The headings and marginal notes are not part of these Conditions, and shall not be taken into consideration in their interpretation.
- Interpretation** 1.3 Words importing persons or parties shall include firms and corporations and any organization having legal capacity. Words importing the singular also include the plural and vice versa where the context requires. Words importing one gender also include other genders.
- Law and Language** 1.4 The law of the Contract is named in the Appendix to Tender.  
Where versions of the Contract are prepared in different languages, the version which is in the ruling language named in the Appendix to Tender shall prevail. The language for day to day communications shall be as stated in the Appendix to Tender.
- Contract Agreement** 1.5 Either party shall, if requested by the other party, execute a Contract Agreement, in the form annexed with such modifications as may be necessary to record the Contract. The costs of stamp duties and similar charges imposed by law shall be borne by the Employer.
- Priority of Documents** 1.6 The documents forming the Contract are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Employer's Representative shall issue any necessary clarification or instruction to the Contractor, and the priority of the documents shall be as follows:
- (a) The Contract Agreement;
  - (b) The Letter of Acceptance;
  - (c) The Employer's Requirements;
  - (d) The Tender;
  - (e) The Conditions of Contract, Part II;
  - (f) The Conditions of Contract, Part I;
  - (g) The Schedules; and
  - (h) The Contractor's Proposal.
- Documents on Site** 1.7 The Contractor shall keep on the Site one complete set of the documents forming the Contract, the Construction Documents, Variations, other communications given or issued under Sub-Clause 1.8 and the documents mentioned in Sub-Clause 5.4. The Employer, the Employer's Representative and assistants (as referred to in Sub-Clause 3.3) shall have the right to use such documents at all reasonable times.
- Communications** 1.8 Wherever provision is made for the giving or issue of any notice, instruction, consent, approval, certificate or determination by any person, unless otherwise specified such communication shall be in writing and shall not be unreasonably withheld or delayed.

Wherever provision is made for a communication to be “written” or “in writing”, this means any hand-written, type-written or printed communication, including the agreed systems of electronic transmission stated in the Appendix to Tender.

All certificates, notices or written orders to be given to the Contractor by the Employer or the Employer’s Representative, and all notices to be given to the Employer or to the Employer’s Representative by the Contractor, shall either be delivered by hand against written acknowledgement of receipt, or be sent by airmail or one of the agreed systems of electronic transmission. The addresses for the receipt of such communications shall be as stated in the Appendix to Tender.

- |   |             |  |
|---|-------------|--|
| <b>Provision of Construction Documents</b>            | <b>1.9</b>  | The Construction Documents shall be in the custody and care of the Contractor. Unless otherwise stated in the Employer’s Requirements, the Contractor shall provide six copies for the use of the Employer’s Representative and assistants (as referred to in Sub-Clause 3.3).   |
| <b>Employer’s Use of Contractor’s Documents</b>       | <b>1.10</b> | Copyright in the Construction Documents and other design documents made by or on behalf of the Contractor shall (as between the parties) remain the property of the Contractor. The Employer may, at his cost, copy, use and communicate any such documents (including making and using modifications) for the purposes of completing, operating, maintaining, altering, adjusting and repairing the Works. They shall not, without the Contractor’s consent, be used, copied or communicated to a third party by the Employer or the Employer’s Representative for other purposes.  |
| <b>Contractor’s Use of Employer’s Documents</b>       | <b>1.11</b> | Copyright in the Employer’s Requirements and other documents issued by the Employer or the Employer’s Representative to the Contractor shall (as between the parties) remain the property of the Employer. The Contractor may, at his cost, copy, use and communicate any such documents for the purposes of the Contract. They shall not, without the Employer’s consent, be used, copied or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.   |
| <b>Confidential Details</b>                           | <b>1.12</b> | The Contractor shall not be required to disclose, to the Employer or the Employer’s Representative, the confidential details listed in the Appendix to Tender.   |
| <b>Compliance with Statutes, Regulations and Laws</b> | <b>1.13</b> | The Contractor shall, in all matters arising in the performance of the Contract, comply with, give all notices under, and pay all fees required by, the provisions of any national or state statute, ordinance or other law, or any regulation of any legally constituted public authority having jurisdiction over the Works. The Contractor shall obtain all permits, licences or approvals required for any part of the Works, in reasonable time taking account of the times for delivery of the Plant and Materials and for completion of the Works. The Employer and the Contractor shall comply with the laws of each country where activities are performed. |
| <b>Joint and Several Liability</b>                    | <b>1.14</b> | If the Contractor is a joint venture (or consortium) of two or more persons, all such persons shall be jointly and severally liable to the Employer for the fulfilment of the terms of the Contract. Such persons shall designate one of them to act as leader with authority to bind the joint venture (or consortium) and each of its members. The composition or the constitution of the joint venture (or consortium) shall not be altered without the prior consent of the Employer.  |

## 2 The Employer

- General Obligations** 2.1 The Employer shall provide the Site and shall pay the Contractor in accordance with Clause 13.
- Access to and Possession of the Site** 2.2 The Employer shall grant the Contractor right of access to, and possession of, the Site within the time stated in the Appendix to Tender. Such right and possession may not be exclusive to the Contractor.
- If the Contractor suffers delay and/or incurs Cost from failure on the part of the Employer to grant right of access to or possession of the Site, the Contractor shall give notice to the Employer's Representative. After receipt of such notice the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 to agree or determine:
- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.3, and
  - (b) the amount of such Cost plus reasonable profit, which shall be added to the Contract Price,
- and shall notify the Contractor accordingly.
- Permits, Licences or Approvals** 2.3 The Employer shall, at the request and cost of the Contractor, assist him in applying for permits, licences or approvals, which are required for any part of the Works, for delivery (including clearance through customs) of Plant, Materials and Contractor's Equipment, and for the completion of the Works. Such requests may also include requests for the Employer's assistance in applying for any necessary government consent to the export of Contractor's Equipment when it is removed from the Site.
- Employer's Entitlement to Terminate** 2.4 The Employer shall be entitled to terminate the Contract, at the Employer's convenience, at any time after giving 56 days' prior notice to the Contractor, with a copy to the Employer's Representative, and returning the performance security. In the event of such termination, the Contractor:
- (a) shall proceed in accordance with Sub-Clause 16.3, and
  - (b) shall be paid by the Employer in accordance with Sub-Clause 19.6.
- After such termination, execution of the Works shall not be recommenced within a period of six years without the Contractor's consent.

## 3 The Employer's Representative

- Employer's Representative's Duties and Authority** 3.1 The Employer's Representative shall carry out the duties specified in the Contract. The Employer's Representative shall have no authority to amend the Contract.
- The Employer's Representative may exercise the authority specified in or necessarily to be implied from the Contract. If the Employer's Representative is required, under the terms of his appointment by the Employer, to obtain the specific approval of the Employer before exercising such authority, such requirements shall be as stated in Part II. Any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Employer's Representative.

Except as expressly stated in the Conditions of Contract, the Employer's Representative shall have no authority to relieve the Contractor of any of his duties, obligations or responsibilities under the Contract. Any proposal, inspection, examination, testing, consent, approval or similar act by the Employer's Representative (including absence of disapproval) shall not relieve the Contractor from any responsibility, including responsibility for his errors, omissions, discrepancies, and non-compliance with Sub-Clauses 5.3 and 5.4.

The Employer's Representative shall copy to the Employer all communications given or received by him in accordance with the Contract.

**Requirements for  
Employer's  
Representative**

3.2 The Employer's Representative shall be a suitably qualified engineer or other appropriate professional, having the experience and capability necessary for compliance with this Clause, or shall employ such suitably qualified engineers and other professionals and make them available for the Contract.

**Employer's  
Representative's  
Authority to  
Delegate**

3.3 The Employer's Representative may from time to time delegate any of his duties to assistants, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy has been delivered to the Employer and the Contractor.

Any determination, instruction, inspection, examination, testing, consent, approval or similar act by any such assistant of the Employer's Representative, in accordance with the delegation, shall have the same effect as though it had been an act of the Employer's Representative. However:

(a) any failure to disapprove any Plant, Materials, design or workmanship shall not prejudice the right of the Employer's Representative to reject such Plant, Materials, design or workmanship;

(b) if the Contractor questions any determination or instruction of an assistant of the Employer's Representative, the Contractor may refer the matter to the Employer's Representative, who shall confirm, reverse or vary such determination or instruction.

**Employer's  
Representative's  
Instructions**

3.4 Unless it is legally or physically impossible, the Contractor shall comply with instructions given by the Employer's Representative in accordance with the Contract.

**Employer's  
Representative to  
Attempt Agreement**

3.5 When the Employer's Representative is required to determine value, Cost or extension of time, he shall consult with the Contractor in an endeavour to reach agreement. If agreement is not achieved, the Employer's Representative shall determine the matter fairly, reasonably and in accordance with the Contract.

## 4 The Contractor

**General Obligations**

4.1 The Works as completed by the Contractor shall be wholly in accordance with the Contract and fit for the purposes for which they are intended, as defined in the Contract. The Works shall include any work which is necessary to satisfy the Employer's Requirements, Contractor's Proposal and Schedules, or is implied by the Contract, or arises from any obligation of the Contractor, and all works not mentioned in the Contract but which may be inferred to be necessary for stability or completion or the safe, reliable and efficient operation of the Works.

The Contractor shall design, execute and complete the Works, including providing Construction Documents, within the Time for Completion, and shall remedy any defects within the Contract Period. The Contractor shall provide all superintendence, labour, Plant, Materials, Contractor's Equipment, Temporary Works and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of defects.

Before commencing design, the Contractor shall satisfy himself regarding the Employer's Requirements (including design criteria and calculations, if any) and the items of reference mentioned in Sub-Clause 4.7. The Contractor shall give notice to the Employer's Representative of any error, fault or other defect in the Employer's Requirements or such items of reference. After receipt of such notice, the Employer's Representative shall determine whether Clause 14 shall be applied, and shall notify the Contractor accordingly.

The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works, irrespective of any approval or consent by the Employer's Representative.

**Performance Security** 4.2

The Contractor shall obtain, at his cost, a performance security from a third party, in the amount and currencies specified in the Appendix to Tender, and deliver it to the Employer by the date 28 days after the Effective Date. The performance security shall be provided by an entity approved by the Employer and shall be in the form annexed, or in another form approved by the Employer.

The performance security shall be valid until the Contractor has executed and completed the Works and remedied any defects. It shall be returned to the Contractor within 14 days of the issue of the Performance Certificate. Prior to making a claim under the performance security, the Employer shall, in every case, notify the Contractor stating the nature of the default for which the claim is to be made.

**Contractor's Representative** 4.3

Unless the Contractor's Representative is named in the Contract, the Contractor shall, within 14 days of the Effective Date, submit to the Employer's Representative for consent the name and particulars of the person the Contractor proposes to appoint. The Contractor shall not revoke the appointment of the Contractor's Representative without the prior consent of the Employer's Representative.

The Contractor's Representative shall give his whole time to directing the preparation of the Construction Documents and the execution of the Works. Except as otherwise stated in the Contract, the Contractor's Representative shall receive (on behalf of the Contractor) all notices, instructions, consents, approvals, certificates, determinations and other communications under the Contract. Whenever the Contractor's Representative is to be absent from the Site, a suitable replacement person shall be appointed, and the Employer's Representative shall be notified accordingly.

The Contractor's Representative may delegate any of his powers, functions and authorities to any competent person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Employer's Representative has received prior notice signed by the Contractor's Representative, specifying the powers, functions and authorities being delegated or revoked. The Contractor's Representative and such persons shall be fluent in the language for day to day communications defined in Sub-Clause 1.4.

- Co-ordination of the Works**    **4.4**    The Contractor shall be responsible for the co-ordination and proper execution of the Works, including co-ordination of other contractors to the extent specified in the Employer's Requirements. The Contractor shall, as specified in the Employer's Requirements, afford all reasonable opportunities for carrying out their work to:
- (a) any other contractors employed by the Employer and their workmen,
  - (b) the workmen of the Employer, and
  - (c) the workmen 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, which the Employer may require.
- The Contractor shall obtain, co-ordinate and submit to the Employer's Representative for his information all details (including details of work to be carried out off the Site) from Subcontractors. The Contractor shall be responsible for the locations of their work or materials, in order to ensure that there is no conflict with the work of other Subcontractors, the Contractor or other contractors.
- Subcontractors**    **4.5**    The Contractor shall not subcontract the whole of the Works. Unless otherwise stated in Part II:
- (a) the Contractor shall not be required to obtain consent for purchases of Materials or for subcontracts for which the Subcontractor is named in the Contract;
  - (b) the prior consent of the Employer's Representative shall be obtained to other proposed Subcontractors;
  - (c) not less than 28 days before the intended date of each Subcontractor commencing work on the Site, the Contractor shall notify the Employer's Representative of such intention; and
  - (d) where practicable, the Contractor shall give a fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors.
- The Contractor shall be responsible for observance by all Subcontractors of all the provisions of the Contract. The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as fully as if they were the acts or defaults of the Contractor, his agents or employees.
- Assignment of Subcontractor's Obligations**    **4.6**    If a Subcontractor has undertaken a continuing and assignable obligation to the Contractor for the work designed or executed, or Plant, Materials or services supplied, by such Subcontractor, and if such obligation extends beyond the expiry of the Contract Period, the Contractor shall, upon the expiry of the Contract Period, assign the benefit of such obligation to the Employer for its unexpired duration, at the request and cost of the Employer.
- Setting Out**    **4.7**    The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Employer's Requirements or, if not specified, given by the Employer's Representative in writing. The Contractor shall rectify, at his cost, any error in the positions, levels, dimensions or alignment of the Works.
- Quality Assurance**    **4.8**    Unless otherwise stated in Part II, the Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. Such system shall be in accordance with the details stated in the Contract. Compliance with the quality assurance system shall not relieve the Contractor of his duties, obligations or responsibilities.

Details of all procedures and compliance documents shall be submitted to the Employer's Representative for his information before each design and execution stage is commenced. When any document is issued to the Employer's Representative, it shall be accompanied by the signed quality statements for such document, in accordance with the details stated in the Contract. The Employer's Representative shall be entitled to audit any aspect of the system and require corrective action to be taken.

**Site Data** 4.9 The Employer shall have made available to the Contractor, prior to the Base Date, all the data on hydrological and sub-surface conditions at the Site, and studies on environmental impact, which have been obtained by or on behalf of the Employer from investigations for the Works. The Contractor shall be responsible for interpreting all data.

The Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have satisfied himself (so far as is practicable, taking account of cost and time) before submitting the Tender, as to:

- (a) the form and nature of the Site, including the sub-surface conditions,
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of the work and Materials necessary for the execution and completion of the Works, and the remedying of any defects, and
- (d) the means of access to the Site and the accommodation he may require.

The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the Tender.

**Matters Affecting the Execution of the Works** 4.10 The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price. Unless otherwise stated in the Contract, the Contract Price shall cover all his obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper design, execution and completion of the Works and the remedying of any defects.

**Unforeseeable Sub-Surface Conditions** 4.11 If sub-surface conditions are encountered by the Contractor which in his opinion were not foreseeable by an experienced contractor, the Contractor shall give notice to the Employer's Representative so that the Employer's Representative can inspect such conditions. After receipt of such notice and after his inspection and investigation, the Employer's Representative shall, if such conditions were not (by the Base Date) foreseeable by an experienced contractor, proceed in accordance with Sub-Clause 3.5 to agree or determine:

- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.3, and
- (b) the additional Cost due to such conditions, which shall be added to the Contract Price,

and shall notify the Contractor accordingly.

**Access Route** 4.12 The Contractor shall be deemed to have satisfied himself as to the suitability and availability of the access routes he chooses to use. The Contractor shall (as between the parties) be responsible for the maintenance of access routes. The Contractor shall provide any signs or directions which he may consider necessary for the guidance of his staff, labour and others. The Contractor shall obtain any permission that may be required from the relevant authorities for the use of such routes, signs and directions.

The Employer will not be responsible for any claims which may arise from the use or otherwise of any access route. The Employer does not guarantee the suitability or availability of any particular access route, and will not entertain any claim for any non-suitability or non-availability for continuous use during construction of any such route.

**Rights of Way and Facilities** 4.13 The Contractor shall bear all costs and charges for special or temporary rights-of-way required by him for access to the Site. The Contractor shall also provide, at his own cost, any additional facilities outside the Site required by him for the purposes of the Works.

**Programme** 4.14 The Contractor shall submit a programme to the Employer's Representative, for information, within the time stated in the Appendix to Tender. The programme shall include the following:

- (a) the order in which the Contractor proposes to carry out the Works (including each stage of design, procurement, manufacture, delivery to Site, construction, erection, testing and commissioning),
- (b) all major events and activities in the production of Construction Documents,
- (c) the periods for the pre-construction reviews under Sub-Clause 5.2 and for any other submissions, approvals and consents specified in the Employer's Requirements, and
- (d) the sequence of all tests specified in the Contract.

Unless otherwise stated in the Contract, the programme shall be developed using precedence networking techniques, showing early start, late start, early finish and late finish dates.

The Contractor shall, whenever required by the Employer's Representative, provide in writing, for information, a general description of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to the programme, or to such arrangements and methods, shall be made without informing the Employer's Representative. If the progress of the Works does not conform to the programme, the Employer's Representative may instruct the Contractor to revise the programme, showing the modifications necessary to achieve completion within the Time for Completion.

**Progress Reports** 4.15 Monthly progress reports shall be prepared by the Contractor and submitted to the Employer's Representative in six copies. The first report shall cover the period up to the end of the calendar month after that in which the Commencement Date occurred; reports shall be submitted monthly thereafter, each within 14 days of 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) photographs and detailed descriptions of progress, including each stage of design, procurement, manufacture, delivery to Site, construction, erection, testing and commissioning;
- (b) charts showing the status of Construction Documents, purchase orders, manufacture and construction;
- (c) for the manufacture of each main item of Plant and Materials, the name of manufacturer, manufacture location, percentage progress, and the actual or expected dates of commencement of manufacture, Contractor's inspections, tests and delivery;

- (d) records of personnel and Contractor's Equipment on Site;
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (g) comparisons of actual and planned progress, with details of any aspects which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome such aspects.

**Contractor's Equipment** 4.16 Unless otherwise stated in Part II, the Contractor shall provide all Contractor's Equipment necessary to complete the Works. All Contractor's Equipment shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any such Contractor's Equipment without the consent of the Employer's Representative.

**Safety Precautions** 4.17 The Contractor shall comply with all applicable safety regulations in his design, access arrangements and operations on Site. Unless otherwise stated in Part II, the Contractor shall, from the commencement of work on Site until taking-over by the Employer, provide:

- (a) fencing, lighting, guarding and watching of the Works, and
- (b) temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of owners and occupiers of adjacent land, the public and others.

**Protection of the Environment** 4.18 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Contractor shall ensure that air emissions, surface discharges and effluent from the Site during the Contract Period shall not exceed the values indicated in the Employer's Requirements, and shall not exceed the values prescribed by law.

**Electricity, Water and Gas** 4.19 The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details are given in the Employer's Requirements. The Contractor shall pay the Employer at the prices stated in the Employer's Requirements. The quantities consumed shall be determined by the Employer's Representative, who shall include the amounts due as deductions in Interim and Final Payment Certificates. The Contractor shall, at his risk and cost, provide any apparatus necessary for such determination and for his use of these services.

**Employer Supplied Machinery and Materials** 4.20 The Employer undertakes to provide the items of machinery and materials (if any) in accordance with the details given in the Employer's Requirements. The Employer shall, at his risk and cost, transport such machinery and materials to the Contractor, at the time and place specified in the Contract.

The Contractor shall visually inspect the machinery and materials upon receipt at such place, and shall notify the Employer and the Employer's Representative of any shortage, defect or default; then, either the Employer shall immediately rectify any shortage, defect or default, or the Contractor (if the Contractor and the Employer's Representative so agree) shall carry out such rectification as a Variation. After visual inspection, this machinery and 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 undetectable shortage, defect or default.

The Employer also undertakes to operate the items of machinery and equipment in accordance with the details, arrangements and charges given in the Employer's Requirements. The Contractor shall pay such charges to the Employer; the amounts due shall be determined by the Employer's Representative and included as deductions in Interim and Final Payment Certificates.

**Clearance of Site** 4.21 During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.

Upon the issue of any Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which such Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave such part of the Site and the Works in a clean and safe condition to the satisfaction of the Employer's Representative. Except that, the Contractor shall be entitled to retain on Site, until the expiry of the Contract Period, such Contractor's Equipment, Materials and Temporary Works as required by him for the purpose of fulfilling his obligations under the Contract.

If the Contractor fails to remove, by 28 days after the issue of the Performance Certificate, any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works, the Employer may sell or otherwise dispose of such items. The Employer shall be entitled to retain, from the proceeds of such sale, a sum sufficient to meet the costs incurred in connection with the sale or disposal, and in restoring the Site. Any balance of the proceeds shall be paid to the Contractor. If the proceeds of the sale are insufficient to meet the Employer's costs, the outstanding balance shall be recoverable from the Contractor by the Employer.

**Security of the Site** 4.22 Unless otherwise stated in Part II:

- (a) the Contractor shall be responsible for keeping unauthorised persons off the Site, and
- (b) authorised persons shall be limited to the employees of the Contractor, employees of his Subcontractors and persons authorised by the Employer or the Employer's Representative.

**Contractor's Operations on Site** 4.23 The Contractor shall confine his operations to the Site, and to any additional areas which may be provided by the Contractor and agreed by the Employer's Representative as working areas. The Contractor shall take all necessary precautions to keep his personnel and equipment within the Site and such additional areas, and to keep and prohibit them from encroaching on adjacent land.

**Fossils** 4.24 All fossils, coins, articles of value or antiquity, and structures and other remains or things of geological or archaeological interest discovered on the Site shall (as between the parties) be the property of the Employer. The Contractor shall take reasonable precautions to prevent his staff, labour or other persons from removing or damaging any such article or thing. The Contractor shall, immediately upon discovery of such article or thing, advise the Employer's Representative, who may issue instructions for dealing with it.

If the Contractor suffers delay and/or incurs Cost in following these instructions of the Employer's Representative, and if such delay and/or Cost was not (by the Base Date) foreseeable by an experienced contractor, the Contractor shall give notice to the Employer's Representative, with a copy to the Employer. After receipt of such notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 to agree or determine:

- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.3, and
- (b) the amount of such Cost, which shall be added to the Contract Price, and shall notify the Contractor accordingly.

## 5 Design

**General Obligations** 5.1 The Contractor shall carry out, and be responsible for, the design of the Works. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer's Requirements. For each part of the Works, the prior consent of the Employer's Representative shall be obtained to the designer and design Subcontractor, if they are not named as such in the Contract. Nothing contained in the Contract shall create any contractual relationship or professional obligations between any designer, or a design Subcontractor, and the Employer.

The Contractor holds himself, his designers and design Subcontractors as having the experience and capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Employer's Representative at all reasonable times during the Contract Period.

**Construction Documents** 5.2 The Contractor shall prepare Construction Documents in sufficient detail to satisfy all regulatory approvals, to provide suppliers and construction personnel sufficient instruction to execute the Works, and to describe the operation of the completed Works. The Employer's Representative shall have the right to review and inspect the preparation of Construction Documents, wherever they are being prepared.

Each of the Construction Documents shall, when considered ready for use, be submitted to the Employer's Representative for pre-construction review. In this Sub-Clause, "review period" means the period required by the Employer's Representative, which (unless otherwise stated in the Employer's Requirements) shall not exceed 21 days, calculated from the date on which the Employer's Representative receives a Construction Document and the Contractor's notice that it is considered ready, both for a pre-construction review in accordance with this Sub-Clause, and for use. If the Employer's Representative, within such review period, notifies the Contractor that such Construction Document fails (to the extent stated) to comply with the Employer's Requirements, it shall be rectified, resubmitted and reviewed in accordance with this Sub-Clause, at the Contractor's cost.

For each part of the Works, and except to the extent that the prior consent of the Employer's Representative shall have been obtained:

- (a) construction shall not commence prior to the expiry of the review periods for the Construction Documents which are relevant to the design and construction of such part;

- (b) construction shall be in accordance with such Construction Documents; and
- (c) if the Contractor wishes to modify any design or document which has previously been submitted for such pre-construction review, the Contractor shall immediately notify the Employer's Representative, and shall subsequently submit revised documents to the Employer's Representative for pre-construction review.

If the Employer's Representative instructs that further Construction Documents are necessary for carrying out the Works, the Contractor shall upon receiving the Employer's Representative's instructions prepare such Construction Documents.

Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects shall be rectified by the Contractor at his cost.

**Contractor's Undertaking**

**5.3** The Contractor undertakes that, if legally and physically possible, the design, the Construction Documents, the execution and the completed Works will be in accordance with the following, in order of priority:

- (a) the law in the Country, and
- (b) the documents forming the Contract, as altered or modified by Variations.

**Technical Standards and Regulations**

**5.4** The design, the Construction Documents, the execution and the completed Works shall comply with the Country's national specifications, technical standards, building, construction and environmental regulations, regulations applicable to the product being produced from the Works, and the standards specified in the Employer's Requirements, applicable to the Contractor's Proposal and Schedules, or defined by law. References in the Contract to such specifications and other matters shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise. If substantially changed or new applicable national specifications, technical standards or regulations come into force after the Base Date, the Contractor shall submit proposals for compliance to the Employer's Representative. In the event that the Employer's Representative determines that such proposals constitute a variation, he shall then initiate a Variation in accordance with Clause 14.

**Samples**

**5.5** The Contractor shall submit the following samples and relevant information to the Employer's Representative for pre-construction review in accordance with the procedure for Construction Documents described in Sub-Clause 5.2:

- (a) manufacturer's standard samples of Materials,
- (b) samples (if any) specified in the Employer's Requirements, and
- (c) additional samples instructed by the Employer's Representative under Clause 14.

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

**As-Built Drawings**

**5.6** The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact "as-built" locations, sizes and details of the work as executed, with cross references to relevant specifications and data sheets. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two copies shall be submitted to the Employer's Representative prior to the commencement of the Tests on Completion.

In addition, the Contractor shall prepare and submit to the Employer's Representative "as-built drawings" of the Works, showing all Works as executed. The drawings shall be prepared as the Works proceed, and shall be submitted to the Employer's Representative for his inspection. The Contractor shall obtain the consent of the Employer's Representative as to their size, the referencing system, and other pertinent details.

Prior to the issue of any Taking-Over Certificate, the Contractor shall submit to the Employer's Representative one microfiche copy, one full-size original copy and six printed copies of the relevant "as-built drawings", and any further Construction Documents specified in the Employer's Requirements. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 until such documents have been submitted to the Employer's Representative.

**Operation and  
Maintenance  
Manuals**

5.7 Prior to commencement of the Tests on Completion, the Contractor shall prepare, and submit to the Employer's Representative, operation and maintenance manuals in accordance with the Employer's Requirements and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Works. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 until such operation and maintenance manuals have been submitted to the Employer's Representative.

**Error by Contractor**

5.8 If errors are found in the Construction Documents, they and the Works shall be corrected at the Contractor's cost.

**Patent Rights**

5.9 The Contractor shall indemnify the Employer against all claims of infringement of any patent, registered design, copyright, trade mark or trade name, or other intellectual property right, if:

- (a) the claim or proceedings arise out of the design, construction, manufacture or use of the Works;
- (b) the infringement (or allegation of infringement) was not the result of part (or all) of the Works being used for a purpose other than that indicated by, or reasonably to be inferred from, the Contract;
- (c) the infringement (or allegation of infringement) was not the result of part (or all) of the Works being used in association or combination with any thing not supplied by the Contractor, unless such association or combination was disclosed to the Contractor prior to the Base Date or is stated in the Contract; and
- (d) the infringement (or allegation of infringement) was not the unavoidable result of the Contractor's compliance with the Employer's Requirements.

The Contractor shall be promptly notified of any claim under this Sub-Clause made against the Employer. The Contractor may, at his cost, conduct negotiations for the settlement of such claim, and any litigation or arbitration that may arise from it. The Employer or the Employer's Representative shall not make any admission which might be prejudicial to the Contractor, unless the Contractor has failed to take over the conduct of the negotiations, litigation or arbitration within a reasonable time after having been so requested.

Except to the extent that the Employer agrees otherwise, the Contractor shall not make any admission which might be prejudicial to the Employer, until the Contractor has given the Employer such reasonable security as the Employer may require. The security shall be for an amount which is an assessment of the compensation, damages, charges and costs for which the Employer may become liable, and to which the indemnity under this Sub-Clause applies.

The Employer shall, at the request and cost of the Contractor, assist him in contesting any such claim or action, and shall be repaid all reasonable costs incurred.

## **6 Staff and Labour**

- Engagement of Staff and Labour** 6.1 The Contractor shall make his own arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.
- Rates of Wages and Conditions of Labour** 6.2 The Contractor shall pay rates of wages, and observe conditions of labour, not less favourable than those established for the trade or industry where the work is carried out. If no such established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions not less favourable than the general level of wages and conditions observed by employers whose trade or industry is similar to that of the Contractor.
- Persons in the Service of Others** 6.3 The Contractor shall not recruit, or attempt to recruit, his staff and labour from amongst persons in the service of the Employer or the Employer's Representative.
- Labour Laws** 6.4 The Contractor shall comply with all the relevant labour laws applying to his employees, and shall duly pay and afford to them all their legal rights. The Contractor shall require all such employees to obey all applicable laws and regulations concerning safety at work.
- Working Hours** 6.5 No work shall be carried out on the Site outside the normal working hours stated in the Appendix to Tender, or on the locally recognised days of rest, unless:
- (a) the Contract so provides,
  - (b) the work is unavoidable, or necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Employer's Representative, or
  - (c) the Employer's Representative gives his consent.
- Facilities for Staff and Labour** 6.6 Unless otherwise stated in Part II, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for his (and his Sub-contractor's) staff and labour. The Contractor shall also provide the facilities specified in the Employer's Requirements, for the Employer's and Employer's Representative's personnel. The Contractor shall not permit any of his employees to maintain any temporary or permanent living quarters within the structures forming part of the Works.
- Health and Safety** 6.7 Precautions shall be taken by the Contractor to ensure the health and safety of his staff and labour. The Contractor shall, in collaboration with and to the requirements of the local health authorities, ensure that medical staff, first aid facilities, sick bay and ambulance service are available at the accommodation and on the Site at all times, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Employer's Representative may reasonably require.

The Contractor shall appoint a member of his staff at the Site to be responsible for maintaining the safety, and protection against accidents, of personnel on the Site. This person shall be qualified for his work and shall have the authority to issue instructions and take protective measures to prevent accidents. The Contractor shall send, to the Employer's Representative, details of any accident as soon as possible after its occurrence.

- Contractor's Superintendence** 6.8 The Contractor shall provide all necessary superintendence during the design and execution of the Works, and as long thereafter as the Employer's Representative may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. Such superintendence shall be given by sufficient persons having adequate knowledge 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.
- Contractor's Personnel** 6.9 The Contractor shall employ (or cause to be employed) only persons who are careful and appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer's Representative may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative, who in the opinion of the Employer's Representative:
- (a) persists in any misconduct,
  - (b) is incompetent or negligent in the performance of his duties,
  - (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.
- Disorderly Conduct** 6.10 The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour, and to preserve peace and protection of persons and property in the neighbourhood of the Works against such conduct.

## 7 Plant, Materials and Workmanship

- Manner of Execution** 7.1 All Plant and Materials to be supplied shall be manufactured, and all work to be done shall be executed, in the manner set out in the Contract. Where the manner of manufacture and execution is not set out in the Contract, the work shall be executed in a proper, workmanlike and careful manner, with properly equipped facilities and non-hazardous Materials, and in accordance with recognized good practice.
- Delivery to Site** 7.2 The Contractor shall be responsible for procurement, transport, receiving, unloading and safe keeping of all Plant, Materials, Contractor's Equipment and other things required for the completion of the Works.

**Inspection 7.3** The Employer and the Employer's Representative shall be entitled, during manufacture, fabrication and preparation at any places where work is being carried out, to inspect, examine and test the materials and workmanship, and to check the progress of manufacture, of all Plant and Materials to be supplied under the Contract. The Contractor shall give them full opportunity to inspect, examine, measure and test any work on Site or wherever carried out.

The Contractor shall give due notice to the Employer's Representative whenever such work is ready, before packaging, covering up or putting out of view. The Employer's Representative shall then either carry out the inspection, examination, measurement or testing without unreasonable delay, or notify the Contractor that it is considered unnecessary. If the Contractor fails to give such notice, he shall, when required by the Employer's Representative, uncover such work and thereafter reinstate and make good at his own cost.

**Testing 7.4** If the Contract provides for tests, other than the Tests after Completion, the Contractor shall provide all documents and other information necessary for testing and such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as are necessary to carry out such tests efficiently.

The Contractor shall agree, with the Employer's Representative, the time and place for the testing of any Plant and other parts of the Works as specified in the Contract. The Employer's Representative shall give the Contractor not less than 24 hours' notice of his intention to attend the tests. The Contractor shall provide sufficient suitably qualified and experienced staff to carry out the tests specified in the Contract.

If the Employer's Representative does not attend at the time and place agreed, or if the Contractor and the Employer's Representative agree that the Employer's Representative shall not attend, the Contractor may proceed with the tests, unless the Employer's Representative instructs the Contractor otherwise. Such tests shall be deemed to have been made in the Employer's Representative's presence.

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

**Rejection 7.5** If, as a result of inspection, examination or testing, the Employer's Representative decides that any Plant, Materials, design or workmanship is defective or otherwise not in accordance with the Contract, the Employer's Representative may reject such Plant, Materials, design or workmanship and shall notify the Contractor promptly, stating his reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If the Employer's Representative requires such Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If such rejection and retesting cause the Employer to incur additional costs, such costs shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due, or to become due, to the Contractor.

**Ownership of Plant and Materials 7.6** Each item of Plant and Materials shall become the property of the Employer at whichever is the earlier of the following times:

- (a) when it is delivered to Site;
- (b) when by virtue of Sub-Clause 8.9, the Contractor becomes entitled to payment of the value of the Plant and Materials.

## 8 Commencement, Delays and Suspension

- Commencement of Works**      **8.1**      The Contractor shall commence the design and execution of the Works as soon as is reasonably possible after the receipt of a notice to this effect from the Employer's Representative. Such notice shall be issued within the time stated in the Appendix to Tender after the Effective Date. The Contractor shall then proceed with the Works with due expedition and without delay, until completion.
- Time for Completion**      **8.2**      The whole of the Works, and each Section (if any), shall be completed and shall have passed the Tests on Completion within the Time for Completion for the Works or such Section (as the case may be).
- Extension of Time for Completion**      **8.3**      The Contractor may apply for an extension of the Time for Completion if he is or will be delayed either before or after the Time for Completion by any of the following causes:
- (a) a Variation (unless an adjustment to the Time for Completion is agreed under Sub-Clause 14.3),
  - (b) a force majeure event (as defined in Sub-Clause 19.1),
  - (c) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions, unless the Contractor has not complied with such Sub-Clause,
  - (d) physical conditions or circumstances on the Site, which are exceptionally adverse and were not (by the Base Date) foreseeable by an experienced contractor, or
  - (e) any delay, impediment or prevention by the Employer.

If the Contractor intends to apply for an extension of the Time for Completion, the Contractor shall give notice to the Employer's Representative of such intention as soon as possible and in any event within 28 days of the start of the event giving rise to the delay, together with any other notice required by the Contract and relevant to such cause. The Contractor shall keep such contemporary records as may be necessary to substantiate any application, either on the Site or at another location acceptable to the Employer's Representative, and such other records as may reasonably be requested by the Employer's Representative. The Contractor shall permit the Employer's Representative to inspect all such records, and shall provide the Employer's Representative with copies as required.

Within 28 days of the first day of such delay (or such other period as may be agreed by the Employer's Representative), the Contractor shall submit full supporting details of his application. Except that, if the Contractor cannot submit all relevant details within such period because the cause of delay continued for a period exceeding 7 days, the Contractor shall submit interim details at intervals of not more than 28 days (from the first day of such delay) and full and final supporting details of his application within 21 days of the last day of delay.

The Employer's Representative shall proceed in accordance with Sub-Clause 3.5 to agree or determine either prospectively or retrospectively such extension of the Time for Completion as may be due. The Employer's Representative shall notify the Contractor accordingly. When determining each extension of time, the Employer's Representative shall review his previous determinations and may revise, but shall not decrease, the total extension of time.

**Delays Caused by Authorities**

**8.4** If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (b) such authorities delay, impede or prevent the Contractor, and
- (c) the resulting delay to the Works was not (by the Base Date) foreseeable by an experienced contractor,

then such delay will be considered as a cause of delay giving an entitlement to extension of time under Sub-Clause 8.3.

**Rate of Progress**

**8.5** If, at any time, the Contractor's actual progress falls behind the programme referred to in Sub-Clause 4.14, or it becomes apparent that it will so fall behind, the Contractor shall submit to the Employer's Representative a revised programme taking into account the prevailing circumstances. The Contractor shall, at the same time, notify the Employer's Representative of the steps being taken to expedite progress, so as to achieve completion within the Time for Completion.

If any steps taken by the Contractor in meeting his obligations under this Sub-Clause cause the Employer to incur additional costs, such costs shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due, or to become due, to the Contractor.

**Liquidated Damages for Delay**

**8.6** If the Contractor fails to comply with Sub-Clause 8.2, the Contractor shall pay to the Employer the relevant sum stated in the Appendix to Tender as liquidated damages for such default (which sum shall be the only monies due from the Contractor for such default) for every day or part of a day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate; except that the total payment shall not exceed the limit of liquidated damages (if any) stated in the Appendix to Tender.

The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due, or to become due, to the Contractor. In the event of an extension of time being granted under Sub-Clause 8.3, the amount due under this Sub-Clause shall be recalculated accordingly, and any over-payment refunded. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his duties, obligations or responsibilities under the Contract.

At any time after the Employer has become entitled to liquidated damages, the Employer's Representative may give notice to the Contractor under Sub-Clause 15.1, requiring the Contractor to complete within a specified reasonable time for completion. Such action shall not prejudice the Employer's entitlements to payment under this Sub-Clause and to terminate under Sub-Clause 15.2.

**Suspension of Work**

**8.7** The Employer's Representative may at any time instruct the Contractor to suspend progress of part or all of the Works. During suspension, the Contractor

shall protect, store and secure such part or the Works against any deterioration, loss or damage.

**Consequences of Suspension**

**8.8** If the Contractor suffers delay and/or incurs Cost in following the Employer's Representative's instructions under Sub-Clause 8.7, and in resumption of the work, and if such delay and/or Cost was not (by the Base Date) foreseeable by an experienced contractor, the Contractor shall give notice to the Employer's Representative, with a copy to the Employer. After receipt of such notice the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 to agree or determine:

(a) any extension of time to which the Contractor is entitled under Sub-Clause 8.3, and

(b) the amount of such Cost, which shall be added to the Contract Price,

and shall notify the Contractor accordingly. Except that the Contractor shall not be entitled to such extension and payment of Cost if the suspension is due to a cause attributable to the Contractor, or is necessitated by a Contractor's risk as defined in Sub-Clause 17.5.

The Contractor shall not be entitled to extension of time for, or payment of the costs incurred in, making good any deterioration, defect or loss caused by faulty design, workmanship or materials, or by the Contractor's failure to take the measures specified in Sub-Clause 8.7.

**Payment for Plant and Materials in Event of Suspension**

**8.9** The Contractor shall be entitled to payment for Plant and/or Materials which have not been delivered to Site, if the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days. This entitlement shall be to payment of the value of such Plant and/or Materials as at the date of suspension, if:

(a) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Employer's Representative's instructions, and

(b) the suspension is not due to a cause attributable to the Contractor.

The Employer shall then, if requested by the Contractor, take over the responsibility for protection, storage, security and insurance of such suspended Plant and/or Materials; the risk of loss or damage to the suspended works shall then pass to the Employer.

**Prolonged Suspension**

**8.10** If suspension under Sub-Clause 8.7 has continued for more than 84 days, and the suspension is not due to a cause attributable to the Contractor, the Contractor may by notice to the Employer's Representative require permission to proceed within 28 days. If permission is not granted within that time, the Contractor may treat the suspension as an omission under Clause 14 of the affected part of the Works. If such suspension affects the whole of the Works, the Contractor may terminate his employment, under Sub-Clause 16.2.

**Resumption of Work**

**8.11** After receipt of permission or of an instruction to proceed, the Contractor shall, after notice to the Employer's Representative, and together with the Employer's Representative, 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.

If the Employer has taken over risk and responsibility for the suspended Works under Sub-Clause 8.9, risk and responsibility shall revert to the Contractor 14 days after receipt of the permission or instruction to proceed.

## 9 Tests on Completion

- Contractor's Obligations** 9.1 The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4, after providing the documents in accordance with Sub-Clauses 5.6 and 5.7. The Contractor shall give, to the Employer's Representative, 21 days' notice of the date after which the Contractor will be ready to carry out the Tests on Completion. Unless otherwise agreed, such Tests shall be carried out within 14 days after this date, on such day or days as the Employer's Representative shall instruct.

In considering the results of the Tests on Completion, the Employer's Representative 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 the Tests on Completion, the Contractor shall provide the Employer's Representative and the Employer with a certified report of the results of all such Tests.

- Delayed Tests** 9.2 If the Tests on Completion are being unduly delayed by the Contractor, the Employer's Representative may by notice require the Contractor to carry out such Tests within 21 days after the receipt of such notice. The Contractor shall carry out such Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Employer's Representative.

If the Contractor fails to carry out the Tests on Completion within 21 days, the Employer's Representative may himself proceed with such Tests. All such Tests so carried out by the Employer's Representative shall be at the risk and cost of the Contractor. These Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of such Tests shall be accepted as accurate.

- Retesting** 9.3 If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 shall apply, and the Employer's Representative or the Contractor may require such failed Tests, and the Tests on Completion on any related work, to be repeated under the same terms and conditions.

- Failure to Pass Tests on Completion** 9.4 If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3, the Employer's Representative shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (b) reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies against the Contractor as are provided under Clause 15; or
- (c) issue a Taking-Over Certificate, if the Employer so requires: the Contract Price shall then be reduced by such amount as may be agreed by the Employer and the Contractor (in full satisfaction of such failure only), and the Contractor shall then proceed in accordance with his other obligations under the Contract.

## 10 Employer's Taking Over

- Taking-Over Certificate** 10.1 Except as stated in Sub-Clause 9.4, the Works shall be taken over by the Employer when they have been completed in accordance with the Contract (except as described in sub-paragraph (a) below), have passed the Tests on

Completion and a Taking-Over Certificate for the Works has been issued, or has deemed to have been issued in accordance with this Sub-Clause. If the Works are divided into Sections, the Contractor shall be entitled to apply for a Taking-Over Certificate for each Section.

The Contractor may apply by notice to the Employer's Representative for a Taking-Over Certificate not earlier than 14 days before the Works or Section (as the case may be) will, in the Contractor's opinion, be complete and ready for taking over. The Employer's Representative shall, within 28 days after the receipt of 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 minor outstanding work that does not affect the use of the Works or Section for their intended purpose) including passing the Tests on Completion; or
- (b) reject the application, giving his 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 such work before issuing a further notice under this Sub-Clause.

If the Employer's Representative 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.

#### **Use by The Employer 10.2**

The Employer shall not use any part of the Works unless the Employer's Representative has issued a Taking-Over Certificate for such part. If a Taking-Over Certificate has been issued for any part of the Works (other than a Section), the liquidated damages for delay in completion of the remainder of the Works (and of the Section of which it forms part) shall, for any period of delay after the date stated in such Taking-Over Certificate, be reduced in the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be); such values shall be determined by the Employer's Representative in accordance with the provisions of Sub-Clause 3.5. The provisions of this paragraph shall only apply to the rate of liquidated damages under Sub-Clause 8.6, and shall not affect the limit of such damages.

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 at the date on which it is used,
- (b) the Employer's Representative shall, when requested by the Contractor, issue a Taking-Over Certificate accordingly, and
- (c) the Contractor shall cease to be liable for the care of such part from such date, when responsibility shall pass to the Employer.

After the Employer's Representative 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, and the Contractor shall carry out such Tests on Completion as soon as practicable, before the expiry of the Contract Period.

#### **Interference with Tests on Completion 10.3**

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the Employer (or another contractor employed by 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 Employer's Representative 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 of the Contract Period. The Employer's Representative shall require the Tests on Completion to be carried out by 14 days' notice and in accordance with the relevant provisions of the Contract. If the Contractor incurs additional Cost as a result of this delay in carrying out the Tests on Completion, such Cost plus reasonable profit shall be determined by the Employer's Representative in accordance with the provisions of Sub-Clause 3.5 and shall be added to the Contract Price.

## 11 Tests after Completion

**Employer's Obligations** 11.1 If Tests after Completion are specified in the Contract, this Clause shall apply. Unless otherwise stated in Part II, the Employer shall provide the necessary labour, materials, electricity, fuel and water, and shall carry out the Tests after Completion in accordance with the manuals provided by the Contractor under Sub-Clause 5.7 and such guidance as the Contractor may be required to give during the course of such Tests.

The Tests after Completion shall be carried out as soon as is reasonably practicable after the Works, or Section, have been taken over by the Employer. The Employer shall give to the Contractor 21 days' notice of the date after which the Tests after Completion will be carried out. Unless otherwise agreed, such Tests shall be carried out within 14 days after this date, on the day or days determined by the Employer. If the Contractor does not attend at the time and place agreed, the Employer may proceed with the Tests after Completion, which shall be deemed to have been made in the Contractor's presence, and the Contractor shall accept the readings as accurate.

The results of the Tests after Completion shall be compiled and evaluated by the Employer and the Contractor. Any effect on the results of the Tests after Completion which can reasonably be shown to be due to the prior use of the Works by the Employer shall be taken into account in assessing such results.

**Delayed Tests** 11.2 If the Contractor incurs additional Cost as a result of any unreasonable delay by the Employer in carrying out the Tests after Completion, such Cost plus reasonable profit shall be determined by the Employer's Representative in accordance with the provisions of Sub-Clause 3.5 and shall be added to the Contract Price.

If, for reasons not attributable to the Contractor, a Test after Completion on the Works or any Section cannot be completed during the Contract Period (or any other period agreed upon by the Employer and the Contractor), then the Works or such Section shall be deemed to have passed such Test after Completion.

**Retesting** 11.3 If the Works, or a Section, fail to pass the Tests after Completion, the Employer or the Contractor may require such failed Tests, and the Tests after Completion on any related work, to be repeated under the same terms and conditions. If such failure and retesting result from a default of the Contractor and cause the Employer to incur additional costs, such costs shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due, or to become due, to the Contractor.

**Failure to Pass Tests after Completion**

- 11.4** If the following conditions apply, namely:
- (a) the Works, or a Section, fail to pass any or all of the Tests after Completion,
  - (b) the relevant sum payable as liquidated damages for such failure is stated (or its method of calculation is defined) in the Appendix to Tender, and
  - (c) the Contractor pays such relevant sum to the Employer during the Contract Period,

then the Works or such Section shall be deemed to have passed such Tests after Completion.

If the Works, or a Section, fail to pass a Test after Completion and the Contractor in consequence proposes to make any adjustment or modification thereto, the Employer's Representative may instruct the Contractor that the Employer does not wish such adjustment or modification to be made until a time that is convenient to the Employer. In such event, the Contractor shall remain liable to carry out the adjustment or modification, and to satisfy such Test within a reasonable time of being notified to do so by the Employer's Representative. If, however, the Employer's Representative fails to give any such notice during the Contract Period, the Contractor shall be relieved of any such obligation and the Works or Section (as the case may be) shall be deemed to have passed such Test after Completion.

If the Contractor incurs additional Cost as a result of any unreasonable delay by the Employer in permitting access to the Works or Plant by the Contractor, either to investigate the causes of failure to pass a Test after Completion, or to carry out any adjustments or modifications, then the Contractor shall be paid the additional Cost, plus reasonable profit, caused by such delay.

## **12 Defects Liability**

**Completion of Outstanding Work and Remedying Defects**

- 12.1** In order that the Construction Documents and the Works shall be in the condition required by the Contract (fair wear and tear excepted) at, or as soon as practicable after, the expiry of the Contract Period, the Contractor shall:
- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, as soon as practicable after such date, and
  - (b) execute all work of amendment, reconstruction, and remedying defects or damage, as may be instructed by the Employer or the Employer's Representative during the Contract Period.

If any such defect appears or damage occurs, the Employer or the Employer's Representative shall promptly notify the Contractor in writing.

**Cost of Remedying Defects**

- 12.2** All work referred to in Sub-Clause 12.1(b) shall be executed by the Contractor at his own cost, if the necessity for such work is due to:
- (a) the design of the Works,
  - (b) Plant, Materials or workmanship not being in accordance with the Contract, or
  - (c) failure by the Contractor to comply with any of his other obligations.

If such necessity is due to any other cause, the Employer's Representative shall notify the Contractor accordingly and seek agreement to an adjustment to the Contract Price. In this event, Sub-Clause 14.3 shall apply to such work.

**Extension of Contract Period** 12.3 The Contract Period shall be extended by a period equal to the sum of any periods, after the Works are taken-over, during which the Works or any Section or item of Plant cannot be used, for the purposes for which they are intended, by reason of a defect or damage; except that the Contract Period shall not be extended by more than two years.

When delivery of Plant and/or Materials, or erection of Plant, or installation of Materials, has been suspended under Sub-Clause 8.7, the Contractor's obligations under this Sub-Clause shall not apply to any defects or damage occurring more than three years after the Plant and/or Materials would otherwise have been delivered, erected and taken-over.

**Failure to Remedy Defects** 12.4 If the Contractor fails to remedy any defect or damage within a reasonable time, the Employer or the Employer's Representative may fix a date on or by which to remedy the defect or damage, and give the Contractor reasonable notice of such date.

If the Contractor fails to remedy the defect or damage by such date and the necessity for such work is due to a cause stated in Sub-Clause 12.2(a), (b) or (c), the Employer may (at his sole discretion):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's risk and cost, but the Contractor shall have no responsibility for such work: the costs properly incurred by the Employer in remedying the defect or damage shall be recoverable from the Contractor by the Employer;
- (b) require the Employer's Representative to determine and certify a reasonable reduction in the Contract Price; or
- (c) if the defect or damage is such that the Employer has been deprived of substantially the whole of the benefit of the Works or parts of the Works, terminate the Contract in respect of such parts of the Works as cannot be put to the intended use: the Employer shall then be entitled to recover all sums paid for such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor, and Sub-Clause 15.1 shall not apply.

**Removal of Defective Work** 12.5 If the defect or damage is such that it cannot be remedied expeditiously on the Site, the Contractor may, with the consent of the Employer's Representative or the Employer, remove from the Site for the purposes of repair any part of the Works which is defective or damaged.

**Further Tests** 12.6 If the remedying of any defect or damage is such that it may affect the performance of the Works, the Employer may require that Tests on Completion or Tests after Completion, or both, be repeated to the extent necessary. The requirement shall be made by notice within 28 days after the defect or damage is remedied. Such Tests shall be carried out in accordance with Clause 9 or Clause 11 (as the case may be).

**Right of Access** 12.7 Until the Performance Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the working and performance of the Works, except as may be inconsistent with any reasonable security restrictions by the organisation responsible for operating the Works.

**Contractor to Search** 12.8 The Contractor shall, if required by the Employer's Representative, search for the cause of any defect, under the direction of the Employer's Representative. Unless the defect is one for which the Contractor is liable, the Cost of such search, plus reasonable profit, shall be added to the Contract Price.

**Performance Certificate** 12.9 The Contract shall not be considered to be completed until the Performance Certificate has been signed by the Employer's Representative and delivered to the Contractor, stating the date on which the Contractor completed his obligations to the Employer's Representative's satisfaction.

The Performance Certificate shall be given by the Employer's Representative by the date 28 days after the expiry of the Contract Period, or as soon after such date as the Contractor has provided all the Construction Documents and completed and tested all the Works, including remedying any defects.

Only the Performance Certificate shall be deemed to constitute approval of the Works.

**Unfulfilled Obligations** 12.10 After the Performance Certificate has been issued, the Contractor and the Employer 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 any such obligation, the Contract shall be deemed to remain in force.

## 13 Contract Price and Payment

**The Contract Price** 13.1 Unless otherwise stated in Part II:

- (a) payment for the Works shall be made on a fixed lump sum basis;
- (b) the Contract Price shall not be adjusted for changes in the cost of labour, materials or other matters;
- (c) the Contractor shall pay all duties and taxes in consequence of his obligations under the Contract, and the Contract Price shall not be adjusted for such costs, except as stated in Sub-Clause 13.16;
- (d) any quantities which may be set out in a Schedule are only estimated quantities and are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract; and
- (e) any quantities, prices or rates of payment per unit quantity which may be set out in a Schedule are only to be used for the purposes stated in such Schedule.

If any part of the Works is to be paid according to quantity supplied or work done, the provisions for measurement and valuation shall be as stated in Part II.

**Advance Payments** 13.2 The Employer will make interest-free advance payments to the Contractor for his mobilization and design. The total of such advance payments, and the number and timing of instalments (if more than one), shall be as stated in the Appendix to Tender, payable in the proportions of currencies in which the Contract Price is payable. The Employer's Representative shall issue an Interim Payment Certificate for the first instalment after the Contractor has delivered, to the Employer, the performance security in accordance with Sub-Clause 4.2 and a bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payments. Such bank guarantee shall remain effective until the advance payments have been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates.

The advance payments shall be repaid through percentage deductions in Interim Payment Certificates certified by the Employer's Representative in accordance with this Clause. Unless other percentages are stated in the Appendix to Tender:

- (a) deductions shall commence in the Interim Payment Certificate in which the total of all certified interim payments (excluding the advance payments and deductions and repayments of retention) exceeds ten per cent (10%) of the Contract Price less Provisional Sums; and
- (b) deductions shall be made at the amortization rate of one quarter (25%) of the amount of all Interim Payment Certificates (excluding the advance payments and deductions and repayments of retention) in the types and proportionate amounts of currencies of the advance payments, until such time as the advance payments have been repaid.

If the advance payments have not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clauses 15, 16 or 19 (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

**Application for  
Interim Payment  
Certificates**

**13.3** The Contractor shall submit a statement in six copies to the Employer's Representative after the end of each month, in a form approved by the Employer's Representative, showing the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the detailed report on the progress during the month in accordance with Sub-Clause 4.15. The statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Construction Documents produced and the Works executed up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);
- (b) any amounts to be added and deducted for changes in legislation in accordance with Sub-Clause 13.16;
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Appendix to Tender to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Appendix to Tender;
- (d) any amounts to be added and deducted for the advance payments and repayments in accordance with Sub-Clause 13.2;
- (e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 13.5;
- (f) any other additions or deductions which may have become due in accordance with the Contract (including those under Clause 20), other than under Sub-Clause 8.6; and
- (g) the deduction of the amounts certified in all previous Interim Payment Certificates.

**Schedule of  
Payments**

**13.4** If the Contract includes a Schedule of Payments specifying the instalments in which the Contract Price will be paid, then, unless otherwise stated in such Schedule:

- (a) the instalments quoted in such Schedule shall be used to determine the contract value for the purposes of sub-paragraph (a) of Sub-Clause 13.3;
- (b) Sub-Clause 13.5 shall not apply; and

**Plant and Materials  
for the Permanent  
Works** 13.5

(c) if the payment instalments are not defined by reference to the actual progress achieved in executing the Works, the Employer's Representative shall be entitled to amend such Schedule: such amendment shall be made in accordance with the provisions of Sub-Clause 3.5 and shall only take account of the extent to which the actual progress achieved is less than that on which the instalments in the Schedule were based.

If this Sub-Clause applies, Interim Payment Certificates shall include (i) an additional amount for Plant and Materials which have been brought to the Site for incorporation in the Permanent Works, and (ii) a deduction when they have been incorporated in the Permanent Works. The Employer's Representative shall determine each addition and deduction in accordance with the following provisions:

- (a) no addition shall be included in the Interim Payment Certificate unless, in the opinion of the Employer's Representative:
  - (i) the Plant and Materials are considered to be in accordance with the Contract;
  - (ii) the Plant and Materials have been delivered to the Site and are properly stored on Site and protected against loss, damage or deterioration;
  - (iii) the Contractor's records of the requirements, orders, receipts and use of Plant and Materials are kept in a form approved by the Employer's Representative, and such records are available for inspection by the Employer's Representative;
  - (iv) the Contractor has submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, together with such documents as may be required for the purpose of evidencing such Cost; and
  - (v) the Plant and Materials are those listed in the Appendix to Tender;
- (b) the additional amount to be certified shall be the equivalent of eighty percent of the cost of the Plant and Materials delivered to the Site, as determined by the Employer's Representative after review of the documents mentioned in sub-paragraph (a) above, taking account of the contract value of such Plant and Materials as determined and considered appropriate by the Employer's Representative;
- (c) the amount of the deduction for any Plant and Materials incorporated in the Permanent Works shall be equivalent to the addition previously certified by the Employer's Representative for such Plant and Materials under sub-paragraph (b) above; and
- (d) the currencies for such additions and deductions shall be determined by the Employer's Representative as follows:
  - (i) in the case of each addition, the currencies shall be those in which the payment will eventually become due for the relevant item of Plant or Materials, upon their incorporation in the Permanent Works; and
  - (ii) in the case of a deduction, the currencies shall be those in which the addition for the respective item of Plant or Materials had been certified.

**Issue of Interim Payment Certificates** 13.6 No amount will be certified or paid until the Employer has received, and approved, the performance security in accordance with Sub-Clause 4.2. Thereafter, the Employer's Representative shall, within 28 days of receiving a statement and supporting documents, deliver to the Employer with a copy to the Contractor an Interim Payment Certificate showing the amount which the Employer's Representative considers to be due; if no payment is considered to be due, the Employer's Representative shall promptly notify the Contractor accordingly. Except that the Employer's Representative shall not be bound to certify any payment under this Sub-Clause, if the net amount to be certified (after retention and other deductions) would be less than the minimum amount of Interim Payment Certificates (if any) stated in the Appendix to Tender.

An Interim Payment Certificate shall not be withheld on account of:

- (a) defects: if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement shall be deducted by the Employer's Representative from any amount otherwise due;
- (b) part (only) of the payment applied for being disputed: in such case, a payment certificate shall be issued for the undisputed amount.

The Employer's Representative may in any payment certificate make any correction or modification that should properly be made to any previous certificate.

**Payment** 13.7 Unless otherwise stated in Part II,

- (a) the Employer shall pay the amount certified in each Interim Payment Certificate within 56 days from the date on which the Employer's Representative received the Contractor's statement and supporting documents; and
- (b) the Employer shall pay the amount certified in the Final Payment Certificate within 56 days from the date of issue of the Certificate.

Payments shall be made into a bank account, nominated by the Contractor, in the payment country named as such in the Contract. If payments are to be made in more than one currency, separate bank accounts may be nominated by the Contractor for each currency, and payments shall be made by the Employer accordingly.

**Delayed Payment** 13.8 If payment of any sum payable under Sub-Clause 13.7 is delayed, the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. Unless otherwise stated in Part II, these financing charges shall be calculated at the annual rate three percentage points above the discount rate of the central bank in the country of the currency of payment. The Contractor shall be entitled to such payment without formal notice and without prejudice to any other right or remedy.

**Payment of Retention Money** 13.9 When the Employer's Representative has issued the Taking-Over Certificate for the Works, and the Works have passed all specified tests (including the Tests after Completion, if any), the first half of the Retention Money shall be certified by the Employer's Representative for payment to the Contractor. If the Works are taken over in Sections, the percentage of the first half of the Retention Money released following the issue of a Taking-Over Certificate for a Section, and it passing all tests, shall be the percentage value of the Section as stated in the Appendix to Tender.

Upon the expiry of the Contract Period, the second half of the Retention Money shall be certified by the Employer's Representative for payment to the Contractor. Except that, if at such time any work shall remain to be executed under Clause 11 or Clause 12, the Employer's Representative shall be entitled to withhold certification, until completion of such work, of so much of the balance of the Retention Money as shall represent the cost of the work remaining to be executed.

**Statement at 13.10  
Completion**

Not later than 84 days after the issue of the Taking-Over Certificate for the Works, the Contractor shall submit, to the Employer's Representative, six copies of a statement at completion with supporting documents showing in detail, in the form approved by the Employer's Representative under Sub-Clause 13.3:

- (a) the final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of amounts which the Contractor considers will become due to him under the Contract.

The estimated amounts shall be shown separately in such statement at completion. The Employer's Representative shall certify payment under Sub-Clause 13.6.

**Application for 13.11  
Final Payment  
Certificate**

Not later than 56 days after the issue of the Performance Certificate, the Contractor shall submit to the Employer's Representative six copies of a draft final statement with supporting documents showing in detail, in a form approved by the Employer's Representative:

- (a) the value of all work done in accordance with the Contract, and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Employer's Representative disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Employer's Representative may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Employer's Representative the final statement as agreed (for the purposes of these Conditions referred to as the "Final Statement").

If, following discussions between the Employer's Representative and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Employer's Representative shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for those parts of the draft final statement which are not in dispute. The dispute may then be resolved under Clause 20, in which case the Contractor shall then prepare and submit to the Employer (with a copy to the Employer's Representative) a Final Statement in accordance with the outcome of the dispute.

**Discharge 13.12**

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all monies due to the Contractor under the Contract. Such discharge may state that it shall become effective only after payment due under the Final Payment Certificate has been made and the performance security referred to in Sub-Clause 4.2 has been returned to the Contractor.

- Issue of Final Payment Certificate** 13.13 The Employer's Representative shall issue to the Employer, with a copy to the Contractor, the Final Payment Certificate within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clauses 13.11 and 13.12, stating:
- (a) the amount which is finally due, and
  - (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, other than under Sub-Clause 8.6, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.
- If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clauses 13.11 and 13.12, the Employer's Representative shall request the Contractor to do so. If the Contractor fails to make such an application within a period of 28 days, the Employer's Representative shall issue the Final Payment Certificate for such amount as he considers to be due.
- Cessation of Employer's Liability** 13.14 The Employer shall not be liable to the Contractor for any matter or thing arising out of (or in connection with) the Contract or execution of the Works, unless the Contractor shall have included a claim for it in his Final Statement and (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the statement at completion described in Sub-Clause 13.10.
- Calculation of Payments in Foreign Currency** 13.15 If the Contract Price is expressed in Local Currency only, but some payments are to be made in another currency, the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Appendix to Tender. If no rates of exchange are stated therein, they shall, unless otherwise stated in Part II, be those prevailing for the Base Date, as determined by the central bank of the Country.
- Changes in Legislation** 13.16 The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from changes in legislation of the Country, made after the Base Date. Such legislation means any law, order, regulation or by-law having the force of law, including currency restrictions, which affects the Contractor in the performance of his obligations.
- If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost resulting from such changes in legislation, made after the Base Date, the Contractor shall give notice to the Employer's Representative. After receipt of such notice the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 to agree or determine:
- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.3, and
  - (b) the amount of such Cost, which shall be added to the Contract Price, and shall notify the Contractor accordingly.

## 14 Variations

**Right to Vary** 14.1 Variations may be initiated by the Employer's Representative at any time during the Contract Period, either by instruction or by a request for the Contractor to submit a proposal. If the Employer's Representative requests the Contractor to submit a proposal and subsequently elects not to proceed with the change, the Contractor shall be reimbursed for the Cost incurred, including design services.

The Contractor shall not make any alteration and/or modification of the Works, unless and until the Employer's Representative instructs or approves a Variation. If the Construction Documents or Works are not in accordance with the Contract, the rectification shall not constitute a Variation.

**Value Engineering** 14.2 The Contractor may, at any time, submit to the Employer's Representative a written proposal which in the Contractor's opinion will reduce the cost of constructing, maintaining or operating the Works, or improve the efficiency or value to the Employer of the completed Works, or otherwise be of benefit to the Employer. Any such proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 14.3.

**Variation Procedure** 14.3 If the Employer's Representative requests a proposal, prior to instructing a Variation, the Contractor shall submit as soon as practicable:

- (a) a description of the proposed design and/or work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 4.14, and
- (c) the Contractor's proposal for adjustment to the Contract Price, Time for Completion and/or modifications to the Contract.

The Employer's Representative shall, as soon as practicable after receipt of such proposals, respond with approval, rejection or comments.

If the Employer's Representative instructs or approves a Variation, he shall proceed in accordance with Sub-Clause 3.5 to agree or determine adjustments to the Contract Price, Time for Completion and Schedule of Payments. Adjustment of the Contract Price shall include reasonable profit, and shall take account of the Contractor's submissions under Sub-Clause 14.2 if applicable.

**Payment in Applicable Currencies** 14.4 If the Contract provides for payment of the Contract Price in more than one currency, and an adjustment is agreed or fixed as stated above, the amount payable in each of the applicable currencies shall be specified when the adjustment is agreed or fixed. In specifying the amount in each currency, the Contractor and the Employer's Representative (or, failing agreement, the Employer's Representative) shall take account of the actual or expected currency proportions of the Cost of the varied work, without being bound by the proportions of various currencies specified for payment of the Contract Price.

**Provisional Sums** 14.5 Each Provisional Sum shall only be used, in whole or in part, in accordance with the Employer's Representative's instructions. The total sum paid to the Contractor shall include only such amounts for the work, supplies or services to which such Provisional Sums relate as the Employer's Representative shall have instructed. For each Provisional Sum, the Employer's Representative may order:

- (a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 14.3;
- (b) Plant, Materials or services to be purchased by the Contractor, for which payment will be made as follows:
  - (i) the actual price paid (or due to be paid) by the Contractor, and
  - (ii) a percentage of the actual price paid (or due to be paid), as stated in the Appendix to Tender, to cover all other Costs, charges and profit.

The Contractor shall, when required by the Employer's Representative, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

## 15 Default of Contractor

**Notice to Correct 15.1** If the Contractor fails to carry out any of his obligations, or if the Contractor is not executing the Works in accordance with the Contract, the Employer's Representative may give notice to the Contractor requiring him to make good such failure and remedy the same within a specified reasonable time.

**Termination 15.2** If the Contractor:

- (a) fails to comply with a notice under Sub-Clause 15.1,
- (b) abandons or repudiates the Contract,
- (c) without reasonable excuse fails:
  - (i) to commence the Works in accordance with Sub-Clause 8.1,
  - (ii) to proceed with the Works in accordance with Clause 8, or
  - (iii) to demonstrate that sufficient design capability is employed in the design of the Works to achieve completion within the Time for Completion,
- (d) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under any applicable law) has a similar effect to any of these acts or events,
- (e) fails to comply with a notice issued under Sub-Clause 7.5 within 28 days after having received it, or
- (f) assigns the Contract or subcontracts the Works without the required consent,

then the Employer may, after having given 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site. The Contractor shall then deliver all Construction Documents, and other design documents made by or for him, to the Employer's Representative. The Contractor shall not be released from any of his obligations or liabilities under the Contract. The rights and authorities conferred on the Employer and the Employer's Representative by the Contract shall not be affected.

The Employer may upon such termination complete the Works himself and/or by any other contractor. The Employer or such other contractor may use for such completion so much of the Construction Documents, other design documents made by or on behalf of the Contractor, Contractor's Equipment,

Temporary Works, Plant and Materials as he or they may think proper. Upon completion of the Works, or at such earlier date as the Employer's Representative thinks appropriate, the Employer's Representative shall give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall remove or arrange removal of the same from such place without delay and at his cost.

**Valuation at Date of Termination** 15.3 The Employer's Representative shall, as soon as possible after termination under Sub-Clause 15.2, determine and advise the Contractor of the value of the Construction Documents, Plant, Materials, Contractor's Equipment and Works and all sums then due to the Contractor as at the date of termination.

**Payment after Termination** 15.4 After termination under Sub-Clause 15.2, the Employer shall not be liable to make any further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established.

The Employer shall be entitled to recover from the Contractor the extra costs, if any, of completing the Works after allowing for any sum due to the Contractor under Sub-Clause 15.3. If there are no such extra costs, the Employer shall pay any balance to the Contractor.

**Bribes** 15.5 If the Contractor, or any of his Subcontractors, agents or servants gives or offers to give to any person any bribe, gift, gratuity or commission as an inducement or reward:

(a) for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer, or

(b) for showing or forbearing to show favour or disfavour to any person in relation to the Contract or to any other contract with the Employer,

then the Employer may, after having given 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of this Clause shall apply as if such termination and expulsion had been made under Sub-Clause 15.2.

## 16 Default of Employer

**Contractor's Entitlement to Suspend Work** 16.1 If the Employer fails to pay the Contractor the amount due under any certificate of the Employer's Representative, and fails to explain why the Contractor is not entitled to such amount, within 21 days after the expiry of the time stated in Sub-Clause 13.7 within which payment is to be made, except for any deduction that the Employer is entitled to make under the Contract, the Contractor may suspend work or reduce the rate of work after giving not less than 7 days' prior notice to the Employer (with a copy to the Employer's Representative). Such action shall not prejudice the Contractor's entitlements to payment under Sub-Clause 13.8 and to terminate under Sub-Clause 16.2.

If the Contractor suspends work or reduces the rate of work, and the Employer subsequently pays the amount due (including payment in accordance with Sub-Clause 13.8), the Contractor's entitlement under Sub-Clause 16.2 shall lapse in respect of such delayed payment, unless notice of termination has already been given, and the Contractor shall resume normal working as soon as is reasonably possible.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work or reducing the rate of work in accordance with this Sub-Clause, the Contractor shall give notice to the Employer's Representative. After receipt of such notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 to agree or determine:

- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.3, and
  - (b) the amount of such Cost plus reasonable profit, which shall be added to the Contract Price,
- and shall notify the Contractor accordingly.

**Termination 16.2** If the Employer:

- (a) fails to pay the Contractor the amount due under any certificate of the Employer's Representative within 42 days after the expiry of the time stated in Sub-Clause 13.7 within which payment is to be made (except for any deduction that the Employer is entitled to make under the Contract),
- (b) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under any applicable law) has a similar effect to any of these acts or events,
- (c) consistently fails to meet the Employer's obligations under the Contract, or
- (d) assigns the Contract without the Contractor's consent,

or, if a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.10,

then the Contractor may terminate his employment under the Contract by giving notice to the Employer, with a copy to the Employer's Representative. Such notice shall take effect 14 days after the giving of the notice.

**Cessation of Work and Removal of Contractor's Equipment 16.3**

After termination under Sub-Clause 2.4 or Sub-Clause 16.2, the Contractor shall:

- (a) cease all further work, except for such work as may be necessary and instructed by the Employer's Representative for the purpose of making safe or protecting those parts of the Works already executed, and any work required to leave the Site in a clean and safe condition,
- (b) hand over all Construction Documents, Plant and Materials for which the Contractor has received payment,
- (c) hand over those other parts of the Works executed by the Contractor up to the date of termination, and
- (d) remove all Contractor's Equipment which is on the Site and repatriate all his staff and labour from the Site.

Any such termination shall be without prejudice to any other right of the Contractor under the Contract.

**Payment on Termination 16.4**

After termination under Sub-Clause 16.2, the Employer shall return the performance security, and shall pay the Contractor an amount calculated and certified in accordance with Sub-Clause 19.6 plus the amount of any loss or damage, including loss of profit, which the Contractor may have suffered in consequence of termination.

## 17 Risk and Responsibility

**Indemnity 17.1** The Contractor shall indemnify and hold harmless the Employer, the Employer's Representative, their contractors, agents and employees from and against all claims, damages, losses and expenses arising out of or resulting from the Works, including professional services provided by the Contractor.

These indemnification obligations shall be limited to claims, damages, losses and expenses which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of physical property (other than the Works), including consequential loss of use. Such obligations shall also be limited to the extent that such claims, damages, losses or expenses are caused in whole or in part by a breach of a duty of care, imposed by law on the Contractor or anyone directly or indirectly employed by the Contractor.

**Contractor's Care of the Works 17.2** The Contractor shall take full responsibility for the care of the Works from the Commencement Date until the date of issue of the Taking-Over Certificate, when responsibility shall pass to the Employer. If the Employer's Representative issues a Taking-Over Certificate for any Section or part of the Works, the Contractor shall cease to be responsible for the care of that Section or part from the date of issue of such Taking-Over Certificate, when responsibility shall pass to the Employer.

The Contractor shall take responsibility for the care of any outstanding work which is required to be completed prior to the expiry of the Contract Period, until the Employer's Representative confirms in writing that such outstanding work has been completed.

If any loss or damage happens to the Works, arising from any cause other than the Employer's risks listed in Sub-Clause 17.3, during the period for which the Contractor is responsible, the Contractor shall rectify such loss or damage, at his cost, so that the Works conform with the Contract. The Contractor shall also be liable for any loss or damage to the Works caused by any operations carried out by the Contractor after the date of issue of the Taking-Over Certificate.

**Employer's Risks 17.3** The Employer's risks are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war,
- (c) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly,
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works,
- (f) loss or damage due to the use or occupation by the Employer of any Section or part of the Works, except as may be provided for in the Contract, and
- (g) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.

**Consequences of  
Employer's Risks**

**17.4** The Contractor shall give notice, to the Employer's Representative, of an Employer's risk upon it being foreseen by, or becoming known to, the Contractor. If an Employer's risk results in loss or damage, the Contractor shall rectify such loss or damage to the extent required by the Employer's Representative. If the Contractor suffers delay and/or incurs Cost as a result of an Employer's risk, the Contractor shall give further notice to the Employer's Representative. After receipt of such further notice the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 to agree or determine:

- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.3, and
- (b) the amount of such Cost, which shall be added to the Contract Price, and shall notify the Contractor accordingly.

**Contractor's Risks**

**17.5** The Contractor's risks are all risks other than the Employer's risks listed in Sub-Clause 17.3.

**Limitation of  
Liability**

**17.6** The Contractor shall in no event be liable to the Employer, by way of indemnity or by reason of any breach of the Contract or in tort or otherwise, for loss of use of any part (or all) of the Works or for loss of production, loss of profit or loss of any contract or for any indirect special or consequential loss or damage which may be suffered by the Employer in connection with the Contract. The total liability of the Contractor to the Employer under the Contract shall not exceed the Contract Price. Except that this Sub-Clause shall not limit the liability of the Contractor:

- (a) under Sub-Clauses 4.19, 4.20, 5.9, 8.6 and 11.4,
- (b) under any other provisions of the Contract which expressly impose a greater liability,
- (c) in cases of fraud, wilful misconduct or illegal or unlawful acts, or
- (d) in cases of acts or omissions of the Contractor which are contrary to the most elementary rules of diligence which a conscientious contractor would have followed in similar circumstances.

## 18 Insurance

- Insurance for Design** 18.1 The Contractor shall effect professional indemnity insurance, which shall insure the Contractor's liability by reason of professional negligence in the design of the Works. Such insurance shall be for a limit of not less than the amount specified in the Appendix to Tender.
- The Contractor shall use his best endeavours to maintain such professional indemnity insurance in full force and effect throughout the periods of his liability, under the Contract and under the law of the Country. The Contractor undertakes to give the Employer reasonable notice in the event of difficulty (if any) in extending, renewing or reinstating such insurance.
- Insurance for Works and Contractor's Equipment** 18.2 The Contractor shall insure the Construction Documents, Plant, Materials and Works in the joint names of the Employer, the Contractor and Subcontractors, against all loss or damage. This insurance shall cover loss or damage from any cause other than the Employer's risks listed in Sub-Clause 17.3 sub-paragraphs (a), (b), (c) and (d) in so far as such insurance is readily obtainable. Such insurance shall be for a limit of not less than the full replacement cost (including profit) and shall also cover the costs of demolition and removal of debris. Such insurance shall be in such a manner that the Employer and the Contractor are covered from the date by which the evidence is to be submitted under Sub-Clause 18.5(a), until the date of issue of the Taking-Over Certificate for the Works. The Contractor shall extend such 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 occasioned by the Contractor or Subcontractors in the course of any other operations (including those under Clauses 11 and 12).
- The Contractor shall insure the Contractor's Equipment in the joint names of the Employer, the Contractor and Subcontractors, against all loss or damage. This insurance shall cover loss or damage from any cause other than the Employer's risks listed in Sub-Clause 17.3 sub-paragraphs (a), (b), (c) and (d) in so far as such insurance is readily obtainable. Such insurance shall be for a limit of not less than the full replacement value (including delivery to Site). Such insurance shall be in such a manner that each item of equipment is insured while it is being transported to the Site and throughout the period it is on or near the Site.
- Insurance against Injury to Persons and Damage to Property** 18.3 The Contractor shall insure against liability to third parties, in the joint names of the Employer, the Contractor and Subcontractors, for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2) or to any person (except persons insured under Sub-Clause 18.4), which may arise out of the performance of the Contract and occurring before the issue of the Performance Certificate. Such insurance shall be for a limit of not less than the amount specified in the Appendix to Tender.
- Insurance for Workers** 18.4 The Contractor shall effect and maintain insurance against losses and claims arising from the death or injury to any person employed by the Contractor or any Subcontractor, in such a manner that the Employer and the Employer's Representative are indemnified under the policy of insurance. For a Subcontractor's employees, such insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

**General Requirements for Insurances**

**18.5** Each insurance policy shall be consistent with the general terms agreed in writing prior to the Effective Date, and such agreement shall take precedence over the provisions of this Clause.

The Contractor shall, within the respective periods stated in the Appendix to Tender (calculated from the Commencement Date), submit to the Employer:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances described in Sub-Clauses 18.2 and 18.3.

When each premium has been paid, the Contractor shall submit copy receipts to the Employer. The Contractor shall also, when providing such evidence, policies and receipts to the Employer, notify the Employer's Representative of so doing.

The Contractor shall effect all insurances for which he is responsible with insurers and in terms approved by the Employer. Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify such loss or damage. Payments received from insurers shall be used for the rectification of such loss or damage.

The Contractor (and, if appropriate, the Employer) shall comply with the conditions stipulated in each of the insurance policies. The Contractor shall make no material alteration to the terms of any insurance without the prior approval of the Employer. If an insurer makes (or purports to make) any such alteration, the Contractor shall notify the Employer immediately.

If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide satisfactory evidence, policies and receipts in accordance with this Sub-Clause, the Employer may, without prejudice to any other right or remedy, effect insurance for the coverage relevant to such default, and pay the premiums due. Such payments shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due, or to become due, to the Contractor.

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 accordingly.

## **19 Force Majeure**

**Definition of Force Majeure**

**19.1** In this Clause, "force majeure" means an event beyond the control of the Employer and the Contractor, which makes it impossible or illegal for a party to perform, including but not limited to:

- (a) act of God;
- (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
- (c) rebellion, revolution, insurrection, or military or usurped power, or civil war;
- (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;

		(e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors.
<b>Effect of Force Majeure Event</b>	<b>19.2</b>	Neither the Employer nor the Contractor shall be considered in default or in contractual breach to the extent that performance of obligations is prevented by a force majeure event which arises after the Effective Date.
<b>Contractor's Responsibility</b>	<b>19.3</b>	Upon occurrence of an event considered by the Contractor to constitute force majeure and which may affect performance of his obligations, he shall promptly notify the Employer's Representative, and shall endeavour to continue to perform his obligations as far as reasonably practicable. The Contractor shall also notify the Employer's Representative of any proposals, including any reasonable alternative means for performance, but shall not effect such proposals without the consent of the Employer's Representative.
<b>Employer's Responsibility</b>	<b>19.4</b>	Upon occurrence of an event considered by the Employer to constitute force majeure and which may affect performance of his obligations, he shall promptly notify the Contractor and the Employer's Representative, and shall endeavour to continue to perform his obligations as far as reasonably practicable. The Employer shall also notify the Employer's Representative and the Contractor of any proposals, with the objectives of completing the Works and mitigating any increased costs to the Employer and the Contractor.
<b>Payment to Contractor</b>	<b>19.5</b>	If, in consequence of force majeure, the Works shall suffer loss or damage, the Contractor shall be entitled to have included, in an Interim Payment Certificate, the Cost of work executed in accordance with the Contract, prior to the event of force majeure. If the Contractor incurs additional Cost in complying with Sub-Clause 19.3, such Cost shall be determined by the Employer's Representative in accordance with the provisions of Sub-Clause 3.5 and shall be added to the Contract Price.
<b>Optional Termination, Payment and Release</b>	<b>19.6</b>	Irrespective of any extension of time, if a force majeure event occurs and its effect continues for a period of 182 days, either the Employer or the Contractor may give to the other a notice of termination, which shall take effect 28 days after the giving of the notice. If, at the end of the 28-day period, the effect of the force majeure continues, the Contract shall terminate. If the Contract is terminated under this Sub-Clause, Sub-Clause 2.4 or Sub-Clause 16.2, the Employer's Representative shall determine the value of the work done and: <ul style="list-style-type: none"> <li>(a) the amounts payable for any work carried out for which a price is stated in the Contract;</li> <li>(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: such 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;</li> <li>(c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;</li> <li>(d) the reasonable Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of such items to the Contractor's works in his country (or to any other destination at no greater cost); and</li> <li>(e) the reasonable Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of such termination;</li> </ul> and issue an Interim Payment Certificate in accordance with Clause 13.

**Release from Performance under the Law** 19.7 If under the law of the Contract the Employer and the Contractor are released from further performance, the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 if the Contract had been terminated under that Sub-Clause.

## 20 Claims, Disputes and Arbitration

**Procedure for Claims** 20.1 If the Contractor intends to claim any additional payment under any Clause of these Conditions or otherwise, the Contractor shall give notice to the Employer's Representative as soon as possible and in any event within 28 days of the start of the event giving rise to the claim.

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 Employer's Representative. Without admitting the Employer's liability, the Employer's Representative shall, on receipt of such notice, inspect such records and may instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer's Representative to inspect all such records, and shall (if instructed) submit copies to the Employer's Representative.

Within 28 days of such notice, or such other time as may be agreed by the Employer's Representative, the Contractor shall send to the Employer's Representative an account, giving detailed particulars of the amount and basis of the claim. Where the event giving rise to the claim has a continuing effect, such account shall be considered as interim. The Contractor shall then, at such intervals as the Employer's Representative may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the Employer's Representative, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event.

If the Contractor fails to comply with this Sub-Clause, he shall not be entitled to additional payment.

**Payment of Claims** 20.2 The Contractor shall be entitled to have included in any Interim Payment Certificate such amount for any claim as the Employer's Representative considers due. If the particulars supplied are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment for such part of the claim as has been substantiated.

**Dispute Adjudication Board** 20.3 Unless the member or members of the Dispute Adjudication Board have been previously mutually agreed upon by the parties and named in the Contract, the parties shall, within 28 days of the Effective Date, jointly ensure the appointment of a Dispute Adjudication Board. Such Dispute Adjudication Board shall comprise suitably qualified persons as members, the number of members being either one or three, as stated in the Appendix to Tender. If the Dispute Adjudication Board is to comprise three members, each party shall nominate one member for the approval of the other party, and the parties shall mutually agree upon and appoint the third member (who shall act as chairman).

The terms of appointment of the Dispute Adjudication Board shall:

- (a) incorporate the model terms published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC),
- (b) require each member of the Dispute Adjudication Board to be, and to remain throughout the appointment, independent of the parties,

- (c) require the Dispute Adjudication Board to act impartially and in accordance with the Contract, and
- (d) include undertakings by the parties (to each other and to the Dispute Adjudication Board) that the members of the Dispute Adjudication Board shall in no circumstances be liable for breach of duty or of contract arising out of their appointment; the parties shall indemnify the members against such claims.

The terms of the remuneration of the Dispute Adjudication Board, including the remuneration of each member and of any specialist from whom the Dispute Adjudication Board may require to seek advice, shall be mutually agreed upon by the Employer, the Contractor and each member of the Dispute Adjudication Board when agreeing such terms of appointment. In the event of disagreement, the remuneration of each member shall include reimbursement for reasonable expenses, a daily fee in accordance with the daily fee established from time to time for arbitrators under the administrative and financial regulations of the International Centre for Settlement of Investment Disputes, and a retainer fee per calendar month equivalent to three times such daily fee.

The Employer and the Contractor shall each pay one-half of the Dispute Adjudication Board's remuneration in accordance with its terms of remuneration. If, at any time, either party shall fail to pay its due proportion of such remuneration, the other party shall be entitled to make payment on his behalf and recover it from the party in default.

The Dispute Adjudication Board's appointment may be terminated only by mutual agreement of the Employer and the Contractor. The Dispute Adjudication Board's appointment shall expire when the discharge referred to in Sub-Clause 13.12 shall have become effective, or at such other time as the parties may mutually agree.

If, at any time, the parties so agree, they may appoint a suitably qualified person to replace (or to be available to replace) any or all members of the Dispute Adjudication Board. The appointment will come into effect if a member of the Dispute Adjudication Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. If a member so declines or is unable to act, and no such replacement is available to act, the member shall be replaced in the same manner as such member was to have been nominated.

If any of the following conditions apply, namely:

- (a) the parties fail to agree upon the appointment of the sole member of a one-person Dispute Adjudication Board within 28 days of the Effective Date,
- (b) either party fails to nominate an acceptable member, for the Dispute Adjudication Board of three members, within 28 days of the Effective Date,
- (c) the parties fail to agree upon the appointment of the third member (to act as chairman) within 28 days of the Effective Date, or
- (d) the parties fail to agree upon the appointment of a replacement member of the Dispute Adjudication Board within 28 days of the date on which a member of the Dispute Adjudication Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the person or administration named in the Appendix to the Tender shall, after due consultation with the parties, nominate such member of the Dispute Adjudication Board, and such nomination shall be final and conclusive.

**Procedure for  
Obtaining Dispute  
Adjudication  
Board's Decision**

**20.4** If a dispute arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any opinion, instruction, determination, certification or valuation of the Employer's Representative, the dispute shall initially be referred in writing to the Dispute Adjudication Board for its decision, with a copy to the other party. Such reference shall state that it is made under this Sub-Clause. The parties shall promptly make available to the Dispute Adjudication Board all such information, access to the Site, and appropriate facilities, as the Dispute Adjudication Board may require for the purposes of rendering its decision. No later than the fifty-sixth day after the day on which it received such reference, the Dispute Adjudication Board, acting as a panel of expert(s) and not as arbitrator(s), shall give notice of its decision to the parties. Such notice shall include reasons and shall state that it is given under this Sub-Clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence, and the Contractor and the Employer shall give effect forthwith to every decision of the Dispute Adjudication Board, unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award.

If either party is dissatisfied with the Dispute Adjudication Board's decision, then either party, on or before the twenty-eighth day after the day on which it received notice of such decision, may notify the other party of its dissatisfaction. If the Dispute Adjudication Board fails to give notice of its decision on or before the fifty-sixth day after the day on which it received the reference, then either party, on or before the twenty-eighth day after the day on which the said period of fifty-six days has expired, may notify the other party of its dissatisfaction. In either event, such notice of dissatisfaction shall state that it is given under this Sub-Clause, such notice shall set out the matters in dispute and the reason(s) for dissatisfaction and, subject to Sub-Clauses 20.7 and 20.8, no arbitration in respect of such dispute may be commenced unless such notice is given.

If the Dispute Adjudication Board has given notice of its decision as to a matter in dispute to the Employer and the Contractor and no notice of dissatisfaction has been given by either party on or before the twenty-eighth day after the day on which the parties received the Dispute Adjudication Board's decision, then the Dispute Adjudication Board's decision shall become final and binding upon the Employer and the Contractor.

**Amicable Settlement**

**20.5** Where notice of dissatisfaction has been given under Sub-Clause 20.4, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that unless the 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**

**20.6** Any dispute in respect of which:

- (a) the decision, if any, of the Dispute Adjudication Board has not become final and binding pursuant to Sub-Clause 20.4, and
- (b) amicable settlement has not been reached,

shall be finally decided by international arbitration. The arbitration rules under which the arbitration is conducted, the institution to nominate the arbitrator(s) or to administer the arbitration rules (unless named therein), the number of

arbitrators, and the language and place of such arbitration shall be as set out in the Appendix to Tender. The arbitrator(s) shall have full power to open up, review and revise any decision of the Dispute Adjudication Board.

Neither party shall be limited, in the proceedings before such arbitrator(s), to the evidence or arguments previously put before the Dispute Adjudication Board to obtain its decision.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the parties and the Dispute Adjudication Board shall not be altered by reason of the arbitration being conducted during the progress of the Works.

- |   |             |  |
|---|-------------|--|
| <b>Failure to Comply with Dispute Adjudication Board's Decision</b> | <b>20.7</b> | Where neither party has given notice of dissatisfaction within the period stated in Sub-Clause 20.4 and the Dispute Adjudication Board's related decision, if any, has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6. The provisions of Sub-Clauses 20.4 and 20.5 shall not apply to any such reference. |
| <b>Expiry of Dispute Adjudication Board's Appointment</b>           | <b>20.8</b> | When the appointment of the Dispute Adjudication Board and of any replacement has expired, any such dispute referred to in Sub-Clause 20.4 shall be finally settled by arbitration pursuant to Sub-Clause 20.6. The provisions of Sub-Clauses 20.4 and 20.5 shall not apply to any such reference.   |

## Index

	Sub-Clause	Page
Access, Right of	12.7	27
Access Route	4.12	10
Access to and Possession of the Site	2.2	6
Advance Payments	13.2	28
Agreement, Contract	1.5	4
Amicable Settlement	20.5	45
Arbitration	20.6	45
Bribes	15.5	36
Care of the Works	17.2	38
Cessation of Work after Termination	16.3	37
Claims, Payment of	20.2	43
Claims, Procedure for	20.1	43
Commencement of Works	8.1	20
Communications	1.8	4
Conduct, Disorderly	6.10	18
Confidential Details	1.12	5
Contract Period, Extension of	12.3	27
Contract Price	13.1	28
Contractor to Search	12.8	27
Contractor's Entitlement to Suspend Work	16.1	36
Contractor's Equipment	4.16	12
Contractor's Representative	4.3	8
Contractor's Undertaking	5.3	15
Defective Work, Removal of	12.5	27
Defects, Failure to Remedy	12.4	27
Defects, Remedying	12.1	26
Definitions	1.1	1
Delay, Liquidated Damages for	8.6	21
Delays Caused by Authorities	8.4	21
Delivery to Site	7.2	18
Discharge	13.12	32
Dispute Adjudication Board	20.3	43
Dispute Adjudication Board's Appointment, Expiry of	20.8	46
Dispute Adjudication Board's Decision, Failure to Comply with	20.7	46
Dispute Adjudication Board's Decision, Procedure for Obtaining	20.4	45
Disputes, Amicable Settlement of	20.5	45
Disputes, Arbitration of	20.6	45
Disputes, Dispute Adjudication Board's Decision on	20.4	45
Documents, Contractor's Use of Employer's	1.11	5
Documents, Employer's Use of Contractor's	1.10	5
Documents on Site	1.7	4
Documents, Preparation of Construction	5.2	14
Documents, Priority of	1.6	4
Documents, Provision of Construction	1.9	5
Drawings, As-Built	5.6	15
Electricity, Water and Gas	4.19	12
Electronic Transmission	1.8	4
Employer Supplied Machinery and Materials	4.20	12
Employer's Liability, Cessation of	13.14	33
Employer's Representative, Requirements for	3.2	7
Employer's Representative's Authority to Delegate	3.3	7
Employer's Representative's Duties and Authority	3.1	6

## Index

	Sub-Clause	Page
Employer's Representative's Instructions	3.4	7
Employer's Representative to Attempt Agreement	3.5	7
Environment, Protection of	4.18	12
Error by Contractor	5.8	16
Error by Employer's Representative	3.4	7
Execution, Manner of	7.1	18
Extension of Contract Period	12.3	27
Extension of Time for Completion	8.3	20
Final Payment Certificate, Application for	13.11	32
Final Payment Certificate, Issue of	13.13	33
Force Majeure, Contractor's Responsibility after	19.3	42
Force Majeure, Definition of	19.1	41
Force Majeure, Employer's Responsibility after	19.4	42
Force Majeure Event, Effect of	19.2	42
Force Majeure: Optional Termination, Payment and Release	19.6	42
Force Majeure, Payment to Contractor after	19.5	42
Force Majeure: Release from Performance under the Law	19.7	43
Foreign Currency, Calculation of Payments in	13.15	33
Fossils	4.24	13
Headings	1.2	4
Health and Safety	6.7	17
Indemnity	17.1	38
Inspection	7.3	19
Instructions of Employer's Representative	3.4	7
Insurance against Injury to Persons and Damage to Property	18.3	40
Insurance for Design	18.1	39
Insurance for Workers	18.4	40
Insurance for Works and Contractor's Equipment	18.2	40
Insurances, General Requirements for	18.5	40
Interim Payment Certificates, Application for	13.3	29
Interim Payment Certificates, Issue of	13.6	31
Interpretation	1.3	4
Joint and Several Liability	1.14	5
Labour and Staff, Engagement of	6.1	17
Labour and Staff, Facilities for	6.6	17
Labour Laws	6.4	17
Labour, Wages and Conditions of	6.2	17
Language	1.4	4
Law	1.4	4
Laws, Compliance with	1.13	5
Legislation, Changes in	13.16	33
Liability, Joint and Several	1.14	5
Liability, Limitation of	17.6	39
Licences, Permits or Approvals	2.3	6
Liquidated Damages for Delay	8.6	21

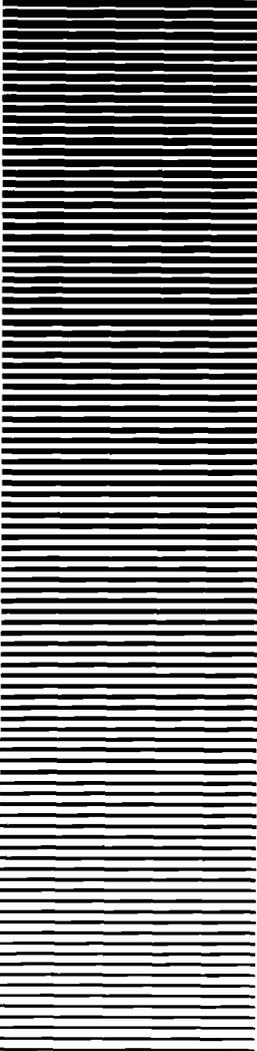
## Index

	Sub-Clause	Page
Machinery and Materials Supplied by the Employer	4.20	12
Marginal Notes	1.2	4
Materials and Plant, Ownership of	7.6	19
Materials and Plant, Payment for	13.5	30
Notice to Correct	15.1	35
Obligations, Contractor's General	4.1	7
Obligations, Design	5.1	14
Obligations, Employer's General	2.1	6
Obligations, Unfulfilled	12.10	28
Operation and Maintenance Manuals	5.7	16
Outstanding Work, Completion of	12.1	26
Patent Rights	5.9	16
Payment	13.7	31
Payment, Delayed	13.8	31
Payment in Applicable Currencies	14.4	34
Performance Certificate	12.9	28
Performance Security	4.2	8
Permits, Licences or Approvals	2.3	6
Personnel, Contractor's	6.9	18
Persons in the Service of Others	6.3	17
Plant and Materials, Ownership of	7.6	19
Plant and Materials, Payment for	13.5	30
Programme	4.14	11
Progress, Rate of	8.5	21
Progress Reports	4.15	11
Provisional Sums	14.5	34
Quality Assurance	4.8	9
Regulations and Laws, Compliance with	1.13	5
Regulations, Technical	5.4	15
Rejection	7.5	19
Remedying Defects	12.1	26
Remedying Defects, Cost of	12.2	26
Removal of Contractor's Equipment after Termination	16.3	37
Reports on Progress	4.15	11
Representative, Contractor's	4.3	8
Representative, Employer's	3.1	6
Retention Money, Payment of	13.9	31
Rights of Way and Facilities	4.13	11
Risks, Contractor's	17.5	39
Risks, Employer's	17.3	38
Risks, Employer's, Consequences of	17.4	39
Safety	6.7	17
Safety Precautions	4.17	12
Samples	5.5	15
Schedule of Payments	13.4	29
Security, Performance	4.2	8

<b>Index</b>	<b>Sub-Clause</b>	<b>Page</b>
Setting Out	4.7	9
Site, Access to and Possession of	2.2	6
Site, Clearance of	4.21	13
Site, Contractor's Operations on	4.23	13
Site Data	4.9	10
Site, Delivery to	7.2	18
Site, Security of	4.22	13
Staff and Labour, Engagement of	6.1	17
Staff and Labour, Facilities for	6.6	17
Standards and Regulations, Technical	5.4	15
Statement at Completion	13.10	32
Statement, Contractor's Monthly	13.3	29
Statement, Final	13.11	32
Statutes, Regulations and Laws, Compliance with	1.1	35
Sub-Surface Conditions, Unforeseeable	4.11	10
Subcontractors	4.5	9
Subcontractor's Obligations, Assignment of	4.6	9
Superintendence, Contractor's	6.8	18
Suspension, Consequences of	8.8	22
Suspension of Work	8.7	21
Suspension, Payment for Plant and Materials in Event of	8.9	22
Suspension, Prolonged	8.10	22
Suspension, Resumption of Work after	8.11	22
Taking-Over Certificate	10.1	23
Technical Standards and Regulations	5.4	15
Terminate, Employer's Entitlement to	2.4	6
Termination by Contractor	16.2	37
Termination by Contractor, Payment on	16.4	37
Termination by Employer	15.2	35
Termination by Employer, Payment after	15.4	36
Termination by Employer, Valuation at Date of	15.3	36
Testing	7.4	19
Tests after Completion, Delayed	11.2	25
Tests after Completion, Failure to Pass	11.4	26
Tests after Completion: Obligations	11.1	25
Tests after Completion: Retesting	11.3	25
Tests, Further	12.6	27
Tests on Completion, Delayed	9.2	23
Tests on Completion, Failure to Pass	9.4	23
Tests on Completion, Interference with	10.3	24
Tests on Completion: Obligations	9.1	23
Tests on Completion: Retesting	9.3	23
Time for Completion	8.2	20
Time for Completion, Extension of	8.3	20
Unforeseeable Sub-Surface Conditions	4.11	10
Use by the Employer	10.2	24
Value Engineering	14.2	34
Variation Procedure	14.3	34
Variations: Right to Vary	14.1	34
Water, Electricity and Gas	4.19	12
Working Hours	6.5	17
Works, Contractor's Care of	17.2	38
Works, Co-ordination of	4.4	9
Works, Matters Affecting the Execution of	4.10	10



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INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS  
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE  
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



## **CONDITIONS OF CONTRACT FOR DESIGN – BUILD AND TURNKEY**

**PART II GUIDANCE FOR THE PREPARATION OF  
CONDITIONS OF PARTICULAR APPLICATION**

**FIRST EDITION 1995**

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## CONTENTS

INTRODUCTION .....	225
1 THE CONTRACT .....	226
2 THE EMPLOYER .....	228
3 THE EMPLOYER'S REPRESENTATIVE .....	228
4 THE CONTRACTOR .....	229
5 DESIGN .....	232
6 STAFF AND LABOUR .....	233
7 PLANT, MATERIALS AND WORKMANSHIP .....	234
8 COMMENCEMENT, DELAYS AND SUSPENSION .....	235
9 TESTS ON COMPLETION .....	235
10 EMPLOYER'S TAKING OVER .....	236
11 TESTS AFTER COMPLETION .....	236
12 DEFECTS LIABILITY .....	236
13 CONTRACT PRICE AND PAYMENT .....	237
14 VARIATIONS .....	245
15 DEFAULT OF CONTRACTOR .....	246
16 DEFAULT OF EMPLOYER .....	246
17 RISK AND RESPONSIBILITY .....	246
18 INSURANCE .....	246
19 FORCE MAJEURE .....	248
20 CLAIMS, DISPUTES AND ARBITRATION .....	248
ANNEXES - FORMS OF SECURITY .....	250

# INTRODUCTION

The terms of the Conditions of Contract for Design-Build and Turnkey have been prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) and are recommended for general use for the purpose of the design and construction of works where tenders are invited on an international basis; with minor modifications, the Conditions are also suitable for use on domestic contracts. Under the usual arrangements for a design-build contract, the Contractor is responsible for the design and provision, in accordance with the Employer's requirements, of works which may include any combination of engineering (including civil, mechanical, electrical, etc) and building works; and interim payments are made as construction proceeds.

The Conditions are also intended for use on turnkey contracts, under which the Employer's requirements usually include provision of a fully-equipped facility, ready for operation (at the turn of the "key"); such contracts are often contractor-financed.

The version in English of the Conditions is considered by FIDIC as the official and authentic text for the purposes of translation.

In the preparation of the Conditions it was recognised that, while there are many sub-clauses which will be generally applicable, there are some sub-clauses which must necessarily vary to take account of the circumstances relevant to the particular contract. The sub-clauses which were considered to be applicable to the majority of contracts have been presented in Part I - General Conditions, which will facilitate their incorporation into the contract. Part I - General Conditions and Part II - Conditions of Particular Application will together comprise the Conditions governing the rights and obligations of the parties. It will be necessary to prepare the Part II for each individual contract, taking particular account of the references to Part II which are contained in some sub-clauses in Part I.

Part I - General Conditions was prepared on the following basis:

- (i) interim payments will be made as construction proceeds: example wording for contractor-financed contracts is proposed in this Part II;
- (ii) if the wording in Part I necessitates further information, the sub-clause makes reference to that information being contained in the Appendix to Tender: either prescribed by the Employer or inserted by the Tenderer;
- (iii) if a sub-clause in Part I concerns a matter on which different terms could apply on different contracts, the principles applied in writing the sub-clause were:
  - (a) users would find it more convenient to delete (or not invoke) provisions which they did not want to apply, than to write additional text (in Part II) if Part I did not cover their requirements; or
  - (b) in cases where the application of (a) was thought to be inappropriate, the sub-clause contains the provisions which were considered to apply to the option most often used.

It should be noted that, because of the application of (a), some of the provisions contained in Part I should not be taken to be the recommended provisions for an apparently-typical contract. The Conditions of Contract must be prepared for each tender document individually, by personnel with the relevant skills.

The guidance hereafter is intended to assist writers of Part II by giving options for various sub-clauses where appropriate. As far as possible, example wording is included, in *italics*; in some cases, however, only an aide-memoire is given. Before incorporating any example wording, it must be checked to ensure that it is wholly suitable for the particular circumstances; if not, it must be amended. Where example wording is amended, and in all cases where other amendments or additions are made, care must be taken to ensure that no ambiguity is created, either with Part I or between the clauses in Part II.

FIDIC have published a document entitled "Tendering Procedure" which presents a systematic approach to the selection of tenderers and the obtaining and evaluation of tenders; the second edition was published in 1994. The document is intended to assist the Employer to receive sound competitive tenders with a minimum of qualifications. FIDIC also intend to publish a guide to the use of these Conditions of Contract for Design-Build and Turnkey.

# THE PREPARATION OF CONDITIONS OF PARTICULAR APPLICATION

## Clause 1 - The Contract

The tender documents should be prepared on behalf of the Employer by suitably-qualified engineers who are familiar with his requirements and with the technical aspects of the required works. The tender documents issued to tenderers will consist of the Conditions of Contract, the Employer's Requirements, and the Tender and Schedules for completion by the Tenderer. In addition, each of the Tenderers should receive the data referred to in Sub-Clause 4.9, and the Instructions to Tenderers to advise them of any matters which the Employer wishes them to include in their Proposal but which do not form part of the Employer's Requirements for the Works. When the Employer accepts the Tender, the Contract (which then becomes effective) includes such Proposal and the completed Schedules.

The Employer's Requirements should specify the particular requirements for the completed Works, including quality and scope, and may require the Contractor to train personnel and/or to supply certain items, such as consumables which could be listed in a Schedule. The matters referred to in some or all of the following Sub-Clauses might be included:

- 1.9 Number of copies (and required extent) of Construction Documents
- 4.4 Other contractors (and others) on the Site
- 4.7 Setting-out points, lines and levels of reference
- 4.14 Periods for any specified submissions, approvals and consents
- 4.18 Environmental constraints
- 4.19 Electricity, water, gas and other services available on the Site
- 4.20 Employer supplied machinery and materials
- 5.1 Criteria for design personnel
- 5.2 Extent, and procedures for submission and pre-construction review, of Construction Documents
- 5.4 Technical standards and building regulations
- 5.5 Extent, and procedures for submission and pre-construction review, of samples
- 5.6 As-built drawings and other records of the Works
- 5.7 Operation and maintenance manuals
- 6.6 Facilities for the Employer's and Employer's Representative's personnel
- 7.1 Manner of execution
- 7.4 Testing during manufacture and/or construction
- 9.1 Tests on Completion
- 11.1 Tests after Completion
- 14.5 Provisional Sums

The Appendix to Tender, based on the example form herein, should be prepared by the Employer, with the elements completed to the extent of his requirements. The Employer may also be able to anticipate the data he requires from Tenderers, and include a questionnaire in the Schedules.

The Instructions to Tenderers may need to specify any constraints on the completion of the Appendix to Tender and/or Schedules, and/or to specify the extent of other information which the Tenderer is to include with his Tender. The matters referred to in some or all of the following Sub-Clauses might be included:

- 4.3 Contractor's Representative (name and curriculum vitae)
- 4.8 Quality Assurance system
- 4.14 Programming system (precedence networking techniques)
- 7.4 Testing during manufacture and/or construction
- 9.1 Tests on Completion
- 11.1 Tests after Completion
- 18 Insurances
- 20 Resolution of disputes

Turnkey contracts typically include design, construction, fixtures, fittings and equipment (f.f.e.), the scope of which should be defined in the Employer's Requirements. Full consideration should be given to detailed requirements, such as the extent to which the Works are to be fully equipped, ready for operation, with spare parts and consumables provided for a stated period's operation by the Employer. In addition, the Contractor may be required to operate the Works, either for a few months' commissioning period, or for some years' operation on a build-operate-transfer contract.

Understandably, tenderers are often reluctant, in the face of extensive competition, to incur great expense in the preparation of tender designs. When preparing the Instructions to Tenderers, thought should be given as to the extent of detail which tenderers can realistically be expected to prepare and include in their Proposals. Consideration should be given to offering some remuneration to tenderers if they, in order to provide a responsive tender, have to undertake studies or carry out design work of a conceptual nature.

#### Sub-Clause 1.1 - Definitions

It may be necessary to amend some of the definitions; for example:

- 1.1.3.1 the Base Date could be defined as a particular calendar date
- 1.1.3.5 a period other than a year may be required, for remedying any defects
- 1.1.5.2 a different currency may be required to be the contract Local Currency
- 1.1.5.3 payments in a Foreign Currency may not be acceptable
- 1.1.6.11 all parts of a cross-border Site may not be located in the same Country

#### Sub-Clause 1.5 - Contract Agreement

The form of Agreement should be included in the tender documents as an annex to Part II. If tender negotiations have been lengthy, it may be considered advisable for the Agreement to include definitions of the details of the Contract Price and/or of the dates defined in Sub-Clause 1.1.3. The parties should ascertain whether the law necessitates an Agreement.

#### Sub-Clause 1.6 - Priority of Documents

An order of precedence is usually necessary, in case a conflict is subsequently found among the contract documents. If no order of precedence is to be prescribed, this Sub-Clause may be varied:

##### EXAMPLE

*Delete the text of Sub-Clause 1.6 and substitute:*

*The several documents forming the Contract are to be taken as mutually explanatory of one another. In the case of ambiguities or discrepancies, the priority shall be that accorded by law. The Employer's Representative has authority to issue any instruction which he considers necessary in explanation of such ambiguities or discrepancies.*

### Sub-Clause 1.10 - Employer's Use of Contractor's Documents

Additional provisions may be required, if all rights to particular items of computer software (for example) are to be assigned to the Employer. The wording of such provisions should take account of the applicable law.

### Sub-Clause 1.14 - Joint and Several Liability

For a major turnkey contract, detailed requirements for the joint venture may need to be specified; for example, it may be desirable for each member to produce a parent company guarantee. Requirements which apply prior to the Contract becoming effective should be included in the Instructions to Tenderers. The Employer will wish the leader of the joint venture to be appointed at an early stage, providing a single point of contact thereafter, and will not wish to be involved in a dispute between the members of a joint venture. The Employer should scrutinise the joint venture agreement carefully, and it may need to be approved by the project's financing institutions. It may be necessary to review the effect of this Sub-Clause in relation to the particular legal personality which the applicable law may give to joint ventures.

### Additional Sub-Clause - Details to be Confidential

If confidentiality is required, an additional sub-clause may be added:

#### EXAMPLE SUB-CLAUSE

*The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out his obligations under it. The Contractor shall not publish, permit to be published, or disclose any particulars of the Contract in any trade or technical paper or elsewhere without the previous consent in writing of the Employer and at the Employer's sole discretion.*

## Clause 2 - The Employer

### Sub-Clause 2.2 - Access to and Possession of the Site

It may be essential for the Contractor to have early access to the Site for the purposes of survey and sub-surface investigations. If right of access cannot be granted, both early and thereafter exclusively, details should be given in the Employer's Requirements.

## Clause 3 - The Employer's Representative

### Sub-Clause 3.1 - Employer's Representative's Duties and Authority

Any requirements for Employer's approval should be set out in Part II:

#### EXAMPLE

*The Employer's Representative shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of the Conditions of Contract:*

- (a) Sub-Clause . . . . . (insert number; describe action, unless all require approval)*
- (b) Sub-Clause . . . . . (insert number; describe action, unless all require approval)*

This list should be extended or reduced as necessary. If the obligation to obtain the approval of the Employer only applies beyond certain limits (monetary or otherwise), the example wording should be varied.

## Additional Sub-Clause - Management Meetings

### EXAMPLE SUB-CLAUSE

*Either the Employer's Representative or the Contractor's Representative may require the other to attend a management meeting. The business of each management meeting shall be to review the anticipated arrangements for future work and to resolve any matters raised in accordance with this Sub-Clause. The Employer's Representative shall record the business of management meetings and provide copies of this record to those attending the meeting and to the Employer. The responsibility of the parties for any actions to be taken shall be included in such record and shall, if not agreed in accordance with the Contract, be decided by the Employer's Representative.*

*The Contractor's Representative shall notify the Employer's Representative at the earliest opportunity of specific likely future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Employer's Representative 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 14.3. The Contractor shall submit such estimate and/or proposal as soon as practicable. The Contractor's Representative shall co-operate with the Employer's Representative in making and considering proposals to mitigate the effect of any such event or circumstances, and in carrying out instructions of the Employer's Representative.*

## Clause 4 - The Contractor

### Sub-Clause 4.1 - General Obligations

The Contractor is required to check the design criteria and calculations (if any) included in the Employer's Requirements. It may be necessary for an outline design to be prepared, prior to the preparation of the tender documents, in order (for example) to establish the feasibility of the project. Tenderers should be advised of the extent to which such design is a suggestion or a requirement. It may also be necessary to amend the second sentence of the Tender so that the Tenderer not only checks the Employer's design, but also takes on full responsibility for it. Alternatively, a reasonable period (from the Commencement Date) could be specified for the Contractor to check such design, after which he assumes full responsibility for it, subject to permitted exceptions.

### Sub-Clause 4.2 - Performance Security

The acceptable form(s) of performance security should be included in the tender documents, annexed to Part II. Example forms are annexed to this document as Annex A and Annex B; the alternative of an insolvency guarantee may be considered appropriate in certain cases. These example forms and the wording of the Sub-Clause may have to be amended to comply with the law applicable to the Contract.

### EXAMPLE

*After the second sentence of Sub-Clause 4.2, add:*

*If the performance security is in the form of a bank guarantee, it shall be issued either (a) by a bank located in the Country, or (b) directly by a foreign bank acceptable to the Employer. If the performance security is not in the form of a bank guarantee, it shall be furnished by an institution registered, or licensed to do business, in the Country.*

For a turnkey contract, the Contractor could alternatively be required to provide a performance bond guaranteeing the due and proper completion of the Works, without specifying the amounts or currencies.

#### Sub-Clause 4.3 - Contractor's Representative

If the Representative is known at the time of submission of the Tender, the Proposal can include the Representative's name; however, the Tenderer may wish to propose alternatives, especially if the contract award seems likely to be delayed. If the ruling language is not the same as the language for day to day communications (under Sub-Clause 1.4), or if for any other reason it is necessary to stipulate that the Contractor's Representatives shall be fluent in a particular language, one of the following sentences may be added.

##### EXAMPLE

*At the end of Sub-Clause 4.3, add:*

*The Contractor's Representative and such persons shall also be fluent in (insert name of language)*

##### EXAMPLE

*At the end of Sub-Clause 4.3, add:*

*If the Contractor's Representative, or such persons, is not fluent in (insert name of language), the Contractor shall make a competent interpreter available during all working hours.*

#### Sub-Clause 4.4 - Co-ordination of the Works

If the Employer knows the particular requirements relating to the presence of other contractors, details should be included in the Employer's Requirements. If the work is let under several separate contracts, it may be appropriate for the Employer's Requirements to specify that the Contractor shall be responsible for co-ordinating his work with that of other contractors. However, if the Contractor is to have responsibility to co-ordinate the work of other contractors, he should be given the power to do so in some effective way. It will also be necessary for him to know in advance what he is going to co-ordinate, with whom and when.

#### Sub-Clause 4.5 - Subcontractors

The wording in Part I includes the conditions which will usually apply. If less (or no) consent is required, some (or all) of sub-paragraphs (a) to (d) may be deleted, or qualified in Part II:

##### EXAMPLE

*Prior consent shall not be required for minor details where the value of the subcontract is less than (amount to be stated; alternatively:) 0.01% of the Contract Price.*

A sentence may be added to increase the extent to which consent is required:

##### EXAMPLE

*The prior consent of the Employer's Representative shall be obtained to the suppliers of the following Materials: (insert details: for example, manufactured or prefabricated items)*

#### Sub-Clause 4.6 - Assignment of Subcontractor's Obligations

If the Contractor is required to assign his right to subsequently make a claim against the Subcontractor for defective performance, it may be appropriate for the terms of the assignment to entitle the Contractor to require the Employer to make such claim on the Contractor's behalf.

#### Sub-Clause 4.8 - Quality Assurance

The wording in Part I imposes the requirement of a quality assurance system in accordance with details stated in the Contract (in Part II, the Employer's Requirements or the Contractor's Proposal). If no such system is appropriate, this Sub-Clause may be deleted.

#### Sub-Clause 4.11 - Unforeseeable Sub-Surface Conditions

In the case of major sub-surface works, the allocation of the risk of sub-surface conditions is an aspect which should be considered when tender documents are being prepared. If this risk is to be shared between the parties, the Sub-Clause may be amended:

##### EXAMPLE

*Delete sub-paragraph (b) of Sub-Clause 4.11 and substitute:*

- (b) the additional Cost due to such conditions, ..... per cent ( ..... %) of which shall be added to the Contract Price (the balance ..... percent of such Cost shall be borne by the Contractor),*

#### Sub-Clause 4.14 - Programme

The wording in Part I specifies that the programme uses precedence networking techniques, which may not be appropriate for some types of Works; for example, linear programmes (time-chainage charts) may be preferable for tunnels. It may therefore be considered necessary to amend the Sub-Clause, and/or to specify detailed electronic data-processing requirements.

#### Sub-Clause 4.16 - Contractor's Equipment

If the Contractor is not to provide all the Contractor's Equipment necessary to complete the Works, the Employer's obligations should be specified (under Sub-Clause 4.20, for example). If vesting of Contractor's Equipment is required, further paragraphs may be added, subject to their being consistent with the applicable law:

##### EXAMPLE

*At the end of Sub-Clause 4.16, add the following paragraphs:*

*Contractor's Equipment which is owned by the Contractor (either directly or indirectly) shall be deemed to be the property of the Employer with effect from its time of arrival on the Site. The vesting of such property in the Employer shall not:*

- (a) affect the responsibility or liability of the Employer,*
- (b) prejudice the right of the Contractor to the sole use of such Contractor's Equipment for the purpose of the Works, or*
- (c) affect the Contractor's responsibility to operate and maintain the same under the provisions of the Contract.*

*The property in each item shall be deemed to revert in the Contractor with effect from the time he is entitled to remove it from the Site, or when the Employer's Representative issues the Taking-Over Certificate for the Works, whichever occurs first.*

#### Sub-Clause 4.17 - Safety Precautions

If the Contractor is sharing occupation of the Site with others, it may not be appropriate for him to provide some of the listed items; in these circumstances, the Employer's obligations should be specified.

#### Sub-Clause 4.19 - Electricity, Water and Gas

If services are to be available for the Contractor to use, the Employer's Requirements should give details, including locations and prices.

#### Sub-Clause 4.20 - Employer Supplied Machinery and Materials

For this Sub-Clause to apply, the Employer's Requirements should describe each item which the Employer will provide and/or operate and should specify all necessary details. With some types of facilities, further provisions may be necessary, to clarify aspects such as liability and insurance.

#### Sub-Clause 4.22 - Security of the Site

If the Contractor is sharing occupation of the Site with others, it may not be appropriate for him to be responsible for its security; in these circumstances, the Employer's obligations should be specified.

## Clause 5 - Design

#### Sub-Clause 5.2 - Construction Documents

The "Construction Documents" include all drawings which are to be submitted by the Contractor for pre-construction review by the Employer's Representative. The extent to which such Documents are required, and the procedures for submission and review, may need to be clarified in the Employer's Requirements. It may be appropriate to specify different "review periods", taking account of the time necessary to review the different types of drawing, and/or of the possibility of substantial submissions at particular stages of the design-build process.

If the Employer's Representative is to carry out a full approval procedure, it should be described in the Employer's Requirements, and full consideration should be given to aspects such as liability and the consequences of delayed approval; the Sub-Clause may be amended:

#### EXAMPLE

*In Sub-Clause 5.2, delete sub-paragraph (a) and substitute:*

- (a) construction shall not commence until the Contractor receives the Employer's Representative's approval of the Construction Documents which are relevant to the design and construction of such part;*

#### Sub-Clause 5.9 - Patent Rights

If the Works involves the use by the Contractor of a design previously provided to the Employer by others, an additional sub-clause may be required:

#### EXAMPLE SUB-CLAUSE

##### *Employer's Warranty for Patent Rights*

*If any matter, for which the Contractor is not liable to indemnify the Employer under Sub-Clause 5.9, causes the infringement (or allegation of infringement) by the Contractor of any patent, registered design, copyright, trade mark or other intellectual property right, the Employer shall indemnify the Contractor against all claims, damages, charges and costs which the Contractor may incur.*

*The Contractor shall promptly notify the Employer of any claim under this Sub-Clause. The Employer may, at his own cost, conduct negotiations for the settlement of such claim, and any litigation or arbitration that may arise from it. The Contractor shall not make any admission which might be prejudicial to the Employer, unless the Employer has failed to take over the conduct of the negotiations or litigation within a reasonable time after having been so requested. The Contractor shall, at the request and cost of the Employer, assist him in contesting any such claim or action, and shall be repaid all reasonable costs incurred.*

## Clause 6 - Staff and Labour

### Sub-Clause 6.5 - Working Hours

If the Employer does not wish to specify working hours in the Appendix to Tender, or to restrict them to the times specified by the Tenderer (in order to plan the Employer's Representative's supervision, for example), this Sub-Clause may be deleted.

### Sub-Clause 6.6 - Facilities for Staff and Labour

If the Employer will make some accommodation available, his obligations should be specified.

### Sub-Clause 6.8 - Contractor's Superintendence

If the ruling language is not the same as the language for day to day communications (under Sub-Clause 1.4), or if for any other reason it is necessary to stipulate that the Contractor's superintending staff shall be fluent in a particular language, the following sentence may be added.

#### EXAMPLE

*At the end of Sub-Clause 6.8, add:*

*A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of (insert name of language), or the Contractor shall have sufficient competent interpreters available on Site during all working hours.*

### Additional Sub-Clauses

It may be necessary to add a few sub-clauses to take account of the circumstances and locality of the Site:

#### EXAMPLE SUB-CLAUSE

##### *Foreign Staff and Labour*

*The Contractor may import such staff, artisans, and labourers as are required in order to execute the Works. The Contractor must ensure that all such staff and labour are provided with the required residence visas and work permits. The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of all persons whom the Contractor recruited and employed for the purposes of or in connection with the Contract. The Contractor shall be responsible for such persons as are to be returned until they shall have left the Site or, in the case of foreign nationals who have been recruited outside the Country, shall have left it.*

#### EXAMPLE SUB-CLAUSE

##### *Measures against Insect and Pest Nuisance*

*The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from insect and pest nuisance, and to reduce the dangers to health and the general nuisance occasioned by the same. The Contractor shall provide his staff and labour with suitable prophylactics for the prevention of malaria and take steps to prevent the formation of stagnant pools of water. The Contractor shall comply with all the regulations of the local health authorities and shall arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as instructed by such authorities.*

#### EXAMPLE SUB-CLAUSE

##### *Epidemics*

*In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government, or the local medical or sanitary authorities, for the purpose of dealing with and overcoming the same.*

#### EXAMPLE SUB-CLAUSE

##### *Burial of the Dead*

*The Contractor shall make all necessary arrangements for the transport, to any place as required for burial, of any of his expatriate employees or members of their families who may die in the Country. The Contractor shall also be responsible, to the extent required by local regulations, for making any arrangements with regard to burial of any of his local employees who may die while engaged upon the Works.*

#### EXAMPLE SUB-CLAUSE

##### *Alcoholic Liquor or Drugs*

*The Contractor shall not, otherwise than in accordance with the statutes, ordinances and government regulations or orders for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his Subcontractors, agents, staff or labour.*

#### EXAMPLE SUB-CLAUSE

##### *Arms and Ammunition*

*The Contractor shall not give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.*

#### EXAMPLE SUB-CLAUSE

##### *Festivals and Religious Customs*

*The Contractor shall in all dealings with his staff and labour have due regard to all recognised festivals, days of rest and religious or other customs.*

## **Clause 7 - Plant, Materials and Workmanship**

### **Additional Sub-Clause**

If the Contract is being financed by an institution whose rules or policies require a restriction on the use of its funds, a further sub-clause may be added:

#### EXAMPLE SUB-CLAUSE

*All Contractor's Equipment, Temporary Works, Plant and Materials shall have its origin in eligible source countries as defined in (insert name of published guidelines for procurement). Contractor's Equipment, Temporary Works, Plant and Materials shall be transported by carriers from such eligible source countries, unless exempted by the Employer's Representative in writing on the basis of potential excessive costs or delays. Surety, insurance and banking services shall be provided by insurers and bankers from such eligible source countries.*

## Clause 8 - Commencement, Delays and Suspension

### Sub-Clause 8.2 - Time for Completion

If the Works are to be taken-over in stages, these stages should be defined as Sections, in the Appendix to Tender.

### Sub-Clause 8.6 - Liquidated Damages for Delay

Under many legal systems, these pre-defined damages must be a reasonable pre-estimate of the Employer's probable loss in the event of delay. If the Contract Price is to be quoted as the sum of figures in more than one currency, it may be preferable to define these damages (per day) as a percentage reduction applicable to each of such figures. If the Contract Price is expressed in the Local Currency, the damages per day may either be defined as a percentage or be defined as a figure in such Local Currency; however, unless all payments are to be made in the Local Currency, the currencies of payment should be specified.

### Additional Sub-Clause

If it is considered appropriate to include a provision for accelerated completion, one of the following sub-clauses may be added:

#### EXAMPLE SUB-CLAUSE

*If the Contractor achieves completion of the Works, or Section (if any), prior to the Time for Completion, the Employer shall pay to the Contractor the relevant sum stated in the Appendix to Tender (as bonus for early completion) for every calendar day which shall elapse between the date stated in the relevant Taking-Over Certificate and the relevant time prescribed in Sub-Clause 8.2.*

#### EXAMPLE SUB-CLAUSE

*Sections are required to be completed by the dates given in the Appendix to Tender in order that such Sections may be occupied and used by the Employer in advance of the completion of the whole of the Works. Details of the work required to be executed to entitle the Contractor to bonus payments and the amount of the bonuses are stated in the Employer's Requirements. For the purposes of calculating bonus payments, the dates given in the Appendix to Tender for completion of Sections are fixed; no adjustments of the dates by reason of granting an extension of time pursuant to these Conditions will be allowed.*

## Clause 9 - Tests on Completion

### Sub-Clause 9.1 - Contractor's Obligations

The Employer's Requirements should describe the tests he requires, before taking-over, to demonstrate completion. It may also be appropriate for the Contractor's Proposal to include detailed arrangements, instrumentation, etc. If the Works are to be tested and taken-over in stages, the tests requirements may have to take account of the incomplete parts of the Works.

## **Clause 10 - Employer's Taking Over**

### **Sub-Clause 10.1 - Taking-Over Certificate**

If the Works are to be taken-over in stages, these stages should be defined as Sections, in the Appendix to Tender. Precise geographical definitions are advisable, and the Appendix should include a table, so as to define the aspects relating to the Retention Money releases, Time for Completion and liquidated damages for delay (the table is shown in the example Appendix).

## **Clause 11 - Tests after Completion**

### **Sub-Clause 11.1 - Employer's Obligations**

The Employer's Requirements should describe the tests he requires, after taking-over, to verify that the Works fulfil his performance requirements. For some types of Works, these Tests may be the most difficult to specify well, although they are critical to a successful outcome. It may be appropriate for the Contractor's Proposal to include detailed arrangements, and/or to define any instrumentation required, in addition to that included in the Works. With many types of Works, it may be essential to define the physical inputs and/or for tenderers to prescribe (in a Schedule, probably) the performance criteria which their plant will achieve.

Tests after Completion are usually carried out by the Employer, with guidance from the Contractor's staff. If other arrangements are envisaged, they should be specified, and amendment of the Sub-Clause may be required.

### **Sub-Clause 11.4 - Failure to Pass Tests after Completion**

If the first part of this Sub-Clause is to apply, the method of calculating liquidated damages (based on the extent of the failure) should be defined in the Appendix to Tender, and the Employer's Requirements should specify the minimum acceptable performance criteria.

## **Clause 12 - Defects Liability**

### **Sub-Clause 12.5 - Removal of Defective Work**

If the Plant to be supplied under the Contract is such that the value of an item which might have to be removed from the site is substantial (compared, for example, with the amount of the performance security), it may be appropriate to amend the Sub-Clause, so as to require the Contractor to provide additional security in these circumstances.

### **Sub-Clause 12.10 - Unfulfilled Obligations**

It may be necessary to review the effect of this Sub-Clause in relation to the period of liability which the applicable law may impose.

## Clause 13 - Contract Price and Payment

### Sub-Clause 13.1 - The Contract Price

When writing Part II, consideration should be given to the amount and timing of payment(s) to the Contractor. A positive cash flow is clearly of benefit to the Contractor, and tenderers will take account of the interim payment procedures when preparing their tenders.

Normally, this type of contract is based on a lump sum price, with little or no remeasurement; the Contractor then takes the risk of changes in cost arising from his design. The lump sum price may consist of two or more amounts, quoted in the currencies of payment (which may, but need not, include the Local Currency).

In order to value Variations, the Tenderer can be required to submit a detailed breakdown of the Contract Price, including quantities, unit rates and other pricing information; such information can also be used for the Interim Payment Certificates. However, that information may not have been competitively priced; when the tender documents are being prepared, the Employer must decide whether he is prepared to be bound by such information. If not, he should have ensured that the Employer's Representative has the necessary expertise to value any Variations which may be required.

Additional Sub-Clauses may be required to cover any exceptions to the options set out in Sub-Clause 13.1, and any other matters relating to payment.

If Sub-Clause 13.1(a) is not to apply, the method of determining the Contract Price should be defined in additional Sub-Clauses, as envisaged in the last sentence of Sub-Clause 13.1. If the requirements involve remeasurement, the following wording might be appropriate for one of such additional Sub-Clauses:

#### EXAMPLE SUB-CLAUSE ON REMEASUREMENT

*The Employer's Representative shall ascertain and determine by measurement the value of those parts of the Works which are to be remeasured in accordance with the Contract (note: the parts must be defined, here or elsewhere). Such parts of the Works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the Contract. The Employer's Representative shall, when he requires any such part of the Works to be measured, give reasonable notice to the Contractor's Representative, who shall promptly:*

- (a) attend or send a qualified representative to assist the Employer's Representative in making such measurement, and*
- (b) supply all particulars required by the Employer's Representative.*

*Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Employer's Representative or approved by him shall be taken to be the correct measurement of such part of the Works.*

If Sub-Clause 13.1(b) is not to apply, the method of determining the adjustments to the Contract Price should be defined in additional Sub-Clause(s).

#### EXAMPLE SUB-CLAUSE FOR ADJUSTMENT FOR CHANGES IN COST

*The amounts payable to the Contractor and valued at base prices in accordance with Schedule . . . shall be adjusted for rises or falls in the cost of labour, Contractor's Equipment, Plant, Materials and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the Contract, the Contract Price shall be deemed to include amounts to cover the contingency of such other rise or fall in costs.*

The amount to be added to or deducted from the Interim Payment Certificates for changes in cost and legislation shall be determined from formulae for each of the currencies in which the Contract Price is payable and for each of the sections of work priced in the said Schedule. The formulae will be of the following general type:

$$P_n = a + b \frac{L_n}{L_o} + c \frac{M_n}{M_o} + d \frac{E_n}{E_o} + \text{etc}$$

where:

“**P<sub>n</sub>**” is the adjustment factor to be applied to the estimated value of the work carried out in month “**n**”;

“**a**” is a fixed coefficient, specified in the Appendix to Tender, representing the non-adjustable portion in contractual payments;

“**b**”, “**c**”, “**d**”, etc are coefficients representing the estimated proportion of each cost element (labour, materials, etc) in the Works, as specified in the Appendix to Tender;

“**L<sub>n</sub>**”, “**M<sub>n</sub>**”, “**E<sub>n</sub>**”, etc are the current cost indices or reference prices for month “**n**”, determined, in the relevant currency of payment, applicable to each cost element on the date 49 days prior to the last day of the period to which the particular Interim Payment Certificate is related; and

“**L<sub>o</sub>**”, “**M<sub>o</sub>**”, “**E<sub>o</sub>**”, etc are the base cost indices or reference prices corresponding to the above cost elements, in the relevant currency of payment, on the Base Date.

The cost indices or reference prices specified in the Appendix to Tender shall be used. In the event of ambiguity as to the source, it shall be determined by the Employer’s Representative; reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of said Appendix) for the purposes of clarification of the source, but it is understood that such dates (and thus such values) may not correspond to the base cost indices. In cases where the Currency of Index is not the relevant currency of payment, the index shall be converted into the relevant currency of payment at the selling rate established by the Central Bank of the Country. If at any time a current index (for the date 49 days prior to the last day of the period to which the particular Interim Payment Certificate is related) is unavailable, a provisional index as determined by the Employer’s Representative shall be used, subject to subsequent correction of the amounts certified when the current index is available.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either each index or price applicable on the date 49 days prior to the expiry of the Time for Completion, or the current index or price, whichever is more favourable to the Employer; provided that, if an extension of time is granted in accordance with Sub-Clause 8.3, the above provision shall apply to the extended time for completion.

The weightings (coefficients) for each of the factors of cost given in the Appendix to Tender shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

The following table may be included in the Appendix to Tender (the fixed element, for which 0.10 is often considered appropriate, is entered before tender documents are issued, the other data being completed by the Tenderer):

Coefficient; scope of index	Country of origin; currency of index	Source of index; Title/definition	Value on stated date(s)*	
			Value	Date
<b>a</b> = 0.10 Fixed				
<b>b</b> = ..... labour				
<b>c</b> = .....				
<b>d</b> = .....				
<b>e</b> = .....				

\* These values and dates confirm the definition of each index, but do not define Base Date indices

If Sub-Clause 13.1(c) is not to apply, additional Sub-Clause(s) should be added.

**EXAMPLE SUB-CLAUSE ON EXEMPTION FROM DUTIES**

*Except to the extent specified otherwise, all Contractor's Equipment, Temporary Works, Plant and Materials (hereinafter jointly referred to as "Goods") imported by the Contractor into the Country for the purpose of or in connection with the Contract shall be exempt from customs and other import duties, if the Employer's prior written approval is obtained for such imports. The Employer shall provide documents for such exemption, for the Contractor to present in order to clear the Goods through Customs. If exemption is not then granted, the customs duties payable and paid shall be reimbursed by the Employer. All imported Goods, which are not incorporated in or expended in connection with the Works, shall be exported on completion of the Contract; if not exported, the Goods will be assessed for duties as applicable to the Goods involved in accordance with the current regulations in the Country.*

*The exemption provided for in the preceding paragraph shall not apply to:*

- (a) *Goods which are locally produced unless they are not available in sufficient quantities or are of a different standard to that which is necessary for the Works; and*
- (b) *any element of duty or tax inherent in the price of goods or services procured in the Country, which shall be deemed to be included in the Contract Price.*

*Port dues, quay dues and, except as set out above, any element of tax or duty inherent in the price of goods or services shall be deemed to be included in the Contract Price.*

**EXAMPLE SUB-CLAUSE ON EXEMPTION FROM TAXES**

*Expatriate (foreign) personnel shall not be liable for income tax levied in the Country on earnings paid in Foreign Currency, or for such tax levied on subsistence, rentals and similar services directly furnished by the Contractor to his personnel, or for allowances in lieu. If such personnel have part of their earnings paid in Foreign Currency in the Country, there shall be no restriction on the export by them at the conclusion of their term of service on the Works of any balance remaining of their earnings paid in Foreign Currencies. The Employer shall seek exemption for the purposes of this Sub-Clause; if it is not granted, the payments made shall be reimbursed by the Employer.*

**Sub-Clause 13.2 - Advance Payments**

The total of the advances (and the number of instalments) must be specified in the Appendix to Tender, unless no such advances are to be paid. The rate of deduction for the repayments should be checked to ensure that repayment is achieved before completion; the typical figures in sub-paragraphs (a) and (b) of the Part I Sub-Clause are based on the assumption that the total of the advances is less than 22% of the Contract Price. The acceptable form(s) of guarantee should be included in the tender documents, annexed to Part II: an example form is annexed to this document, as Annex C.

#### Sub-Clause 13.4 - Schedule of Payments

Part I contains provisions for interim payments to the Contractor, which can be based on a Schedule of Payments or on any other basis for determining interim valuation; if a latter basis is adopted, details should be added in Part II. If payments are to be specified in a Schedule of Payments, the “minimum amount of interim certificates” could be omitted from the Appendix to Tender, and the Schedule of Payments could be in one of the following forms:

- (a) an amount (or percentage of the Contract Price) could be entered for each month during the Time for Completion, which can prove unreasonable if the Contractor's progress differs significantly from the expectation on which the Schedule was based; or
- (b) the Schedule could be based on actual progress achieved in executing the Works, which necessitates careful definition of the payment milestones; otherwise, disagreements may arise when the work required for a payment milestone is 99.99% achieved but the balance cannot be completed until some months later.

The figures inserted by the Tenderer in the Schedule of Payments should be compared with his tender programme (if any), to assess whether it they are reasonably consistent with each other. If the Works consists of few different types of operations, an alternative approach for interim valuations may be appropriate.

#### EXAMPLE SUB-CLAUSE FOR INTERIM VALUATION PROCEDURE

*Prior to commencing construction of the Permanent Works, the Contractor shall submit a bill of principal quantities of the Permanent Works (referred to in this Sub-Clause as “the BPQPW”), together with such supporting information and calculations as the Employer’s Representative may reasonably require. The BPQPW shall include the anticipated final quantities of the principal items of Permanent Works, which shall have been priced using all-in rates such that the total amount equals the Contract Price. The BPQPW shall not contain priced items for design or for Temporary Works; the value of each element of such work, and of any other work elements not described in the BPQPW, shall each be included in the rates for Permanent Works which are to be constructed after such element is carried out. The BPQPW shall be subject to the approval of the Employer’s Representative, which may at any time be withdrawn, and shall be without prejudice to the final amount due under the Contract. The BPQPW shall be revised and reissued if it appears at any time before Taking-Over that it will not fully represent the Permanent Works when complete.*

*During the Time for Completion, the contract value for the purposes of sub-paragraph (a) of Sub-Clause 13.3 shall not exceed the amount calculated from the current BPQPW, based on the quantities of Permanent Works which have been constructed in accordance with the Contract. The Contractor’s interim statement shall be in the same form as that of the current BPQPW and shall be accompanied by the Contractor’s signed statement that the current BPQPW attached thereto (including anticipated final quantities) and the as-constructed quantities are all correct; each such statement shall also be accompanied by a Construction Certificate, signed by the Contractor’s Representative, certifying that the part of the Works constructed to date complies with the Contract. However, the Contractor may propose such lesser amount as seems reasonable, supported with appropriate calculations on a similar basis to the procedure described in this Sub-Clause.*

#### Sub-Clause 13.5 - Plant and Materials for the Permanent Works

If payment is to be made for these items prior to their arrival at Site, a further Sub-Clause may be added:

#### EXAMPLE SUB-CLAUSE FOR PAYMENT UPON SHIPMENT

*Interim Payment Certificates shall include (i) an additional amount for Plant and Materials which have been shipped to the Site for incorporation in the Permanent Works, and (ii) a deduction when payment is due under Sub-Clause 13.5. The Employer’s Representative shall determine each addition and deduction in accordance with the following provisions:*

- (a) *no addition shall be included in the Interim Payment Certificate unless, in the opinion of the Employer's Representative:*
- (i) *the Plant and Materials have been shipped to the Country, en route to the Site, in accordance with the Contract;*
  - (ii) *the Contractor has submitted a clean shipped bill of lading or other evidence of shipment, evidence of payment of freight and insurance, and other documents as the Employer's Representative may reasonably require, together with an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the amount due under sub-paragraph (b) of this Sub-Clause: such guarantee shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;*
  - (iii) *the Contractor's records of the requirements, orders, receipts and use of Plant and Materials are kept in a form approved by the Employer's Representative, and such records are available for inspection by the Employer's Representative;*
  - (iv) *the Contractor has submitted a statement of the Cost of acquiring and shipping the Plant and Materials to the port (or other place) of entry into the Country, together with such documents as may be required for the purpose of evidencing such Cost; and*
  - (v) *the Plant and Materials are those listed for this Sub-Clause in the Appendix to Tender;*
- (b) *the additional amount to be certified shall be the equivalent of seventy percent of the cost of the Plant and Materials delivered to the port (or other place) of entry into the Country, as determined by the Employer's Representative after review of the documents mentioned in sub-paragraph (a) above, taking account of the contract value of such Plant and Materials as determined and considered appropriate by the Employer's Representative;*
- (c) *the amount of the deduction for any Plant and Materials for which payment is due under Sub-Clause 13.5 shall be equivalent to the addition previously certified by the Employer's Representative for such Plant and Materials under sub-paragraph (b) above; and*
- (d) *the currencies for such additions and deductions shall be determined by the Employer's Representative as described in Sub-Clause 13.5.*

#### Sub-Clause 13.7 - Payment

If a different period for payment is to apply, the Sub-Clause may be amended:

##### EXAMPLE

*In sub-paragraph . . . of Sub-Clause 13.7, delete "56" and substitute . . .*

If the country/countries of payment need to be specified, such details can be included in the Contract: in the Employer's Requirements, in the Contractor's Proposal, or in a Schedule.

#### Sub-Clause 13.8 - Delayed Payment

If the discount rate of the central bank in the country of the currency of payment, plus 3%, is not a reasonable indication of the Contractor's financing costs, a new rate may need to be defined; alternatively, the actual financing Costs could be paid, taking account of local financing arrangements.

#### Sub-Clause 13.9 - Payment of Retention Money

If part of the Retention Money is to be released and substituted by an appropriate security, an additional Sub-Clause may be added.

## EXAMPLE SUB-CLAUSE FOR RELEASE OF RETENTION

*When the Retention Money has reached three-fifths (60%) of the limit of Retention Money stated in the Appendix to Tender, the Employer's Representative shall certify and the Employer shall pay half (50%) of such limit of Retention Money to the Contractor upon lodgement with the Employer of an "on-demand" bank guarantee issued by a bank acceptable to the Employer in a like amount. Such guarantee shall be valid up to a date which is one hundred weeks after the due (or extended) date for completion of the Works, and shall be returned to the Contractor upon the issue of the Performance Certificate. This release of retention shall be in lieu of the release of the second half of the Retention Money under Sub-Clause 13.9.*

### Sub-Clause 13.15 - Calculation of Payments in Foreign Currency

Instead of the Contract Price being quoted in the currencies of payment, this Sub-Clause relates to the situation where it is quoted in Local Currency only, but is paid, by application of percentages and exchange rates, in various currencies (which may, but need not, include the Local Currency). If this Sub-Clause is to apply, the name of the Local Currency must be stated in the Tender, so that the Contract Price is a sum in that currency only, and the Appendix to Tender should include a table for insertion of the proportions and exchange rates (the table is shown in the example Appendix). If all payments and deductions are not to be in the same currency proportions, an additional Sub-Clause will be required; also, an additional table will be required in the Appendix to Tender if there are Sections.

## EXAMPLE SUB-CLAUSE FOR CALCULATION OF PAYMENTS BY PROPORTIONS

*All payments to the Contractor by the Employer shall be made*

- (a) in the case of payment(s) under Sub-Clause(s) 13.2 and (insert number of any other applicable Sub-Clause) in (insert name of currency/currencies);*
- (b) in the case of payments for certain provisional sum items excluded from the Appendix to Tender, in the currencies and proportions applicable to these items at the time when the Employer's Representative gives instructions for the work covered by these items to be carried out;*
- (c) in any other case, in the currencies and proportions stated in the Appendix to Tender as applicable to such payment provided that the proportions of currencies stated in the Appendix to Tender may from time to time upon the application of either party be varied as may be agreed.*

*All payments to the Employer by the Contractor including payments made by way of deduction or set-off shall be made*

- (a) in the case of repayment(s) under Sub-Clause(s) 13.2 and (insert number of any other applicable Sub-Clause) in (insert name of currency);*
- (b) in the case of liquidated damages under Sub-Clause 8.6, in (insert name of currency);*
- (c) in the case of reimbursement of any sum previously expended by the Employer, in the currency in which the sum was expended by the Employer;*
- (d) in any other case, in such currency as may be agreed.*

*If the part payable in a particular currency of any sum payable to the Contractor is wholly or partly insufficient to satisfy by way of deduction or set-off a payment due to the Employer in that currency, in accordance with the provisions of this Sub-Clause, then the Employer may make such deduction or set-off wholly or partly from the balance of such sum payable in other currencies.*

### Additional Sub-Clause - Payments in Local Currency

If all payments are to be made in Local Currency, it must be named in the Tender, so that the Contract Price is a sum in that currency only; Sub-Clause 13.15 should be deleted, and a further Sub-Clause added.

## EXAMPLE SUB-CLAUSE FOR A SINGLE-CURRENCY CONTRACT

*The currency of account shall be the Local Currency and all payments made in accordance with the Contract shall be in Local Currency. The Local Currency payments shall be fully convertible, except those for local costs. The percentage attributed to local costs shall be as stated in the Appendix to Tender.*

### Project Financing Arrangements

For major contracts in some markets, there may be a need to resort to securing finance from entities such as aid agencies, development banks or export credit agencies. If financing is to be procured from such institutions, the Conditions of Contract may need to incorporate any special requirements which the relevant institution may have. The exact wording will depend on the relevant institution, so reference will need to be made to them to ascertain their requirements, and to seek approval of the draft tender documents. These requirements may include tendering procedures which need to be adopted in order to render the eventual contract eligible for financing, and/or special Sub-Clauses which may need to be incorporated into Part II. The following examples indicate some of the topics which the institution's requirements may cover:

- (a) prohibition from discrimination against the shipping companies of any one country;
- (b) ensuring that the Contract is subject to a widely-accepted neutral international law;
- (c) provision for arbitration at a recognised international forum in the event of disputes;
- (d) giving the Contractor the right to suspend/terminate in the event of default under the financing arrangements;
- (e) restricting the right to reject Plant;
- (f) specifying the payments due in the event of termination;
- (g) specifying that the Contract does not become effective until certain conditions precedent have been satisfied, including pre-disbursement conditions for the financing arrangements;
- (h) obliging the Employer to make payments from his own resources if, for any reason, the funds under the financing arrangements are insufficient to meet the payments due to the Contractor, whether due to a default under the financing arrangements or otherwise.

In addition, the financing institution/banks may wish the Contract to include references to the financing arrangements, especially if funding from more than one source is to be arranged, to finance different elements of supply. It is not unusual for Part II to include special provisions identifying different categories of Plant and specifying the documents to be presented to the relevant financing institution to obtain payment. If the financing institution's requirements are not met, it may be difficult (or even impossible) to secure suitable financing for the project, and/or the institution may decline to provide finance for part or all of the Contract.

However, where the financing is not tied to the export of goods and services from any particular country but is simply provided by commercial banks lending to the Employer, those banks may be concerned to ensure that the Contractor's rights are very restricted. Such banks may wish the Contract to exclude any reference to the financing arrangements, and/or to restrict the Contractor's right to suspend/terminate in the event of default.

### EXAMPLE FORM OF SUB-CLAUSE WHICH A FINANCING INSTITUTION MAY REQUIRE

*The total Contract Price of (insert amount) is made up as follows:*

*(breakdown into items and/or into supply/delivery/etc)*

*and shall be payable by the Employer to the Contractor as set out below.*

- (a) . . . % of the total Contract Price shall be payable by a direct payment from the Employer to the Contractor within 28 days of the Effective Date, which shall be payable against the following documents:
  - (i) commercial invoice addressed to the Employer specifying the amount of the payment now due,

- (ii) *advance payment security guarantee issued by . . . Bank in the form annexed,*
  - (iii) *performance security guarantee issued by . . . Bank in the form annexed, and*
  - (iv) *Employer's Representative's Interim Payment Certificate confirming the payment due and specifying the amount.*
- (b) *. . % of the contract price for the supply of Plant shall be payable as follows:*
- (i) *. . % of the relevant value of the Plant supplied, by direct payment from the Employer to the Contractor on shipment of each item, against the following documents:*
    - (original) commercial invoice,*
    - (original) shipping documents,*
    - (original) certificate of origin,*
    - (original) insurance certificate, and*
    - (original) Employer's Representative's Interim Payment Certificate confirming the payment due and specifying the amount.*
  - (ii) *. . % of the relevant value of the Plant supplied, by disbursement from the Loan Agreement to the Contractor on shipment of each item, on presentation of a Qualifying Certificate in the form annexed and copies of the documents listed in sub-paragraph (b)(i) above.*
- (c) *the balance of the total Contract Price shall be payable as follows:*
- (i) *. . % of the relevant value of the services rendered, by direct payment from the Employer to the Contractor on execution of the relevant service, against the following documents:*
    - (original) commercial invoice, and*
    - (original) Employer's Representative's Interim Payment Certificate confirming the payment due and specifying the amount.*
  - (ii) *. . % of the relevant value of the services rendered, by disbursement from the Loan Agreement to the Contractor, on presentation of a Qualifying Certificate in the form annexed and copies of the documents listed in sub-paragraph (c)(i) above.*
- (d) *The direct payments by the Employer specified in this Sub-Clause shall be made by an irrevocable letter of credit established by the Employer in favour of the Contractor and confirmed by a bank acceptable to the Contractor.*

The above arrangements (involving financing institution(s), Employer and Contractor) may be initiated by the Employer, or by the Contractor (before submitting his tender). Alternatively, the Contractor may be prepared to initiate financing arrangements and retain responsibility for them, although he would probably be unable or unwilling to provide finance from his own resources; his financing bank's requirements will therefore affect his attitude in contract negotiations. They might well require the Employer to make some payment during construction, although a large proportion of the Contract Price might be withheld until the Works are complete. This payment arrangement can be achieved either by a high percentage rate for retention, or by a suitably completed Schedule of Payments: the Instructions to Tenderers would set out the criteria with which the tenderer should comply. Since the Contractor would then have to arrange his own financing to cover the shortfall between such payments and his outgoings, he (and his financing bank) would probably require some form of security, guaranteeing payment when due.

It may be appropriate for the Employer, when preparing the tender documents, to anticipate the latter requirement and undertake to provide a letter of credit to cover the element of payment which the Contractor is to receive when the Works are complete. The main issue to be addressed in drawing up the letter of credit is the documents to be presented by the Contractor to the bank when requesting the payment due. The following Sub-Clause may be added.

## EXAMPLE SUB-CLAUSE FOR CONTRACTOR FINANCE

*The Employer shall, within . . . days of the Effective Date, deliver to the Contractor irrevocable letters of credit, confirmed by a bank acceptable to the Contractor, in the total sum of . . . per cent ( . . . %) of the Contract Price, payable in the proportions of currencies in which the Contract Price is due to be paid. One letter of credit shall be issued for each currency, payable by a bank in the country of such currency. The amounts payable under the letters of credit will be part payment of the amounts due under the Contract upon completion of the Works. Each letter of credit shall state that it is payable when the Contractor is entitled, under the Contract, to receive the Taking-Over Certificate for the Works, as evidenced by:*

- (a) such Taking-Over Certificate signed by the Employer's Representative and endorsed on behalf of the Employer, or*
- (b) the sworn affidavit signed by all members of the panel of experts (insert appropriate reference) duly authenticated by a notary public.*

It may be appropriate to anticipate the possible delay to the procurement of these letters of credit:

### EXAMPLE DEFINITION

*Delete Sub-Clause 1.1.3.3 and substitute:*

*"Commencement Date" means the latest of the following dates:*

- (i) the date 28 days after the Effective Date;*
- (ii) the date on which the Contractor receives the notice to commence issued by the Employer's Representative under Sub-Clause 8.1;*
- (iii) the date on which the Contractor receives the letters of credit under Sub-Clause . . .*

## Clause 14 - Variations

Variations can be initiated by any of three ways:

- (a) the Employer's Representative may instruct the variation under Sub-Clause 14.1, without prior agreement as to feasibility or price;
- (b) the Contractor may initiate his own proposals under Sub-Clause 14.2, to the benefit of both parties; or
- (c) the Employer's Representative may request a proposal under Sub-Clause 14.3, seeking prior agreement so as to minimise dispute.

### Sub-Clause 14.5 - Provisional Sums

Although generally inappropriate for this type of contract, a Provisional Sum may be required for parts of the Works which are not required to be priced at the risk of the Contractor: for example, to cover goods which the Employer wants to select, or to deal with a major uncertainty regarding sub-surface conditions. It is essential to define the scope of each Provisional Sum (in a Schedule, probably), since such scope will then be excluded from the other elements of the Contract Price.

If a Provisional Sum is likely to be valued under Sub-Clause 14.5(b), the percentage should be quoted by tenderers in the Appendix to Tender. If Provisional Sums relate to radically different types of work, it may be appropriate to permit tenderers to quote a different percentage for each Provisional Sum.

## Clause 15 - Default of Contractor

### Sub-Clause 15.2 - Termination

Before inviting tenders, the Employer should verify that the wording of this Sub-Clause, and any anticipated termination, is not in conflict with the applicable law.

## Clause 16 - Default of Employer

### Sub-Clause 16.2 - Termination

Before inviting tenders, the Employer should verify that the wording of this Sub-Clause is not in conflict with the applicable law; the Contractor should verify that any anticipated termination is not in conflict with such law.

## Clause 17 - Risk and Responsibility

### Sub-Clause 17.3 - Employer's Risks

If certain risks are to be confined to the country in which the Site is located, the Sub-Clause may be amended:

#### EXAMPLE

*At the end of each of sub-paragraphs ..... of Sub-Clause 17.3, insert "in the Country;"*

### Additional Sub-Clause - Use of Employer's Accommodation/Facilities

If the Contractor is to occupy the Employer's facilities temporarily, an additional sub-clause may be added:

#### EXAMPLE SUB-CLAUSE

*The Contractor shall take full responsibility for the care of the items detailed below, from the respective dates of use or occupation for the purposes of the Contract to the respective dates of hand-over or cessation of such occupation (although such hand-over or cessation of such occupation may take place after the date stated in the Taking-Over Certificate for the Works):*

*(insert details)*

*If any loss or damage happens to any of the above items while the Contractor is responsible for their care, arising from any cause whatsoever other than the Employer's risks listed in Sub-Clause 17.3, the Contractor shall, at his own cost, rectify such loss or damage so that the items conform with the provisions of the Contract to the satisfaction of the Employer's Representative.*

## Clause 18 - Insurance

The wording in Part I is based on the Contractor procuring insurances consistent with the general terms agreed with the Employer. The Instructions to Tenderers may therefore require tenderers to include the terms in their Proposals.

In certain circumstances, the Employer may decide not to insist on insurance for design under Sub-Clause 18.1, and/or to arrange insurance in respect of the Works and Third Party liability himself. The tender documents should include details of the insurances to be provided by the Employer, as an annex to Part II, so that tenderers

can estimate what other insurances they wish to have for their own protection. Such details should include the conditions, limits, exceptions and deductibles, preferably in the form of a copy of each policy.

#### EXAMPLE SUB-CLAUSE FOR WORKS INSURANCE BY THE EMPLOYER

*Delete Sub-Clause 18.2 and substitute:*

*The Employer shall insure the Construction Documents, Plant, Materials and Works in the joint names of the Employer, the Contractor and Subcontractors, against all loss or damage arising from any insurable cause other than the Employer's risks listed in Sub-Clause 17.3. Such insurance shall be for a limit of not less than the full replacement cost (including profit) and shall also cover the costs of demolition and removal of debris. Such insurance shall be in such a manner that the Employer and the Contractor are covered from the date by which the evidence of such insurance is to be submitted under Sub-Clause 18.5, until the date of issue of the Taking-Over Certificate for the Works. The Employer shall extend such 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 occasioned by the Contractor or Subcontractors in the course of any other operations (including those under Clauses 11 and 12).*

*The Contractor shall insure the Contractor's Equipment in the joint names of the Employer, the Contractor and Subcontractors, against all loss or damage arising from any insurable cause other than the Employer's risks listed in Sub-Clause 17.3. Such insurance shall be for a limit of not less than the full replacement value (including delivery to Site). Such insurance shall be in such a manner that each item of equipment is insured while it is being transported to the Site and throughout the period it is on or near the Site.*

#### EXAMPLE SUB-CLAUSE FOR THIRD PARTY INSURANCE BY EMPLOYER

*Delete Sub-Clause 18.3 and substitute:*

*The Employer shall insure against liability to third parties, in the joint names of the Employer, the Contractor and Subcontractors, for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2) or to any person (except persons insured under Sub-Clause 18.4), which may arise out of the performance of the Contract and occurring before the issue of the Performance Certificate.*

#### EXAMPLE GENERAL REQUIREMENTS FOR USE WITH ABOVE EXAMPLES

*Delete Sub-Clause 18.5 and substitute:*

*Each insurance policy shall be consistent with the general terms agreed in writing prior to the Effective Date, and such agreement shall take precedence over the provisions of this Clause.*

*The Contractor shall, within the period stated in the Appendix to Tender (calculated from the Commencement Date), submit to the Employer appropriate evidence that the insurances for which the Contractor is responsible have been effected. When each premium has been paid, the Contractor shall submit copy receipts to the Employer. The Contractor shall effect all insurances for which the Contractor is responsible with insurers and in terms approved by the Employer. Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify such loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage. The Contractor (and, if appropriate, the Employer) shall comply with the conditions stipulated in each of the insurance policies.*

*The Employer shall, within 14 days after receiving the performance security described in Sub-Clause 4.2, submit to the Contractor evidence that the insurances for which the Employer is responsible have been effected, and copies of the relevant policies of insurance. When each premium has been paid, the Employer shall submit copy receipts to the Contractor.*

*The Employer shall effect all insurances for which the Employer is responsible with insurers, and in the terms, approved solely by the Employer. All such insurances shall be in accordance with the details of insurance annexed, unless otherwise agreed with the Contractor. The Contractor shall be deemed to have fully understood such details, and to have satisfied himself before submitting his Tender as to the extent of the cover provided under such insurances (taking account of the conditions, limits, exceptions and*

deductibles) and as to the correctness and sufficiency of the Contract Price, which shall be deemed to include the cost of any further insurances which the Contractor wishes to effect. The Contractor and Subcontractors shall accept the insurances effected by the Employer, as if they had effected such insurances; they and the Employer shall comply with the terms and conditions stipulated in each such policy. Payments received under a policy insuring against loss or damage shall be used for the rectification of the loss or damage.

Each party shall make no material alteration to the terms of any insurance for which he is responsible, without the prior agreement of the other party. If an insurer makes (or purports to make) any such alteration, the party notified by such insurer shall notify the other party immediately.

If either party fails to effect and keep in force any of the insurances which he is required to effect under the Contract, or fails to provide satisfactory evidence, policies and receipts in accordance with this Sub-Clause, the other party may, without prejudice to any other right or remedy, effect insurance for the coverage relevant to such default, and pay the premiums due. Such payments shall be recoverable from the party responsible for effecting such insurance.

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 (including the cost of preparing insurance claims) shall be borne by the Contractor and/or the Employer accordingly.

## **Clause 19 - Force Majeure**

Before inviting tenders, the Employer should:

- (a) verify that the wording of this Clause, and any anticipated action under it, is not in conflict with the applicable law, and
- (b) consider whether to amend the period of 182 days in Sub-Clause 19.6.

## **Clause 20 - Claims, Disputes and Arbitration**

Sub-Clause 20.3 - Dispute Adjudication Board

The Contract should include provisions which, whilst not discouraging the parties from reaching agreement as the works proceed, allows them to refer contentious matters to impartial individual(s) with suitable technical qualifications. The provisions depend, for their success, on the parties' confidence in the agreed individual(s) and in the individual's personal and professional qualities. Therefore, it is essential that the arrangements are not imposed by either party on the other party, and that the nominating authority is wholly impartial: FIDIC is prepared to perform this role, provided delegation is permissible (see the example wording in the Appendix to Tender). It is preferable, but not essential, for the individual(s) to be agreed by the time the Tender is accepted: the parties may be able to agree the appointment immediately after the award of the Contract, when relationships are usually favourable.

The "Dispute Adjudication Board" is the defined term for such individual(s), but such definition does not preclude the use of one expert, who would thus act as a one-person Board. At an early stage, consideration should be given as to whether a one-person or three-person Board is preferable for a particular project, taking account of its size, duration and the fields of expertise which will be involved. For some projects, it may be considered appropriate to appoint a one-person Dispute Adjudication Board for each major field of expertise relevant to the Works; however, this could give rise to problems if, when a dispute arises, the parties cannot agree to which person it is to be referred.

For a one-person Board, the Employer may suggest (in a Schedule, possibly, with curriculum vitae) the names of acceptable persons for the Dispute Adjudication Board, for tenderers to select. From the list, each tenderer would nominate acceptable potential members, preferably with alternates in case some subsequently decline the appointment.

For a three-person Board, the Employer may similarly propose one member, and invite tenderers to approve and to suggest (in a Schedule, possibly, with curriculum vitae) the names of acceptable persons for another member of the Dispute Adjudication Board, for the Employer's approval. The Employer could similarly suggest names of acceptable persons for the third member of the Dispute Adjudication Board, for tenderers to select.

Whichever method is used by the parties to attempt agreement on the appointment of the Dispute Adjudication Board, it may be preferable to avoid the matter becoming a major part of the pre-contract negotiations. The example wording in the Tender therefore seeks to avoid the tenderer's suggestions becoming a condition of the Tender, introducing a potential delay to the award of a contract.

#### Sub-Clause 20.5 - Amicable Settlement

The provisions of this Sub-Clause are intended to encourage the parties to settle a dispute amicably: for example, by direct negotiation, mediation or conciliation. Amicable settlement procedures depend, for their success, on confidentiality and on agreement of the procedure; therefore, it is preferable that such procedures are not imposed by either party on the other party. The parties could consider initiating proposals for such procedures upon award of the Contract, when relationships are usually favourable. Alternatively, it may be feasible to await the existence of a dispute before agreeing the procedure; if agreement is then difficult, a successful outcome of any amicable settlement procedure would be just as difficult.

#### Sub-Clause 20.6 - Arbitration

The Contract should include provisions for the resolution by international arbitration of any disputes which are not resolved amicably. International commercial arbitration has practical advantages over litigation and may be more mutually acceptable to the parties.

Careful consideration should be given to ensuring that the international arbitration rules chosen are compatible with the provisions of Clause 20 and the other elements to be set out in the Appendix to Tender. The Rules of Arbitration of the International Chamber of Commerce (the "ICC") are frequently included in international construction contracts. In the absence of specific stipulations as to the number of arbitrators, place of arbitration and language of arbitration, the ICC will decide on the number of arbitrators (typically three in any substantial construction dispute) and on the place of arbitration.

If the UNCITRAL (or other non-ICC) arbitration rules are preferred, it is necessary to designate, in the Appendix to Tender, an institution to nominate the arbitrators or to administer the arbitration, unless such institution is named (and their role specified) in the arbitration rules. However, it will be necessary to ensure, before so designating it in the Appendix to Tender, that it is prepared to so nominate or administer.

For major projects tendered internationally, it is desirable that the place of arbitration be situated in a state other than that of the Employer or Contractor or any financing institution. The situs state should have a modern and liberal arbitration law and should have ratified a bilateral or multilateral convention (such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards), or both, that would facilitate the enforcement of an arbitral award in the states of the parties to the Contract.

It may be considered desirable in some cases for other parties to be joined into any arbitration between the Employer and the Contractor, thereby creating a multi-party arbitration. While this may be feasible, multi-party arbitration clauses require skilful drafting on a case-by-case basis. No satisfactory standard form of multi-party arbitration clause for international use has yet been developed.

**Annex A: EXAMPLE FORM OF PERFORMANCE GUARANTEE**

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

**BETWEEN:** (1) \_\_\_\_\_ [name of bank surety or insurance company]  
of \_\_\_\_\_ [address] (hereinafter called "the Guarantor"); and  
(2) \_\_\_\_\_ [name of Employer]  
of \_\_\_\_\_ [address] (hereinafter called "the Employer").

**WHEREAS:**

A This Agreement is supplemental to a contract (hereinafter called "the Contract") made between (1) the Employer and (2)[name of Contractor] of \_\_\_\_\_ [address of Contractor] (hereinafter called "the Contractor") whereby the Contractor agreed and undertook to design and execute and complete and remedy any defects in the Works of \_\_\_\_\_ [name of Contract and brief description of the Works] for the sum of \_\_\_\_\_ [amount in Contract currency] being the Contract Price; and

B The Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

**IT IS HEREBY AGREED** as follows:

1. Subject to Clause 2 if the Contractor (unless relieved from the performance by any clause of the Contract or by statute or by the decision of a tribunal of competent jurisdiction) shall in any respect fail to execute the Contract or commit any breach of his obligations thereunder then the Guarantor will indemnify and pay the Employer the damages sustained by him as a consequence of such failure or breach not exceeding the aggregate sum of \_\_\_\_\_ [amount of guarantee] \_\_\_\_\_ [in words], such sums being payable in the types and proportions of currencies in which the Contract Price is payable.
2. The payment by the Guarantor will only be made if, prior to the earlier of the date of issue of the Performance Certificate or \_\_\_\_\_ ("the End Date"), the Guarantor has received:
  - (a) written notice from both the Employer and the Contractor that the amount of damages payable to the Employer is agreed between the Employer and the Contractor; or
  - (b) a copy of a notice of arbitration issued by either the Employer or the Contractor under the Contract which is subsequently followed (whether before or after the End Date) by a legally certified copy of an award issued in arbitration proceedings carried out in conformity with the Contract that the amount of the damages is payable to the Employer; or
  - (c) a legally certified copy of a decision of the Dispute Adjudication Board under the Contract in respect of which no notice of dissatisfaction has been given by either the Employer or the Contractor within twenty eight days of the decision under the Contract stating an amount due to the Employer.
3. The Guarantor shall not be discharged or released from his Guarantee by an arrangement between the Contractor and the Employer, with or without the consent of the Guarantor, or by any forbearance on the part of the Employer, whether as to payment, time, performance or otherwise, and any notice to the Guarantor of any such arrangement, alteration or forbearance is hereby expressly waived.
4. This Guarantee shall not be assignable by the Employer and upon it ceasing to be in full force and effect the Employer shall return the same to the Guarantor within 14 days.
5. Words and expressions defined in the Contract shall so far as the context admits bear the same meaning in this Guarantee.
6. This Guarantee shall be governed by the laws of \_\_\_\_\_.

Signed by \_\_\_\_\_  
for and on behalf of \_\_\_\_\_  
on (date) \_\_\_\_\_  
in the capacity of \_\_\_\_\_  
and in the presence of \_\_\_\_\_  
Seal (where applicable)

Signed by \_\_\_\_\_  
for and on behalf of \_\_\_\_\_  
on (date) \_\_\_\_\_  
in the capacity of \_\_\_\_\_  
and in the presence of \_\_\_\_\_  
Seal (where applicable)

**Annex B: EXAMPLE FORM OF SURETY BOND FOR PERFORMANCE**

By this Bond \_\_\_\_\_ [*name and address of Contractor*] as Principal (hereinafter called "the Contractor") and \_\_\_\_\_ [*name, legal title, and address of surety, bonding company, or insurance company*] as Surety (hereinafter called "the Surety"), are held and firmly bound unto \_\_\_\_\_ [*name and address of Employer*] as Obligee (hereinafter called "the Employer") in the amount of \_\_\_\_\_ [*amount of bond*] \_\_\_\_\_ [*in words*], for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Employer dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ for \_\_\_\_\_ [*name of Contract*] in accordance with the documents listed therein, which are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto) then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a tender or tenders from qualified tenderers for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive tenderer, arrange for a Contract between such tenderer and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or
- (3) pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the issue of the Performance Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this \_\_\_\_\_ day of \_\_\_\_\_ .

Signed by \_\_\_\_\_  
for and on behalf of \_\_\_\_\_  
on (date) \_\_\_\_\_  
in the capacity of \_\_\_\_\_  
and in the presence of \_\_\_\_\_  
Seal (where applicable)

Signed by \_\_\_\_\_  
for and on behalf of \_\_\_\_\_  
on (date) \_\_\_\_\_  
in the capacity of \_\_\_\_\_  
and in the presence of \_\_\_\_\_  
Seal (where applicable)

**Annex C: EXAMPLE FORM OF GUARANTEE FOR ADVANCE PAYMENT**

To: \_\_\_\_\_ [name of Employer]  
\_\_\_\_\_ [address of Employer]  
\_\_\_\_\_ [name of Contract]

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub-Clause 13.2 (“Advance Payments”) of the above-mentioned Contract, \_\_\_\_\_ [name and address of Contractor] (hereinafter called “the Contractor”) shall deposit with \_\_\_\_\_ [name of Employer] a bank guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of \_\_\_\_\_ [amount of guarantee] \_\_\_\_\_ [in words].

We, the \_\_\_\_\_ [bank or financial institution], as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligor and not as Surety merely, the payment to \_\_\_\_\_ [Name of Employer] on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding \_\_\_\_\_ [amount of guarantee] \_\_\_\_\_ [in words].

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between \_\_\_\_\_ [name of Employer] and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

No claim may be made by you under this guarantee until we have received notice in writing from you specifying the amount of each advance payment which has been paid to the Contractor pursuant to the Contract.

Our outstanding liability under this guarantee will reduce by such amounts as may be notified to us in your authorised writing and stated to be the reduction of this guarantee required to be made in accordance with the Contract by reason of the repayments made by the Contractor.

This guarantee shall remain valid and in full effect from the date of the first advance payment under the Contract until \_\_\_\_\_ [name of Employer] receives full repayment of the same amount from the Contractor.

Yours truly,  
Signature and Seal: \_\_\_\_\_  
Name of Bank: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_



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



## **CONDITIONS OF CONTRACT FOR DESIGN – BUILD AND TURNKEY**

**FORMS OF TENDER AND AGREEMENT**

**FIRST EDITION 1995**

ISBN 2-88432-010-5

# TENDER

NAME OF CONTRACT:

TO:

GENTLEMEN,

We have examined the Conditions of Contract, Employer's Requirements, Schedules, Addenda Nos \_\_\_\_\_ and the matters set out in the Appendix hereto. We have understood and checked these documents and have not found any errors in them. We accordingly offer to design, execute and complete the said Works and remedy any defects, fit for purpose in conformity with these documents and the enclosed Proposal, for the fixed lump sum of

(in currencies of payment) \_\_\_\_\_  
\_\_\_\_\_

We accept your suggestions for the appointment of the Dispute Adjudication Board, as set out in Schedule \_\_\_\_\_ *[We have completed the Schedule by adding our suggestions for the other member of this three-person Board, but these suggestions are not conditions of this Tender].* \*

We agree to abide by this Tender until \_\_\_\_\_ and it shall remain binding upon us and may be accepted at any time before that date. We acknowledge that the Appendix forms part of our Tender.

If our Tender is accepted, we will provide the specified performance security, commence the Works as soon as reasonably possible after receiving the Employer's Representative's notice to commence, and complete the Works in accordance with the above-named documents within the time stated in the Appendix to Tender.

Unless and until a formal Agreement is prepared and executed this Tender, together with your written acceptance thereof, shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

We are, Gentlemen

Yours faithfully

Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_

duly authorised to sign tenders for and on behalf of \_\_\_\_\_  
\_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_

\* If the Tenderer does not accept, this paragraph may be deleted and replaced by:

We do not accept your suggestions for the appointment of the Dispute Adjudication Board, and propose that we jointly agree upon the appointment after the Effective Date (unless previously agreed) in accordance with Sub-Clause 20.3 of the Conditions of Contract. *[OPTIONAL: Our Proposal includes our suggestions for this appointment, but these suggestions are not conditions of this Tender.]*

## Appendix to Tender

[Note: with the exception of the items for which the Employer's requirements have been inserted, the following information must be completed before the Tender is submitted]

	Sub-Clause	
Employer's name and address _____	1.1.2.1 & 1.8	_____
Contractor's name and address _____	1.1.2.2 & 1.8	_____
Name and address of the Employer's Representative _____	1.1.2.3 & 1.8	_____
Time for notice to commence _____	8.1	_____ days
Time for Completion of the Works _____	1.1.3.4	_____ days
<i>If Sub-Clause 13.15 does not apply:</i>		
Foreign Currency/Currencies _____	1.1.5.3	as named in the TENDER
Law of the Contract _____	1.4	_____
Ruling language _____	1.4	_____
Language for communications _____	1.4	_____
Electronic transmission systems _____	1.8	_____
Confidential details _____	1.12	_____
Time for access to the Site _____	2.2	_____ days after the Commencement Date
Amount of performance security _____	4.2	_____ % of the Contract Price, and in the proportions of currencies in which the Contract Price is payable
Time for submission of programme _____	4.14	_____ days after the Effective Date
Normal working hours _____	6.5	_____

Liquidated damages for the Works \_\_\_\_\_ 8.6 \_\_\_\_\_ % of the Contract Price per day, in the proportions of currencies in which the Contract Price is payable

Limit of liquidated damages for delay \_\_\_\_\_ 8.6 \_\_\_\_\_ % of the Contract Price

*If Clause 11 applies:*

Liquidated damages for failing Tests after Completion 11.4

(details of test failure) \_\_\_\_\_

(details of test failure) \_\_\_\_\_

Total amount of advance payments \_\_\_\_\_ 13.2 \_\_\_\_\_ % of the Contract Price

Number and timing of instalments \_\_\_\_\_ 13.2 \_\_\_\_\_

Start repayment of advance payment \_\_\_\_\_ 13.2(a) when payments are 10% of the Contract Price

Repayment amortisation of advance payment 13.2(b) \_\_\_\_\_ 25%

Percentage of retention \_\_\_\_\_ 13.3 \_\_\_\_\_ %

Limit of Retention Money \_\_\_\_\_ 13.3 \_\_\_\_\_ % of the Contract Price

*If Sub-Clause 13.5 applies:*

Plant and Materials for payment when delivered to the Site \_\_\_\_\_ 13.5 \_\_\_\_\_ [list]

Minimum amount of Interim Payment Certificates \_\_\_\_\_ 13.6 \_\_\_\_\_ % of the Contract Price

*If Sub-Clause 13.15 applies:*

Payments in Local and Foreign Currencies 1.1.5.3 & 13.15

Currency Unit	Percentage payable in such Currency	Rate of exchange: number of Local per unit of Foreign
Local: _____ [name]	_____	1.000
Foreign: _____ [name]	_____	_____
_____ [name]	_____	_____

*If there are Provisional Sums:*

Percentage for adjustment of Provisional Sums _____	14.5(b)	_____ %
Amount of insurance for design _____	18.1	_____
Amount of third party insurance _____	18.3	_____
Periods for submission of insurance:	18.5	
(a) evidence of insurance _____		_____ days
(b) relevant policies _____		_____ days
Number of members of Dispute Adjudication Board _____	20.3	_____
Member of Dispute Adjudication Board (if not agreed) to be nominated by _____	20.3	The President of FIDIC or a person appointed by such President
Arbitration rules _____	20.6	_____
Number of arbitrators _____	20.6	_____
Language of arbitration _____	20.6	_____
Place of arbitration _____	20.6	_____

*If ICC rules are NOT to apply - Either:*

Arbitration rules to be administered by _____	20.6	_____
Or: Arbitrator (if not agreed) to be nominated by _____		

*If there are Sections:*

Definition of Sections

Description (Sub-Clause 1.1.6.9)	Value (percentage of Contract Price) *	Time for Completion (Sub-Clause 1.1.3.4)	Liquidated Damages (Sub-Clause 8.6)
_____	_____	_____	_____
_____	_____	_____	_____

\* These percentages shall also be applied to the first half of the Retention Money under Sub-Clause 13.9

Initials of signatory of Tender \_\_\_\_\_

# AGREEMENT

This Agreement made the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_

Between \_\_\_\_\_ of \_\_\_\_\_ (hereinafter called "the Employer") of the one part, and \_\_\_\_\_ of \_\_\_\_\_ (hereinafter called "the Contractor") of the other part

Whereas the Employer desires that the Works known as \_\_\_\_\_ should be designed and executed by the Contractor, and has accepted a Tender by the Contractor for the design, execution and completion of such Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
  - (a) The Letter of Acceptance dated \_\_\_\_\_
  - (b) The Employer's Requirements
  - (c) The Tender dated \_\_\_\_\_
  - (d) The Conditions of Contract (Parts I and II)
  - (e) The Addenda nos \_\_\_\_\_
  - (f) The completed Schedules, and
  - (g) The Contractor's Proposal.
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to design, execute and complete the Works and remedy any defects therein, fit for purpose in conformity with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor, in consideration of the design, execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

In Witness whereof the parties hereto have caused this Agreement to be executed the day and year first before written in accordance with their respective laws.



Authorised signature of Employer

\_\_\_\_\_

in the presence of:

Name \_\_\_\_\_

Signature \_\_\_\_\_

Address \_\_\_\_\_



Authorised signature of Contractor

\_\_\_\_\_

in the presence of:

Name \_\_\_\_\_

Signature \_\_\_\_\_

Address \_\_\_\_\_